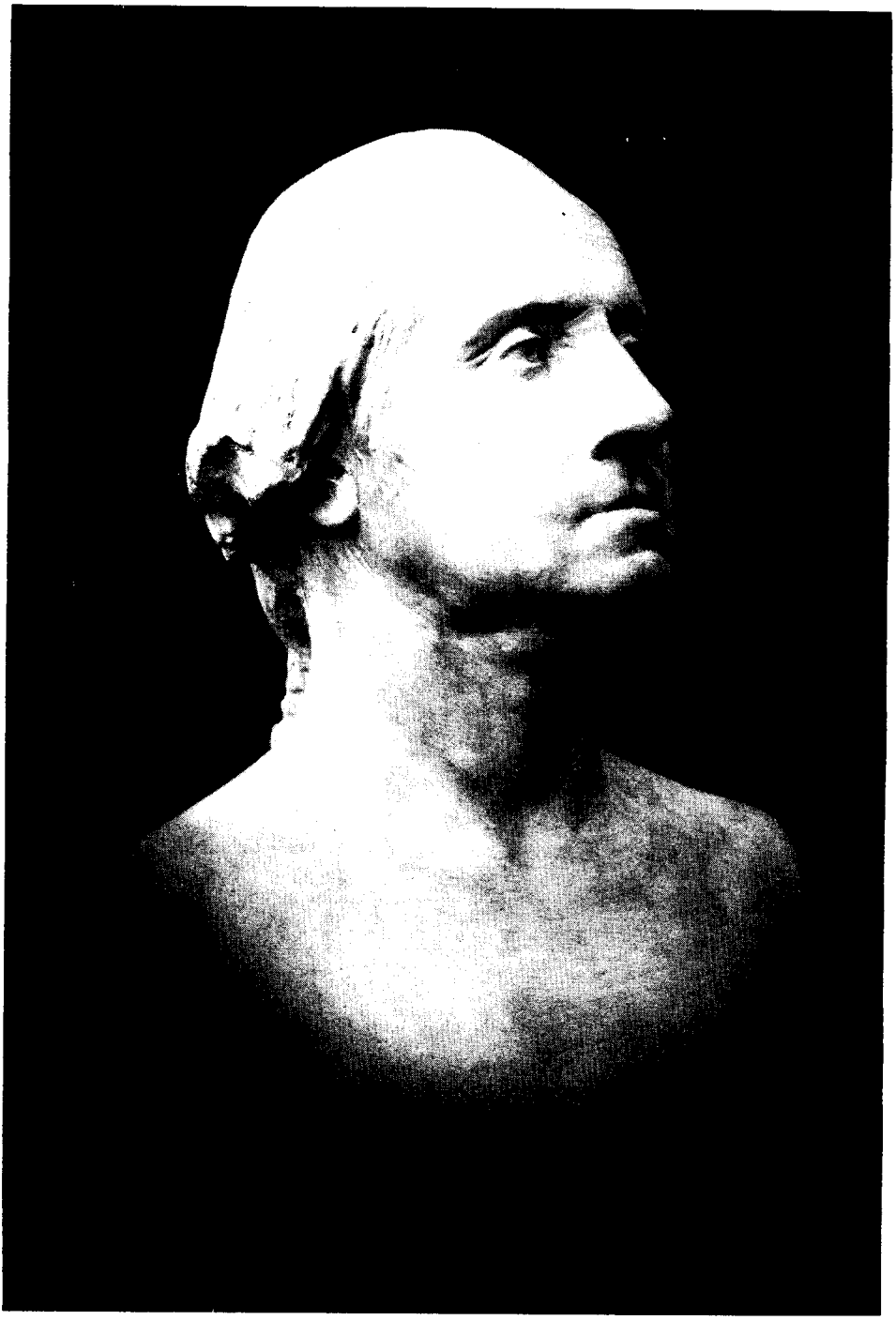
HISTORY OF THE FORMATION OF THE UNION UNDER THE CONSTITUTION



GEORGE WASHINGTON

From the bust by Jean Antoine Houdon

HISTORY OF THE FORMATION OF THE UNION UNDER THE CONSTITUTION

WITH LIBERTY DOCUMENTS AND REPORT OF THE COMMISSION

Sol Bloom, *Director General*

UNITED STATES
CONSTITUTION SESQUICENTENNIAL COMMISSION

Joint Resolution

JOINT RESOLUTION Providing for the preparation and completion of plans for a comprehensive observance of the one hundred and fiftieth anniversary of the formation of the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby established a commission, to be known as the "United States Constitution Sesquicentennial Commission" (hereinafter referred to as the "Commission") for the celebration of the one hundred and fiftieth anniversary of the formation of the Constitution, and to be composed of eighteen commissioners, as follows: The President of the United States; the President of the Senate and the Speaker of the House of Representatives, ex officio; five persons to be appointed by the President of the United States; five Senators to be appointed by the President of the Senate; and five Representatives by the Speaker of the House of Representatives.

SEC. 2. The commissioners shall receive no compensation for their services but shall be paid their actual and necessary traveling, hotel, and other expenses incurred in the discharge of their duties.

SEC. 3. The Commission shall select a chairman and appoint a Director, who shall appoint, with the approval of the Commission, such assistants and subordinates as he deems necessary.

SEC. 4. That it shall be the duty of the commissioners, after promulgating to the American people an address relative to the reason of its creation and of its purpose, to prepare a plan or plans, and a program for the adequate celebration of the sesquicentennial anniversary, and to give due and proper consideration to any plan or plans which may be submitted to them; and to take such steps as may be necessary in the coordination and correlation of plans prepared by State's commissions, or by bodies created under appointment by the Governors of the respective States, and by representative civic bodies.

SEC. 5. That the Commission shall, on or before the 20th day of January 1936, make a report to the Congress, in order that enabling legislation may be enacted.

SEC. 6. That the Commission hereby created shall expire December 31, 1939.

SEC. 7. That the Commission may receive from any source contributions to aid in carrying out the general purpose of this resolution, but the same shall be expended and accounted for in the same manner as any appropriation which may be made under authority of this Act.

SEC. 8. There is hereby authorized to be appropriated the sum of $10,000 to defray expenses.

Approved August 23, 1935.

UNITED STATES CONSTITUTION SESQUICENTENNIAL COMMISSION

PRESIDENT OF THE UNITED STATES
Chairman

VICE PRESIDENT OF THE UNITED STATES

SPEAKER OF THE HOUSE OF REPRESENTATIVES

United States Senate

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New York

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C. O'CONOR GOOLRICK	Virginia
DANIEL J. TOBIN	Indiana
WILLIAM HIRTH	Missouri
MAURICE E. HARRISON	California
HARRY AUGUSTUS GARFIELD	Massachusetts

Director General

REPRESENTATIVE SOL BLOOM

Historian

DAVID M. MATTESON

Executive Offices: 524 Old House Office Building, Washington, D. C.

U. S. GOVERNMENT PRINTING OFFICE: 1941

FACSIMILE LETTER FROM THE PRESIDENT

THE WHITE HOUSE
WASHINGTON

April 11, 1940

My dear Mr. Bloom:

As Chairman of the United States Constitution Sesquicentennial Commission it is a pleasure to commend the work you have accomplished in carrying out the celebration.

Your task, as Director General, was to make the American people aware of the importance of the Constitution in the daily lives of all of us. To know the Constitution is a fundamental duty of every citizen. You have stressed this fact and made the educational aspects of your work the most important ones.

I understand also that you are, in this final publication of the Commission, placing major emphasis on the study of the origins of the Constitution and the organization of the government under it. This is as it should be. The Constitution stands as the foundation on which later generations have built the present structure of our government. The forth-coming volume, therefore, should be valuable to those who are interested in that structure, which should be all citizens.

Very sincerely yours,

Franklin D. Roosevelt

Honorable Sol Bloom,
Director General,
United States Constitution Sesquicentennial Commission,
Washington, D. C.

General Introduction

DURING the more than four years of the existence of the United States Constitution Sesquicentennial Commission it was active along various lines. As the formation of the final Union was a matter of many months, extending from the organization of the Convention of 1787 on May 25 to the inauguration of President Washington on April 30, 1789, or even to the first term of the Supreme Court in February 1790, there was a long series of special events to commemorate. These involved not only the great national points of celebration—the signing, the last necessary ratification, the beginning of Congress, the inauguration, and the meeting of the Supreme Court—but also numerous state and local days, such as the separate ratifications of the states. In the preparation for all these the Commission planned, advised, and participated, making material available, suggesting programs, holding exhibits, promoting publicity, and making the people as a whole conscious of the importance of the event and mindful to profit by it.

This task involved not only the transient celebrations, but also the production of material which should be of lasting benefit toward a proper understanding of the meaning of the Constitution and its place in the history and daily life of the country—of the origins and principles of our nation. One phase of this was to make generally available the great documents themselves, and in the case of the Declaration of Independence and the Constitution to distribute them as facsimiles and in such fixtures as would make them worthy memorials of the commemoration and constant reminders of the all important facts the celebration sought to inculcate. The other phase of this more permanent purpose was to tell the story of the Constitution popularly but accurately, with the accompanying state documents; and also to present in more detail form a study of the organization of the government under the Constitution.

The present publication serves the dual purpose of a report of the Commission's work and of the special commemorations; and a history of the formation of the Union, involving the two studies mentioned above and a presentation of the texts of the great documents of civil freedom that are the foundation of our national liberty and polity. In many respects the Constitution Sesquicentennial Celebration has been a complement of the former one in honor of the 200th Anniversary of the Birth of George Washington. He has been the central figure

in both; but while the earlier event was concerned principally with him as a single character, the present one has considered him as a leader among leaders in the great work of his later years, when the liberty he had previously been indispensable in securing was made practical, substantiated, and perpetuated.

SOL BLOOM,
Director General.

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STORY OF THE CONSTITUTION

Sol Bloom

Preface

THIS STORY OF THE CONSTITUTION was the chief publication of the Commission during the Celebration and about 700,000 copies of it have been distributed. It is reprinted here for more permanent record and as an important part of the History of the Formation of the Union, as well as an exposition of the principles of the Constitution. It is dedicated to "We the People"—to the 131,000,000 who desire to know something about the Constitution, and to have it told to them in such a way that they can understand what it is all about. It tries to reach the millions who are not judges or lawyers or professors or historians or otherwise trained in a knowledge of the Constitution which governs the daily lives of all of us. It is a book for the people. Accordingly, it tells briefly the origins of our country, and what the steps were that led up to the formation of the Constitution. Having told how and why the national government came about, the book tells what the Constitution stands for, its principles and the means by which it operates.

The original edition carried an exact reprint of the Constitution and amendments, and of other great public papers. These are in the present book transferred to the section on Liberty Documents. Other features are intended to promote through various means—alphabetical analysis, portraits and sketches of the signers, tables, short articles, maps, and questions and answers—an understanding of constitutional history.

This book was planned and edited by the Director General, and prepared by and under the more immediate supervision of the Historian of the Commission, David M. Matteson. Other workers upon the book, who prepared various portions of it, are Mr. Ira E. Bennett, Dr. John C. Fitzpatrick, and Mr. Charles A. Cusick. Accuracy as to all facts and dates has been a constant aim in the publication, and especially of literal exactness in the reprint of the original documents. It is believed that the care which has been taken in these matters justifies a claim of unusual correctness.

SOL BLOOM,
Director General.

People

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Thirteen Colonies

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Continental Congress

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Revolutionary War

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Declaration of Independence
of the United States

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State Governments

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Articles of Confederation

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Independence

★

Constitution of the United States

★

United States Government

Part I

Origin of the United States

DISCOVERY—TITLE TO THE SOIL

THOUGH King Henry VII of England may have turned a cold shoulder upon Christopher Columbus when he asked for financial aid in undertaking a highly speculative voyage in search of India by sailing westward from Europe, yet he was a keen and enterprising monarch, and quickly realized the importance of Columbus' discovery. In 1496 he commissioned John Cabot to go out and discover countries then unknown to Christian people and take possession of them in the name of the English king.

Cabot made two voyages, and by 1498 had sailed along what is now the Atlantic Coast of the United States and claimed it for England. By tacit agreement the European sovereigns rested their respective claims upon priority of discovery. The natives were regarded as heathens possessing no rights of sovereignty. Quarrels arose between the European powers over boundary questions, but the British claims based upon right of discovery were made good by sword and by treaty, so that ultimately the title to all lands embraced in the thirteen original states was vested in the British crown.

The first permanent English settlement on this continent was made under the charter granted by King James I to Sir Thomas Gates and others in 1606. Three years later a new and enlarged charter was given to the "Treasurer and Company of Adventurers and Planters of the City of London for the First Colony in Virginia." The colony was given in absolute property all the lands extending along the sea-coast 400 miles northward from near the 34th degree of north latitude and running back from the coast "from sea to sea." In 1620 another charter was granted to the Duke of Lennox and others, denominated the Council for New England, conveying to them in absolute property all the lands between the 40th and 48th degrees of north latitude.

Under these patents the settlement of Virginia and New England was accomplished. Subsequent charters brought about the settlement of New Jersey, New York, Pennsylvania and Delaware, Maryland, the Carolinas, and Georgia. Wars followed by treaties resulted in the acquisition by England of the remaining territory now comprised in the thirteen original states, together with the western country east of the Mississippi.

By the treaty which ended the War of the Revolution the boundaries of the United States were agreed upon, and all the powers of government and right to soil passed to their proper jurisdictions under the United States.

COLONIAL GOVERNMENT

BRITISH subjects outnumbered all other immigrants to the colonies under British dominion. They brought with them the traditions of British rights, liberties, and immunities, British laws and customs, and the English language.

Centuries of struggle had won for Englishmen many guaranties of rights, liberties, and immunities. English common law was fairly established when the colonies were begun. Some rights and immunities which had been enjoyed from time immemorial were reduced to writing in Magna Carta (*see* p. 511), which was wrung from King John by the barons of England at Runnymede in 1215. Other individual rights were formally guaranteed in writing, notably the Bill of Rights (*see* p. 526) under William and Mary. The system of constitutional government safeguarded by a parliament elected by the people was well established when the first colonial charter was granted.

The liberties and rights of Britons were concessions from kings who ruled as by divine right and were originally seized of all authority. This theory underlies the monarchical system to this day.

The colonies, beginning with Virginia and New England, were settled under charters granted by the king of England. These grants made large reservations of royal privilege and relatively small concessions to the emigrants. Broadly speaking, the colonists did not at first enjoy civil and political liberties as they were known in England. Protests against denial of privileges enjoyed by British freemen were made in Virginia as early as 1612. Gradually the colonies were given larger powers of government, always provided that colonial laws should be in conformity to the laws of England and that allegiance to the crown should be acknowledged.

The colonial period of the people who became Americans was

longer than the period extending from the establishment of the Constitution to the year 1937. The colonists had abundant experience during 169 years in various forms of government under British authority. In some respects eventually there was substantial home rule and enjoyment of individual liberties equal to those enjoyed in England; but in matters of trade the British government persisted in sacrificing the rights of the colonies to the advantage of Britain. This situation developed endless friction, complaint, and evasion of the British regulations.

CAUSES OF THE REVOLUTION

FROM the early days of the colonies, the people claimed for themselves and their posterity exemption from all taxation that was not imposed by their own representatives. Since it was impossible for them to be represented in the British Parliament, they denied the right of that body to tax them. Attempts by Parliament to impose taxes as a means of regulating commerce were opposed, with increasing tension on both sides, but the climax was not reached until after the French and Indian War of 1754–63. During this war the colonists were drawn nearer the British sovereign as their legitimate protector, but bitter experiences and common impositions also served to draw them closer toward a colonial union, which was, however, mainly for more effective protest.

This war, which was part of the Seven Years' War in Europe, left Great Britain with many new colonial possessions all over the world, with a great burden of debt, and with a driving incentive for developing the imperial system. It was felt in Britain that the American colonies should help pay the cost of removing the French menace and for continued British protection. The imperialistic spirit awakened a desire for more strict control over all British possessions. This control was to be exercised through Parliament. A specific declaration to this effect was made in 1766, in the statute of 6 Geo. 3, ch. 12, in which Parliament declared that "the colonies and plantations in America have been, are, and of right ought to be, subordinate unto, and dependent upon, the Imperial Crown and Parliament of Great Britain," and that the king, with the advice and consent of Parliament, "had, hath, and of right ought to have, full power and authority to make laws and statutes of sufficient force and validity to bind the colonies and people of America . . . in all cases whatsoever."

Violent opposition to this assertion of the power to tax the col-

onies arose both in England and America. Lord Chatham in December 1765 declared that while British authority over the colonies was supreme in matters of government and legislation, "taxation is no part of the governing or legislative power; taxes are the voluntary grant of the people alone."

Efforts were made on both sides to avoid a collision. Parliament modified its declaration by providing that no duty or tax would be imposed on the colonies except for the regulation of commerce; and that the net revenue from the duty or tax would be devoted to the use of the colony in which it was levied. Many plans were suggested for reorganization of the governments in the colonies, with a view to reconciling the differences that disturbed good relations with Great Britain.

As early as 1754 Benjamin Franklin's plan of union was adopted by the Albany Congress of the colonies; but, foreshadowing the irrepressible conflict, the colonies rejected the plan because it gave too much control to the British government, and that government rejected it because it gave too much liberty to the colonies.

Aside from the resistance to "taxation without representation," numerous grievances were nursed by the Americans against Great Britain—grievances arising from differences that had grown up in the economic and social life of the colonies, for which no allowance was made by the British government. The colonies were moving toward separation from Britain. The more the colonists studied the subject, the more doubt they entertained as to the right of Parliament to assert supreme authority over them.

The first united action of protest in the preliminaries of the War for Independence was the Stamp Act Congress of 1765, held at New York and attended by delegates from nine of the thirteen colonies, mostly appointed by the assemblies. Voting by colonies, each having one vote, it framed petitions to the king and to Parliament and adopted an important Declaration of Rights, the first platform of American principles. The next step was a common policy of boycotting English goods, known as nonimportation agreements, followed by the appointment of intercolonial committees of correspondence to keep the leaders of the different regions in mutual touch and consultation. When affairs with the home government reached a crisis with the destruction of imported tea and the acts to coerce Massachusetts into obedience to British measures, the colonies took the step which led directly to the present Union. This was the meeting of the First Continental Congress on September 5, 1774, in Carpenters' Hall at Philadelphia.

THE CONTINENTAL CONGRESS

THIS important body was attended by delegates from all the colonies save Georgia, the representation of the people being indirect. It continued to be so throughout the Continental Congress and Articles of Confederation, except that Connecticut and Rhode Island delegates were popularly elected. Another highly important fact was that this meeting, following the practice of the Stamp Act Congress, adopted the rule of one vote for each colony without respect to size, population, or wealth. This decision for equality was undoubtedly inevitable. It had great effect upon the subsequent legislative events down to 1789, for the system was continued under the Second Continental Congress and by the Articles of Confederation. It was a rule that often impeded congressional action and hindered the development of a competent general government; the efforts to continue it almost disrupted the Convention of 1787 that drafted the Constitution.

While there were some conservative members in the First Continental Congress, the radicals were in control; the roll of the Congress included the prominent men of all the colonies. The petition and declarations were similar to those of the Stamp Act Congress. More important was the regulation of the enforcement of the nonimportation and noncomsumption agreement—the boycott. The carrying out of this remained with the people of the colonies, the coercive power was there; but the direction was at least given by a united action. Before the Congress adjourned on October 26, 1774, it provided for another gathering if the crisis continued.

The Second Continental Congress met at Philadelphia on May 10, 1775, and endured until finally superseded in 1789 by the government organized under the new Constitution. It passed without break from the extra-legal conditions of its earlier existence to those of a constitutional body under the Articles of Confederation after March 1, 1781. It and its agents were during the years 1775–88 the only organ of union; in it were all the national powers not then withheld by the states—legislative, executive, and judicial—that existed to keep the states together as one nation, and to it belonged all the responsibility. Unfortunately, neither before nor after the Articles of Confederation went into operation did it possess the power to enforce its measures. The only instrument for this was the states; as Washington said, Congress could "merely recommend and leave it to the States afterwards to do as they please, which . . . is in many cases to do nothing at all." This was an almost fatal weakness but it was not an unnatural condition. Originally the colonies probably had no further idea of union than such common action as would

force respect for the rights of the several colonies under British suzerainty. Circumstances alter cases, and experience teaches.

Independence was not an element of the antebellum struggle. Circumstances literally forced it upon the attention of the leaders and then it was reluctantly incorporated into their policy. They were proud of being Englishmen so long as they were permitted to be such with full recognition of what they claimed as their rights. The Declaration was made inevitable by armed conflict. Independence of thirteen little nations engaged in a common war would have been an absurdity; but localism was still too powerful to permit a union stronger than the minimum necessary to give it status in the family of nations, especially after the need of united military effort had ceased. It was only when it was realized that a nation without a backbone could not remain a nation even in name, that events compelled the "more perfect Union"; and the ratification struggle showed how difficult it was even then to get public opinion to support measures deemed necessary for this by the farsighted men who drafted the Constitution. The evolution did not end there, or the strife between localism, or state rights, and national power.

ARTICLES OF CONFEDERATION

WHEN the Second Continental Congress met, hostilities had begun and the Minute Men of New England were besieging the British forces in Boston. The delegates were much the same as in the earlier Congress, and they realized the need of assuming the war power necessary to carry on the conflict. It was an entirely extra-legal action, acquiesced in because the control of the colonies was in the hands of those who sympathized with the measures, even though they often became reluctant to assume the burden essential to carrying them out.

Independence, national standing, confederation, and state rights were conjoined speedily. The resolution of the Virginia convention, May 15, 1776, instructing the colony's delegates to propose independence, also gave assent to "whatever measures may be thought proper and necessary by the Congress for forming foreign alliances, and a Confederation of the Colonies, . . . *Provided,* That the power of forming Government for, and the regulation of the internal concerns of each Colony, be left to the respective Colonial Legislatures." Also the resolves which Richard Henry Lee introduced under the above directions, and which were adopted by Congress on July 2, 1776, included: "That a plan of confederation be prepared and transmitted

to the respective Colonies for their consideration and approbation."

In 1774 a plan of union had been proposed by a conservative, but this was ignored as it was distinctly pro-British. Franklin offered an outline in 1775 which also was neglected. Finally the Articles of Confederation were agreed to and submitted to the states in 1777. The victory of the small states in establishing their right to an equal vote was not considered by some of them as sufficient, however. New Jersey, Delaware, and Maryland demanded that the states that had large claims to western lands renounce them in favor of the Confederation. Maryland was the last state to ratify the Articles, holding out until March 1, 1781, when she became satisfied that the western claims would become the expected treasure of the entire nation.

This delay caused almost the whole of the American Revolution to be fought under a gentlemen's agreement, and one that was by no means favorable to efficient operation, either civil or military. The correspondence of Washington, the commander-in-chief, during the war is one long plaint of things that were lacking—soldiers, supplies, funds, and cooperation. Undoubtedly, the Continental Congress was not an ideal instrument for the work that it had to do; it deteriorated in personnel, much time was wasted on unimportant matters and in bickering; but in spite of this the evidence is strong that Congress was better than its results. Time and again it passed measures admirable for military efficiency and success, only to see them fall by the wayside because of the obduracy of the state governments, which alone had the *power* to make the acts operable.

No war was ever won through enthusiasm alone, and as this died down and the realization of the burden increased, the reluctance of the states to face necessary conditions increased both the burden and the duration of the contest. In the end the war was won because of the character of the commander-in-chief and because of French aid. Without these it undoubtedly would have failed, and the failure would have been due to the attitude of the state governments, to their unwillingness to forget the selfish claims of the parts in the needs of the whole.

CONFEDERATION FAILS—THE CRITICAL PERIOD

CONDITIONS were not improved under the Articles of Confederation. This direct predecessor of the Constitution brought no transformation of the government; it merely placed on a legal foundation a structure that needed rebuilding throughout. The main, and fatal,

character of the government under the Articles is indicated by Article II: "Each state retains its sovereignty, freedom and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the United States." It was a "league of friendship" only, of which the Congress was the unique organ and in which "each state shall have one vote." The vote of nine states in Congress was necessary to important action by that body. The Articles "shall be inviolably observed by every state, and the union shall be perpetual"; and the consent of the legislature of each state was necessary to any amendment of the fundamental law.

The Articles contained many wise details which were later perpetuated in the Constitution; but the compact gave Congress no commercial control and no power to raise money. It could only make requisitions on the states (as it had done during the war) on an ascertained basis, and then hope and pray that the states would respond adequately. They never did. Congress was given control over foreign affairs, but was given no means of making the states obey even the treaty requirements, or provide for the payment of the foreign debt. It was a government of responsibility without power; to foreign nations it was the United States, to the states it was merely what they chose to allow it to be. Its dealing with the people was through states and not otherwise.

During the war most of the states had adopted constitutions. These provided for governments in separate departments—executive, legislative, and judicial—generally with bills of rights to protect the citizens, especially from such evils as had caused the revolt against British control. They were based on the practices of colonial times and the current theories of government; and they gave control through the elective franchise over the lower house of legislature in all cases, as had been the rule of the colonies. There was usually an upper house, but the character of its election varied. The governor was in a majority of cases chosen by the legislature. In only five states, New England and New York, were both the entire legislature and the executive popularly elected. The Articles of Confederation were, however, a thing apart from this movement, a concession to necessity rather than an inherent element of American polity.

There is small wonder that the Confederation was not a success. Congress recognized at once the financial need; but several efforts to get the states to amend the Articles, by adding the right to levy import duties, failed through lack of unanimous authorization. The

binding force of war conditions having ended, there was the collapse of moral fiber that seems always to follow a great clash of arms. Interest in the Union steadily waned. It became increasingly difficult to secure a quorum of attendance in Congress, and when there was a sufficiency of states represented important measures were blocked by the need of nine state votes, especially as a state frequently lost her vote because of differences among her delegates. Localism became more and more rampant; interstate difficulties and discriminating commercial legislation arose; and within the states depression, with its following of radicalism and class and ignorant sectional demands, bred anarchy. It is, however, easy to put too much emphasis on the evils of this critical period and upon the economic distress. It was a time of experimentation, of learning a hard lesson that would be remembered. The Continental Congress and Articles of Confederation not only remained a symbol of union; they also prepared the way for a better national government and left on hand agencies of government in fair working order and various substantial acts of legislation, such as the ordinance for the government of the Northwest Territory and that for the public-land survey.

Part II

Formation of the Constitution

GENESIS OF THE CONVENTION

THOUGHTFUL men, both in and out of public life, were fully aware of the distressful state of affairs and its only too evident consequences; and there were many exchanges of ideas on the possible remedies. Pamphlets were also issued on the subject, such as those of Noah and Pelatiah Webster. Washington was then in retirement on his Mount Vernon estate, but in touch with affairs through visitors and an extensive correspondence. He wrote Lafayette in 1783: "We stand, now, an Independent People, and have yet to learn political tactics . . . experience, which is purchased at the price of difficulties and distress, will alone convince us that the honor, power, and true interest of this country must be measured by a Continental scale, and that every departure therefrom weakens the Union, and may ultimately break the band which holds us together."

Since the attempts for a stronger central government through the regular agency were failing to produce results, efforts for a better understanding and cooperation were sought in outside ways. Virginia led in the measures which had direct results, and the economic interests of the former commander-in-chief were factors in the situation. He was concerned with the improvement of the navigation of the Potomac River and was instrumental in inducing a joint Virginia-Maryland commission, in 1785, to sign a compact for the regulation of the river that was their mutual boundary. Consideration led to the suggestion to include Pennsylvania and Delaware in the adjustment of commercial matters which they had in common with the other two states. On January 21, 1786, the legislature of Virginia, enlarging upon this idea and ignoring entirely the requirements of the Articles of Confederation, suggested a general convention of commissioners from the states to view the trade of the Union, and "consider how far a uniform system in their commercial relations may be necessary to their common interests and their permanent harmony."

The convention thus projected met at Annapolis in September 1786, but was attended by New York, New Jersey, Pennsylvania, Delaware, and Virginia only, though other states had appointed delegates. Because of the limited attendance, nothing was done except to make a report, drafted by Alexander Hamilton, to the legislatures of the five states and also to Congress. This called attention to the fact that the delegates of New Jersey had been authorized to consider not only commercial regulations but "other important matters" necessary to the common interest and permanent harmony of the several states; and suggested the calling of another convention with enlarged powers, since the "power of regulating trade is of such comprehensive extent, and will enter so far into the general System of the foederal government, that to give it efficacy, and to obviate questions and doubts concerning its precise nature and limits, may require a corresponding adjustment of other parts of the Feoderal System." It is interesting to note how farseeing Hamilton was in this statement of the importance of the commercial power of the Union.

Congress took this report into consideration and on February 21, 1787, eleven states being represented, resolved that such a convention appeared "to be the most probable means of establishing in these states a firm national government," and that it considered it "expedient" that such a convention be held in May 1787 at Philadelphia "for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein as shall when agreed to in Congress and confirmed by the States render the federal Constitution adequate to the exigencies of Government and the preservation of the Union." This resolve brought the acts of the proposed convention within the legal requirements of amendment of the Articles, since whatever was proposed by the convention must be agreed to by Congress and then confirmed, presumably, by all the state legislatures.

THE DEPUTIES

THE LEGISLATURES of all the states except Rhode Island appointed deputies to this Convention of 1787. Six of them did this before Congress passed the above resolve. Seventy-four men were appointed deputies; of these nineteen declined or did not attend. Of the fifty-five who attended, fourteen left before the convention closed and three more refused to sign the final draft; thirty-eight signing, with the added signature of an absent deputy. Rhode Island, where localistic radicals were in control, ignored the whole proceeding.

Who were the fifty-five men who, in varying degrees, were the framers of our National Constitution? The knowledge concerning some of them is indefinite, but the following facts are substantially correct. All of them except eight were natives of the colonies. Franklin, the oldest, was 81; Dayton, the youngest, was 26; fourteen were 50 or over; twenty-one were less than 40. Twenty-five were college men. Eighteen had been officers in the Continental army, of whom ten were in the Society of the Cincinnati. One had been a British army officer before the Revolution. Thirty-four of them were lawyers, or men who had at least studied the law, some of them trained at the Middle Temple in London; of these six had been or were to be state attorney generals, five chief justices of the state supreme courts, four chancellors, three national judges, and five justices of the Supreme Court of the United States, of whom one was to be chief justice and another after a term as associate justice was to be rejected for the higher office by the Senate. Eight of the deputies were merchants or financiers. Six of them were planters, while others were planters in addition to legal or other activities. There were three physicians and two former ministers of the gospel, several college professors and one present and one future college president. The Fourth Estate was represented by Benjamin Franklin.

These men were almost without exception acquainted with public affairs: forty-six had been members of one or both of the houses of the colonial or state legislatures; ten attended state constitutional conventions; sixteen had been or were to be governors or presidents of states. In national affairs forty-two were delegates to the Continental Congress, eight were signers of the Declaration of Independence, six signers of the draft of the Articles of Confederation, seven had attended the Annapolis Convention, and three had been executive officers under the Congress. Thirteen were to be congressmen and nineteen national senators, one territorial governor, four members of the President's Cabinet. One had been a minister abroad and seven more were to be later. Two future Presidents of the United States took a prominent part in the proceedings of the convention and one future Vice President. Two others were to be candidates for the highest office in the land and these and one other, candidates for the Vice Presidency. The positions which these men had occupied or were later to fill are indicative of the regard in which they were held by their fellow citizens, and of their character and worth.

The most important man in the convention was George Washington; indeed, his acceptance of the deputyship, made reluctantly and after long consideration, was the initial triumph of the movement

and a foreshadowing of success, so great was his prestige. Madison and Randolph, his fellow deputies from Virginia, were very active in the work of the convention; and Wythe and Mason, older men, added the weight of their knowledge and experience as prominent participants in earlier affairs. Madison's great knowledge of political science, the fact that to him more than to any other deputy public life was a profession, and his grasp of the essential problems before the convention and the means by which they could be solved, enabled him to become the principal architect of the Constitution.

Franklin was the seer of the convention. His great age and infirmities forbade very active participation, and he was probably responsible for little of the detailed results; but his very presence gave the gathering importance and dignity and his advice must have been eagerly sought and carefully considered. He and Washington were the two great harmonizers. Washington presided over the formal sessions, taking little part in the debate, but in committee of the whole and in the private conferences which were such an important underpinning of the formal structure as it arose, he was in constant consultation with his colleagues. Also, as the character of the plan developed, there was a general recognition of the fact that he must be a leading man in the early operation of the new government, and this of necessity influenced its shape.

It is not possible here to do more than mention the other most prominent men of the convention. In the reflection of his later fame much influence has been attributed to Alexander Hamilton. This, however, was not the case. His ideas of central power were too extreme; he was hindered by the reactionary character of his two colleagues, and he was also absent during half of the convention. His great services came later. In the ratification contest and the successful operation of the new government his work was masterful.

Gouverneur Morris, brilliant and cogent debater and firm believer in a national system, was responsible for the final very apt wording of the Constitution. James Wilson, leader in law and political theory, ably seconded Madison's efforts, especially in details. Roger Sherman, from small but progressive Connecticut, was a signer of the documents of the First Congress, the Declaration, the Articles of Confederation, and the Constitution; and Oliver Ellsworth was his lawyer colleague.

Gerry and King of Massachusetts were Harvard graduates, the one fluctuating in his attitude and the other a calm thinker and careful speaker, an advocate of an efficient system with due consideration of the rights of the states. William Paterson of New Jersey, John

Dickinson of Delaware, and Luther Martin of Maryland, were prominent as small state leaders, bent upon the preservation of the equality of the states. Martin was from the beginning an opponent of anything other than amendment of the Articles of Confederation, and continued implacable. John Rutledge, Charles Pinckney, Charles Cotesworth Pinckney, and Pierce Butler of South Carolina saw the need of a completely new system, but were also eager to preserve the advantage of the slave system then dominating the economic conditions of the lower South. Charles Pinckney, one of the youngest men in the convention, was especially forceful in his advocacy of a workable "American System" for the nation whose future growth he clearly envisioned.

ORGANIZATION

THE CONVENTION was called for the second Monday in May 1787, which was the 14th, and Washington arrived at Philadelphia, prompt as always, on the day before, when, as he said in his diary, "the bells were chimed." There was, however, not the necessary quorum until the 25th, when seven states were represented. Before the end of the month ten states were present and voting. Maryland participated on June 2, but New Hampshire, the twelfth state, was not on hand until July 23, and New York was not voting after July 10.

The meeting was held in Independence Hall, where the Congress had sat and where the Declaration of Independence was adopted and signed. Little time was wasted in organization. Washington was the unanimous choice for president. The voting was by the prevailing system of one state, one vote; and complete secrecy was ordered in accordance with the rule, often violated, of the Continental Congress.

Most of the credentials merely voiced the purpose of the assembly as given by the resolution of the Continental Congress to provide effectual means to remedy the defects of the Confederation; but the Delaware members were forbidden to amend the right of each state to one vote. On the other hand, South Carolina wished the central authority to be "entirely adequate to the actual situation and future good government." Delaware's warnings were preliminary notes of discord that later reached full development in the main theme.

Thus began the meetings of one of the greatest sessions of wise men in the history of the world. But these meetings were so secret that the president would not give any hint concerning them even in the intimacy of his private diary. There was a formal journal kept, but except for its list of motions and votes, it is the least important of the

records which have come down to us. Far surpassing it and all other sources combined were the notes on the debates kept by Madison, notes that were not made public as a whole until 1840. Thus he doubled the debt the nation owes him for his work in the formation of the national government, and later he added still further to the obligation by his energetic participation in the ratification contest and in the organization of the government. Various other members made notes that occasionally add to the knowledge derived from Madison, or throw light upon the position of members. None of these, however, cover the whole proceedings, the Yates notes being the most extensive next to Madison's.

There were meetings on eighty-seven or eighty-eight days of the one hundred sixteen between May 25 and September 17, inclusive. Of these meetings we have more or less knowledge, but of the work under the surface, of the special committee meetings and of the private discussions, we have scarcely anything, and most of this through the unreliable form of later recollection. Yet it was here, in the give and take of informal gatherings, that much of the real work was done.

THE VIRGINIA PLAN

ON MAY 29, the convention having been organized, Randolph "opened the main business" by introducing the "Virginia Plan." This plan, drafted by Madison, had been submitted by him in outline to Washington on April 16, and was later worked up in preliminary meetings of the Virginia delegation of seven members. It provided for apportioned representation, a legislature of two houses, the lower house elected by the people, the upper one elected by the lower. The legislature was to have all the legislative powers of the Continental Congress, and also "to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual Legislation; to negative all laws passed by the several States, contravening in the opinion of the National Legislature the articles of Union; and to call forth the force of the Union against any member of the Union failing to fulfill its duty under the articles thereof."

There was to be a national executive and a national judiciary, with a council of revision formed out of them which should have a conditional veto on national legislation and also on the national legislature's negative of state acts. The central power was to guarantee a republican form of government and its territory to each state. Provisions for the admission of new states were included, and

provisions for amendment without "the assent of the National Legislature." Also state officers should be "bound by oath to support the articles of Union." Ratification of the proposed changes was to be by Congress and state conventions.

This was the germ of the Constitution of the United States. For its form it went back to practices of colonial and state governments; for its powers to the lessons of wartime and later experiences. It gave the central government coercive power over the state governments, while it guaranteed their continued existence. Since it made no provision for operation through the state governments, it contained the idea of direct action on the people, and the great "law of the land" principle was foreshadowed. This was far more than a mere amendment of the Articles of Confederation and entirely contrary to the instructions given the delegates from Delaware. It was a large-state proposal.

Charles Pinckney also introduced a plan, the text of which has not come down to us, but probable extracts and an outline exist. Its general character was similar to the Virginia plan and its influence upon the final draft seems to have been considerable.

The next thirteen meetings were in committee of the whole upon the Virginia plan. To enforce the idea of this plan three resolutions, urged by Gouverneur Morris, were introduced, declaring that a federal (that is, confederate) union of individual sovereigns was not sufficient; that a "*national* Government ought to be established consisting of a *supreme* Legislative, Executive, & Judiciary."

The report which the committee of the whole made to the convention on June 13 was a development of the Virginia plan, with changes that gave the election of the upper house of the national legislature to the state legislatures; made the executive consist of a single individual, and gave him alone the provisional veto.

THE PATERSON PLAN

MEANWHILE, the deputies who feared a strong central government and were concerned with the preservation of the power of the states had been devising an alternative plan, which was introduced by Paterson of New Jersey on June 15. This merely added to the powers of Congress the right to levy an impost and to regulate foreign and interstate commerce. It authorized a plural executive and a federal judiciary. It made the acts of Congress and the treaties with foreign powers "the supreme law of the respective States so far forth as those Acts or Treaties shall relate to the said States or their

Citizens," and bound the judiciary of the states to proper observance. It also gave the national executive the right to call forth the power of the states to compel obedience by the states to such acts or treaties.

This plan left the character of Congress unchanged, with an equal state vote and choice of delegates by the state legislatures; it adopted the separation of national powers; and specified the supremacy of the Union within its sphere. These were, to this extent, concessions to the recognized need for a more efficient government, but they did not go far. They merely patched up the old Articles.

THE COMPROMISE

THE BATTLE between the large and small states was joined. Out of the conflict, which threatened to disrupt the convention, emerged on July 16 the adoption of the Great Compromise, urged by the Connecticut deputies. This gave representation based on population in the lower house, and to that house the exclusive power to originate money bills; but in the upper house an equal state vote. The special financial power of the lower house was also a provision in some of the state constitutions; but it was later practically nullified by giving the Senate the right of unrestricted amendment. During the discussion of this compromise, the cleavage between the northern and southern states developed, due to the latter's demand, when population was substituted for wealth as the basis of representation, for representation of its slave population. A part of the compromise was, therefore, that three-fifths of the slaves should be counted as inhabitants. A similar proposal as a basis of requisitions upon the states had been before the Continental Congress; and as a phase of this agreement the direct taxes, which under the new government would take the place of the old requisitions, were given the same basis of levy upon the states. This compromise, together with the election of the Senate by the state legislatures, did much to quiet the apprehension of the small-state party; but it was not a victory for those who wished to preserve the principles of the Articles of Confederation, and when later each senator was given a separate vote the idea of state representation in the upper house was weakened.

This compromise made it evident that sectional questions as well as those involving state rights were to be met—evidences that were prophetic of future trouble. Much of the history of the nation throughout its first six decades was to turn, not upon state rights as they involved the differences between small and large states, but upon state sovereignty in combination with sectional divergencies.

The southern deputies, from a region entirely agricultural, were fearful that unrestrained control by the central government over foreign commerce might result in navigation acts unfavorable to their section. Out of this another compromise developed which left the commercial power unrestricted but forbade an export tax, or interference with the foreign slave trade before 1808.

LAW OF THE LAND

THE NEXT important question was that of national control over state laws and actions; its need was generally recognized, but a direct veto and military enforcement of obedience were objectionable. The plan introduced by Paterson on June 15 suggested the remedy, which was adopted unanimously on July 17. This made the laws and treaties of the national government the supreme law, to which the state judiciaries were bound in their decisions. Later the Constitution itself was added to the laws and treaties and the "supreme law of the States" was made the "supreme Law of the Land," which change might be considered as emphasizing the origin of the Constitution as the work of the whole—of the people—and not of the states.

This great "Law of the Land" clause has been called the linchpin of the Constitution, since it effectively binds the parts into the whole. It has always been the chief basis upon which the courts have passed on the constitutionality of legislation, whether state or national. It embodies the principle of direct action by the national government upon the inhabitants, for the enactments of the Congress are laws directly binding upon the people themselves.

METHOD OF RATIFICATION AND AMENDMENT

THE VIRGINIA plan had called for ratification of the Constitution by state conventions especially chosen by the people. Only two of the existing state constitutions had been framed by conventions chosen exclusively for this task; and only in these two had the constitution been submitted to the people for approval or rejection. Elsewhere legislatures, all but three of them freshly chosen, however, framed the constitutions and put them in force. The amendments proposed to the Articles of Confederation were also voted upon by the legislatures.

The more direct appeal under the new Constitution to the freemen themselves, through the action of conventions especially

chosen for the purpose, was in harmony with the main principles of a document which began with "We the People," and which cut loose so completely from the existing confederate principles. Attention may be called here to the fact that in this as in other respects the Constitution led toward that greater democratic spirit that operated more and more within the state governments themselves: an element that had no small influence in cementing the Union.

More was to follow the convention's adoption on July 23 of this method of ratification, for on August 31 it was voted that ratification by nine states would be sufficient for establishing the Constitution over the states so ratifying, and that the approbation of the Continental Congress was not required. Both of these decisions were clearly revolutionary. The Articles of Confederation required unanimous ratification of amendment, and the resolution calling the convention stated that the alterations and provisions made by the convention should be submitted to Congress as well as to the states; in other words, that the convention should act, not as an independent body, but as a committee or agent of Congress. The method by which the new Constitution might be amended also did away with the need of unanimity; but left to the Congress under the new Constitution to decide, in proposing amendments, whether the ratification should be by legislatures or conventions of the people.

FINISHING THE WORK

THE REST of the work of the convention was largely detail—important detail, but little that involved great principles. Like the basic ideas, the results were arrived at for the most part through compromise. A definite statement of the national powers had to be made, since the residuary ones were left to the states; the national judiciary and its jurisdiction stated; and the election and powers of the President decided upon.

The demand for a single executive won; but the idea of a council, inherited from colonial times, when such a body was both the upper house of legislature and the governor's adviser, persisted, and finally the Senate was given power to ratify treaties and also approve appointments. The Cabinet of the President, which has evolved as his adviser, has no legal existence as a body. The method of choosing the President had to be worked out without aid from precedents, except the provision in the Maryland constitution of an electoral college for senatorial elections; and the original intention has been twisted entirely out of shape by the development of political parties.

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Committees of detail and of style performed their tasks, and finally on September 17, 1787, the draft was ready for the signatures of the deputies. Of the fifty-five who had attended the convention, only forty-one remained, and three of these refused to sign. To the thirty-eight signatures was added, at his request, that of one absent deputy, and it is probable that a large majority of those absent would have signed if present. With Hamilton signing for New York, though he had refrained from voting on its final passage since alone he could not represent the state, the draft was sent forth by the "Unanimous Consent of the States present." This form was itself a compromise which induced various members to sign who would not otherwise have done so. These were willing to certify by their signatures that the draft had received the votes of all of the *states*, but not that it had their personal approval.

Most truly has the Constitution been called a "bundle of compromises . . . a mosaic of second choices accepted in the interest of union."

RATIFICATION

THE DRAFT was submitted to the consideration of the "United States in Congress assembled," with the expression of opinion that Congress pass it on to the state legislatures, to be submitted by them to the mercies of state conventions. Doubtless, had Congress refused to do this, the states could and probably would have taken independent action. The Pennsylvania deputies presented the draft to their legislature on September 18, 1787, before it was known to Congress, and other copies were sent by delegates to their states or to friends. The Congress accepted its modest rôle. On September 28, eleven states being present, without a word of favorable comment upon the contents of the document, it was unanimously transmitted to the state legislatures. The unanimity, like that of the convention itself, was rather fictitious, and possible only because comment was withheld.

During the convention, there had been newspaper speculation and statements as to its progress, based for the most part merely on rumor; but with the publication of the signed Constitution the expression of public opinion came at once to full flood. The extensive and virulent use of newsletters and pamphlets was greater than on any previous occasion; and wherever people gathered, whether for town meetings, church, or gossip at the country stores on the crossroads, the topic was evidently a universal one. It raged for months, and it is to be noticed that ratification became more difficult as the discussion progressed.

The honor of first ratification went to Delaware. Her convention was a mere formality, and approval was unanimously given on December 7, 1787. Five days later Pennsylvania, under the influence of Wilson's vigorous arguments, added her name, though the Antifederalists raised the cry of trickery. The convention of New Jersey resolved on ratification without dissent on December 18, 1787. Georgia gave her adherence on January 2, 1788, and Connecticut was just a week later. One large state, two small states, and two that occupied rather a middle position on this question had now given their approval. The convention of Massachusetts came next and here, where but recently the Shays Rebellion, the worst of the radical outbreaks, had threatened the stability of the state itself, there was a real battle.

The issue fought out in the ratification contest had many phases: the old question of state rights and sovereignty; the danger to the liberties of the people from a strong central government; sectional antagonism; class prejudices; desire to escape obligations and enjoy the unearned increment of cheap money; backwoods life, where ignorance of the real needs prevailed; and fear of anything new or novel.

There were strong leaders on both sides. Samuel Adams was in doubt, Hancock inclined to wait and see which way the popular wind would blow, and Gerry voiced his reasons for refusing to sign the Constitution. Governor George Clinton of New York strongly opposed ratification. Patrick Henry, Richard Henry Lee, George Mason, who had refused to sign the Constitution, and James Monroe headed the opposition in Virginia. The leaders of the convention rallied to its support—King and Strong in Massachusetts, and Hamilton, assisted by Jay and Benson, in New York. Madison was a tower of strength in Virginia, ably seconded by Randolph, even though he also had refused to sign, and by the young John Marshall, ignorant of what his own career would mean in constitutional history, but already firm in the principles that were to give him immortal fame and his government a dynamic entity. Above all, the fact that Washington and Franklin had signed the draft was of immeasurable importance. Both sides realized this: the Federalists pointed with pride; the Antifederalists declared that these great men had been deceived and that the claim of their support of the plan was misleading.

Washington took no direct active share in the ratification contest, but he made no secret of his support. His correspondence teemed with the subject and his almost daily intercourse with visi-

tors at Mount Vernon seconded his written admonitions. Above all, he disapproved of the idea of a second convention, which was one of the favorite proposals of the Antifederalists. He had too much knowledge of the difficulties met in the first gathering to believe that a second one could do any better, especially as there was no agreement among those opposed as to the proper remedy. There was nothing, in his opinion, constructive in the arguments against the Constitution; they were all "addressed to the passions of the people and obviously calculated to alarm their fears."

The most influential publication of the contest was the series of newsletters written by Hamilton, Madison, and Jay under the signature of "Publius" and later called "The Federalist." So fair and so cogent was this work that it continues to this day as a great exposition of the Constitution, a survival which Washington prophesied.

It was in the Massachusetts contest that the proponents, facing a crisis, devised a remedy that made ratification possible. This was the proposal of amendments by the state conventions, not as a condition of ratification, though this was generally demanded by the opposing leaders, but as a recommendation, of the proper consideration of which they were "convinced." A chief feature of all these amendments was a bill of rights, that the new central government might not become an instrument of tyranny, which the newly emancipated colonists considered the British government to have been.

Ratification in Massachusetts, the second large state, was thus secured on February 6, 1788, by the close vote of 187 to 168. All the states but one of those that followed Massachusetts in 1788 suggested amendments. In New Hampshire the convention met and adjourned, which alarmed Washington and other Federalists; but this was really a wise act, because a majority of the delegates of this rural state had been instructed to oppose adherence. Maryland, in spite of Luther Martin and Samuel Chase, who later were to become strong Federalists, ratified on April 28, 1788, by a vote of 63 to 11, and South Carolina on May 23 by a vote of 149 to 73.

The reassembled New Hampshire convention on June 21, 1788, by a vote of 57 to 47, gave the ninth ratification necessary for putting the Constitution into effect.

Practically, however, the approval of Virginia and New York was necessary; the former because of its importance and the latter because of its geographical position. In the conventions of both these states the struggle was desperate. Finally, ratification was obtained in Virginia on June 26, 1788, by a vote of 89 to 79. In New York a large majority of the delegates were hostile, but the

efforts of Hamilton, Jay, R. R. Livingston, and Duane converted a sufficient number, in spite of Lansing, who had been a member of the Convention of 1787, Governor Clinton, and Melancton Smith. Ratification won by a vote of 30 to 27 on July 26, 1788.

North Carolina and Rhode Island remained outside. In the former state a convention adjourned on August 4, 1788, after resolving by a vote of 184 to 83 or 84 that a long list of submitted amendments should be laid before Congress, or a second convention called, previous to ratification. Rhode Island did not even call a convention. When, however, the new government was in operation without these states and they were in danger of being treated as foreign countries, they changed their mind. North Carolina ratified on November 21, 1789, and Rhode Island on May 29, 1790, but even then by the narrow vote of 34 to 32.

On September 13, 1788, the Continental Congress prepared for its own demise by directing that the electors of the President should be chosen on the first Wednesday in January 1789; that the electors should vote on the first Wednesday in February; and that the new government should begin operations at New York on the first Wednesday in March. Electors were accordingly chosen in ten states; the New York legislature failing to pass the necessary measure on method of appointment, that state lost its vote. A month later the electors chose George Washington President and John Adams Vice President. But the newly elected Congress failed to have a quorum on the first Wednesday in March, which was the 4th; and it was not until April 6, 1789, that enough members were assembled legally to organize and declare the electoral vote. Washington, duly notified, arrived at New York on April 23 and was inaugurated President April 30, 1789. Thus the government of the United States of America began actual operations under the Constitution, except that the Supreme Court did not organize until February 2, 1790.

Part III

The Constitution In Operation

THE PEOPLE AND THE CONSTITUTION

THE LEAGUE embodied in the Articles of Confederation was made by the states. The Constitution was made by the people.

The first three words of the Constitution—"We the People"—declare by what authority the United States of America is ruled.

Having won their liberty and independence by force of arms, and having experienced distress and danger because of an imperfect union, the people finally succeeded in forming the "more perfect Union" which is ordained and established by the Constitution.

The Constitution is a direct emanation from the people. It not only prescribes the kind of government which shall hold the states and the people together, but it limits and defines the powers of the government itself. Neither the United States government nor the states can modify, enlarge, or restrict their own powers. They depend for their existence upon the people, who reserve the right, as set forth in the Declaration of Independence, to alter or abolish their government.

Until the people decide otherwise, the United States is, in the noble phrase of Chief Justice Chase, "an indestructible Union, composed of indestructible States." It is made indissoluble by the Constitution, which also provides for the indestructibility of the states by guaranteeing to each state a republican form of government and equal suffrage in the Senate.

The people have ordained in the Constitution that the national government shall depend for its existence upon the perpetuity of the states. There is, however, no guaranty of unchangeable state area, though there is a constitutional restriction of changes; but all elections are by states, including election of senators and representatives in Congress and presidential electors. When the House of Representatives is called upon to elect a President of the United States each state has one vote. Failure of the states to perform

their functions would annihilate the national government.

The people who ordained the Constitution were passionately attached to their state and local governments. They knew that they were masters of their states, but they feared that a national government would become a tyranny like the British tyranny they had just thrown off. The states and the people enjoy immense powers that are denied to the United States. It is this dual system of government that distinguishes the United States from other countries.

England has no written constitution. Its constitution or fundamental law is whatever Parliament says it is. Therefore the judges of England enforce the laws of Parliament without any question as to their constitutionality. But under a written constitution creating a government with limited powers a nation must have some means of determining if laws are in accord with the basic principles set forth by the constitution.

The liberties enjoyed by Englishmen were wrested from the Crown. The American colonists claimed these liberties as their inheritance, and won, by force of arms, the final right to them and to further ones which had been fostered by the conditions of the colonial governments. The government of the United States is not a concession to the people from some one higher up. It is the creation and the creature of the people themselves, as absolute sovereigns.

A LIMITED GOVERNMENT

THE OBJECTS sought by the American people in their aspirations for the preservation of their liberties are well stated in the preamble to the Constitution, though no power to enact any statute is derived from the preamble. But while the scope of these objectives recognizes the unlimited power of the people, the Constitution itself imposes severe limitations upon the government. In general, the national government is granted only such powers as are necessary for the proper discharge of purely national functions, such as could not be discharged by the states, acting either separately or through interstate compacts.

New conditions and an uncertain future faced the people when they ratified the Constitution, and it was framed to meet the situation that confronted them. This was well set forth by Justice Story in *Martin* v. *Hunter*, 1 Wheat. 326:

"The constitution unavoidably deals in general language. It did not suit the purposes of the people, in framing this great charter

of our liberties, to provide for minute specifications of its powers or to declare the means by which those powers should be carried into execution. It was foreseen that this would be a perilous and difficult, if not an impracticable, task. The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence."

The determination of the people to hold a check-rein upon the government they were creating is shown in the many prohibitions contained in the Constitution. Great reserve powers, many of them unexplored, are retained to the states and to the people. This is well stated by the court in *Livingston* v. *Van Ingen,* 9 Johns. (N. Y.) 574:

"When the people create a single, entire government, they grant at once all the rights of sovereignty. The powers granted are indefinite and incapable of enumeration. Every thing is granted that is not expressly reserved in the constitutional charter, or necessarily retained as inherent in the people. But when a federal government is erected with only a portion of the sovereign power, the rule of construction is directly the reverse, and every power is reserved to the members that is not, either in express terms or by necessary implication, taken away from them, and vested exclusively in the federal head. This rule has not only been acknowledged by the most intelligent friends of the constitution, but is plainly declared by the instrument itself."

Although the powers of the national government are limited in number, they are not limited in degree. Wherever the people have granted a power to the government it is a complete power, and that which is implied is as much a part of the Constitution as that which is expressed.

Experience in colonial governments and under the Confederation had taught the people that safety lay in preventing concentration of powers in any one authority. By separating the legislative, executive, and judicial powers, and making each of them a check upon the others, it was felt that all powers necessary could be entrusted to the government without danger of tyranny. But as a further precaution the people reserved to the states and to themselves all powers that were not entrusted to the national government; and in other clauses of the Bill of Rights they set barriers against encroachment upon individual liberty by any branch of this government.

By retaining large powers in the states the people erected a

further barrier against encroachment upon their liberties by the central government they were creating. This division or balance of powers between the national government and the states has been the cause of endless debate and controversy.

CONGRESS

THE LIMITATION upon the law-making power of the United States government is clearly shown by the words "herein granted" in the following sentence, from Art. I. § 1:

"All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Neither branch of Congress acting separately can enact a law. Congress can not delegate its power to make laws to an executive department or to an administrative officer, nor can any department or officer repeal, extend, or modify an act of Congress. But Congress may vest in executive officers the power to make necessary rules and regulations to enforce a law.

Senators and representatives are paid out of the United States Treasury, but it has been held that they are not officers of the United States. They are not subject to impeachment. Either house by a two-thirds vote may expel a member, but otherwise they are not removable. With some exceptions, they are exempt from arrest during attendance upon Congress; and they cannot be questioned elsewhere for their actions or words in Congress. No senator or representative may be appointed to any national office during his term if the office has been created or the emoluments thereof increased during that time. No national officer may be a member of Congress.

The general process of making laws is set forth in the Constitution. Every bill must have the approval of the President of the United States, unless he retains it more than ten days; and if he should disapprove, it cannot become a law unless repassed by a two-thirds vote of each house of Congress.

Proposals to amend the Constitution may be submitted to the states by a two-thirds vote of both houses of Congress, and such a resolution need not be submitted to the President for his approval.

The chief power conferred upon the government is that of taxation. When Congress acts within its constitutional authority, its power to tax is unlimited; but Congress cannot under the pretext of taxation exercise powers which are denied to it.

Next to the power to tax, the power to regulate interstate and

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foreign commerce is the most important function of Congress as affecting the every day affairs of the people. Commerce is traffic, intercourse, navigation, trade, and shipping; and the power to regulate includes power to foster, protect, control, restrain, and prohibit, with appropriate regard for the welfare of the public. But here, as elsewhere, this power does not carry with it the right to destroy the guaranties which are placed in the Constitution and amendments.

The exclusive power to coin money and regulate its value is conferred upon Congress. All power over coinage is denied to the states, so that there shall be a national coinage and a uniform value of money throughout the United States. Although the states are prohibited from making "any thing but gold and silver Coins a Tender in the Payment of Debts," there is no prohibition against the issuance of paper money by the United States. The Supreme Court has held that Congress may determine this question, according to the necessities of the nation.

Only seven words are contained in the Constitution in regard to the mails. Congress is given power "To establish Post Offices and post Roads." This is a complete and exclusive power, and it has been held to include the power to define and punish crimes against the mails.

Under its power to confer upon authors and inventors "the exclusive Right to their respective Writings and Discoveries" Congress has powerfully stimulated the inventive faculties of the American people.

The exclusive power to declare war is vested in Congress. The Constitution does not define the limits of this power. This subject was earnestly discussed by the framers of the Constitution. They very wisely concluded that, since it is impossible to foresee the dangers of war or the measures that may be necessary to maintain our independence, the government should not be denied the power to make war and peace in any way it deems wise. The power to declare war and make treaties enables the United States to do anything necessary to preserve the nation. But even extreme war measures must be directed toward saving the Constitution. The government cannot, under the exercise of the war power, extinguish a state or abolish the Constitution. The Constitution takes precautions against a possible military dictatorship by providing that no appropriation of money to raise and support armies shall be for a longer term than two years. Congress is not at liberty to grant permanent funds to the President for the support of an army.

Several prohibitions are imposed upon Congress in the body of the Constitution. The privilege of the writ of habeas corpus may not be

suspended unless the public safety shall require it; no bill of attainder may be enacted; no ex post facto law may be passed; no export tax or duty may be imposed; no preference may be given to the ports of one state over those of another; no money may be drawn from the Treasury except by appropriations made by law; and no title of nobility may be granted.

To prevent encroachments on national powers, certain prohibitions are imposed by the Constitution upon the states. No state may enter into any treaty or alliance, grant letters of marque, coin money, emit paper money or make it a legal tender, pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility. No state may lay duties on commerce or keep troops or ships of war or enter into any agreement with any other state, or with a foreign power, without the consent of Congress.

THE PRESIDENT

THE EXECUTIVE power is "vested in a President;" he is the sole responsible constitutional officer. There is a Vice President, but as an executive officer he is merely the heir apparent, ready to take over the presidential functions when occasion requires. In the meantime, he presides over the Senate without a vote except in cases of a tie. Unofficially he may at times act as a liaison between the President and Congress; but ordinarily his place in the scheme of government is but little considered, so slightly that this reacts at times upon the proper consideration to be given to the nominations for an office of such great potentiality.

The President must be a native born citizen, the only office in the country of which this was a qualification in the original Constitution, though a similar qualification was implied for the Vice President. In the Twelfth Amendment this requirement for the lesser office is distinctly stated.

The office of President of the United States is one of the most important and powerful in the world; yet to its duties and powers the Constitution gives only some 320 words, not including those upon the veto power. These duties and powers are to have command of the military and naval forces, grant reprieves and pardons, make treaties, appoint and commission officers, give information to Congress, convene it in extraordinary sessions and under certain conditions adjourn it, receive foreign ministers, and "take Care that the Laws be faithfully executed." In addition he has the power of provisional veto.

It is evident that while the President is head of the executive department, his duties and powers are not confined to the execution of the laws; though this is perhaps his most important duty. Various of his functions, not actually executive, were also combined in the office of colonial governor or later state governor and were primarily those of the deputy of a king possessed with general powers. The power of veto is distinctly legislative, as is also the treaty-making power and the right to advise Congress. The pardon power is judicial. The Senate shares in both the appointing and treaty power, possessing, in this respect, the character of a council.

The President himself does not execute the laws. He is responsible for seeing that they are executed, the actual tasks being performed by a host of officials under him, who are answerable to him. The Constitution directs that he shall appoint diplomatic and consular officers, judges of the Supreme Court, and "all other Officers of the United States," except that Congress may direct the appointment of "inferior Officers" by courts of law or heads of departments. So far as his power is derived from the Constitution, he is beyond the reach of any other department of the government. In directing national policy, the President possesses almost unlimited discretionary powers, which are not subject to question by the legislative or judicial departments. All official acts performed by the heads of departments are presumed to be the acts of the President.

The President is exempt from mandamus or injunction, and is not subject to the writ of habeas corpus. Theoretically, he may be subpoenaed, but in practice he is exempt.

As commander-in-chief of the army and navy the President may make rules and regulations for the government of these forces. Such regulations have the force of law. Without waiting for the action of Congress, the President may use the military forces to put down insurrection or meet invasion. During war, he possesses enormous powers. He may invade enemy territory and set up a military government therein. He may establish provisional courts in occupied territory and set up a temporary tariff system. He may recognize and revoke recognition of foreign governments. He may declare a blockade of foreign ports and employ secret agents to enter the enemy's lines for the purpose of gaining information. In a time of invasion or civil war the President may declare martial law.

The President's power to pardon is not subject to regulation by Congress. Congress cannot limit the effect of his pardon nor exclude any class of offenders from the exercise of a pardon.

Under the treaty-making power the President, with the advice

and consent of the Senate, may make contracts with foreign nations of the most far-reaching character, and these treaties are the supreme law of the land. During war, treaties with the enemy are usually suspended or terminated automatically, and peace is usually made by treaty. Additions to the territory of the United States have been made mostly by treaty, notably the Louisiana Purchase, the acquisition of California and other territory from Mexico, the purchase of Alaska, and the acquisition of the Philippine Islands and Puerto Rico from Spain.

THE JUDICIARY

ONE OF the most striking and novel features of the Constitution is the establishment of the judicial branch as an independent and coequal department of the government. The lack of a real judicial system was one of the vital defects of the United States before the establishment of the Constitution. At the time, in no other government did the judiciary possess the powers now exercised by the courts of the United States; since ratification of our Constitution, various nations have adopted similar provisions. Justice Story says:

"Where there is no judicial department to interpret, pronounce, and execute the law, to decide controversies, and to enforce rights, the government must either perish by its own imbecility, or the other departments of government must usurp powers, for the purpose of commanding obedience, to the destruction of liberty. The will of those who govern will become, under such circumstances, absolute and despotic; and it is wholly immaterial, whether power is vested in a single tyrant or in an assembly of tyrants."

The Constitution provides for "one supreme Court, and . . . such inferior Courts as the Congress may from time to time ordain and establish." The judicial power of the United States is vested in these courts.

Neither the number nor the qualifications of justices of the Supreme Court, or of judges of other courts, are provided for in the Constitution. All judges are appointed by the President, with the advice and consent of the Senate, and hold their offices during good behavior.

Careful provision was made not to have the national courts conflict with state courts in jurisdiction, and the functions and powers of state courts were left intact except in matters outside their province. The national judicial power extends to cases arising under the Constitution, the laws of the United States, and treaties; in addition, other cases which do not properly come under the jurisdiction of state

courts are under the jurisdiction of the national courts, such as those of maritime jurisdiction, controversies between states, and cases affecting ambassadors, ministers, and consuls. Cases arising under state laws may, of course, be appealed to the Supreme Court when constitutional rights are involved.

This new branch of government revealed its importance from the very first, and with the growth of the nation, the framework of national courts has become of profound significance. Only a relatively small part of the work done by the national courts, including the Supreme Court, involves decisions on the constitutionality of legislation. The vast majority of cases are those of interpretation and application of laws whose constitutionality is unquestioned.

The Supreme Court hears very few cases that have not been heard before in inferior courts, as the Constitution gives it original jurisdiction only in cases affecting ambassadors, ministers, and consuls, and those in which a state itself is a party. As such cases are relatively few, the Supreme Court devotes most of its time to its appellate jurisdiction, which may, unless Congress decrees otherwise, extend to all the other cases named in the Constitution.

It was for the purpose of enabling the Constitution and laws in pursuance of it to be enforced in specific cases, in this way securing the rights of life, liberty, and property, that the people committed the judicial power, not to a part of the legislature or executive power, but to a separate, distinct, and independent body of men. The independence of the judicial branch is secured by providing that judges cannot be removed except by impeachment, and their salaries cannot be diminished during their continuance in office.

Congress cannot impose upon the courts any but judicial duties. Quasi-judicial functions may be conferred by Congress upon administrative officers.

PERTAINING TO THE STATES

ARTICLE IV of the Constitution provides that full faith and credit shall be given by each state to the public acts, records, and judicial proceedings of every other state. This clause is intended to preserve the rights and immunities of citizens and to promote uniformity and harmony in the administration of justice under state laws.

It is also provided that the privileges and immunities of citizens shall be common throughout the states. Fugitives from justice are required to be returned to the state having jurisdiction of the crime.

Provision is made for the admission by Congress of new states into the Union. A state when admitted has equal sovereignty with

the older ones. It must pledge to the other states that it will support the Constitution; and it cannot, by a compact with the United States, enlarge or diminish its constitutional rights or liabilities.

Congress is given power to dispose of property belonging to the United States. The full extent of this power has never been developed; but the Supreme Court has held that it includes the right to acquire means of conveying to market surplus electric power developed as an incident to regulation of navigation. The government of territories is within the power of Congress under the same paragraph, as well as the reclamation of public lands.

A republican form of government is guaranteed by the United States to every state, and they must be protected against invasion. In case of domestic violence the legislature or governor may call upon the United States for protection. The courts have ruled that the authority to decide whether the exigency requires action by the United States rests in the President.

METHOD OF AMENDMENT

Time and labor were devoted by the farmers to working out a method whereby the Constitution might be changed to meet the real needs of the people, while at the same time guarding against hasty and ill-considered experiments suggested by mere speculation or theory or by popular excitement.

Two modes are provided for bringing about alterations in the Constitution. One may be begun at the instance of the government, through a resolution of Congress proposing amendments; the other may be begun at the instance of the states, through the instrumentality of a convention. A resolution by Congress proposing a constitutional amendment requires a two-thirds vote; and no general convention can be called unless two-thirds of the states concur in the demand. In either case, three-fourths of the states must concur, either through their legislatures or conventions called for the purpose, before any amendment can become a part of the Constitution. The states cannot substitute a popular vote for the constitutional method of acting upon proposed amendments.

The procedure whereby the Constitution provides for its own amendment by the people is one of the most novel and ingenious developments ever recorded in the history of the art of government. It enables the people, without turbulence or bloodshed, to alter their government as they see fit. Changes of government in other countries have usually been attended by wild disorders. Inability to improve

the Articles of Confederation was one of the reasons for the virtual collapse of the Union before the Constitution was adopted..

Attempts have been made by states to rescind their ratification of amendments to the constitution, but without effect. It is believed that when a state legislature has voted to ratify an amendment it has exhausted its constitutional authority in the premises. The right of a state to ratify after having refused to do so is, however, recognized.

Thousands of resolutions have been offered in Congress for amendments to the Constitution. But the unwisdom of rushing through an amendment by surprise or in response to a sudden wave of public impulse has been provided against by securing deliberation in proposing and ratifying amendments. Only after full discussion by all the people can the Constitution be changed. Yet the knowledge that they have it in their power to make any change they desire is a factor in insuring the devotion of the people to the Constitution they have ordained and established.

SUPREMACY OF THE CONSTITUTION AND LAWS

AFTER recognizing the validity of the public debt, the sixth article of the Constitution declares that the Constitution and the laws of the United States made in pursuance thereof, and all treaties made under the authority of the United States, shall be the supreme law of the land; and that the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

This majestic declaration makes of the United States a nation, with an effective national government. The law of a state, though enacted in the exercise of powers not controverted, must yield, in case of conflict, to a constitutional act of Congress or a treaty. "It must always be borne in mind," says the Supreme Court, "that the Constitution, laws and treaties of the United States are as much a part of the law of every State as its own local laws and constitution. This is a fundamental principle in our system of complex national polity."

A treaty is regarded as equivalent to an act of Congress if it operates of itself without the aid of any legislative provision. Where a treaty and an act of Congress are in conflict the later in date must prevail; a treaty may supersede a prior act of Congress, and an act of Congress may supersede a prior treaty.

"The guardianship of the Constitution," says Dicey, "is in America confided not only to the Supreme Court, but to every judge

throughout the land." "The power, moreover, of the Courts which maintains the articles of the Constitution as the law of the land, and thereby keeps each authority within its proper sphere, is exerted with an ease and regularity which has astounded and perplexed continental critics. The explanation is that while the judges of the United States control the action of the Constitution, they nevertheless perform purely judicial functions, since they never decide anything but the cases before them."

In order to compel observance of the Constitution as the supreme law it is further provided that all national legislators, judges, and officers, and all state legislators, judges, and officers shall be bound by oath or affirmation to "support this Constitution"; but no religious test is required as a qualification to office.

It is indispensably necessary that members and officers of state governments should be under obligation to support the Constitution; for these authorities are agents in keeping the United States government in operation. The election of the President, senators, and representatives in Congress is dependent upon the faithful action of the states. State judges are called upon to pass judgment upon the Constitution, laws, and treaties of the United States. Governors exert important powers in filling vacancies in the Senate and in issuing writs of election to fill vacancies in the House of Representatives, as well as in regard to the militia.

AMENDMENTS TO THE CONSTITUTION

ONLY twenty-one amendments have been attached to the Constitution. Of these the first ten constitute the Bill of Rights. The conventions of several states consented to ratify the Constitution only after they became satisfied that the Bill of Rights would be made a part of it.

In an eloquent address to the United States Senate on March 18, 1936, dealing specifically with the fourth and fifth amendments, Senator Ashurst of Arizona gave a vivid picture of the genesis of the Bill of Rights. Referring to the ancient right expressed in the phrase, "Every man's house is his castle," Mr. Ashurst said:

"A gentleman calling upon me once asked, 'Did you ever read Lord Coke's famous maxim in Semayne's case?' to wit, 'The house of every one is to him as his castle and fortress, as well for his defense against injury and violence as for his repose.' I said, 'I am familiar with Coke, but that was law 1,000 years before my Lord Coke adorned the bench.' "

Senator Ashurst added:

"The makers of our Federal Constitution and the framers of the first 10 amendments were never tired of quoting the immortal words of the elder Pitt, used in his speech on The Excise:

" 'The poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storms may enter; the rain may enter—but the King of England cannot enter. All his forces dare not cross the threshold of the ruined tenement.'

"When the ratification of the Federal Constitution was pending before the Virginia convention, called to pass upon that momentous question, Virginia was a pivotal State—a diamond pivot—on which mighty events turned. Patrick Henry, who Lord Byron said was 'the forest-born Demosthenes who shook the Philip of the seas,' was a delegate to the Virginia convention; and although the proposed Federal Constitution had come forth with the sanction of the revered name of General Washington and therefore justly carried with it the vast prestige which the name of Washington could not fail to attach to any proposition, Patrick Henry did not approve the Constitution and, to use his own expression, he was 'most awfully alarmed,' as he considered the document to be threatening to the liberties of his country—amongst other reasons because it lacked a bill of rights—and Mr. Henry challenged the view of Mr. James Madison, he of the superb intellect; Mr. Henry challenged the Wythes, the Pendletons, and the Innesses, and that splendid galaxy of scholars and statesmen who enriched the annals not only of Virginia but all America; and he demanded to know why a Bill of Rights, guaranteeing the privileges and immunities of the citizen, had been omitted from the Federal Constitution. The Virginia State convention, after a prolonged debate, was able to ratify the Federal Constitution by a majority of only 10 votes, so ably did Patrick Henry argue against it because it did not contain the Bill of Rights which English liberty had affirmed for centuries.

"James Madison pledged his word that at the earliest opportunity he would use his energy toward placing into the Federal Constitution the requisite amendments guaranteeing the citizens' rights, privileges, and immunities, and as soon as the Virginia convention had finished the work of ratification it adopted resolutions expressing its desire for the Bill of Rights, demanded by Patrick Henry. These resolutions were forwarded to the governors of the various States, and as far as men could be bound in faith and honor, as far as men could be bound in statesmanship and in politics, the amendments

guaranteeing the citizen's individual rights and his liberties were by common consent agreed to, and it was generally understood that these amendments would be proposed to the States by the First Congress.

"The first bill to be considered by the First Congress under the Constitution was quite naturally a bill to raise revenue to pay the expenses of the Government; but on July 21, 1789, James Madison, who was a Member of the House, arose and asked the House 'to indulge him in further consideration of amendments to the Constitution,' and he pointed out that the faith and honor of Congress were pledged; that the faith and honor of public men everywhere were pledged to amendments securing to the citizens such guaranties as were comprehended within the first 10 amendments.

"The Bill of Rights amendments were then proposed to the States, including of course the fourth and fifth, and were ratified within 2 years and 3 months. Thereafter, as far as Americans are concerned, and as far as the Constitution itself is concerned, they were and are a part and parcel of the original Constitution, as much so as if they were signed on the 17th of September, 1787, when the main instrument itself was signed."

The ten amendments constituting the Bill of Rights are safeguards against the abuse of national power only; they do not take from Congress any powers hitherto granted. The rights and immunities enumerated were already in existence. The people had all their rights and liberties before they made the Constitution. The Constitution was established, among other purposes, to make the people's liberties secure against oppression by the government which they were setting up.

I

The First Amendment, relating to religion, free speech, right of assembly and petition, debars Congress from establishing a religion or prohibiting free exercise of religion, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

Efforts to abate the evil practices of lobbying have been checked when they sought to abridge the right of petition; but freedom of speech and of the press does not permit slander or the publication of libels, blasphemous or other indecent articles, or other publications injurious to morals or private reputation. A publisher is subject to punishment for contempt if his articles tend to obstruct the administration of justice. The right of free speech does not give immunity for every possible use of language. (*See* page 557.)

II

The Second Amendment does not confer upon the people the right to bear arms. It merely forbids Congress from infringing upon that right. But a law forbidding the carrying of concealed weapons does not violate this amendment. (*See* page 557.)

III

The Third Amendment protects the people against military intrusion in their homes. (*See* page 557.)

IV

The Fourth Amendment guarantees the security of the people in their persons, houses, papers, and effects against unreasonable searches and seizures. Almost up to the hour of the Revolution the American people had suffered from such injuries at the hands of the British government; and they were determined that their own government should not have power to invade their privacy by "writs of assistance," as general search-warrants were called. John Adams, speaking of James Otis' heroic protest against that practice, declared, "The child Independence was born on that occasion." (*See* page 557.)

V

The Fifth Amendment protects the citizen against double jeopardy, self-incrimination, deprivation of life, liberty, or property without due process of law, and loss of property taken for public use. Far reaching decisions by the courts have protected the citizen under these clauses. (*See* page 557.)

VI

The Sixth Amendment secures the right of trial by jury, and other rights while under criminal trial. The prohibitions are laid upon Congress, and not upon the states. (*See* page 557.)

VII

The Seventh Amendment guarantees the rights of citizens in civil trials. (*See* page 558.)

VIII

The Eighth Amendment prohibits excessive bail and fines, and cruel and unusual punishment. The Supreme Court will interfere with the action of state courts if they impose fines which amount to a deprivation of property without due process of law, but will do this under the Fourteenth Amendment. (*See* page 558.)

IX

The Ninth Amendment provides that the enumeration of certain rights shall not be construed to deny or disparage other rights retained by the people. This amendment indicates that the Constitution is but a delegation of powers, which powers, together with the implied powers, constitute all that the national government has or may presume to exercise. The people retain many rights which are not enumerated, and the government has no power to interfere with these rights. (*See* page 558.)

X

The Tenth Amendment is vitally important in preserving the powers of the states and the people against encroachment by Congress. It retains to the states or the people all powers not delegated to the United States or prohibited to the states by the Constitution. In observance of this amendment the Supreme Court has halted attempts to invade the powers of the states, notably in the matter of commerce. The power of the states to regulate matters of internal police applies not only to the health, morals, and safety of the public, but also to whatever promotes the public peace, comfort, and convenience. State laws enacted under this power may be harsh and oppressive without violating the Constitution, but the restrictions of the Fourteenth Amendment apply. (*See* page 558.)

XI

The Eleventh Amendment exempts a state from suit by a citizen of another state or a foreigner. It does not deprive the Supreme Court of jurisdiction over suits between states. Nor does it prevent suits against individuals holding official positions under a state, to prevent their committing wrong or trespass under sanction of an unconstitutional statute. (*See* page 558.)

XII

The Twelfth Amendment was declared in effect September 25, 1804, after a deadlock in the election of a President of the United States. Under the original electoral provision the elector voted "for two Persons," without designating either for President or Vice President. Jefferson and Burr received an equal number of votes in the election of 1800, and not until the 36th ballot in the House of Representatives did the choice fall to Jefferson. The amendment requires electors to vote separately for President and Vice President. (*See* page 558.)

XIII

The Thirteenth Amendment abolishes slavery. It differs from the first ten amendments in that it restricts the power of the states as well as that of the national government. It removes legal doubt as to the validity of the Emancipation Proclamation.

The drafting of men for military service does not violate this amendment, since a soldier is not a slave; and the contract of a seaman does not violate the spirit of the amendment.

An act of Congress declaring that no distinction should be made between race or color in denying admission to accommodations and privileges in inns, public conveyances and theaters was held unconstitutional, because denial of these privileges does not subject any person to any form of servitude or fasten upon him any badge of slavery. (*See* page 559.)

XIV

The Fourteenth Amendment puts beyond doubt that all persons, white or black, whether former slaves or not native born or naturalized, and owing no allegiance to any foreign power, are citizens of the United States and of the state in which they reside. The states are prohibited from abridging the immunities of citizens, and from depriving any person of life, liberty, or property, without due process of law, or denying to any person equal protection of the laws. A state law fixing the employment of mine workers at eight hours per day does not contravene the amendment. Statutes of states regulating the manufacture and sale of goods are within the amendment. The amendment does not add to constitutional privileges and immunities. The right of suffrage is not one of these. (*See* page 559.)

XV

The Fifteenth Amendment provides that the right of citizens to vote shall not be denied or abridged on account of race, color, or previous condition of servitude. It does not confer upon any one the right to vote. The power to determine qualifications of voters is left to the states; but they may not confine the voting right to white persons. (*See* page 560.)

XVI

The Sixteenth Amendment gives Congress power to tax incomes, from whatever source derived, without apportionment among the several states. This is not an extension of the taxing power, but it removes all occasion for an apportionment among the states of taxes laid upon incomes. The salaries of United States judges are not

subject to tax, since the Constitution provides that they shall not be diminished. (*See* page 560.)

XVII

The Seventeenth Amendment changes the mode of election of United States senators. Contests in state legislatures over election of senators had caused great dissatisfaction, and it was believed that election by the people would be an improvement. (*See* page 561.)

XVIII

The Eighteenth Amendment provided for prohibition of the manufacture, sale, transportation, importation, and exportation of intoxicating liquors for beverage purposes. Congress and the states were given concurrent power to enforce the amendment.

The amendment became effective January 16, 1920. It proved to be unsatisfactory, for many reasons. Confusion arose because of the division of police powers. Enforcement by the national government was impossible. It was urged that this amendment was in conflict with the fifth, by taking property without due process of law. It conflicted with the provision which makes the acts of Congress the supreme law of the land. Personal liberty, it was claimed, was abridged. On this point a district court said (*Cornell* v. *Moore*, 267 Fed. 459):

"It may be a matter of regret that age-old provisions making for the liberty of action of the citizen have been encroached upon, and to a degree whittled away; but this is not a matter wherein the courts may relieve. It is a political question and not a judicial one."

After thirteen years of trial, with increasing confusion, dissatisfaction, and expense, the Eighteenth Amendment was repealed by the Twenty-first Amendment, which became effective December 5, 1933. (*See* page 561.)

XIX

The Nineteenth Amendment provides that the right of United States citizens to vote shall not be denied or abridged by the United States or any state on account of sex. It was declared adopted August 26, 1920. The first proposal to amend the Constitution to provide for woman suffrage was offered by Senator Sargent of California in 1878 at the request of Miss Susan B. Anthony.

Fifteen states had granted complete suffrage to women before the amendment was adopted, and in all but nine of the rest they had partial suffrage. A woman was elected to the House of Repre-

sentatives from Montana in 1916. Women first voted on a national scale in the presidential election of 1920, and apparently their total vote was about 6,000,000. It is believed that at least 12,000,000 women voted in 1932. (*See* page 561.)

XX

The Twentieth Amendment was adopted primarily for the purpose of abolishing "lame duck" sessions of Congress. It changes the dates when the terms of the President, senators, and representatives shall begin and end. The presidential term now begins on January 20 every fourth year, and the terms of senators and representatives begin on January 3, the length of term remaining six and two years, respectively. Consequently a new Congress convenes in the January following the presidential election of the preceding November.

Since only seventeen days elapse between the meeting of Congress on January 3 and the inauguration of the President on January 20, it is possible that confusion may arise in case of delay in counting and declaring the electoral vote, or in electing a President by the House in the event of failure of the electors to elect. The amendment provides that if the President-elect shall have died before inauguration day the Vice President-elect shall be President; and that if a President shall not have been chosen or shall have failed to qualify by inauguration day, the Vice President-elect shall act as President until a President shall have qualified. Congress is authorized to provide for filling a vacancy occurring through failure of both a President-elect and Vice President-elect to qualify, and the person selected shall act until a President or Vice President shall have qualified.

Congress has provided that it shall meet in joint session on January 6 following a presidential election, to count the electoral vote and declare the result. This allows only three days for organization of the House of Representatives by the election of a Speaker. Serious difficulties might arise if the House should fail to organize in time to count the vote, or to elect a President if that duty should fall upon it. Failure of the House to elect a President might be attended by failure of the Senate to elect a Vice President. It is quite conceivable, also, that passions might be aroused if failure to elect a President by a House controlled by one political party should be followed by election of a Vice President by a Senate controlled by another party. It is also conceivable that the two houses of Congress might deadlock upon the selection of a person to fill a vacancy in the Presidency. (*See* page 561.)

XXI

The Twenty-first Amendment repeals the Eighteenth Amendment and prohibits the transportation or importation into any state of intoxicating liquors in violation of its laws. (*See* page 562.)

CONCLUSION

THE SYMMETRY of arrangement and beautiful coordination of motion in the several governments constituting the American system may be compared with the solar system.

As the Sun is the center of attraction and controlling power that binds and moves the planets in one system, so the People are the center and controlling power that binds and moves their governments in one system.

The Law which the solar system obeys is not written, but its operation is partly disclosed and partly understood. The Law which the American political system obeys is partly written, for all men to read. It is the Constitution of the United States.

The limits of the powers of the Sun and the People are not known. They have never been tested to the limit. The composition of the Sun is hidden in Nature. The composition of the People is hidden in human nature.

Reason assumes that the Sun has powers beyond those known to us. Reason reinforced by knowledge asserts that the People have reserved powers which never have been expressed in written law.

The United States and the States may be compared to planets revolving around their Sun, the People.

In order to comprehend the peculiar nature of the American system it must be borne in mind that the States existed before the United States was created. It was to bind them together, to swing them into their coordinated orbits that the Union was perfected.

Some of the powers possessed by the People are exerted in the States. Others are kept in reserve.

The powers necessary to bind the States together in one solar Union are set forth in the Constitution. All other powers are kept in reserve.

The States perform certain functions which the United States cannot perform. The United States performs functions which the States separately cannot perform. The People retain a sphere of personal liberties into which neither the States nor the United States can enter.

The Law which controls the solar system is divine, and there-

fore perfect. The Law which controls the American political system is human, and therefore imperfect. But under a trial of 150 years it has been found to approach more nearly the symmetry of the Law that rules the universe than any other emanation of the human mind and will.

Several unique features of the Constitution distinguish it from any previous inventions in the art of government. Among these are:

The Constitution binds individuals as well as States. Under it all individuals have equal duties and rights.

The legislative, executive, and judicial powers are lodged in separate bodies of public servants whose powers and duties compel them to check and balance one another. No uncontrolled power is lodged in any one.

The written Constitution is made paramount to any legislative, executive, or judicial authority.

A court is created with power to hold all authorities within their allotted spheres, and this court itself is bound to remain within its allotted sphere.

The Constitution contains within itself a method whereby it may be amended by the People.

These principles, never practiced before, are the bone and sinew of a fabric suitable to a nation whose government obeys those whom it rules, and whose people rule the government which they obey.

Portraits and Sketches of the Signers of the Constitution

NOTE

THESE PORTRAITS and brief facts appertain, it should be borne in mind, to the thirty-eight deputies who signed the Constitution, and an absent deputy, Dickinson of Delaware, who requested his colleague, George Read of Delaware, to sign for him; the other sixteen men who attended and had more or less to do with framing the document are not given here. There is no known portrait of Fitz-Simons or Broom. Others, though included, are not entirely authenticated. These are the portraits of Brearley, Livingston, and Wilson. The statements concerning the careers of the men are intended to emphasize the public services and to show, by dates, length of participation in activities of the Union. Each one is called, in connection with the Constitutional Convention, by the title given him in his credentials. In various cases other portraits with sketches will be found of the signers in the catalogue issued by the Commission as a guide to its exhibit of portraits of the members of the Convention and other leaders.

WASHINGTON, GEORGE, 1732–1799
VIRGINIA

Planter, soldier, statesman; colonial officer in French and Indian War; Virginia Legislature; Continental Congress, 1774–75; Commander-in-Chief of Continental Army; "Deputy" to Constitutional Convention, President of it; President of the United States, 1789–97; Commander-in-Chief of United States Provisional Army.

WASHINGTON, by Stuart, in Boston Museum of Fine Arts, property of Boston Athenaeum.

LANGDON, JOHN, 1741–1819
NEW HAMPSHIRE

Merchant; militia service during Revolution; Continental Congress, 1775–76, 1787; New Hampshire Legislature, Speaker; Continental Navy Agent; President of New Hampshire; "Deputy" to Constitutional Convention; Ratification Convention; Governor; United States Senator, 1789–1801.

GILMAN, NICHOLAS, 1755–1814
NEW HAMPSHIRE

Statesman; officer in Continental Army; Continental Congress, 1787–88; "Deputy" to Constitutional Convention; Congressman, 1789–97; New Hampshire Senate; United States Senator, 1805–14.

GORHAM, NATHANIEL, 1738–1796
MASSACHUSETTS

Merchant, land owner; Massachusetts Legislature, Speaker; Massachusetts Board of War and Constitutional Convention; Continental Congress, 1782–83, 1786–87; judge; "Delegate" to Constitutional Convention, chairman of committee of the whole; Ratification Convention; Massachusetts Council.

KING, RUFUS, 1755–1827
MASSACHUSETTS

Lawyer; Massachusetts Legislature; Continental Congress, 1784–87; "Delegate" to Constitutional Convention; Ratification Convention; United States Senator from New York, 1789–96, 1813–25; Minister to Great Britain; Federalist candidate for Vice President and President.

LANGDON, by Savage. GILMAN, from Bowen's "Centennial of the Inauguration of Washington." GORHAM, by Sharples, courtesy Frick Art Reference Library. KING, by Trumbull, courtesy Gallery of Fine Arts, Yale University.

JOHNSON, WILLIAM SAMUEL,
1727–1819
CONNECTICUT

Lawyer; Stamp Act Congress; Connecticut Agent in England; Connecticut Council; judge; Continental Congress, 1784–87; "Delegate" to Constitutional Convention; Ratification Convention; United States Senator, 1789–91; President of Columbia College.

SHERMAN, ROGER, 1721–1793
CONNECTICUT

Shoemaker, lawyer; Connecticut Legislature and Council of Safety; judge; Continental Congress, 1774–81, 1784, signer of Declaration of Independence and Articles of Confederation; "Delegate" to Constitutional Convention; Ratification Convention; mayor of New Haven; Congressman, 1789–91; United States Senator, 1791–93.

HAMILTON, ALEXANDER, 1757–1804
NEW YORK

Lawyer; aide to Washington and line colonel in Continental Army; Continental Congress, 1782–83, 1788; New York Legislature; Annapolis Convention; "Delegate" to Constitutional Convention; part author of *Federalist;* Ratification Convention; Secretary of the Treasury, 1789–95; inspector general in United States Provisional Army.

LIVINGSTON, WILLIAM, 1723–1790
NEW JERSEY

Lawyer; New York Legislature; local New Jersey Committee of Correspondence; Continental Congress, 1774–76; commander of New Jersey Revolutionary militia; Governor of New Jersey; "Commissioner" to Constitutional Convention.

JOHNSON, by Stuart, from collection of Mrs. Jonathan Bulkley, courtesy Frick Art Reference Library. SHERMAN, by Rosenthal, in Independence Hall. HAMILTON, by Trumbull courtesy Essex Institute. LIVINGSTON, by Rosenthal.

BREARLEY, DAVID, 1745–1790
NEW JERSEY
Lawyer; officer in Continental Army; New Jersey Constitutional Convention; Chief Justice of New Jersey; "Commissioner" to Constitutional Convention; Ratification Convention; United States District Judge.

PATERSON, WILLIAM, 1745–1806
NEW JERSEY
Lawyer; New Jersey Provincial Congress, Constitutional Convention, Attorney General, and Council; "Commissioner" to Constitutional Convention; United States Senator, 1789–90; Governor; Chancellor; Associate Justice of Supreme Court, 1793–1806.

DAYTON, JONATHAN, 1760–1824
NEW JERSEY
Lawyer, land owner; officer in Continental Army; New Jersey Legislature, Speaker; "Commissioner" to Constitutional Convention; Continental Congress, 1788; New Jersey Council; Congressman, 1791–99, Speaker; United States Senator, 1799–1805.

FRANKLIN, BENJAMIN, 1706–1790
PENNSYLVANIA
Printer, statesman, scientist, philosopher; Pennsylvania Legislature; Deputy Postmaster General of Colonies; Albany Congress; Colonial Agent in England; Continental Congress, 1775–76, signer of Declaration of Independence; Commissioner and Minister to France; President of Pennsylvania; "Deputy" to Constitutional Convention.

BREARLEY, from Schuyler's "St. Michael's Church." PATERSON, by Rosenthal. DAYTON, by Rosenthal. FRANKLIN, by Duplessis, courtesy New York Public Library.

MIFFLIN, THOMAS, 1744–1800
PENNSYLVANIA

Merchant, politician, Pennsylvania Legislature, Speaker; Continental Congress, 1774–75, 1782–84, President of it, 1783–84; aide to Washington, major general and quartermaster general in Continental Army; Continental Board of War; "Deputy" to Constitutional Convention; President of Pennsylvania and Governor; Pennsylvania Constitutional Convention.

MORRIS, ROBERT, 1734–1806
PENNSYLVANIA

Merchant, financier; Continental Congress, 1775–78, signer of Declaration of Independence and Articles of Confederation; Pennsylvania Legislature and Council of Safety; Superintendent of Finance, 1781–84; established Bank of North America; "Deputy" to Constitutional Convention; United States Senator, 1789–95.

CLYMER, GEORGE, 1739–1813
PENNSYLVANIA

Merchant; Pennsylvania Council of Safety; Continental Congress, 1776–77, 1780–82, signer of Declaration of Independence; Pennsylvania Legislature; "Deputy" to Constitutional Convention; Congressman, 1789–91.

(No known portrait)

FITZSIMONS, THOMAS, 1741–1811
PENNSYLVANIA

Merchant; militia officer in Revolution; Pennsylvania Council of Safety and Navy Board; Continental Congress, 1782–83; Pennsylvania Legislature and Board of Censors; Bank of North America; "Deputy" to Constitutional Convention; Congressman, 1789–95.

MIFFLIN, by Peale, in Independence Hall. MORRIS, by Stuart, courtesy Lt. Col. Robert Morris. CLYMER, by Rosenthal.

INGERSOLL, JARED, 1749–1822
PENNSYLVANIA
Lawyer; Continental Congress, 1780; Pennsylvania Attorney General; "Deputy" to Constitutional Convention; United States District Attorney; municipal officer in Philadelphia; judge of Pennsylvania District Court; Federalist candidate for Vice President.

WILSON, JAMES, 1742–1798
PENNSYLVANIA
Lawyer; Pennsylvania Provincial Convention; Continental Congress, 1775–77, 1783, 1785, 1786, signer of Declaration of Independence; Continental Board of War; Advocate General for France in America; "Deputy" to Constitutional Convention; Ratification Convention; Associate Justice of Supreme Court of the United States, 1789–98.

MORRIS, GOUVERNEUR, 1752–1816
PENNSYLVANIA
Lawyer; New York Provincial Congress and Constitutional Convention; Continental Congress from New York, 1778–79, signer of Articles of Confederation; Assistant Superintendent of Finance; "Deputy" to Constitutional Convention; special mission to England; Minister to France; United States Senator from New York, 1800–03.

READ, GEORGE, 1733–1798
DELAWARE
Lawyer; Delaware Attorney General and Legislature; Continental Congress, 1774–77, signer of Declaration of Independence; Delaware Constitutional Convention and Council; Continental Court of Appeals; Annapolis Convention; "Deputy" to Constitutional Convention; United States Senator, 1789–93; Chief Justice of Delaware.

INGERSOLL, by Peale, courtesy Frick Art Reference Library. WILSON, by Seyffert. MORRIS, by Sharples, courtesy John S. Turnbull. READ, by Sully, courtesy Mrs. Harmon P. Read.

BEDFORD, GUNNING, JR., 1747–1812
DELAWARE

Lawyer; Delaware Legislature and Council; Continental Congress, 1783–85; Delaware Attorney General; Annapolis Co vention; "Deputy" to Constitutional Co vention; Ratification Convention; United States District Judge.

(*No known portrait*)

BROOM, JACOB, 1752–1810
DELAWARE

Surveyor, business man, manufacturer; "Deputy" to Constitutional Convention; borough officer in Wilmington; Delaware Legislature; postmaster at Wilmington; bank director.

BASSETT, RICHARD, 1745–1815
DELAWARE

Lawyer; militia service in Revolution; Delaware Council of Safety, Legislature, and Constitutional Convention; Annapolis Convention; "Deputy" to Constitutional Convention; Ratification Convention; United States Senator, 1789–93; judge of Delaware Court of Common Pleas; Governor; United States Circuit Judge, but office soon abolished.

DICKINSON, JOHN, 1732–1808
DELAWARE

Lawyer; Delaware and Pennsylvania Legislatures, Speaker in Delaware; Stamp Act Congress; Continental Congress, 1774–76, 1779, signer of Articles of Confederation; President of Delaware; President of Pennsylvania; Annapolis Convention; "Deputy" from Delaware to Constitutional Convention. (Though not present at the signing, his signature was added, at his request, by George Read of Delaware.)

BEDFORD, by Peale, in Independence Hall. BASSETT, by Rosenthal. DICKINSON, by Rosenthal.

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McHenry, James, 1753–1816
Maryland

Physician; surgeon in Continental Army, military secretary to Washington, aide to Lafayette; Maryland Legislature; Continental Congress, 1783–85; "Deputy" to Constitutional Convention; Ratification Convention; Secretary of War, 1796–1800.

Jenifer, Daniel of St. Thomas, 1723–1790
Maryland

Planter; Agent and Receiver General for Lord Proprietary of Maryland; Maryland Legislature, Council, Council of Safety, and President of Senate; Continental Congress, 1779–81; Maryland-Virginia Conference of 1785; "Deputy" to Constitutional Convention.

Carroll, Daniel, 1730–1796
Maryland

Planter; Continental Congress, 1781–83, signer of Articles of Confederation; "Deputy" to Constitutional Convention; Congressman, 1789–91; Commissioner for District of Columbia.

Blair, John, 1732–1800
Virginia

Lawyer; Virginia Legislature, Provincial Convention, and Council; judge of General Court and Chancery of Virginia; "Deputy" to Constitutional Convention; Ratification Convention; Associate Justice of the Supreme Court of the United States 1789–96.

McHenry, by Rosenthal. Daniel of St. Thomas Jenifer, by Rosenthal. Carroll, by Wollaston, courtesy Maryland Historical Society. Blair, by unknown artist.

MADISON, JAMES, 1751–1836
VIRGINIA

Publicist, statesman; Virginia Convention, Legislature, and Council; Continental Congress, 1780–83, 1787–88; Annapolis Convention; "Deputy" to Constitutional Convention; part author of *Federalist;* Ratification Convention; Congressman, 1789–97; Secretary of State, 1801–09; President of the United States, 1809–17; Virginia Constitutional Convention; Rector of University of Virginia.

BLOUNT, WILLIAM, 1749–1800
NORTH CAROLINA

Land owner; paymaster in Continental Army; North Carolina Legislature, Speaker; Continental Congress, 1782–83, 1786–87; "Deputy" to Constitutional Convention; Ratification Convention; Governor of Territory South of the Ohio River and Superintendent of Indian Affairs; Tennessee Constitutional Convention; United States Senator from Tennessee, 1796–97; Tennessee Senate.

SPAIGHT, RICHARD DOBBS, 1758–1802
NORTH CAROLINA

Planter; North Carolina Legislature; Continental Congress, 1783–85; "Deputy" to Constitutional Convention; Ratification Convention; Governor of North Carolina; Congressman, 1798–1801; North Carolina Senate.

WILLIAMSON, HUGH, 1735–1819
NORTH CAROLINA

Merchant, physician; surgeon general of North Carolina militia; North Carolina Legislature; Continental Congress, 1782–85, 1787–88; "Deputy" to Constitutional Convention; Ratification Convention; Congressman, 1789–93.

MADISON, copy of Stuart, courtesy Frick Art Reference Library. BLOUNT, by Rosenthal. SPAIGHT, by Rosenthal. WILLIAMSON, by Rosenthal.

RUTLEDGE, JOHN, 1739–1800
SOUTH CAROLINA

Lawyer; South Carolina Legislature; Stamp Act Congress; Continental Congress, 1774–75, 1782–83; South Carolina Council of Safety, Constitutional Convention, President, and Governor; judge of Chancery Court; "Deputy" to Constitutional Convention; Associate Justice of Supreme Court of United States, 1789–91; Chief Justice of South Carolina; Chief Justice of the United States, 1795, but rejected by the Senate.

PINCKNEY, CHARLES COTESWORTH, 1746–1825

SOUTH CAROLINA

Lawyer, soldier; South Carolina Provincial Congress and Legislature; colonel in Continental Army; "Deputy" to Constitutional Convention; Ratification Convention; declined Cabinet positions; Minister to France; major general in United States Provisional Army; candidate for President.

PINCKNEY, CHARLES, 1757–1824
SOUTH CAROLINA

Lawyer; militia service in Revolution; South Carolina Legislature; Continental Congress, 1784–87; "Deputy" to Constitutional Convention; Ratification Convention; South Carolina Council, Governor, and Constitutional Convention; United States Senator, 1799–1801; Minister to Spain; Congressman, 1819–21.

BUTLER, PIERCE, 1744–1822
SOUTH CAROLINA

Planter; officer in British Army before the Revolution; South Carolina Legislature; Continental Congress, 1787; "Deputy" to Constitutional Convention; United States Senator, 1789–96, 1803–04.

RUTLEDGE, by Trumbull; C. C. PINCKNEY, by Trumbull; both courtesy Gallery of Fine Arts, Yale University. C. PINCKNEY, by Stuart, courtesy American Scenic and Historic Preservation Society. BUTLER, by Rosenthal.

FEW, WILLIAM, 1748–1828

GEORGIA

Lawyer; Georgia Constitutional Convention, Legislature, and Council; militia service in Revolution; judge of Georgia County and Circuit Courts; Continental Congress, 1780–82, 1786–88; "Deputy" to Constitutional Convention; Ratification Convention; United States Senator, 1789–93; New York Legislature and Prison Inspector; bank director; New York City Alderman.

BALDWIN, ABRAHAM, 1754–1807

GEORGIA

Clergyman, lawyer; tutor at Yale; chaplain in Continental Army; Georgia Legislature; author of charter and President of University of Georgia; Continental Congress, 1785, 1788; "Deputy" to Constitutional Convention; Congressman, 1789–99; United States Senator, 1799–1807.

FEW, by Rosenthal. BALDWIN, by Rosenthal.

Ratifications, Admissions, and Possessions

THE CONSTITUTION was ratified by popular conventions in the several states, in the following order:

Delaware	December 7, 1787; Yeas, 30 (unanimous).
Pennsylvania	December 12, 1787; Yeas, 46; Nays, 23.
New Jersey	December 18, 1787; Yeas, 38 (unanimous).
Georgia	January 2, 1788; Yeas, 26 (unanimous).
Connecticut	January 9, 1788; Yeas, 128; Nays, 40.
Massachusetts	February 6, 1788; Yeas, 187; Nays, 168.
Maryland	April 28, 1788; Yeas, 63; Nays 11.
South Carolina	May 23, 1788; Yeas, 149; Nays, 73.
New Hampshire	June 21, 1788; Yeas, 57; Nays, 47.
Virginia	June 26, 1788; Yeas, 89; Nays, 79.
New York	July 26, 1788; Yeas, 30; Nays, 27.
North Carolina	November 21, 1789; Yeas, 194; Nays, 77.
Rhode Island and Providence Plantations	May 29, 1790; Yeas, 34; Nays, 32.

Later states were admitted as follows:

Vermont	March 4, 1791.
Kentucky	June 1, 1792.
Tennessee	June 1, 1796.
Ohio	1803.
Louisiana	April 30, 1812.
Indiana	December 11, 1816.
Mississippi	December 10, 1817.
Illinois	December 3, 1818.
Alabama	December 14, 1819.
Maine	March 15, 1820.
Missouri	August 10, 1821.
Arkansas	June 15, 1836.
Michigan	January 26, 1837.
Florida	March 3, 1845.
Texas	December 29, 1845.
Iowa	December 28, 1846.
Wisconsin	May 29, 1848.
California	September 9, 1850.
Minnesota	May 11, 1858.
Oregon	February 14, 1859.
Kansas	January 29, 1861.
West Virginia	June 19, 1863.
Nevada	October 31, 1864.
Nebraska	March 1, 1867.
Colorado	August 1, 1876.
North Dakota	November 2, 1889.
South Dakota	November 2, 1889.
Montana	November 8, 1889.
Washington	November 11, 1889.
Idaho	July 3, 1890.
Wyoming	July 10, 1890.
Utah	January 4, 1896.
Oklahoma	November 16, 1907.
New Mexico	January 6, 1912.
Arizona	February 14, 1912.

Territories of the United States:

Alaska, acquired from Russia on March 30, 1867; territory, August 24, 1912.
Hawaii, annexed on July 7, 1898; territory, April 30, 1900.

Possessions of the United States:

Puerto Rico, acquired from Spain, December 10, 1898.
Guam, acquired from Spain, December 10, 1898.
Philippine Islands, ceded by Spain, December 10, 1898.
American Samoa, acquired by tripartite treaty with Germany and Great Britain, December 2, 1899.
Canal Zone, acquired by treaty with Panama, November 18, 1903.
Virgin Islands, bought from Denmark, August 4, 1916.

Ratification of Amendments

ARTICLE V of the National Constitution is as follows:

> The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; . . .

Until Amendment XXI, state ratification was by the legislatures; this last one was submitted to conventions.

It has been usual to date the ratification of all amendments to the National Constitution from the certification by the secretary of state that a sufficient number of states had approved of it. On May 16, 1921, however, the Supreme Court of the United States announced in *Dillon* v. *Gloss* (256 U. S. 368, 376) that an amendment was in effect on the day when the legislature of the last necessary state ratified. Such ratification is entirely apart from state regulations respecting the passage of laws or resolutions. It is based on the higher law of the National Constitution itself, which, as it also did for the election of senators before Amendment XVII, prescribed action by the legislature alone. In consequence, approval or veto of such ratification by the governor is of no account either as respects the date or the legality of the sanction. The rule that ratification once made may not be withdrawn has been applied in all cases; though a legislature that has rejected may later approve, and this change has been made in the consideration of several amendments.

AMENDMENTS I–X

THESE passed Congress on September 25, 1789. Eleven states were necessary, since Vermont became a state before the ratification was completed. Virginia was this eleventh state and she agreed to the amendments on December 15, 1791. President Washington

announced the action of the states from time to time in messages to Congress. He reported the action of Virginia on December 30, 1791, and that of Vermont on January 18, 1792; but Vermont had ratified on November 3. There is no record of action by Connecticut, Georgia, or Massachusetts. Secretary Jefferson on March 1, 1792, announced the adoption to the governors of the states. (*See* pages 557, 558.)

AMENDMENT XI

CONGRESS proposed this on March 4, 1794, but the resolution was not enrolled and signed by the Vice President and Speaker until March 11. The records on the adoption are rather meager, and the states were so dilatory on notifying the central government of their sentiments that Congress on March 2, 1797, asked the President to make inquiries to Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, Kentucky, Tennessee, and South Carolina, half of the states then in the Union. On January 8, 1798, he reported that Kentucky having ratified, the amendment was "declared to be a part of the Constitution." But Kentucky had ratified as early as December 17, 1794.

The honor of being the twelfth state to ratify lies between North Carolina and Delaware. Delaware ratified on January 23, 1795. The legislature of North Carolina passed the ratification as a law on January 19, 1795. In that state the governor did not possess the power to approve or veto a bill, but the constitution required that each act be signed by the speakers of the two houses, and this signature was essential to the validity of the law. All the laws of a session were so signed at that time on the last day; accordingly, this act of ratification bears the date February 7, 1795. It has been considered, therefore, that February 7 was the date of ratification of North Carolina, because the action, as required by state regulations, was not completed until that day. However, at that time in that state the rule of common law was in force which made a statute retroactive to the beginning of the session in which it was enacted, which in this case was December 30, 1794. In Tennessee there was a similar requirement of signature by the speakers, and there the state supreme court declared that though the signing was essential to the validity of the measure, yet it was of a ministerial and not of a legislative character, and being done, the "law takes effect from the date of its passage by relation." Because of the contradictory character of the state regulations, and because they are also opposed to the principle of the *Dillon* v. *Gloss* decision govern-

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ing the legislature in the performance of a duty dependent upon the National Constitution only, the ratification by Delaware on January 23, 1795, is here considered as the final necessary one, with the ratification of North Carolina as of January 19. (*See* page 558.)

AMENDMENT XII

THIS proposal passed Congress on December 9, 1803, the vote of the Speaker being necessary for it in the House; but it was not enrolled and signed until December 12. James Madison, secretary of state, declared it in force on September 25, 1804. Thirteen states were then needed to ratify, and Tennessee was supposedly the last necessary state, July 27, 1804. Connecticut and Delaware rejected the proposal; and there is no record for Massachusetts. In New Hampshire the resolution passed on June 15, 1804, was vetoed on June 20, was not passed over the veto, and was never certified to the secretary of state; but since the veto of the governor was extralegal, the original action by the legislature of that state really consummated the ratification. (*See* page 558.)

AMENDMENT XIII

THIS was submitted on January 31, 1865, by Congress, President Lincoln giving his unnecessary approval on the next day. It was rejected by Delaware and Kentucky, two of the loyal slaveholding states and the only states which had not already abolished slavery by state action, except Texas. It was also rejected by Mississippi, a slave state that had been one of the Confederate States. The remaining states, including the ten others that had been in the Confederacy, approved. As there were then thirty-six states, ratification by twenty-seven was needed. Georgia was the last necessary state, her legislature voting on December 6, 1865. Secretary Seward certified the amendment on December 18, 1865. At this time the southern states had been reorganized under presidential reconstruction and their legislatures, while annulling the ordinances of secession, had also abolished slavery within their limits. Later Congress refused to recognize these reorganized governments, except in Tennessee, but their ratification of the Thirteenth Amendment was none the less accepted to make it valid; because, if they were states within the Union, the amendment could not be carried without their approval. If the eleven states that formed the Confederate States were not in the Union, then there were only twenty-five states and nineteen were needed for ratification. On this basis the necessary

approval would have been that of New Hampshire, July 1, 1865. (*See* page 559.)

AMENDMENT XIV

JUNE 13, 1866, was the date on which Congress voted this second of the Civil War amendments. The resolution was signed on June 15 and received by the secretary of state the next day. There were many complications over the ratification. The southern states were still unreconstructed when it was submitted, and conditions remained unsettled in that region during its consideration, Congress requiring ratification as a condition of reconstruction. Various states rejected the amendment and later accepted it; others, having approved, attempted to withdraw the approval. On the same basis as that under which the Thirteenth Amendment became a part of the Constitution, there were thirty-seven states to vote on it and twenty-eight was the required three-fourths. The legislatures of Louisiana and South Carolina, twenty-seventh and twenty-eighth states, both passed the amendment on July 9, and Alabama on July 13. Meanwhile, New Jersey and Ohio had withdrawn their acceptance. Secretary Seward made a conditional certification of ratification on July 20, 1868; but on July 21, Congress by concurrent resolution declared that the amendment had been ratified by twenty-nine states and directed Secretary Seward to promulgate it as a part of the Constitution, which he did on July 28 in a lengthy statement showing that he acted under the above order from Congress. Later Oregon also withdrew her acceptance. Delaware, Kentucky, and Maryland rejected the proposal and California ignored it. Four states added their approval after that of Alabama, more than making up the necessary twenty-eight without the three states that had withdrawn. (*See* page 559.)

AMENDMENT XV

THE PROHIBITION of a color limitation on suffrage was offered to the states by Congress on February 26, 1869, and deposited with the secretary of state on the next day. By this time most of the southern states had been reconstructed; ratification of this amendment was required, however, of the remaining few before they would be readmitted. Georgia was the twenty-eighth state, February 2, 1870, and Secretary Fish announced the approval on March 30. New York withdrew her acceptance on January 5, 1870, but Nebraska added her name on February 17, and Texas on February 18. New Jersey, the last state to vote, did so on February 15, 1871. California, Delaware, Kentucky, Maryland, Oregon, and Tennessee rejected the amendment. (*See* page 560.)

AMENDMENT XVI

NOT UNTIL July 12, 1909, did Congress offer another amendment to the states. The resolution was signed on July 16 and deposited in the Department of State on July 21. Before it was ratified, the number of states had increased to forty-eight, making thirty-six essential for the incorporation of the amendment into the Constitution. Delaware on February 3, 1913, made up the required number; but New Mexico and Wyoming also accepted the amendment on this day, though probably at later hours. Kentucky is included in the above thirty-six, even though the governor had vetoed the legislative approval. Secretary Knox issued his certificate on the ratification on February 25, 1913. The amendment was rejected by Connecticut, Florida, Rhode Island, and Utah, and Pennsylvania and Virginia took no action. (*See* page 560.)

AMENDMENT XVII

THE AMENDMENT for popular election of senators passed Congress on May 13, 1912, and reached the secretary of state on the 15th. In contrast with the slow progress of the Sixteenth Amendment through the state legislatures, this one was adopted by Connecticut, the thirty-sixth state, on April 8, 1913. Only one additional state ratified, that of Louisiana, more than a year later. It was rejected by Delaware and Utah, and no action was taken by Alabama, Florida, Georgia, Kentucky, Maryland, Mississippi, Rhode Island, South Carolina, and Virginia. The secretary's certification is dated May 31, 1913. (*See* page 561.)

AMENDMENT XVIII

THE ENACTMENT of the prohibition amendment was almost as swift as its repeal. The amendment was offered to the states by Congress on December 18, 1917, and deposited with the Department of State on the 19th. On January 16, 1919, it was ratified by Missouri, Nebraska, and Wyoming, probably in this order, with Missouri as the thirty-sixth state. Five other states ratified on January 15 and two on January 17. The amendment was promulgated on January 29, and was in effect from January 16, 1920. The California legislature passed the resolution on January 13, 1919, that endorsement being the twenty-first. A referendum was ordered on it, but this did not affect the legality of the enactment. Rhode Island rejected the amendment; Connecticut took no action. (*See* page 561.)

AMENDMENT XIX

THE AMENDMENT for female suffrage received the sanction of Congress on June 4, 1919, and was placed with the secretary of state the next day. The ratification of Tennessee, the thirty-sixth state, was on August 18, 1920. The struggle there for approval of the amendment was a severe one, and on August 31 the House reconsidered and non-concurred; but the Senate refused to recognize this action, as the governor had not only forwarded to Washington the certificate of adoption but the secretary of state had announced the inclusion of the amendment in the Constitution on August 26. After Tennessee two other states voted their adherence to the proposal, Connecticut on September 14, and Vermont on February 8, 1921. There was no action by Alabama, Florida, or North Carolina; and rejection by Delaware, Georgia, Louisiana, Maryland, Mississippi, South Carolina, and Virginia. (*See* page 561.)

AMENDMENT XX

THE "LAME DUCK" amendment passed Congress on March 2, 1932, and was signed and deposited on March 3. It was ratified on January 23, 1933, by Georgia, Missouri, Ohio, and Utah, which approvals made up the necessary thirty-six states; of these Utah, because of its most western location, was probably the last. All forty-eight states ratified the amendment, which was certified by the secretary of state on February 6, 1933. (*See* page 561.)

AMENDMENT XXI

CONGRESS voted the repeal of the Eighteenth Amendment on February 20, 1933, and it was deposited in the Department of State the same day. Ratification was by state conventions, which required preliminary legislative action to prescribe the election of the delegates and the meetings; and in forty-three states this was done by September 7, but four of the laws put off the conventions until 1934. In North Carolina the people voted on the question of holding a convention, and rejected it. Thirty-eight conventions met in 1933; that of South Carolina rejected the amendment. The conventions of Pennsylvania, Ohio, and Utah ratified on December 5, 1933, in this order. Maine, December 6, was the thirty-seventh state. The certificate of the adoption of the amendment was made by the acting secretary of state on December 5, and the President, in accordance with a special law, also issued his proclamation on the same day. (*See* page 562.)

The following table is amended from one from the Department of State. The chief change is the substitution of January 23, 1795, Delaware, for February 7, 1795, North Carolina, for the date of the ratification of the Eleventh Amendment. The reasons for the substitution are given above in this article. The change to February 2, 1870, Georgia, for February 3, 1870, Iowa, for the Fifteenth Amendment, and the omission of North Carolina from the states that gave the final necessary ratification of the Eighteenth Amendment, are for the same reasons.

Amendments to the Constitution

	Passed by Congress	Engrossed and Signed	Received State Dept.	Ratified by last necessary State		Certified—Secy. of State
I (freedom of religion, etc.)	Sept. 25, 1789	Sept. 28	*Sept. 26	Dec. 15, 1791	Virginia, 11th	Mar. 1, 1792
II (right to bear arms)	do	do	do	do	do	Do.
III (quartering of soldiers)	do	do	do	do	do	Do.
IV (security against search)	do	do	do	do	do	Do.
V (due process of law)	do	do	do	do	do	Do.
VI (right to speedy trial)	do	do	do	do	do	Do.
VII (right to jury trial)	do	do	do	do	do	Do.
VIII (no cruel punishments)	do	do	do	do	do	Do.
IX (unenumerated rights not denied)	do	do	do	do	do	Do.
X (undelegated powers reserved)	do	do	do	do	do	Do.
XI (suability of a state)	Mar. 4, 1794	Mar. 11	*Mar. 12	Jan. 23, 1795	Delaware, 12th	Jan. 8, 1798†
XII (reform in electoral vote)	Dec. 9, 1803	Dec. 12	*Dec. 12	June 15, 1804	New Hampshire, 13th	Sept. 25, 1804
XIII (abolishing slavery)	Jan. 31, 1865	Feb. 1	Feb. 2	Dec. 6, 1865	Georgia, 27th	Dec. 18, 1865
XIV (rights of citizens)	June 13, 1866	June 15	June 16	July 9, 1868	Louisiana, South Carolina, 28th	July 28, 1868
XV (negro suffrage)	Feb. 26, 1869	Feb. 26	Feb. 27	Feb. 2, 1870	Georgia, 28th	Mar. 30, 1870
XVI (income tax)	July 12, 1909	July 16	July 21	Feb. 3, 1913	Delaware, New Mexico, Wyoming, 36th.	Feb. 25, 1913
XVII (election of senators)	May 13, 1912	May 15	May 15	Apr. 8, 1913	Connecticut, 36th	May 31, 1913
XVIII (prohibition)	Dec. 18, 1917	Dec. 18	Dec. 19	Jan. 16, 1919	Missouri, Nebraska, Wyoming, 36th	Jan. 29, 1919
XIX (woman suffrage)	June 4, 1919	June 5	June 5	Aug. 18, 1920	Tennessee, 36th	Aug 26, 1920
XX ("lame duck")	Mar. 2, 1932	Mar. 3	Mar. 3	Jan. 23, 1933	Georgia, Missouri, Ohio, Utah, 36th	Feb. 6, 1933
XXI (repeal of prohibition)	Feb. 20, 1933	Feb. 20	Feb. 20	Dec. 5, 1933	Pennsylvania, Ohio, Utah, 36th	Dec. 5, 1933‡

* Resolution of Congress asking President to transmit.

† Date when President informed Congress.

‡ Date also of President's proclamation.

Alphabetical Analysis of the Constitution

INTRODUCTION

THE SUGGESTION for this Alphabetical Analysis appeared originally in William Hickey, *Constitution of the United States of America, . . . with an Alphabetical Analysis* (1846), one of the early efforts to make available the exact text of the Constitution, the "fireside companion of the American citizen," as Hickey called it. The book also contained much valuable historical information. Congress purchased large editions of it for distribution; it became a standard text and later editions brought the tabulation through the Fifteenth Amendment. The principle of the compilation requires that the key word shall in each case be explained by the quotation of a sufficient amount of the context, with a reference to its exact place in the Constitution or Amendment.

The original suffered from over-elaboration; words were included in the alphabetical list that were unimportant, or so general throughout the document as to have no special significance. On the other hand, as the plan of the analysis excluded all words not in the text, various matters were not sufficiently indicated; for instance, the word "copyright" did not appear in Hickey's analysis, but it is a word for which the searcher would naturally look. The present compilation, while following Hickey's general plan, is a complete reconstruction, which is down to date, and which tries to exclude the superfluous, to avoid repetitions by the use of cross references, and to add essentials. When the word in the alphabetical list is not itself in the text, it is enclosed in [ ] square brackets.

SOL BLOOM,
Director General,
United States Constitution Sesquicentennial Commission.

ALPHABETICAL ANALYSIS

	Art.	sec.	cl.	p.
To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;	1	8	6	545
To establish Post Offices and post Roads;	1	8	7	546
To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;	1	8	8	546
To constitute Tribunals inferior to the supreme Court;	1	8	9	546
To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;	1	8	10	546
To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;	1	8	11	546
To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;	1	8	12	546
To provide and maintain a Navy;	1	8	13	546
To make Rules for the Government and Regulation of the land and naval Forces;	1	8	14	546
To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;	1	8	15	546
To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;	1	8	16	546
To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And;	1	8	17	546
To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof;	1	8	18	546
Congress shall have power to enforce this article by appropriate legislation: (13th amend.)	—	2	—	559
The Congress shall have power to enforce, by appropriate legislation, the provisions of his article; (14th amend.)	—	5	—	560
The Congress shall have power to enforce this article by appropriate legislation; (15th amend.)	—	2	—	560
The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration. (16th amend.)	—	—	—	560
The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation; (18th amend.)	—	2	—	561
Congress shall have power to enforce this article by appropriate legislation; (19th amend.)	—	—	2	561
CONGRESS. 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 the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person;	1	9	1	546
CONGRESS. No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State;	1	9	8	547
CONGRESS. No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.	1	10	2	547
CONGRESS. No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay	1	10	3	547

	Art.	sec.	cl.	p.
CONGRESS. The Congress may determine the Time of chusing the Electors [of President], and the Day on which they shall give their Votes; which Day shall be the same throughout the United States	2	1	4	548
CONGRESS. . . . Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected	2	1	6	548
CONGRESS. . . . the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments	2	2	2	549
CONGRESS. [The President] . . . shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; . . .	2	3	—	549
CONGRESS. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish	3	1	1	550
CONGRESS. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make	3	2	2	550
CONGRESS. The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed	3	2	3	550
CONGRESS. The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted	3	3	2	550
CONGRESS. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof	4	1	—	551
CONGRESS. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well of the Congress	4	3	1	551
CONGRESS. The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; . . .	4	3	2	551
CONGRESS. The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate	5	—	—	551
CONGRESS. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances (1st amend.)	—	—	—	557
CONGRESS. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution				

[ELECTION of President and Vice President of the United States.] The Executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the

Art. sec. cl. p.

same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be same throughout the United States (*See* continuance.)..... 2 1 1-4 547

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the lists of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of the Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States (*See* continuance.)..(12th amend.) 558

If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified (*See* continuance.).....(20th amend.) ... 3 .. 562

The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the

National Development Under the Constitution

THE NATION OF 1790

When the Constitution went into operation the United States consisted of thirteen states between the Atlantic Ocean and the Appalachian Mountains and additional territory running through to the Mississippi River. This western territory had been claimed by various states as within the bounds of their colonial charters. By 1789 the claims to most of the region north of the Ohio River had been ceded to the central government, and the claims south of the Ohio were soon after given up, as was also the claim to what soon became Vermont, the fourteenth state. Thereafter, the thirteen original states had their present boundaries, except that Maine was a part of Massachusetts until 1820 and West Virginia a part of Virginia until 1863. In 1787 the northern part of the western territory had been placed under a territorial government, a plan which became the model for such temporary organization for regions on their way to statehood and a sharing by their inhabitants in the general government; and during the early years under the Constitution territorial governments were formed for the southwestern region. Settlement west of the Appalachians began in colonial times, Kentucky being admitted as a state in 1792; but in general the western region was still frontier. It was plagued by Indian wars; largely still virgin forests or prairies, or with small settlements along the main waterways that were almost the only means of travel or transportation. It was far distant from the coast cities that were the centers of trade; and with crude economic and social conditions, that made such backwoods life foreign to the civilization that had grown up on the Atlantic slope in colonial times and come to have a definite aristocratic trend. Pioneer life promoted democratic spirit.

EXPANSION TO 1860

By 1848 all of this territorial country east of the Mississippi, except the northeastern part of what is now Minnesota, had become

UNITED STATES IN 1790

NOTE.—The states in the election of 1792 chose electors according to the number of representatives allowed them under the apportionment act of April 15, 1792. Maryland and Vermont were entitled to 10 and 4 electors respectively under that apportionment, but three of their votes were not cast.

states, and Florida had also been acquired and given statehood. This region was considerably larger than the territory of the thirteen original states, for the people of whom the Constitution had been originally framed; and it had increased in population from 110,000 in 1790 to 8,000,000 in 1850. Moreover, it had grown up entirely under the aegis of the Constitution; it was essentially the child of the Union and had never known such conditions as those which, in colonial times, had led finally to the American Revolution and had developed the theory of state sovereignty. The democracy of its infancy continued fundamental in its maturing years. In 1850 this region had 76 representatives and 20 senators and the original states plus Vermont and Maine 140 representatives and 30 senators. Three Presidents had come from the western land.

Meanwhile, between 1789 and 1850 the territory of the nation had increased to its present continental dimensions, except for a slice in southern New Mexico and Arizona, added in 1853. This was done by the Louisiana Purchase in 1803 of the valley of the Mississippi west of the main stream; the annexation of Texas in 1845; the division of the Oregon Country with Great Britain in 1846; and the cession of California and the rest of the trans-Rocky region by Mexico in 1848. The nation of 892,000 square miles in 1790 had become one of 3,027,000 by 1860; while the story of pioneer settlement, territorial government, and statehood had already begun west of the "Father of Waters." Indeed, by the latter date eight states out of this new territory had been added to the Union; though much of this far western region was still unsettled or under frontier conditions. In 1860 the thirteen original states, with Vermont and Maine, had only half of the 31,000,000 inhabitants, and in the presidential election of that year 164 electors to the 139 of the rest of the country.

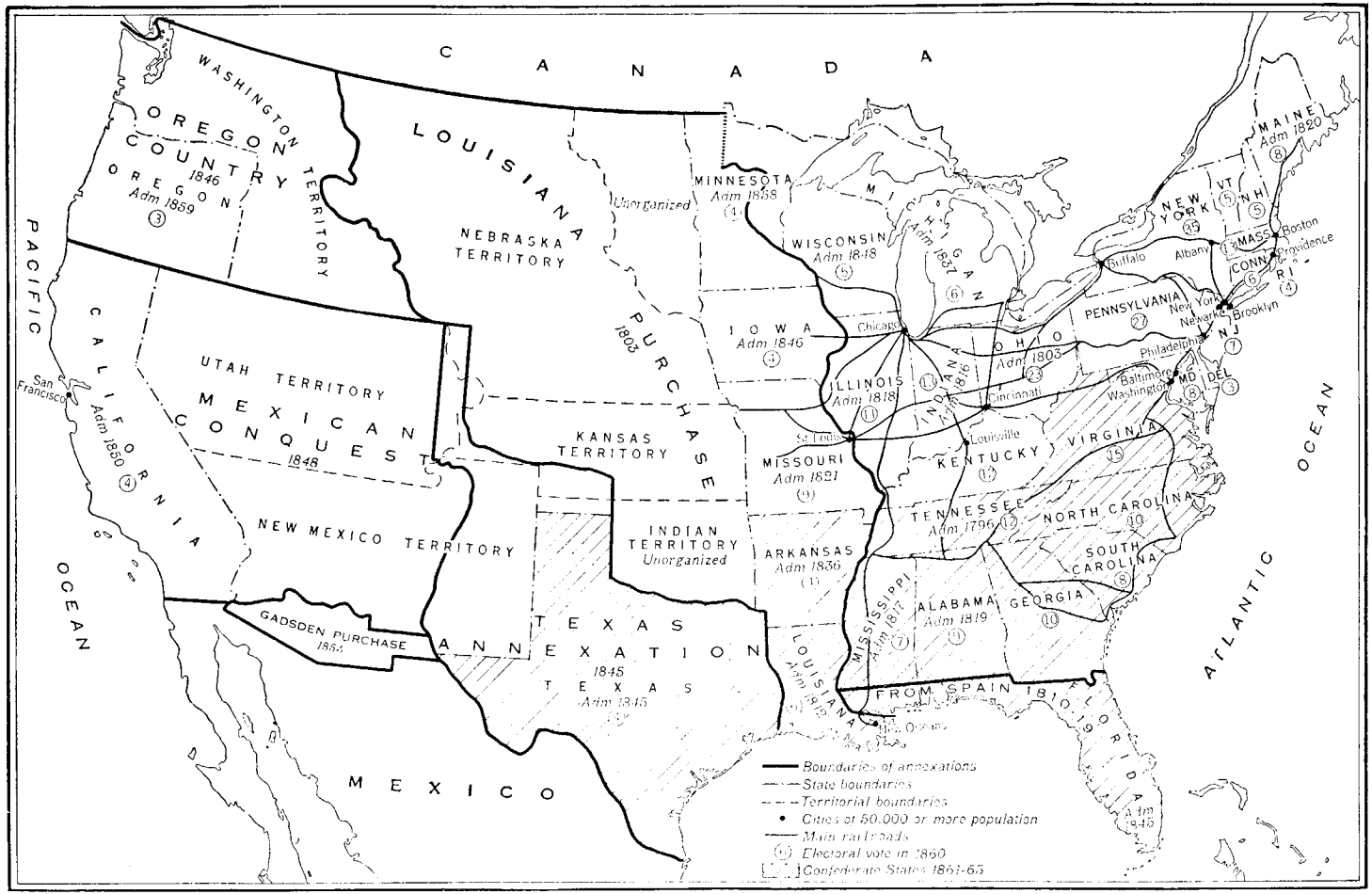
ECONOMIC AND SOCIAL CONDITIONS IN 1790

THIS increase in territory and population, with the consequent shifting of political balance, was only one phase of the change in the character of the nation under the Constitution. Economic and social alterations had been scarcely less. In 1790 the country was almost entirely rural and agricultural and each section largely self-supporting. The largest city, New York, had but 33,000 inhabitants, and there were only twelve cities or towns of 5,000 or more people, with a total number of 156,000 out of a general population of 3,900,000, which was 4 percent. Foreign trade came next to agriculture in economic importance, but imports were only $23,000,000 in value and exports $20,000,000. Most of the imports were of manufac-

tured goods, for manufacturing was still in its infancy in the United States and what little existed was purely home work. Machinery was practically unknown; water or wind furnished the only power; "Labor" was never spelled with a capital; corporations an almost nonexistent element in business. Travel and transportation were in a wretched condition. Coastwise trade in small ships was, where possible, the most convenient method; the larger rivers were also navigable in their lower reaches. There were no good roads and few of any kind to connect a population scattered over a coast line of some twelve hundred miles and running inland for perhaps half as far. Travel was by horseback, private carriage, or stage; transportation by pack-saddle or heavy freight wagons; all slow and often perilous. It took a week to go from Boston to New York.

Isolation and the development of localism and sectional prejudice had been natural results of such conditions. Education was not the privilege of the many; except in New England there was no system of primary public schools, and the right to secondary training was even less regarded. There were fewer than ten colleges throughout the whole country and their courses were rigidly classical; technical and professional schools were almost unknown. In most of the colonies there had been established churches; and though religious freedom was a Revolutionary cry, the barriers of creed and ethical outlook were still formidable in 1790. The ministry was, as it had been in colonial times, the chief profession; but lawyers had pushed themselves to the front in Revolutionary times. Medicine was crude; bleeding was a general remedy; prevention and sanitary measures considered contrary to the will of Providence. Newspapers had existed in the colonies since 1704 and they had grown steadily in number and influence; and their practice of clipping a large part of their contents from exchanges made them even in 1789 of more general influence than their usually highly partisan editors probably realized. The Revolutionary era had given birth to many valuable state papers; but American literature and art in recognizable form was a later product. Amusements were few; the theater struggling for foothold and frowned upon by conservative elements; music of limited appeal; outdoor life in occasional evidence, such as riding or skating, but leisure and the cultivation of the spirit of unconsidered value in the scheme of life.

At the outbreak of the Revolution slavery existed in all of the colonies, but the leaders were general in deprecating its presence as contrary to the spirit of the movement. During the next decade or two in the North, where it was economically unimportant, slavery



UNITED STATES IN 1860

was directly abolished or gradual abolition begun. In the South, except in South Carolina and Georgia, it was believed to be justly dying out. In these two most southern states it was deemed necessary for the cultivation of rice; and the deputies from these states in the Convention of 1787 had insisted upon a demand for recognition of slavery in representation, upon a provision for the return of fugitives, and upon a postponement of the abolition of foreign slave trade. They prevailed.

CONDITIONS IN 1860

THE CONTRAST in 1860 with the economic and social conditions noticed above as prevalent in 1790 was marked. The country remained prevailingly rural and agricultural but in a markedly less degree. There were nine cities with over 100,000 inhabitants; the largest, New York, had 806,000. There were 26 with a population larger than the largest in 1790, and 316 cities and towns containing 5,000 or more people. This urban population of 6,200,000 was 20 percent of the whole. These cities were already centers of large manufacturing and fast becoming ever greater ones. The factory system had developed and labor was finding its voice. Business had become specialized and there were great banking houses and accumulations of capital under corporate control. The imports of merchandise had increased to $354,000,000 and the exports to $334,000,000. The steamship went into practical operation in 1807, and this not only facilitated ocean navigation but made possible the ascension of the great western rivers and the circuit of transportation over them. Improved roads, turnpikes, canals, and finally railroads had wrought a revolution in land travel and transportation. By 1860 one could travel from Bangor in Maine to New Orleans by train, or from Philadelphia by way of Chicago or St. Louis to the Missouri River. A similar revolution in communication had been made by the introduction of the telegraph, though in 1866 there were only about 40,000 miles of line.

Isolation was no longer possible; localism and sectional prejudice were results of a political or economic point of view and not mainly of ignorance. Fostered by grants of public land, the school system in much of the country was a matter of justifiable pride; and higher education on both private and public foundations, and professional schools, were well established wherever flourished the public-school system upon which they fed. Religious freedom was recognized throughout the land. Newspapers had become a stupendous organ of public opinion. The chief papers, such as the *New York Tribune*,

circulated widely and no town of any size was without its own newspaper, or rival ones. The native literature, the arts, music, theater, and other amusements were recognized elements of national life. The people were learning to live; and the accumulation of wealth was developing a leisure class and culture.

IMMIGRATION

THE GREAT growth of population was not the result of natural increase only. Beginning about 1820, each year saw the arrival of a host of immigrants. In 1854 there were 428,000 of them. The number varied widely from year to year, but in 1860 4,000,000 of the population, being 13 percent of the whole, were of foreign birth. These were for the most part up to 1860 of the British, Irish, and German stock which had formed the most appreciable elements of the colonial people, and they did not make any marked ethnic change in the character of the population as a whole.

INDUSTRIAL TREND

THE CONTRAST between conditions in 1790 and 1860 has been noticed because it was at the end of this period that the nation entered upon its great struggle for continued existence as a whole, and the localism that had hindered and almost prevented the formation of the Union had still to bear the burden of the blame. The manifestation was the same, but the underlying causes had now become distinctly economic, whereas the differences inherited from colonial times were more social and directly political. The spread of the nation and the unparalleled development of industry were of necessity accompanied by an increasing unevenness in their economic effects. The sterile soil of New England could not long compete with the deep fertility of the prairies, especially when the development of transportation brought grain that was cheap to grow, cheap to even distant markets; and more than ever that region turned to its fisheries and foreign trade and also to manufactures. Throughout the Middle States there was this same trend toward industrialism. The West was still essentially agricultural; but even here there were 10 cities of 25,000 inhabitants or more, and a sufficient beginning of manufacturing to warrant the belief that the Old Northwest at least would become diversified in its economic foundations.

THE SOUTH AND SLAVERY

BUT THE South, which now included the states of the Southwest, was not only distinctly agricultural, but was confined to two crops,

tobacco and cotton. After the invention of the cotton gin, which made it easy to extract the seeds from the lint, the growing of cotton received an enormous impulse, and spread over all the newer lands where climate and soil made its growth profitable. The South became cotton grower for the industrial world; not only did it furnish the supply for the northern mills, but the value of the export of cotton in 1860 was $192,000,000, or 57 percent of the whole export. And the cultivation of cotton was by slave labor; as also, though with much less importance, was the cultivation of tobacco; so that as slavery died out in the rest of the Union it became a chief factor in the economic well-being of the South. In 1790 there were 700,000 slaves in a total population of 3,900,000, which was 18 percent. In 1860 there were 4,000,000 in a population of 31,000,000, or less than 13 percent; but in the eleven states that seceded from the Union to form the Confederate States, there were 3,500,000 slaves in a total population of 8,900,000, which was 89 percent of all the slaves and 40 percent of the population of these seceding states.

SECESSION AND WAR

SUCH an enormous mass of servile laborers concentrated in one portion of the Union and bound up with the economic development of that region could not but have an influence upon social aspects and also upon the political point of view. Moreover, the conditions set the slave-holding section, a region that was a third in size and 40 percent of the population of the whole, apart from the rest, where slavery was forbidden or unprofitable; and checked the participation of that region in the general development described above. The political effect of this divergence was to keep alive in the South the spirit of localism and belief that the nation was under the new Constitution, as it had been under the Articles of Confederation, a Union of sovereign states, each of which retained the right to withdraw from the government, of which, through its ratification or later admission as a state, it had become a member.

It is not necessary here to consider the legality of such action. Secession was not a new theory in 1860; the idea was as old as the government and movements for state action in disobedience to national measures had appeared several times in the history of the United States since 1789, and in various sections. But by 1860 the rest of the nation, developed as described above during the 70 years of life under the Constitution, had arrived at a disbelief in this theory. The result was war; and the effect of the defeat of the Confederate States, which the seceding states had formed, was to abolish forever

the idea that the states had any rights except such as they possessed under the Constitution of the United States—the Constitution of an indestructible Union as well as one of indestructible states.

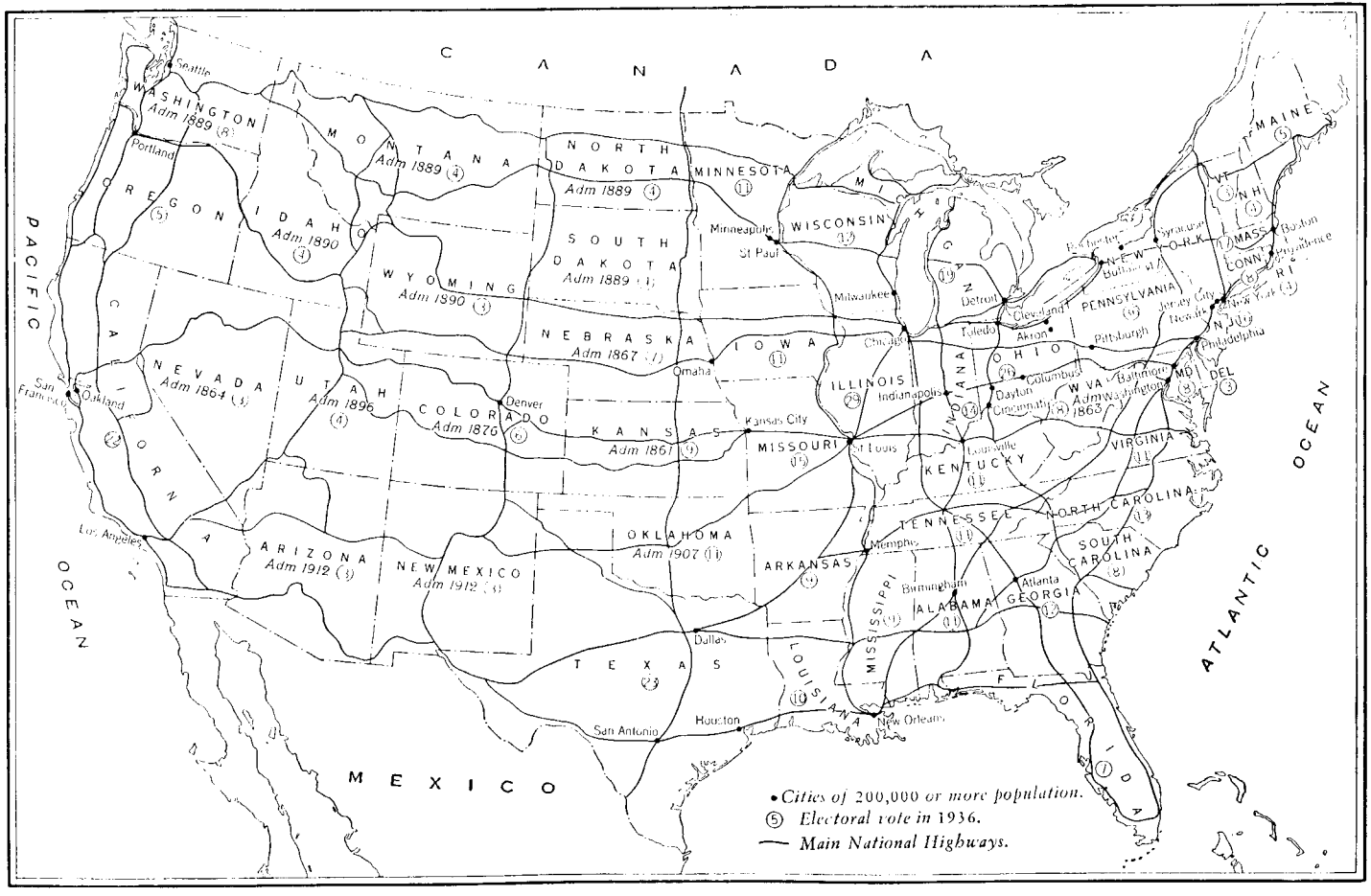
THE NATION OF 1937

THE THIRD of the maps which accompany this sketch shows how the tale of the forty-eight states has been completed since 1860. During this period there has been also an addition of outlying dependencies, including Alaska, Hawaii, Puerto Rico, Canal Zone, and the Philippines, the last being held in preparation for independence. The number of inhabitants in the continental region increased from 31,000,000 to 130,000,000. The continuance of the change in relative density of population and the shifting of political balance is shown on the maps by the number of electoral votes in each state at the different periods.

CHARACTER OF DEVELOPMENT, 1865-1937

THE NATIONAL growth after the end of the Civil War in 1865 accentuated the development of industrialism, with all its problems of capital and labor, of individual rights and rights of combination, of working conditions and the steadily increasing substitution of machines for human toil. Agriculture, still the most important element in our economic life, but hard pressed to hold its position, has also changed greatly. The regions of chief production have altered with the development of the frontier; products have become more varied, and more attention has been given to horticulture and fresh vegetables. Machines have multiplied and increased the possible area of cultivation, while diminishing the need of hand labor and relative employment. Agricultural schools and state and national bureaus have introduced science to agriculture; while the Grange and similar organizations, the gasoline engines, automobiles, telephones, rural delivery, electric light, and radio have wrought against the isolation and social dreariness that formerly surrounded rural life.

While the population has grown and become more and more urban, its character as a whole has been much influenced by postbellum immigration. This has included vast numbers of Latin and Slavic people, not previously an influential factor, and having in many respects behind them generations of habits and culture quite different from those of the earlier growth of the country. Of great importance in postbellum development has been the effect in the South of the abolition of slavery and the consequent growth there of industrialism and share in the new principles of agriculture.



UNITED STATES IN 1937

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MODERN PROBLEMS

THE CROSS-HATCHING of the whole country with railroad lines, the universality of the telegraph and later of the telephone and radio, the unparalleled development of automobiles and the paved roads they require, and the introduction of aviation have all added to the complexity of American life, keyed it to the idea of haste, whether in the rush of business or the pursuit of pleasure, and tended also toward the elimination of localism and the prejudices of its ignorance, and toward the primacy of nationalism. Public supervision and control over private affairs, sharp consideration of the rights of the individual and the welfare of the many or the whole, of the claims of property and of humanity, of material and human conservation and reclamation, of the right and requirement of education, of representation and more direct control by the people, of the right to a healthful life and sufficient leisure, of the justifiable place of amusements, indoors and out—these also are phases of our present life. The youthful pioneer spirit died down with the disappearance of the frontier and the end of free land. The nation approached maturity; took on dignity and international responsibility as it became a world power, and faced the teeming problems of greatness, of many aspects of which the Framers had no conception.

Questions and Answers Pertaining to the Constitution

Q. In what language was Magna Carta written, and to whom was it addressed?

A. It was written in Latin, and was addressed "To the archbishops, bishops, abbots, earls, barons, justiciaries, foresters, sheriffs, reeves, ministers, and all bailiffs and faithful subjects."

Q. What part of the world was first called America?

A. The name "America" was first applied to Central Brazil, in honor of Amerigo Vespucci, who claimed its discovery. It was first applied to the whole known western world by Mercator, the geographer, in 1538.

Q. When did the phrase, "The United States of America," originate?

A. The first known use of the formal term "United States of America" was in the Declaration of Independence. Thomas Paine in February 1776 had written of "Free and independent States of America." The terms "United Colonies," "United Colonies of America," "United Colonies of North America," and also "States," were used in 1775 and 1776.

Q. How were deputies to the Constitutional Convention of 1787 chosen?

A. They were appointed by the legislatures of the different states.

Q. Were there any restrictions as to the number of deputies a state might send?

A. No.

Q. Which state did not send deputies to the Constitutional Convention?

A. Rhode Island and Providence Plantations.

Q. Were the other twelve states represented throughout the Constitutional Convention?

A. No. Two of the deputies from New York left on July 10, 1787, and after that Hamilton, the third deputy, when he was in attendance did not attempt to cast the vote of his state. The New Hampshire deputies did not arrive until July 23, 1787; so that there never was a vote of more than eleven states.

Q. Where and when did the deputies to the Constitutional Convention assemble?

A. In Philadelphia, in the State House where the Declaration of Independence was signed. The meeting was called for May 14, 1787, but a quorum was not present until May 25.

Q. About how large was the population of Philadelphia?

A. The census of 1790 gave it 28,000; including its suburbs, about 42,000.

Q. What was the average age of the deputies to the Constitutional Convention?

A. About 44.

Q. Who were the oldest and youngest members of the Constitutional Convention?

A. Benjamin Franklin of Pennsylvania, then 81; and Jonathan Dayton of New Jersey, 26.

Q. How many lawyers were members of the Constitutional Convention?

A. There were probably 34, out of 55, who had at least made a study of the law.

Q. From what classes of society were the members of the Constitutional Convention drawn?

A. In addition to the lawyers, there were soldiers, planters, educators, ministers, physicians, financiers, and merchants.

Q. How many members of the Constitutional Convention had been members of the Continental Congress?

A. Forty, and two others were later members.

Q. Were there any members of the Constitutional Convention who never attended any of its meetings?

A. There were nineteen who were never present. Some of these declined, others merely neglected the duty.

Q. Were the members of the Constitutional Convention called "delegates" or "deputies," and is there any distinction between the terms?

A. Some of the states called their representatives "delegates"; some, "deputies"; and some, "commissioners," the terms being often mixed. In the Convention itself they were always referred to as "deputies." Washington, for example, signed his name as "deputy from Virginia." The point is simply that whatever they called themselves, they were representatives of their states. The general practice of historians is to describe them as "delegates."

Q. Who was called the "Sage of the Constitutional Convention"?

A. Benjamin Franklin of Pennsylvania.

Q. Who was called the "Father of the Constitution"?

A. James Madison of Virginia, because in point of erudition and actual contributions to the formation of the Constitution he was preeminent.

Q. Was Thomas Jefferson a member of the Constitutional Convention?

A. No. Jefferson was American Minister to France at the time of the Convention.

Q. What did Thomas Jefferson have to do with framing the Constitution?

A. Although absent from the Constitutional Convention and during the period of ratification, Jefferson rendered no inconsiderable service to the cause of constitutional government, for it was partly through his insistence that the Bill of Rights, consisting of the first ten amendments, was adopted.

Q. Who presided over the Constitutional Convention?

A. George Washington, chosen unanimously.

Q. How long did it take to frame the Constitution?

A. It was drafted in fewer than one hundred working days.

Q. How much was paid for the journal kept by Madison during the Constitutional Convention?

A. President Jackson secured from Congress in 1837 an appropriation of $30,000 with which to buy Madison's journal and other papers left by him.

Q. Was there harmony in the Constitutional Convention?

A. Serious conflicts arose at the outset, especially between those representing the small and large states.

Q. Who presented the Virginia Plan?

A. Edmund Randolph.

Q. What was the Connecticut Compromise?

A. This was the first great compromise of the Constitutional Convention, whereby it was agreed that in the Senate each state should have two members, and that in the House the number of representatives was to be based upon population. Thus the rights of the small states were safeguarded, and the majority of the population was to be fairly represented.

Q. Who actually wrote the Constitution?

A. In none of the relatively meager records of the Constitutional Convention is the literary authorship of any part of the Constitution definitely established. The deputies debated proposed plans until, on July 24, 1787, substantial agreement having been reached, a Committee of Detail was appointed, consisting of John Rutledge of South Carolina, Edmund Randolph of Virginia, Nathaniel Gorham of Massachusetts, Oliver Ellsworth of Connecticut, and James Wilson of Pennsylvania, who on August 6 reported a draft which included a preamble and twenty-three articles, embodying fifty-seven sections. Debate continued until September 8, when a new Committee of Style was named to revise the draft. This committee included William Samuel Johnson of Connecticut, Alexander Hamilton of New York, Gouverneur Morris of Pennsylvania, James Madison of Virginia, and Rufus King of Massachusetts, and they reported the draft in approximately its final shape on September 12. The actual literary form is believed to be largely that of Morris, and the chief testimony for this is in the letters and papers of Madison, and Morris' claim. However, the document in reality was builded slowly and laboriously, with not a piece of material included until it had been shaped and approved. The preamble was written by the Committee of Style.

Q. Who was the penman who, after the text of the Constitution had been agreed on, engrossed it prior to the signing?

A. Jacob Shallus who, at the time, was assistant clerk of the Pennsylvania General Assembly, and whose office was in the same building in which the Convention was held.

Q. Does his name appear on the document or in any of the papers pertaining to its preparation?

A. No. In the financial memoranda there is an entry of $30 for "clerks employed to transcribe & engross."

Q. When and how was the identity of the engrosser determined?

A. In 1937, on the occasion of the 150th anniversary of the Constitution. His identity was determined after a long and careful search of collateral public documents.

Q. Where did Shallus do the engrossing?

A. There is no record of this, but probably in Independence Hall.

Q. Did he realize the importance of the work he had done?

A. Probably not; when he died, in 1796, the Constitution had not yet

come to be the firmly established set of governmental principles it since has become.

Q. Did some of the deputies to the Constitutional Convention refuse to sign the Constitution?

A. Only thirty-nine signed. Fourteen deputies had departed for their homes, and three—Randolph and Mason of Virginia and Gerry of Massachusetts—refused to sign. One of the signatures is that of an absent deputy, John Dickinson of Delaware, added at his request by George Read, who also was from Delaware.

Q. How can it be said that the signing of the Constitution was unanimous, when the deputies of only twelve states signed and some delegates refused to sign?

A. The signatures attest the "Unanimous Consent of the States present." The voting was by states, and the vote of each state that of a majority of its deputies. Hamilton signed this attestation for New York, though, as he was the only deputy of the state present, he had not been able to cast the vote of his state for the consent, only eleven states voting on the final question. There is an even greater discrepancy about the signers of the Declaration of Independence. Some seven or eight members present on July 4 never signed; seven signers, including Richard Henry Lee of Virginia, who proposed the resolution of independence, were not present on the day; and eight other signers were not members of Congress until after July 4.

Q. Did George Washington sign the Declaration of Independence?

A. No. He had been appointed commander-in-chief of the Continental Army more than a year before and was at the time with the army in New York City.

Q. Where is the original signed Constitution?

A. On the second floor of the Library of Congress the original Constitution of the United States and the original Declaration of Independence are on permanent exhibit.

Q. What are the exact measurements of the originals of the Declaration of Independence and of the Constitution of the United States?

A. The Declaration of Independence: 29⅞ in. by 24 7/16 in.; The Constitution: four sheets, approximately 28¾ in. by 23⅝ in. each.

Q. How many words are there in the texts of the great state papers, and how long does it take to read them?

A. The Constitution has 4,543 words, including the signatures but not the certificate on the interlineations; and takes about half an hour to read. The Amendments have 2,214 words and they can be read in about half the time the Constitution takes. The Declaration of Independence has 1,458 words, with the signatures, but is slower reading, as it takes over ten minutes. The Farewell Address has 7,641 words and requires forty-five minutes to read.

Q. What party names were given to those who favored ratification and to those who opposed it?

A. Those who favored ratification were called Federalists; those who opposed, Antifederalists.

Q. In ratifying the Constitution, did the people vote directly?

A. No. Ratification was by special state conventions (Art. VII).

Q. The vote of how many states was necessary to ratify the Constitution?

A. Nine (Art. VII).

Q. In what order did the states ratify the Constitution?

A. In the following order: Delaware, Pennsylvania, New Jersey, Georgia, Connecticut, Massachusetts, Maryland, South Carolina, New Hampshire, Virginia, and New York. After Washington had been inaugurated, North Carolina and Rhode Island ratified. For dates and votes, *see* the table on p. 60.

Q. After the Constitution was submitted for ratification, where did the greatest contests occur?

A. In Massachusetts, Virginia, and New York.

Q. In each instance what was the vote?

A. New York ratified the Constitution by a majority of three votes—30 to 27; Massachusetts by 187 to 168; and Virginia by 89 to 79. *See* the table on p. 60.

Q. In the course of ratification, how many amendments were offered by the state conventions?

A. Seventy-eight; exclusive of Rhode Island's twenty-one, and those demanded by the first convention in North Carolina. There were many others offered which were considered necessary as items of a Bill of Rights. Professor Ames gives 124 as the whole number, inclusive of those of Rhode Island and North Carolina and the Bills of Rights. Various of these covered the same topics.

Q. When did the United States government go into operation under the Constitution?

A. The Constitution became binding upon nine states by the ratification of the ninth state, New Hampshire, June 21, 1788. Notice of this ratification was received by Congress on July 2, 1788. On September 13, 1788, Congress adopted a resolution declaring that electors should be appointed in the ratifying states on the first Wednesday in January, 1789; that the electors vote for President on the first Wednesday in February, 1789; and that "the first Wednesday in March next [March 4, 1789] be the time and the present seat of Congress the place for commencing proceedings under the said constitution." The Convention had also suggested "that after such Publication the Electors should be appointed, and the Senators and Representatives elected." The Constitution left with the states the control over the election of congressmen, and Congress said nothing about this in its resolution; but the states proceeded to provide for it as well as for the appointment of electors. On March 3, 1789, the old Confederation went out of existence and on March 4 the new government of the United States began legally to function, according to a decision of the Supreme Court of the United States (*Owings* v. *Speed*, 5 Wheat. 420); however, it had no practical existence until April 6, when first the presence of quorums in both houses permitted organization of Congress. On April 30, 1789, George Washington was inaugurated as President of the United States, so on that date the executive branch of the government under the Constitution became operative. But it was not until February 2, 1790, that the Supreme Court, as head of the third branch of the government, organized and held its first session; so that is the date when our government under the Constitution became fully operative.

Q. Did Washington receive the unanimous vote of the electors in his first election as President?

A. Yes, of all who voted. Four, two in Virginia and two in Maryland, did not vote; and the eight votes to which New York was entitled were not cast because the legislature could come to no agreement upon how the electors should be appointed. There should have been 81 votes; he received 69.

Q. How did the first inauguration proceed?

A. The Senate Journal narrates it as follows: "The House of Representatives, preceded by their Speaker, came into the Senate Chamber, and took the seats assigned them; and the joint Committee, preceded by their Chairman, agreeably to order, introduced the President of the United States to the Senate Chamber, where he was received by the Vice President, who conducted him to the Chair; when the Vice President informed him, that 'The Senate and House of Representatives were ready to attend him to take the oath required by the Constitution, and that it would be administered by the Chancellor of the State of New-York'—To which the President replied, he was ready to proceed:—and being attended to the gallery in front of the Senate Chamber, by the Vice President and Senators, the Speaker and Representatives, and the other public characters present, the oath was administered.—After which the Chancellor proclaimed, 'Long live George Washington, President of the United States.' The President having returned to his seat, after a short pause, arose and addressed the Senate and House of Representatives . . . The President, the Vice President, the Senate and House of Representatives, &c. then proceeded to St. Paul's Chapel, where divine service was performed by the Chaplain of Congress, after which the President was conducted to his house, by the Committee appointed for that purpose."

Q. Was Adams sworn in as Vice President before Washington took the oath of office as President?

A. No. Neither the Vice President nor any senators took the oath of office until June 3. The first act of Congress, June 1, provided for the oath. In the House the Speaker and members present on April 8 had taken an oath provided for by a resolve on April 6 of that House, and the act of June 1 recognized that oath as sufficient for those who had taken it.

Q. What cities have been capitals of the United States government?

A. The Continental Congress sat at Philadelphia, 1774–76, 1777, 1778–83; Baltimore, 1776–77; Lancaster, 1777; York, 1777–78; Princeton, 1783; Annapolis, 1783–84; Trenton, 1784; and New York, 1785–89. The first capital under the Constitution of the United States was in New York, but in 1790 it was moved to Philadelphia. Here it was continued until 1800, when the permanent capital, Washington, in the new District of Columbia, was occupied.

Q. How was the manner of address of the President of the United States decided?

A. Both Houses of Congress appointed committees to consider the proper title to give the President, but they could not agree. The Senate wished it to be "His Highness the President of the United States of America and Protector of their Liberties." The House considered this as too monarchical, and on May 5 addressed its reply to the inaugural speech merely to "The President of the United States." The Senate on May 14 agreed to this simple form. *See* pp. 374–376.

Q. What is meant by the term "constitution"?

A. A constitution embodies the fundamental principles of a government. Our constitution, adopted by the sovereign power, is amendable by that power only. To the constitution all laws, executive actions, and judicial decisions must conform, as it is the creator of the powers exercised by the departments of government.

Q. Why has our Constitution been classed as "rigid"?

A. The term "rigid" is used in opposition to "flexible" because the provisions are in a written document which cannot be legally changed with the same ease and in the same manner as ordinary laws. The British Constitution, which is unwritten, can, on the other hand, be changed overnight by act of Parliament.

Q. What was W. E. Gladstone's famous remark about the Constitution?

A. It was as follows: "As the British Constitution is the most subtle organism which has proceeded from the womb and long gestation of progressive history, so the American Constitution is, so far as I can see, the most wonderful work ever struck off at a given time by the brain and purpose of man."

Q. What is the source of the philosophy found in the Constitution?

A. The book which had the greatest influence upon the members of the Constitutional Convention was Montesquieu's *Spirit of Laws*, which first appeared in 1748. The great French philosopher had, however, in turn borrowed much of his doctrine from the Englishman, John Locke, with whose writings various members of the Convention were also familiar.

Q. Are there original ideas of government in the Constitution?

A. Yes; but its main origins lie in centuries of experience in government, the lessons of which were brought over from England and further developed through the practices of over a century and a half in the colonies and early state governments, and in the struggles of the Continental Congress. Its roots are deep in the past; and its endurance and the obedience and respect it has won are mainly the result of the slow growth of its principles from before the days of Magna Carta.

Q. What state papers should be considered in connecting the Constitution of the United States with Magna Carta?

A. The Great Charter was confirmed several times by later medieval monarchs, and there were various statutes, such as those of Westminster, which also helped to develop the germs of popular government. The Petition of Right, 1628, against the abuse of the royal prerogative, the Habeas Corpus Act, 1679, and the Bill of Rights, 1689, to establish the claims of the Petition, are the great English documents of more modern times on popular freedom. Meanwhile, the colonial charters became the foundation of the Americans' claim to the "rights of Englishmen," and were the predecessors of the state constitutions which owed their origin to the American Revolution. The Declaration of Independence established the principles which the Constitution made practical. Plans for colonial union were proposed from time to time, the most important of them being the Albany Plan of 1754, of which Benjamin Franklin was the author. The united efforts to establish independence gave birth to the Articles of Confederation, which though inadequate, were a real step toward the "more perfect Union" of the Constitution. *See* the "Liberty Documents," *post*.

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Q. In what respect had the Confederation failed?

A. It had three great weaknesses. It had no means of revenue independent of that received through its requisitions on the states, which were nothing more than requests, which the states could and did disregard; and it had no control over foreign or interstate commerce. Behind these lacks was its inability to compel the states to honor the national obligations. It could make treaties but had no means to compel obedience to them; or to provide for the payment of the foreign debt. It had responsibility but no power as a national government; no means of coercing the states to obedience even to the very inadequate grant given to the "League of Friendship" by the Articles of Confederation. But its greatest weakness was that it had no direct origin in, or action on, the people themselves; but, unlike both the Declaration of Independence and the later Constitution, knew only the states and was known only to them, calling them sovereign.

Q. How extensively has the Constitution been copied?

A. All later constitutions show its influence; it has been copied extensively throughout the world.

Q. The United States government is frequently described as one of limited powers. Is this true?

A. Yes. The United States government possesses only such powers as are specifically granted to it by the Constitution.

Q. Then how does it happen that the government constantly exercises powers not mentioned by the Constitution?

A. Those powers simply flow from general provisions. To take a simple example, the Constitution gives to the United States the right to coin money. It would certainly follow, therefore, that the government had the right to make the design for the coinage. This is what the Supreme Court calls "reasonable construction" of the Constitution (Art. I, sec. 8, cl. 18).

Q. Where, in the Constitution, is there mention of education?

A. There is none; education is a matter reserved for the states.

Q. Who was called the "Expounder of the Constitution"?

A. Daniel Webster of Massachusetts, because of his forceful and eloquent orations interpreting the document.

Q. Must a member of the House of Representatives be a resident of the district which he represents?

A. The Constitution provides only that no person shall be a representative "who shall not, when elected, be an Inhabitant of that State in which he shall be chosen"; but makes no requirement as to residence within the district (Art. I, sec. 2, cl. 2).

Q. Have the English a greater representation in their House of Commons than Americans in their House of Representatives?

A. In Great Britain (England, Scotland, and Wales) there is a member in the House of Commons for approximately every 70,000 of population, while in the United States membership in the lower House is based upon every 279,712 of population (Art. I, sec. 2, cl. 3).

Q. What was the ratio of representation in Congress 100 years ago and what is it now?

A. In 1837 there was apportioned one representative for every 47,700

inhabitants, the total number being 242. In 1937 there was one representative for every 279,712, the total number being 435 (Art. I, sec. 2, cl. 3).

Q. Is it possible to impeach a justice of the Supreme Court?

A. It is possible to impeach a justice of the Supreme Court or any other official. The Constitution makes provision for impeachment by the House and trial of the accused by the Senate sitting as a court of "all civil Officers," which includes the justices (Art. I, sec. 2, cl. 5; sec. 3, cl. 6, 7; Art. II, sec. 4).

Q. Are senators, representatives, and justices of the Supreme Court civil officials of the United States?

A. Justices are, but the others are probably not. The Constitution in several places seems to make a clear distinction between legislators and officials, though this has been contested. Members of Congress are not subject to impeachment, but are liable to expulsion by the vote of the house of which they are members (Art. I, sec. 5, cl. 2).

Q. What would be the proceeding in case of the impeachment of a Cabinet officer?

A. An impeachment proceeding may be set in motion in the House of Representatives by charges made on the floor on the responsibility of a member or territorial delegate; by charges preferred by a memorial, which is usually referred to a committee for examination; by charges transmitted by the legislature of a state or from a grand jury; or the facts developed and reported by an investigating committee of the House. After the impeachment has been voted by the House, the case is heard by the Senate sitting as a court. When the President of the United States is impeached and tried the proceedings are the same except that the Senate is then presided over by the Chief Justice of the United States (Art. I, sec. 2, cl. 5; sec. 3, cl. 6, 7; Art. II, sec. 4).

Q. What is meant when it is said that senators are paired?

A. Sometimes a senator belonging to one party agrees with a senator belonging to the other party that neither will vote if the other is absent, the theory being that they would always vote on opposite sides of the question. This is called a pair. Sometimes pairs are secured on a particular vote only. For example, if a senator is in favor of a certain piece of legislation and is ill or unavoidably detained, his friends arrange for some one on the opposite side not to vote. This insures for each a record as to his views. While many are opposed to general pairs, as the first is called, all are glad to arrange a pair for a specific measure if a senator is unavoidably prevented from being present (Art. I, sec. 5, cl. 2).

Q. What is the mace of the House of Representatives and what purpose does it serve?

A. The mace consists of thirteen ebony rods, about three feet long, representing the thirteen original states. It is bound together with silver in imitation of the thongs which bound the fasces of ancient Rome. The shaft is surmounted by a globe of solid silver about five inches in diameter upon which rests a massive silver eagle. The mace is the symbol of the paramount authority of the House within its own sphere. In times of riot or disorder upon the floor the Speaker may direct the sergeant-at-arms, the executive officer of the House, to bear the mace up and down the aisles as a reminder that the dignity and decorum of the House must not be overthrown. Defiance to such warning is the ultimate disrespect to the House and may lead to expul-

sion. When the House is sitting as a body the mace rests upright on a pedestal at the right of the Speaker's dais; when the House is sitting in committee of the whole, the mace stands upon the floor at the foot of its pedestal. Thus, when the House wishes to "rise" from committee of the whole and resume business as a legislative body, lifting the mace to its pedestal automatically effects the transition. The origin of the idea of the mace is based upon a similar emblem in the British House of Commons (Art. I, sec. 5, cl. 2).

Q. Who administers the oath of office to the Speaker of the House of Representatives?

A. It is usually administered by the oldest member in point of service (Art. I, sec. 5, cl. 2).

Q. What is meant by the "Father" of the House of Representatives?

A. It is a colloquial title informally bestowed upon the oldest member in point of service (Art. I, sec. 5, cl. 2). It was borrowed originally from the House of Commons.

Q. Why is a member of the House of Representatives referred to on the floor as "the gentleman from New York," for example, instead of by name?

A. It is a custom in all large deliberative bodies to avoid the use of the personal name in debate or procedure. The original purpose of this was to avoid any possible breach of decorum and to separate the political from the personal character of each member (Art. I, sec. 6, cl. 1).

Q. Do members of Congress get extra compensation for their work on committees?

A. No (Art. I, sec. 6, cl. 1).

Q. Could members of the President's Cabinet be permitted to sit in Congress without amending the Constitution?

A. No. A national officeholder cannot at the same time be a member of either house of Congress (Art. I, sec. 6, cl. 2).

Q. Must all revenue and appropriation bills originate in the House of Representatives?

A. The Constitution provides that all bills for raising revenue shall originate in the House of Representatives. It is customary for appropriation bills to originate there also (Art. I, sec. 7, cl. 1).

Q. What is meant by the word *veto,* in the President's powers?

A. The word is from the Latin and means "I forbid." The President is authorized by the Constitution to refuse his assent to a bill presented by Congress if for any reason he disapproves of it. Congress may, however, pass the act over his veto but it must be by a two-thirds majority in both houses. If Congress adjourns before the end of the 10 days, the President can prevent the enactment of the bill by merely not signing it. This is called a pocket veto (Art. I, sec. 7, cl. 2).

Q. If, after a bill has passed both houses of Congress and gone to the President, Congress desires to recall it, can this be done?

A. A bill which has reached the President may be recalled only by concurrent resolution. The form used is as follows: Resolved, by the House of Representatives (the Senate concurring), That the President be requested to return to the House of Representatives the bill . . . (title). After the concurrent resolution passes both houses it is formally transmitted to the

President. The latter might, however, have already signed it, in which case it would have become a law and would have to be repealed in regular fashion (Art. I, sec. 7, cl. 2).

Q. What is the difference between a joint and a concurrent resolution of Congress?

A. A joint resolution has the same force as an act, and must be signed by the President or passed over his veto. A concurrent resolution is not a law, but only a measure on which the two houses unite for a purpose concerned with their organization and procedure, or expressions of facts, principles, opinions, and purposes, "matters peculiarly within the province of Congress alone," and not embracing "legislative provisions proper" (Art. I, sec. 7, cl. 3).

Q. Which is the longest term of office in the government, aside from judges?

A. The comptroller general of the United States and the assistant comptroller general have the longest tenure. They hold office for fifteen years (Art. I, sec. 8, cl. 18; sec. 9, cl. 7; Art. II, sec. 2, cl. 2).

Q. What is the term of office of treasurer of the United States?

A. The treasurer is appointed by the President of the United States, and no length of term of office is specified (Art. I, sec. 8, cl. 18; sec. 9, cl. 7; Art. II, sec. 2, cl. 2).

Q. When were the various government departments established?

A. Four of the departments are older than the government under the Constitution. These are Department of Foreign Affairs, Treasury, War, and Post Office. They were re-established by the First Congress under the Constitution, which changed the name of the Department of Foreign Affairs to Department of State. The office of attorney general was established in 1789, and in 1870 the Department of Justice was established. The Department of the Navy was established in 1798; Department of Interior, 1849; Department of Agriculture, 1889; Department of Commerce and Labor, 1903; Department of Labor, 1913 (Art. I, sec. 8, cl. 18; Art. II, sec. 2, cl. 1).

Q. Does the postmaster general come before the secretary of the navy in order of precedence?

A. Yes. The order of creation is: Secretary of state, secretary of the treasury, secretary of war, attorney general, postmaster general, secretary of the navy, secretary of the interior, secretary of agriculture, secretary of commerce, and secretary of labor, and that order gives the precedence; but the postmaster general was not a member of the Cabinet until Jackson's Administration, many years after the secretary of the navy (Art. I, sec. 8, cl. 18; Art. II, sec. 2, cl. 1).

Q. Does the Constitution provide for the formation of a Cabinet?

A. No. The Constitution vests the executive power in the President. Executive departments were created by successive acts of Congress under authority conferred by the Constitution in Art. I, sec. 8, cl. 18. The Departments of State, Treasury, and War were created by the first session of the First Congress. The secretaries of these, together with the attorney general, formed the first President's Cabinet. The Cabinet, it should be distinctly understood, is merely an advisory body whose members hold office only during the pleasure of the President. It has no constitutional function as a Cabinet,

and the word does not appear in an act of Congress until February 26, 1907 (Art. I, sec. 8, cl. 18; Art. II, sec. 1, cl. 1, sec. 2, cl. 1).

Q. How many methods of electing the President of the United States were considered by the Constitutional Convention?

A. Five. These were by the Congress; by the people; by state legislatures; by state executives; and by electors. Various methods of appointing the electors were proposed: by popular vote, by lottery from members of Congress, by state legislatures, and by state executives; and the matter was finally compromised by leaving the method to each state legislature. The meeting of the electors in one body was also proposed; and at first the final choice, in case election by electors failed, was given to the Senate, but later, after choice by Congress had been defeated, it was transferred to the House, voting by states.

Q. In the event of the death, resignation, removal, or disability of both President and Vice President, who would become President?

A. In accordance with the presidential succession act of 1886, the succession would devolve upon the secretary of state, or, if he were not available, upon the secretary of the treasury, and so on, according to the order of the creation of their respective departments, provided always that the Cabinet officer fulfilled the qualifications for President as set forth in the Constitution. Thus, for example, if the secretary of state were born in Canada, the succession would devolve upon the next in rank, the secretary of the treasury (Art. II, sec. 1, cl. 6).

Q. If a Cabinet member were to become President while Congress was not in session, would he call a session at once?

A. Yes. In accordance with the act of Congress providing for the succession in such an event, if Congress were not in session, or would not meet within twenty days, such a President would call an extra session (Art. II, sec. 1, cl. 6).

Q. Who appoints the chief justice of the United States and for how long a term?

A. The chief justice of the United States and the associate justices are appointed for life (during good behavior) by the President of the United States, "by and with the Advice and Consent of the Senate," (Art. II, sec. 2, cl. 2; Art. III, sec. 1).

Q. By what authority may the President of the United States call an extra session of Congress?

A. The Constitution provides for this. Art. II, sec. 3, says: ". . . he may, on extraordinary Occasions, convene both Houses, or either of them, . . ."

Q. Can the secretary of state take action with respect to recognizing a government without the consent of Congress?

A. The secretary of state, on behalf of the President, may accord recognition without recourse to Congress (Art. II, sec. 3).

Q. Under the new government how was the national judiciary organized?

A. The First Congress passed various notable acts which endured many years as laws. One of the most worthy of these was that organizing the national judiciary, September 24, 1789. The bill was drawn up with extraordinary ability mainly by Senator Oliver Ellsworth of Connecticut, who had been a deputy to the Constitutional Convention, and who was to become chief justice of the United States. The Constitution prescribes a Supreme Court, but left

its make-up and provision for other courts to Congress. The Supreme Court was organized with a chief justice and five associates; a district court was provided for each state; and the justices sat with the district judges in circuit courts. The jurisdiction of the three grades of the judiciary was fixed, and officers—clerks, marshals, and district attorneys—authorized. The attorney general, also provided for in the act, was for many years little more than the President's legal adviser. Under this law President Washington appointed John Jay, of New York, chief justice, and the judiciary was organized on February 2, 1790. *See* pp. 352 ff.

Q. What are the correct style and titles of the Supreme Court of the United States and its members?

A. The correct title for the Supreme Court is "The Supreme Court of the United States"; for the members, one speaks of a justice, or associate justice, of the Supreme Court of the United States, but always of the head of the court as "The chief justice of the United States" (Art. III, sec. 1).

Q. What are the salaries of the justices of the Supreme Court of the United States?

A. Congress on December 13, 1926, fixed the annual salary of the chief justice at $20,500 and that of the associate justices at $20,000 (Art. I, sec. 8, cl. 18; Art. III, sec. 1).

Q. What has been the number of justices of the Supreme Court of the United States?

A. The chief justice is mentioned in the Constitution but the number of justices is not specified. The act of September 24, 1789, provided for a chief justice and five associates; that of February 24, 1807, made the associates six; that of March 3, 1837, eight; and that of March 3, 1863, nine. But on July 23, 1866, a law directed that no appointments be made of associate justices until the number of them should be only six. This was to prevent President Johnson from making appointments; but the act of April 10, 1869, restored the number to eight. There were only six at the time that President Grant made the first restorative appointments.

Q. It is frequently asserted that the Supreme Court nullifies an act of Congress. Is this correct?

A. Theoretically, no. The Court has repeatedly declared that it claims no such power. All it does—all it can do legally—is to examine a law when a suit is brought before it. If the law in question is in accordance with the Constitution, in the opinion of the Supreme Court, the law stands as affecting the suit. If the law goes beyond powers granted by the Constitution, then it is no law, and the Supreme Court merely states that fact and ignores it in making the decision (Art. III, sec. 2, cl. 1; Art. VI, cl. 2).

Q. In which decision did the Supreme Court first formally assert its authority contrary to an act of Congress?

A. In the famous case of *Marbury* v. *Madison* (1803). This was not the first case in which the authority of an act of Congress was questioned in a case before the court. In *Hylton* v. *United States*, 1796, the court upheld the constitutionality of a national tax on carriages as an excise that did not have to be apportioned. Also justices in the circuit court had, as early as 1792, refused to act as commissioners under an act of Congress, considering the law unconstitutional.

Q. What is treason against the United States?

A. Treason against the United States consists in levying war against them, or in adhering to their enemies, giving the latter aid and comfort. No person can be convicted of treason except upon the testimony of two witnesses to the same overt act or on confession in open court (Art. III, sec. 3, cl. 1).

Q. What right has a territorial delegate in Congress?

A. A territorial delegate sits in the House of Representatives from each organized territory. Delegates may be appointed to committees and have the right to speak on any subject, but not to vote (Art. IV, sec. 3, cl. 2).

Q. Is a constitutional amendment submitted to the President?

A. No. A resolution proposing an amendment to the Constitution, after having passed both houses of Congress by a two-thirds vote, does not go to the President for his signature. It is sent to the states to be ratified either by their legislatures or by conventions, as Congress shall determine (Art. V). The Supreme Court as early as 1798 declared the approval was not requisite (*Hollingsworth* v. *Virginia*, 3 Dallas 378).

Q. What constitutes the supreme law of the land?

A. Art. VI, cl. 2 of the Constitution says: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Q. When referring to various states in the Union, is the term "sovereign states" correct?

A. No. A sovereign is that person or state which recognizes no superior. The states of the Union have a superior—the Constitution of the United States, which is "the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding" (Art. VI, cl. 2).

Q. Is there a clause in the Constitution prohibiting members of certain religious denominations from becoming President of the United States?

A. No. Art. VI, cl. 3 of the Constitution provides that "no religious Test shall ever be required as a Qualification to any Office of public Trust under the United States."

Q. Should the amendments be called articles?

A. The amendments proposed by the first Congress were sent out as "Articles in addition to, and Amendment of the Constitution of the United States of America," and the term "article" is used in self-application in all the amendments since the Twelfth, except the Seventeenth, which uses the term "amendment." This would seem to give official sanction to calling the amendments "articles," but as it causes some confusion, they are better placed by the use of "amendment" only, with the proper number.

Q. How many amendments to the Constitution have been proposed to Congress?

A. About 3,200. Professor Ames lists some 1,500 separate proposals during the first century of the operation of the Constitution, not including the 124 suggested in the state ratification conventions. Since 1889 and down through 1935 there have been about 1,700. Many of these cover the same

subject and the same proposal has been repeatedly offered, since all such matters must be renewed with each Congress. The desires for change cover all phases of the Constitution and reflect in their emphasis the prominent economic, social, and political questions of the period concerned. Besides the twenty-one amendments which have been adopted, five others have failed to receive the necessary state ratification. Two of them were presented with the first ten amendments, and related to apportionment and compensation in Congress. In 1810 one forbidding a citizen to accept titles of nobility passed Congress; in 1861 one forbidding interference with slavery in the states; and in 1924 one prohibiting child labor. This last is considered as still pending, since it has not the time limit added to later proposals. Besides these, various other proposed amendments have passed one or the other house.

Q. Has there been any movement for a convention to propose amendments to the Constitution?

A. Article V says that "on the Application of the Legislatures of two thirds of the several states, [Congress] shall call a Convention for proposing Amendments." While the Constitution was under consideration by the ratification conventions, there was considerable demand for a second convention, and the legislatures of New York and Virginia made formal application to the First Congress for one (*see* pp. 282–288). In 1832 Georgia and in 1833 Alabama renewed the request. Between 1893 and 1935 there have been proposals from 33 state legislatures, some for a general consideration of amendments and others with reference to particular matters. Some legislatures have voted for a convention several times. It is claimed that since more than two-thirds of the states have asked for a convention, it is the duty of Congress to summon one, since the Constitution says nothing about the time within which such two-thirds application must be made. The Supreme Court has, however, said in one of its statements about the ratification of amendments that "we conclude that the fair inference or implication from Article V is that the ratification must be within some reasonable time after the proposal." This reasoning would apply to proposals for a convention.

Q. In the first session of the First Congress how many proposed amendments were considered?

A. All of the amendments proposed by the state conventions were considered, but only approximately 90 separate amendments were formally introduced. Professor Ames lists 312 through the First Congress, which includes the 124 proposed by the states and all reports and amendments to those proposed in Congress.

Q. Who proposed the creation of the first executive departments and the first amendments to the Constitution?

A. James Madison of Virginia proposed the resolutions for the formation of the first executive departments and the series of twelve amendments to the Constitution of which ten were finally ratified by the states.

Q. What constitutes the Bill of Rights?

A. The first ten amendments to the Constitution.

Q. It is said that when the first amendments to the Constitution were submitted, there were twelve, of which ten were adopted. What were the other two about?

A. The two amendments of the twelve which were rejected were the

one which related to the apportionment of representatives in Congress and the one about the compensation of members of Congress.

Q. Do the first ten amendments bind the states?

A. No. They restrict the powers of the national government. They do not bind the states; but various of their restrictions have been applied to the states by the Fourteenth Amendment.

Q. Does not the Constitution give us our rights and liberties?

A. No, it does not, it only guarantees them. The people had all their rights and liberties before they made the Constitution. The Constitution was formed, among other purposes, to make the people's liberties *secure*—secure not only as against foreign attack but against oppression by their own government. They set specific limits upon their national government and upon the states, and reserved to themselves all powers that they did not grant. The Ninth Amendment declares: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Q. What protection is given to a person accused of crime under the jurisdiction of the United States?

A. The Fifth Amendment declares that no person, except one serving in the land or naval forces or the militia in time of war or public danger, can be held to answer for a capital or other infamous crime unless on a presentment or indictment of a grand jury. No person can be twice put in jeopardy of life or limb for the same offense. No one in a criminal case can be compelled to be a witness against himself, or be deprived of life, liberty, or property without due process of law. Private property cannot be taken for public use without just compensation. By the Eighth Amendment excessive bail and fines and cruel and unusual punishments are prohibited. The original Constitution forbids ex post facto laws and bills of attainder, limits the punishment for treason, protects the right to a writ of habeas corpus, and secures trial by jury.

Q. Is the right to speedy trial guaranteed?

A. Yes. The Sixth Amendment expressly states that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury within the district of the crime, and to be informed of the nature and cause of the accusation. He is entitled to be confronted with the witnesses against him, to be allowed to compel the attendance of witnesses in his favor, and to have the assistance of counsel for his defense.

Q. Is the right of trial by jury in civil cases also assured?

A. Yes. Amendment Seven preserves the right of trial by jury in suits of common law involving the value of more than twenty dollars.

Q. What has been the longest period during which no amendment has been added to the Constitution?

A. Sixty-one years, from 1804 to 1865. This period elapsed between the Twelfth and Thirteenth Amendments.

Q. Since the organization of the present Republican Party have more amendments been added to the Constitution during the Republican or Democratic administrations?

A. Five amendments have been added during Republican administrations; two during Democratic administrations; and two were sent to the states during Republican administrations and ratified during Democratic administrations.

Q. How long did it take the states to ratify the income tax amendment?

A. The Sixteenth Amendment was proposed to the states on July 12, 1909, deposited with the secretary of state on July 21, ratified by the thirty-sixth state on February 3, 1913, and declared ratified on February 25, 1913.

Q. It has been stated that the Prohibition Amendment was the first instance of incorporating a statute in the Constitution. Is this so?

A. No. Those portions of the Constitution which specifically dealt with slavery and the slave trade (Art. I, sec. 9, cl. 1; Art. IV, sec. 2, cl. 3) were both of this character. They were made obsolete by time limit in one case and the Civil War in the other.

Q. How many amendments to the Constitution have been repealed?

A. Only one—the Eighteenth (Prohibition).

Q. How is an amendment repealed?

A. By adding another amendment.

Q. If the Eighteenth Amendment is repealed, why is it necessary to call the new one repealing it the Twenty-first?

A. The Eighteenth Amendment will indeed remain in the Constitution, but a notation will be added to the effect that it is repealed by the Twenty-first.

Q. What is the Twentieth Amendment and when was it adopted?

A. This is the so-called "Lame Duck" Amendment, which changes the time for the beginning of the terms of the President, Vice President, and the members of Congress. The term of the President and Vice President begins on January 20, and that of members of Congress on January 3. It was adopted upon the ratification by the thirty-sixth state, January 23, 1933, and certified in effect on February 6.

Q. Why was a constitutional amendment necessary to change the date of the beginning of the terms of President, Vice President, and members of Congress?

A. The Constitution fixes the terms of President and Vice President at four years, of senators at six years, and of representatives at two years. Any change of date would affect the terms of the incumbents. It was therefore necessary to amend the Constitution to make the change.

Q. If the President-elect dies, who becomes President at the beginning of the term for which he was elected?

A. The Twentieth Amendment provides that in this case the Vice President-elect shall become President.

Q. Does the Twentieth Amendment do away with the electoral college?

A. It does not.

Q. It takes how many states to block an amendment?

A. Thirteen, without respect to population or importance; but while approval is considered final, rejection is not while within the time limit, if one is prescribed by the amendment.

II

THE ORGANIZATION OF THE GOVERNMENT UNDER THE CONSTITUTION

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Preface

ALTHOUGH the main events and dates of the beginning of the present Union—the signing of the Constitution on September 17, 1787, the last necessary state ratification on June 21, 1788, and the formal commencement of the new nation on March 4, 1789—are matters supposedly of general knowledge, the means by which the new America was put in practical operation remain little known. The transition to actual and efficient government is, however, both important and interesting. The material has much political value. Of particular significance is the opportunity it gives for comparison of the problems and spirit of that day with those of the present time, distant as they are in point of years. For that reason alone, if for no other, such a study as this may be worth while.

Thirty years ago Dr. Frank Fletcher Stephens published *The Transitional Period, 1788–89, in the Government of the United States.* This small volume remains still the chief study upon the subject, though it is confined to the elections, with a chapter on adjustments of national and state relations. Meanwhile, historical knowledge has been much advanced by new materials and secondary books on the services of the Continental Congress, on the states during that time, on the Philadelphia Convention of 1787, by various monographs on state ratification, and by biographies and writings of leaders of the period. The Honorable Sol Bloom, Director General of the Commission, decided that the Sesquicentennial of the Constitution furnished a proper occasion to add to these a new intensive study of the beginning of the government under the Constitution, that would carry the history of the formation of the Union through the period when its principles were first given practical application—not a history of early legislation, but of organization to legislate, administer, and interpret, though of necessity inclusive of a study of the legislative acts to effect the building up of the branches of the central government.

This embraces not only the topics of Dr. Stephens' book, but

also the establishment of the three great departments of government as units and in their relationship to each other, with particular reference to the way in which precedents resulted. A chapter is included on the ratifications by North Carolina and Rhode Island, because these were bound up with the national organization, while the other eleven ratifications preceded it; and, equally a supplement of the ratification period, one on the first ten amendments. Finally there is, as in Dr. Stephens' work, an account of various adjustments made necessary by the imposition over the states of a self-acting and vigorous general government. Like his study, this does not aim at completeness; indeed, the whole national history is made up of such adjustments and must continue to be so as long as it is federal. It does, however, attempt to show the matters first directly under consideration and important to the proper working of the new government, with some indication of resulting problems.

Various phases of the contents of the present work have formed a part of many monographs which deal with particular elements of the general government. The debt to these is freely acknowledged; none the less, a fresh study of the sources has been made and the account built up from the material collected. Most of the work has been done in the Library of Congress, but search was made in and around Boston, Hartford, New York, Ann Arbor, and Chicago, and correspondence held with custodians of depositories of sources elsewhere. A main purpose is to preserve in the narrative the spirit of the time in which the events happened, to let the participants tell the story as much as possible. In consequence, the work is made up much more of quotations than would ordinarily be the case; and this plan has been followed as the better part in spite of the possibility of repetitions, and, at times, rather loose connection.

The references have been in the main confined to the direct quotations, as it is believed that the abundant use of specific dates in connection with place and event will make sufficiently evident the source of the facts, especially in matters dealing with legislative proceedings. The index is included in the general index of the volume.

Grateful acknowledgment is made to Dr. Edmund C. Burnett and to Mr. Alan Robert Murray, one time member of the staff of the Commission, for critical reading of the text. A considerable portion of the material for the chapter on the Inauguration was collected by Dr. Clarence R. Williams while a member of the History Division.

DAVID M. MATTESON

WASHINGTON, *June 30, 1940.*

The Action of the Continental Congress

RATIFICATION ACCOMPLISHED

THE CONVENTION of New Hampshire, sitting at Concord, ratified the Constitution of the United States at 1 o'clock, Saturday afternoon, June 21, 1788. This was the ninth and last ratification "sufficient for the establishment of this Constitution between the States so ratifying the same."[1] John Langdon and John Sullivan, Federalist leaders in the convention and the state, immediately sent off an express to inform Alexander Hamilton and others of the happy event. Sullivan's letter to Knox at New York City was dated "one of Clock" and said: "I have the pleasure to inform you that our Convention have this moment adopted the New Constitution."[2] The New York convention was assembled at Poughkeepsie at that time and Hamilton was leading the then rather forlorn hope of the Federalists in the gathering. Evidently the courier reached the Hudson sometime after midnight on June 24 and was sent on at once to New York City. The message was read in the Continental Congress in that city at 12 : 30 on June 25, some ten hours after it left Poughkeepsie. The tidings were speeded on their way to Richmond, where the Virginia convention was in session; but the express met on the route the information that Virginia had also ratified; in fact, the vote took place in that convention on the same day that Congress received the unofficial New Hampshire message, though the formal ratification is dated June 26. The Virginia news seems to have been sent by mail and not by courier, as it took a week to arrive; but the crossing of the important dispatches was probably between Baltimore and Alexandria. Washington wrote General Pinckney, June 28, that the citizens of Alexandria had the Virginia intelligence at night on June 27, and decided to celebrate the next day, their cause for rejoicing being increased by the arrival of an express "two hours before day" (about 3 o'clock) with the New Hampshire information.[3] This express was the one that had been sent to Richmond from New York City.

TASK OF THE CONTINENTAL CONGRESS

CONGRESS on June 25 took no action on the New Hampshire news; but on July 2 formal announcement of the ratification was made by the state delegates. Governor Langdon forwarded this document on June 25 and it reached New York, probably by mail, on July 1. On July 2 Congress also had word of Virginia's approval of the new plan of government; whereupon: "*Ordered* That the ratifications of the constitution of the United States transmitted to Congress be referred to a comee. to examine the same and report an Act to Congress for putting the said constitution into operation in pursuance of the resolutions of the late federal Convention." [4] This motion was carried by 8 votes, Rhode Island being excused, North Carolina abstaining, and New York being divided, a vote that harmonized with the conditions respecting ratification, for Rhode Island had refused to call a convention, the North Carolina convention had not yet met, and the New York one gave strong indication of an intention to reject.

The Committee of Detail of the Philadelphia Convention of 1787 had on August 6, 1787, submitted a plan "to introduce" the new government. This was debated and adopted and sent to the Committee of Style for final shaping. The report of this committee was sent by the convention to Congress on September 17, 1787, along with the engrossed parchment text of the Constitution. It is on a fifth sheet of parchment and reads as follows:

> Resolved, . . . That it is the Opinion of this Convention, that as soon as the Conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a Day on which Electors should be appointed by the States which shall have ratified the same, and a Day on which the Electors should assemble to vote for the President, and the Time and Place for commencing Proceedings under this Constitution. That after such Publication the Electors should be appointed, and the Senators and Representatives elected: That the Electors should meet on the Day fixed for the Election of the President, and should transmit their Votes certified, signed, sealed and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled, that the Senators and Representatives should convene at the Time and place assigned; that the Senators should appoint a President of the Senate, for the sole Purpose of receiving, opening and counting the Votes for President; and, that after he shall be chosen, the Congress, together with the President, should, without Delay, proceed to execute this Constitution.[5]

DATES IN THE PROGRESS OF ORGANIZATION

THE COMMITTEE of Congress reported promptly on July 8: "That the first Wednesday in December next be the day for appointing Electors in the several States . . . That the first Wednesday in

January next be the day for the Electors to assemble . . . and vote . . . and that the first Wednesday in February next be the time, and the place for Commencing proceedings under the said Constitution." [6] It took Congress more than two months to fill that blank. Although the resolution of the Philadelphia Convention spoke of the elections to the new Congress, that was an affair left by the Constitution to the legislatures of the different states, and was outside the concern of the Continental Congress, especially as there was no need of a common day for them; so the above resolution was confined to the presidential election, the time of organization, and the place.

Immediate action on the resolution was generally considered inadvisable, even though it was important to get the new government into operation as soon as possible. The North Carolina convention was summoned for July 21, and prompt ratification there was expected, especially if meanwhile the Federalists were successful in the New York convention. Also New York City, being then the seat of government, would necessarily be considered when it came to filling that blank, unless meanwhile her state had voted to remain outside the new Union. The influence of the city was used to delay consideration, the question being "peculiarly interesting to this place"; [7] so Congress "omitted making the necessary arrangements . . . out of delicacy to the situation of New York" [8] and in North Carolina. There was also another reason for delay, which Madison pointed out. He feared that if there was too great an interval between the action of Congress and the next election or meeting of a state legislature to put it in operation, a special meeting might be called of the existing members, "who are everywhere less federal than their successors hereafter to be elected will probably be." [9] On the other hand, among the southern delegates there was doubt whether the necessary action of their legislatures and the elections for which they should provide could be compassed within the dates mentioned in the report of the committee. There was a slight attempt to meet this on July 14 by a suggestion of staggering the elections, but it received the vote of only three states.

The report of the committee did not come up again for two weeks, by which time New York had ratified. Meanwhile, the interest in the matter of organizing the new government was made evident by a full attendance in Congress on July 11, all thirteen states being represented. It was the first time this had occurred since 1776, and the attendance continued an unusually full one until the matter was disposed of; but it was a final burst of energy, for never after

October 10 was the Continental Congress able to make even a quorum.

When the matter came up on July 28 twelve states were present, Rhode Island, the outcast, being the absent one. The first action was to set all three of the dates provided for in the report forward a month, bringing the actual start of the new government to the first Wednesday in March, March 4, and giving the southern states, with their extensive hinterland, the further time they required. This being accomplished, the contest over the seat of government was inaugurated and continued until September 13. New York and Philadelphia were the chief contenders, though votes were also given to cities farther south.

EARLIER PLANS FOR PERMANENT SEATS

THE ARTICLES of Confederation made no provision for a fixed capital; rather, the Congress was given the right to meet "at any place within the United States"; none the less, a fixed seat had been contemplated and even decided upon at the Falls of the Delaware, about at Trenton. Later the idea of two seats was adopted and a committee appointed to inspect Georgetown and the region of the Lower Falls of the Potomac. The Congress went for a while to Baltimore when the British first threatened Philadelphia, and held a session at Annapolis in 1783–84; but otherwise it had not sat south of Pennsylvania. The new Constitution made provision for a permanent seat of government to be selected by the Congress under the Constitution, and the decision upon the temporary seat was expected to influence the site of the fixed capital. Also it was generally understood that the Federal District should not include any of the larger cities, or be too near any of them, but should be on a river. The three streams that seemed available were the Delaware, the Susquehanna, and the Potomac.

The contest in the Continental Congress over a permanent seat had been a recurrent and severe one, with much evidence of sectionalism. The states north of Maryland had a majority of the votes, but the southern states openly declared they could not and would not submit to a northern site. The severe cold of the northern winters and the debilitating heat of the southern summers; better accommodations; the center of population and wealth set against the center of area; the cost of living; the distance to be traveled and the greater difficulties and fewer facilities in this respect for southern members, with the consequent fear of more steady attendance by northern members and selfish advantages in legislation; the danger from Indians in the South that made it essential that the central government should

be located as near their possible calls for help as was practicable—these were some of the points in contention; and they must be considered on a background of the economic and social conditions of the time, not as we know them today. Even the now negligible distance between New York and Philadelphia loomed large, at least as a basis for claims.

The South had a very strong argument in favor of the Potomac site, that respecting future expansion. Jefferson said: ". . . we urge the latter as the only point of union which can cement us to our Western friends when they shall be formed into separate states." [10] The improvement of the Potomac navigation, a measure in which Washington was deeply interested, was in 1788 the most active of the measures to develop the commercial relations with the West, which the General considered fundamental to the section's loyalty to the Union.

CONTEST FOR FIRST TEMPORARY CAPITAL

THIS earlier, unfinished, contest was in the minds of the delegates when they were called upon to choose a temporary seat for the new government. On July 28 a motion to make Philadelphia the place was lost by a 6 to 4 vote, with Delaware and Georgia divided, South Carolina joining New York, New Jersey, and Massachusetts in opposition, but New Hampshire and Connecticut favoring it. This was scarcely a sectional division. Delaware would have voted for Philadelphia, but one delegate wished a vote on Wilmington first; and the South Carolina delegates had an immoderate antipathy to Philadelphia. Throughout the whole of the contest the Georgia vote remained divided, Few favoring New York and Baldwin, though of northern birth, Philadelphia. The reason for the division is not apparent. Both men had been signers of the Constitution and valiant supporters of a stronger Union, with its implication of subordination of sectionalism. Later a New Hampshire delegate wrote that naturally New England preferred New York City, though New Hampshire and Connecticut had favored Philadelphia in recognition of its more central position; but since the matter was lost because South Carolina would not vote for it and Delaware and Georgia divided, they considered this as sufficient to permit their later adherence to a more northern city, and to consider opposition to it "unwarrantable obstinacy." [11]

On July 30 New Jersey and South Carolina delegates offered New York as the place. On August 4, with thirteen states represented, consideration of this was resumed. A motion to substitute Lancaster, Pennsylvania, was defeated by a 6 to 7 vote, but a motion

to substitute Baltimore was carried by 7 to 6, Pennsylvania voting with the South. It was, however, recognized that this vote was not final; and William Knox wrote his brother after this session: "You will undoubtedly be surprised to hear that this day Seven States in Congress were decided upon Baltimore in Maryland as the place of the future residence of the Government of the United States. It has surprized every body out of doors and even the Members themselves (several of whom & the President I have dined in company with) however it is a fact which I have had from their own mouths. Colo. Hamilton seems to think it not final."[12] The next day he continued: ". . . the business however has been resumed this day and it is said that opinions in Congress have taken another turn. It seems to stand thus from the information given me this afternoon by Mr. Baldwin. The proceedings in the first instance was intended to be a resolve, but by management is now an Ordinance, and therefore the proceedings of yesterday is construed into a first reading, and he says it is still open to final decision."[13] These reports are incidentally enlightening respecting both violation of congressional secrecy and parliamentary practice then.

On August 6 Tucker of South Carolina and Henry Lee of Virginia, both southerners, moved for New York, with a new preamble declaring that it was best to leave the subject to the future Congress "uninfluenced by undue attachment" and "unembarrassed by want of time and means"; that there were no advantages in removal sufficient to offset the "expence, danger and Inconvenience," and, moreover, "unnecessary changes . . . would be indicative of instability in the national councils and therefore highly injurious to the interests as well as derogatory to the dignity of the United States, . . ."[14] Williamson of North Carolina offered a substitute preamble, pointing out the need of a central position and showing that New York was "far removed" from this, with only eight senators to eastward and sixteen to southward, seventeen congressmen to forty-two, and only one third of the distance. This substitute was defeated by 7 to 6, South Carolina voting with the states above Pennsylvania. A motion to substitute Philadelphia for New York was defeated by 5 to 7, Georgia being divided; and then the Tucker-Lee preamble and New York were voted by 7 to 5, South Carolina joining the North, Pennsylvania the South, and Georgia continuing divided.

This should have settled the matter, but the Rhode Island delegates, having voted for New York as the place, declined to vote at all on the complete resolution. As William Knox wrote his brother on the 7th: "Rhode Island either declines voting or is not permitted

by the Southern States to vote." [15] Alexander Hamilton tried to get around this, evidently at the request of Rhode Island, by moving on August 7 that a vote on the subject by the delegates of North Carolina and Rhode Island would not be construed to imply an "approbation of the Constitution" by the states they represented. Williamson of North Carolina moved to exclude his State from the resolution, "to prove . . . that we do not wish for *absolution*, being conscious of having pursued our duty; that, with respect to the final vote which was to be taken on the ordinance, we proposed never to assist in such vote unless North Carolina should confederate, but we would not be guilty of parricide, by throwing our State out of the Union." [16] The motion was then withdrawn, and the Rhode Island delegates went home the next day.

On August 4 the North Carolina convention adjourned without ratifying, to await action on the amendments it had proposed; so that when the matter came up again in Congress on August 13 the North Carolina delegates declined to vote, and the whole resolution was defeated, receiving only 5 of the necessary 7 votes, since the adverse vote of Pennsylvania offset the favorable one of South Carolina, New Jersey absent, and Georgia divided. Madison declared that it was probable that no place could get the necessary seven votes, and it was "truly mortifying that the outset of a new Government should be immediately preceded by such a display of locality, . . . " [17] This was rather disingenuous on Madison's part, as the majority, so far as there was one, was on the side for which he refused to vote. Washington, probably of all the prominent men in the country the least influenced by sectional considerations, was more justified in saying: " . . . in all Societies, if the bond or cement is strong and interesting enough to hold the body together, the several parts should submit to the inconveniences for the benefits which they derive from the conveniences of the compact." [18]

CRITICISM AND ARGUMENTS

WILLIAMSON, in writing home respecting the North Carolina delegates' refusal to vote, said that the state had "thrown herself out of the Union, but she happily is not alone; the large, upright, and respectable State of Rhode Island is her associate." [19] This indicates something of the bitterness that the contest was causing; and by this time public opinion had become aroused on the subject. The newspapers were making emphatic comment and the correspondence was not less pointed.

Washington supported Henry Lee's point of view, and for the

same reason. His heart was indeed set upon the Potomac as the fixed seat; but he expected that leaving the temporary seat at New York would help this: ". . . it would have been a moot point with me, whether a *temporary* residence of that body at New York would not have been a less likely means of keeping it *ultimately* from the center (being farther removed from it) than if it was to be at Philada.; . . . " This view was shared by others, including a Boston brother of General John Sullivan, who considered the Potomac the central place and could not understand "why the members of the Southern States vote for Philadelphia unless they intend to fix Congress finally there." [20]

Madison had an answer to this: "The extreme eccentricity . . . will certainly in my opinion bring on a premature, and consequently an improper choice"; [21] and Washington acknowledged to him that "the longer the question respecting the permanent Seat of Congress remains unagitated, the greater certainty there will be of its fixture in a central spot." [22] Hamilton also believed that the selection of New York "will necessitate the early establishment of a permanent seat, and in passing south it is highly probable the government might light upon the Delaware in New Jersey," [23] which it certainly would not do if already farther south than this. Madison, who undoubtedly discussed the question with Hamilton, was "persuaded . . . that if the first position be taken here the second will not be taken on the Potowmac and that this consideration is among the motives of those who advocate N. York. Indeed I *know* the latter to be one of the motives." [24]

OTHER PHASES OF THE QUESTION

THREE other phases of the question, apart from what might be called the North–South contest, were evident. The first of these was indeed an argument for a choice that would promote that of the Potomac as the permanent seat of government. This was the influence which the decision might have on the attitude of the West, at that time subject to both British and Spanish intrigue, and fearful that its demand for the free navigation of the Mississippi might be ignored in behalf of Spanish commercial favors, to the benefit especially of New England. The South was the ally of the West in this demand; and it was pointed out by Madison on August 24 that it was of "critical importance that neither cause nor pretext should be given for distrust in that quarter of the policy towards it in this. . . . It may perhaps be the more necessary to guard agst. suspicion of partiality in this case, as the early measures of the new Government, including a navigation act will of course be most favorable to this extremity." [25]

The second phase respected the influence the controversy would have on the ability of Antifederalists to foment further discontent. This was indicated by Washington, Madison, and various others. From Mount Vernon the first wrote: "The delay had already become the source of clamour and might have given advantages to the Anti-fœderalists." [26] Madison was sure that the resulting "eastern proponderancy in the federal system" [27] would give a great handle to those opposed to the new government. A Maine man warned that the "friends of the New Government are alarmed to find Congress so dilatory, . . . for while they are dallying along in this way the Enemy is sowing tares among the Wheat. Anti federalism is a common enemy we ought all to guard against and obstinacy is a *ditto*." [28] A newsletter in Philadelphia declared: "Every federalist throughout the union laments and deprecates the consequences of delay. Every anti-federalist rejoices in it, as most conducive to the purposes of confusion." [29]

There was, however an element here not without irony. The remaining chief design of the Antifederalists was the calling of a second convention, in which movement Clinton of New York and Patrick Henry of Virginia were the leaders. The southern Antifederalists, while desirous of using the New York claim as an excuse for taunts over the lack of eastern equity and partiality, were more than doubtful of Clinton's reception of such slurs. Madison was hopeful that Henry "may be induced by that circumstance not to make irritating reflections." [30]

The third phase was a moral one; the effect upon the position of the new government, for which the delay boded no good. The people did not scruple "to attribute it to motives, which is to be hoped do not exist." [31] Samuel Powel wrote from Philadelphia to Washington: "Is not the manner of Proceeding destitute of all Dignity. I confess that as an American I feel mortified at this trifling with the Sensibilities of the Union, which I believe were never more alive than on the present occasion." [32] Washington agreed that "the present Congress by its *great* indecision in fixing on a place at which the New Congress is to convene, have hung the expectation, and patience of the Union on tenter hooks, . . ." [33] Also he considered it "a great misfortune, that local interests should involve themselves with federal concerns at this moment." [34] Madison, in spite of his own participation, was justified in saying that "a certain degree of impartiality or the appearance of it . . . in a *federal* Republic founded on local distinctions involving local jealousies . . . ought to be attended to with a still more scrupulous exactness." [35] Jay, too, con-

sidered that "the Injury it does to the Dignity of Government is not inconsiderable";[36] while the correspondents of George Thacher, delegate from Massachusetts, were demanding that he "act the part of a *true Federal Philosopher*," and ask not what the interests of New England were, but "what does the interest of the Union require?" One of them was "mad, that is, politically disordered in mind, to find the Congress so obstinate, as to keep that Government, *the People* their Constituents have adopted, out of motion . . . when the wheels of Government are as it were stuck in the mud."[37]

RIVAL CLAIMS OF THE CITIES

THE NEWSPAPERS of Philadelphia and New York indulged in mutual claims, denials, and sarcasms on the merits of the rival cities. Tench Coxe, as a Philadelphian, was sure that "the execution of the Government, the means of information & our national Consequence in Europe would be benefited" by the choice of his city.[38] Philadelphians claimed six times the trade with the South that New York had, and therefore, as the South would import largely, there would be a far better comparative chance of having the revenue drawn from them returned to them by circulation than if the government continued at New York. The expenditure of federal revenue would be mostly adjacent to the capital, and trade and revenue would both suffer if the South was made reluctant to assent to tariff protection and the monopoly of the carrying trade. The cost of living was supposed to be a third less at Philadelphia, which would mean a smaller civil list and less drain on the taxpayers for the purposes of the general government. New York was open to invasion, capture, and destruction of archives.

The New York proponents declared that southern pretenses were not a justifiable reason for further delay; and that the trade of the South was by water with both cities, and New York's advantages were greater, her port, among other things, not being closed by ice in the winter. New York had been the chief sufferer in the war and deserved consideration. The money required to move the capital elsewhere could well be devoted to other purposes. Answering Philadelphian taunts about social conditions, a New York paper replied: "It appears wonderful that men of sense should hesitate in their choice . . . yet . . . a majority have approved of the one hardly fit for a gentleman, much more a Pennsylvanian to live in."[39]

THE DECISION

MEANWHILE, the Congress continued to strive for a decision, spurred on by the public denunciation of the delay. On August 26

a motion to make Wilmington the place was defeated by 6 to 4, and a similar fate met a readvocacy of New York. On September 2 an oblique approach to New York was made by proposing the seat of government at the first Wednesday in March as the place, but this was turned down, as was also a new offer of Lancaster. On the next day Annapolis was voted down. On September 4, with twelve states present, the South Carolina delegates moved to pass the rest of the ordinance, leaving the place to be decided later, because "after long deliberation . . . there appears to be a diversity of sentiment . . . which may prevent a speedy and definite decision thereon"; and because "a farther delay of the other essential parts of this business might be productive of much national inconvenience." If no decision was reached before March 4, the place should be where Congress last sat.[40] This also was defeated, Pennsylvania voting with the South, South Carolina with the North, Georgia divided, and North Carolina not voting.

On September 8 one Rhode Island delegate returned to Congress, strengthening Madison's fear that the state might be "prevailed on" to vote; but as no colleague joined him, participation was not possible. On September 12, with Maryland absent, the South finally gave in. Henry Lee, who stood alone in his delegation in support of the belief of Virginia's greatest citizen, again proposed New York; "longer delay . . . may produce national injury." Carrington and Madison of Virginia now proposed to leave the place blank, but declared that the need of "principles of conciliation and impartial regard to the Interests and accommodation of the several parts of the Union" required a more central place than the present seat of the government. This would also "be more likely to obviate disagreeable and injurious dissensions concerning the place most fit for the seat of federal business until a permanent seat be established as provided for by the new Constitution."[41] This was somewhat ambiguous, especially as to obviating the strife over the permanent seat; at any rate, it did not commend itself to the delegates and was lost by the usual 6 to 4. Delaware then moved to strike out New York from Lee's motion; but the end had come and only Delaware voted for this. At the request of that state the final vote was postponed until the next day, September 13, when New York and the whole ordinance received nine votes, ten states being present and North Carolina not voting.

Madison wrote Randolph on August 22 that "Congress have come to no final decision . . . an adherence to N. York . . . seems to grow stronger & stronger."[42] After the vote he declared to Wash-

ington: "The place was the result of the dilemma to which the opponents of N. York were reduced of yielding to its advocates or strangling the Government in its birth. The necessity of yielding, and the impropriety of further delay, had been for some time obvious to me, but others did not view the matter in the same light." [43] Monroe agreed that if a "concession must be made the minority must make it, and when the States south of us yielded all hope was at an end." [44] Also the Pennsylvania delegates reported that the belief "that the organization of the new government could not be longer suspended without risquing consequences more disagreeable than any that could result from the mere circumstance of the place at which the government might be convened" caused the rest of the supporters to yield; and they joined in, being "left to choose between opposing alone and unsuccessfully, or submitting to the predetermined sense of the Union. We did not hesitate in choosing the latter, persuaded that, of the alternatives, this was at once the most dignified and wise." All of which explanations are weakened by the fact that the yielding if it had taken place a month earlier would have been under exactly the same conditions. William Knox's comment on September 14 is more direct: ". . . it was found that as it was time the Ordinance should be finished, and no hope of a majority for Philadelphia, to put the best face upon it and give to the world the appearance of unanimity." [45]

The opposition to New York, it will be observed, yielded all at once. No explanation is apparent, though evidently there must have been an understanding of some sort reached between the vote on Madison's resolution and that on the Delaware motion. The whole contest was rather an unpropitious omen, which must have made those who had the hope of "a more perfect Union" in their hearts watch somewhat fearfully the further stages of these preparations.

LATER RIVALRY

AN ACCOUNT of the contest and final bargain over the location of the permanent seat of the government, which occurred in the First Congress under the Constitution, is beyond the limits of the present study. Attention may, however, be called to the efforts of New York City, and later of Philadelphia, which became the temporary seat, to induce a postponement of the change. Madison, in his letter of August 22, 1788, believed that a decision for New York would keep the capital there until "a permanent seat be established." [46] Pendleton on July 21, 1790, said he had hoped the capital would remain at New York until the permanent seat, because of a recom-

pense for their expenditures, the expense and trouble of removal, and belief in a less favorable attitude at Philadelphia.[47]

The extensive alteration of the City Hall at New York for the accommodation of Congress will be recounted later. In 1789, and again in March 1790, before the removal to Philadelphia was decided upon by Congress, bills were passed by the New York legislature to reserve the land at Fort George (the Battery) for public use, and to erect on part of the ground a house for the use of the government of the state, "to be applied to the temporary use and accommodation of the president of the United States of America, during such time as the congress of the United States should hold their sessions in the city of New York." [48] The sum of £8000 was voted for the purpose. One member gave notice in the Senate of an intention to offer a bill to suspend the power to construct the house until after the present session of Congress had adjourned, but the precautionary measure was evidently not offered. The mansion was built opposite Bowling Green, although the national capital had moved to Philadelphia before it was finished. It was occupied by governors for some years, later by customs offices, and was removed in 1815.

Later, Pennsylvania took similar measures, which caused President Washington to write on April 1, 1791: "The most superb edifices may be erected, and I shall wish their inhabitants much happiness, and that too very disinterestedly, as I shall never be of the number myself." [49] When he wrote this he contemplated only one term for himself. The Philadelphia mansion was, however, erected while he was still President, but he refused to occupy it, as did also his successor; and it was taken over by the University of Pennsylvania. He was, however, very much alive to the danger which such action had for the Federal District on the Potomac, in the development of which he was so greatly interested; and he warned the commissioners of the District that nothing should occur that would encourage opposition to the development of the permanent site. Then, as now, the national capital was merely a creature of Congress; the same power that located it in one place could move it to another, and as often as Congress might so decree.

PERMANENT SEAT

WASHINGTON'S concern for the District which he had desired, and had himself located, was great. He spent much time in correspondence and consultation on the spot with the commissioners who were managing the development. He made investments, building two brick houses north of the Capitol to accommodate congressmen.

The act of July 6, 1790, for the permanent seat, called for occupation on the first Monday in December 1800; and though there had been many unexpected obstacles, financial difficulties, and delays, both the President's House, now called the White House, and the Capitol were habitable by that time, and the laying out of the city which L'Enfant had planned well started, so that President Adams, Congress, and the other elements of the government moved in. It took many years, however, to make it a real national center; the enlarged Capitol as it now stands was not finished until the Civil War, the soaring dome being the last feature. But the modern model city is still the result of L'Enfant's skill and Washington's consideration. The interest of the first President in the capital that was given his name continued after he retired, but he died a year before it became the seat of the national government.

The ordinance for the organization of its successor was the last important act of the Continental Congress. Its work was done, work which had been accomplished under conditions greatly in contrast to the powers given to the new Congress by the Constitution; but, in the light of those conditions, not ill done. The next step was the action of the state legislatures, for which this ordinance and the resolution of the Philadelphia Convention called.

Elections

STATE PROBLEMS OF NATIONAL ELECTIONS

FROM Paris on January 8, 1789, Thomas Jefferson wrote the Rev. Richard Price in England:

> A change in their [states'] dispositions, which had taken place since I left them, has rendered this consolidation necessary; that is to say, has called for a federal government which could walk upon its own legs, without leaning for support on the State legislatures. A sense of this necessity, and a submission to it, is to me a new and consolatory proof that wherever the people are well-informed, they can be trusted with their own government; that whenever things get so far wrong as to attract their notice, they may be relied on to set them to rights.[1]

The Continental Congress having done its duty in the premises, the next step had to be taken by those state legislatures, the necessity of whose support Jefferson belittled. This future President of the United States, whose greatest service to his country was to insist that the people should be able to set things right when they saw the necessity, was correct, of course, in his statement of the direct action which the new government was to possess; none the less, the instrumentality of the state legislatures in putting the national government on its feet and keeping it there remained important.

The Constitution of the United States, based on a representative government, demanded frequent elections, and the machinery of these was in various respects left in the hands of the state legislatures. The election of members of the national House of Representatives was to be popular; the election of United States senators a task of the state legislatures; and the election of the President an indirect one, the first step of which was left to the choice of these same legislatures. In all three of these varieties of election there was a choice of method, which the members of the Convention of 1787, in making a frame of government and not a code of laws, left open. Moreover, the resolution of the Continental Congress was confined entirely to the election of President and Vice President,

and the resolutions of the Convention of 1787 said no more than that senators and representatives "should be elected," and should convene at the place and time established for commencing proceedings under the Constitution. There was in neither any prescription upon the states except as to the presidential election. The choice of representatives and senators was left to the initiative of each state legislature.

As respects representatives, the Constitution declared the number to which each state should be initially entitled, and stated the qualifications of the representatives themselves and of those who should have the right to choose them; but this last, being those "requisite for Electors of the most numerous Branch of the State Legislature," continued to be one within the jurisdiction of the separate states. Representatives in Congress should be of a required age, length of national citizenship, and state residence; and the question immediately arose whether these qualifications were exclusive. It is to be noticed that there was no definition of citizens of the United States in the Constitution until Amendment XIV was added; citizenship continued to be on a state basis or under the common law. Naturalization was under the Constitution a power of Congress and was considered an exclusive power; but an alien then made a citizen of the United States was not necessarily a citizen of a state. Should the representatives be elected by districts or at large; and if a division into districts was allowable, had the legislature a right to require residence within the district, since the Constitution did not? Should there be any prescribed method of announcing candidature? Should a plurality elect or must a successful candidate have a majority vote; and if a tie under the plurality rule or no majority, how should the matter be resolved? How should the successful candidate be commissioned; and since they were to be paid out of the United States Treasury, should there be any advances made to them?

The qualifications of United States senators were like those of the representatives—age, length of citizenship, and state residence; and since they were chosen "for a State" and not "in a State," as were the representatives, the question of their particular residence was of less importance, though it did become a matter of consideration and in one state was legally prescribed. Since the senators were to be chosen by the state legislatures, should there be a preliminary law passed respecting the method, or merely an agreement between the two houses (except when the legislature was unicameral)? Should there be a joint ballot or a concurrent one, and a plurality or majority

required; and where should be the initiative in the case of a concurrent vote, and the method to be employed in order to bring the houses to an agreement? Obviously, in the case of a joint ballot, the lower house would exercise the real power.

Presidential electors were not qualified in the Constitution except by the elimination of national legislators and officials; and since there were as yet no such legislators or officials (unless postmasters and bureau officials of the Old Congress at New York could be so considered), the choice in each state was limited only by its number. Also the state legislatures had complete control over the method of appointment; it might be popular, by the legislature, by some combination of these, or given to the governor or to the council. In case of a popular election, there might be a general one or by districts, with or without residence therein; and these districts might be different from those for representatives, or the same with a separate provision for the election of the other two electors of the state's quota. The vote required for election had also to be stated. The time and method of voting by the presidential electors were fixed, and they were required to "meet" for this purpose; but the place was left open, and provision for their compensation was also left to the states.

The elections preliminary to the organization of the national government did, indeed, present a sufficiency of problems to the state legislatures. Let us see, in geographical order, what each of the eleven states did about the matter.

NEW HAMPSHIRE

THE GENERAL Court of New Hampshire was called in special session by President John Langdon to meet at Concord on November 5, 1788. Next day the two houses had a joint conference on the ordinance of the Continental Congress. Langdon presided and suggested the legislative appointment of electors. John Sullivan wanted a popular election of them, and election of representatives by districts. A joint committee was appointed to take action. Sullivan and Ebenezer Webster, father of Daniel, were members of it; and it reported a bill for the election of representatives and electors. This passed the House by 59 to 17 on November 10, and the Senate on November 12. It provided that on the third Monday of December, which was the 15th, the freemen of the state should vote at large for three representatives and five electors, the returns to be sent to the secretary of state and laid before the General Court. A majority vote was required in all cases; and if there were not majorities for three representatives, the ranking candidates double the required

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number should be sent back to the freemen for a second vote on the first Monday in February, which was the 2d. If there were ties, the secretary should draw the number necessary to complete the list. The highest votes would necessarily elect at the second election. The representatives-elect were to be commissioned by the president of the state, with the secretary's countersign. If there were not the necessary majorities for five electors at the first election, no second one being possible, the General Court was to appoint out of the highest of double the number in such way as the members should agree. On February 7, 1789, the General Court passed an act on vacancies, made necessary by the refusal of one of the representatives-elect to serve. By this, the president and council were to issue a precept to the towns, and a second one of the two highest names if there was no majority at the first by-election.

It is not known whether the joint conference of November 6 considered the election of senators. No act or resolution was passed about the election; but on November 11 the House voted for senators, in accordance with a decision made the day before, but which was not entered in the journal. Langdon was named by 60 to 3; evidently the vote for the second senator was not successful, but there is no further record. On November 12 the House also named Nathaniel Peabody by 40 to 36. This same day the Senate, on receiving the decision of the House, concurred for Langdon, but rejected Peabody by 8 to 2, naming Josiah Bartlett instead. The House in its turn then concurred in Bartlett by a vote of 61 to 16. He declined, and later Paine Wingate was elected, the House offering him. Both senators-elect had seen service in the Continental Congress.

The popular election on December 15 resulted in no majorities either for representatives or electors. There seems to have been little popular interest in the election. In Portsmouth only a fourth of the freemen attended, and in the whole state probably about 5200 voted. The highest vote for representatives was 2374 and the lowest of the six returned to the towns for the second vote was 861, Benjamin West being the highest, and Nicholas Gilman, a signer of the Constitution, the lowest of the six. Between were Samuel Livermore, Paine Wingate, Abiel Foster, and John Sullivan. All were Federalists and all had been members of the Continental Congress except West. Some 70 men received votes. In the second election on February 7, 1789, West, Livermore, and Gilman were elected; West declined and Foster came in on a by-election.

Congress had resolved that the presidential electors were to be

chosen on the first Wednesday in January 1789, which was the 7th. It was not until the 3d that the General Court appointed a committee to examine the returns of the popular vote for electors. According to the report of the committee, which was not made until the 6th, none had a majority, the highest had 1759 votes, and the lowest of the ten from whom the General Court should choose five had 528; whereupon the House voted for a joint session to make the choice, but on January 7 the Senate nonconcurred in this and sent down a proposal for a vote "in separate branches." The House in turn nonconcurred and proposed a joint committee which should choose the five, which the Senate amended to a nomination of five by the committee for concurrence by the General Court. This the House rejected by 42 to 29, and proposed that the clerk of the House and secretary of the Senate draw out five names; but this did not please the Senate either, which proceeded on its own part to name the five that had received the highest vote and send this down to the House. It being now near midnight, the House yielded, first agreeing by 35 to 32 to proceed to concur or nonconcur in the Senate's selection, and then concurring by 40 to 19. In doing so, however, by a vote of 46 to 11 the House registered a protest: ". . . at the same time Solemnly protesting against the said mode of choice and declaring that in the Opinion of this House the present mode of appointing Electors ought not to be considered as Establishing a preceedent or drawn into example or insisted upon as a rule in any future appointment of Electors, . . ."[2] The presidential electors were to meet and vote at Exeter.

It will be noticed that the General Court considered that it was necessary to choose the presidential electors not later than January 7, and that was indeed the date prescribed in the ordinance of Congress, in accordance with the plan laid down by the Convention of 1787. Inasmuch as the Constitution declared that "Congress may determine the Time of chusing the Electors," it is possible that a resolution by the Continental Congress might be considered such a legal choice; though in no place does the Constitution include the older body in the term, and the resolution of the Convention of 1787, while somewhat like the "schedules" of later state constitutions, was merely an opinion of the convention.

MASSACHUSETTS

METHODS OF ELECTIONS

As MASSACHUSETTS was the second most populous state in the Union, and recognized as a leader, not only in its section but in the

whole country; as it had recently been the seat of a radical uprising (Shays Rebellion), from the sympathizers of which much of the Antifederalist sentiment in the state had come; and as in it ratification had been successful only after a severe struggle and only because of the expectation of certain amendments, its action in carrying out the resolution of the Continental Congress deserves particular attention.

On October 29, 1788, the General Court of the state met, and on October 31 consigned the resolution of Congress to a joint committee. This committee reported on November 5: (1) electors to be appointed by a joint ballot of the two houses; (2) senators to be elected by the separate houses, each with a negative on the other; (3) the state to be divided into eight districts as nearly of equal poll as possible without dividing counties, and a representative to be elected in each. If no one had a majority, choice should be made at a second election out of the two highest; and if a tie, the senators and assemblymen of the district should choose. The electors to be chosen by the General Court should be one from each representative district and two at large. The Senate accepted the report and appointed a committee to prepare a bill; but the House considered it in committee of the whole for several days. After debate, the committee of the whole appointed a subcommittee on the question of popular election of electors; substituted joint ballot for senators; defeated a motion to require residence in the district by a candidate for representative; and appointed a subcommittee to consider towns rather than counties in forming the districts, but later voted not to disregard county lines, after defeating a motion for heavier representation from the late insurgent region.

On November 10 the subcommittee on popular election of electors reported in favor of freemen voting by districts, district residence of candidates being required, and the General Court in joint session to vote one from the three highest candidates in each district, evidently to do so even though one candidate had a majority. The committee of the whole approved this report, and also voted that at the second election of representatives there should be no limit on the candidates, but the one receiving the highest vote should be declared successful. If there was a tie there should be a third election. When the report of the committee of the whole came up in the House, a division into districts without regard to county lines was defeated; and the report of the joint committee, thus amended, was sent up to the Senate on November 13. In these amendments the Senate nonconcurred and proposed substitutes, of which that

upon the election of senators was unacceptable to the House. On November 19 a joint committee was appointed to prepare a resolve to put in effect the parts agreed upon, and a committee of conference was appointed on the question of the election of senators. There were final efforts in the House to strike out from the Senate's amendments the residence requirement for representatives because unconstitutional, and to alter the districts, but these were defeated; and an attempt by some Shaysites to postpone the whole matter to the next General Court did not come to a vote.

The resolve of November 20 for organizing the national government provided for the eight districts as originally proposed, each district to choose on December 18, 1788, one representative, "who shall be an inhabitant of such district." If no one had a majority the governor and council should notify the towns of the district, naming the two who had the highest vote, and a second election should take place; but, though the two highest were to be *named*, the second election was not limited to them. Also the freemen of each district were to vote for two presidential electors, inhabitants of the district; and from the two who had the highest vote in the district the General Court by joint ballot on the first Wednesday of January was to elect one, when there was also to be a joint ballot for two at large "not voted for by the districts". As this last clause would prevent the candidature at large of some 200 or more prominent citizens, the General Court on January 6, 1789, resolved that there should be unlimited choice among citizens not constitutionally disqualified for electors at large.

Theodore Sedgwick wrote Alexander Hamilton on November 2, 1788, that some Federalists and Antifederalists desired that electors should be chosen by the people and the representatives at large. He was still in hope that this would not succeed. The election of representatives by districts was, on the other hand, deprecated because it would "deprive the people, in a great degree, of the opportunity of electing such characters as they may think are the most competent." [3]

On November 20, the method of electing representatives and electors being decided upon, the House voted to propose two as senators and send the names to the upper house, and continue the process until that house concurred. The Senate had other ideas. Both houses were tenacious of their rights, though the lower house had here yielded the major matter of a joint ballot, seemingly persuaded that the proposal of the original joint committee was proper, since the Constitution required that the election should be by the legislature (General Court), and the state constitution declared the

General Court to be the two branches, "each of which shall have a negative on the other." The Senate in turn had yielded to a joint ballot for electors, there being in this case no constitutional limitation, since the national Constitution left the legislature of each state a free hand as to method of choosing the electors. Under the final agreement the voting for national senators began on that same day, November 20.

ELECTION OF SENATORS

There had been considerable popular speculation on available candidates. John Adams wrote Theophilus Parsons on November 2, 1788, that he was not to be considered a candidate, and wished his name kept out entirely: "You know very well, how ungracious and odious the nonacceptance of an appointment by election is; and, therefore, let me beg of you not to expose me to the necessity of incurring the censure of the public; and the obloquy of individuals, by so unpopular a measure . . . the result of my reflections on the place of a senator in the new government, is an unchangeable determination to refuse it." [4] Adams had a higher office in view. Samuel Adams and Francis Dana were much talked of, and Strong and King, both members of the Convention of 1787, were wished for by "all true Federalists"; but there were doubts concerning King's residence. He had married a New York lady in 1786, but had continued to represent Massachusetts in the Continental Congress through October 1787. Christopher Gore wrote Theodore Sedgwick from Boston on August 31, 1788: "I am very desirous K should give satisfactory evidence of his remaining a citizen of Massachusetts. We much need men of his honor & talents in the New Government." [5] King made unsuccessful efforts to buy a house in Boston in the autumn of 1788, authorizing Gore, who was acting for him, on September 6, 1788, to purchase the property under consideration for $5,000, and Gore on October 12 wrote that the property was to be conveyed to him the next day. The correspondence is evidently not complete and the final reason for failure is not evident. King was himself in Boston about this time; but was after that distinctly associated with New York, and became an assemblyman of that state the next year and was elected one of her United States senators.

On November 21 the House chose Caleb Strong and Charles Jarvis as senators. The latter was a Hancock man. The Senate agreed to Strong, but substituted John Lowell for Jarvis. The House repeated Jarvis. The next day the Senate put up Azor Orme, but the House refused to desert Jarvis. The Senate then substituted Tristram Dalton and the House came back with Nathan Dane, after

defeating a motion to postpone the election to the next session of the General Court. On November 24 the Senate insisted on Dalton, and the House finally yielded. Gore, who was in the lower house, wrote King on November 23, 1788, about the election, indicating considerable irritation at King's not being chosen. He said: "The monstrous lies told by your Essex friends pervaded every quarter of the house and the envy of these people had much greater weight than I coud have suppos'd." [6]

CHOICE OF REPRESENTATIVES AND ELECTORS

The correspondence of various Massachusetts men of this period indicates their interest in the election of representatives; but the vote on December 18 did not denote that the freemen in general were much concerned. The weather was bad; but even in Suffolk County (Boston) only 1800 out of 9417 polls were counted. A majority was found in four districts, but a further election ordered in the other four. Though Samuel Adams was a candidate in the Suffolk County district, the old patriot had lost his hold on this commercial and conservative region, even though his strength continued in the more radical western part of the state. Young Fisher Ames was elected. Gore expressed the belief that King could have been chosen from this district but for the "unconstitutional" district residence requirement. Though, as said above, King attempted to buy a house in Boston, his previous Massachusetts residence had been at Newburyport. On January 6, 1789, the General Court received from the secretary of state the popular votes on electors, and on January 7 the two houses in joint session selected the state's quota of ten; and its final action in the matter of the organization of the national government was on February 7 to direct the governor to deliver the proper credentials to representatives and senators.

Meanwhile, the elections for representatives had continued. At the second election, January 29, 1789, two more were chosen. The four of the first election were all Federalists, as was one at the second election. The sixth man was Elbridge Gerry. He had been opposed in the first election by Nathaniel Gorham, who, like Gerry, had been a member of the Convention of 1787, and who had signed the Constitution, while Gerry had refused to do so and had been later prominent against ratification. Gorham would probably have been elected had there not been other Federalists on the ticket. He withdrew before the second election, and was one of the very few of the men who signed the Constitution who never held office or helped to legislate under it; but Gerry's opponents accused his supporters of

continuing to hold "Mr. Gorham up as a Candidate, by which means the Feds will be divided between him & Hull."[7] Gerry issued a public letter expressing his "desire" that those who had favored him would turn to other candidates. He defended his record against so much "invective and abuse." "Some have endeavoured to hold me up as an enemy to the Constitution, than which, nothing is more remote from the truth." He did continue to desire amendments, however.[8] This letter did not come to the point of withdrawing his candidacy, and served its probable purpose of exploiting it.

The two remaining districts had been the strongholds of Shays Rebellion. The third election on March 2, 1789, resulted in the success in the Worcester district of Jonathan Grout, a Shaysite and an Antifederalist in the Massachusetts ratification convention. It was probably in his behalf that an appeal was issued on February 19, 1789, one typical of the period:

> . . . it is hoped the yeomanry of Worcester district will no longer suffer themselves to be divided and distracted by a baneful and pernicious party spirit, which is industriously fomented, not only by the open and professed enemies of our country, who still hold up their favorite maxim 'divide and rule'—but also by insidious, pretended friends, who seek only their own emolument, without being, in the least, warmed by that patriotic flame, that pure emanation of the divine spirit of liberty, which glowed in the bosoms of all virtuous Americans—pervaded our councils—rendered our arms victorious—and, through innumerable dangers and difficulties, supported and inspired us in accomplishing the late glorious Revolution. Arouse, fellow citizens!—shake of [sic] your shameful lethargy!—and,—by uniting in the choice of a person to represent you in the ensuing Continental [sic] Congress—a person who, to a thorough knowledge of the landed and commercial interests of this extensive district, joins a liberality of sentiment, inflexible integrity, and patriotic virtue, which render him fully capable of honourably representing you in that august body,—convince the world that you are not unworthy the invaluable blessings you enjoy!—and that you will transmit them, undiminished, unimpaired, to a grateful and admiring posterity![9]

A fourth election, March 30, and fifth, May 11, were needed in the most western district of the state, where finally the Federalist, Theodore Sedgwick, was chosen by a majority of eight in a total vote of 4095, the total vote being almost twice as large as at the first election. Even then his success was said to have been due only to the failure on the part of various towns to send in their returns within the specified time.

Sedgwick's correspondence during this protracted contest gives an informing though naturally one-sided story of it. A conservative friend at Springfield, Thomas Dwight, expressed his disgust with the new political tactics: "Precedents in the County of Suffolk are plead

in justification of any expedients to get elected to office, & so that a man will soon (without the imputation of indelicacy) be able to hawk himself in the highways, as an excellent candidate for the highest promotion, with as much freedom and vociferation as your market men now cry codfish or Lobsters." [10]

Sedgwick was proclaimed a Deist and also a public defaulter by his opponent's supporters. Samuel Henshaw, his chief manager at Northampton, wrote on March 27, 1789, that Governor Hancock had delayed the precepts for the fourth election in hope they would not reach the outlying towns, "so as to have the people warned to meet on Monday next, and therefore there would be the highest probability that Lyman would be chosen. But Mr. Governor and his advisers will have their match. Our Sheriff is as good a general as any of them, and has taken care to send the Precepts *by very safe hands* to such towns as will vote like rational Beings." [11] After this March vote Henshaw wrote Sedgwick on April 15 that there had been some "damnation manouevring" and a report that enough votes for Sedgwick had arrived after the vote was returned to elect him. Henshaw counseled: "Let your Friends be cool, persuasive, & perservering." He thought private letters a better means of campaigning than public ones in newspapers, but promised to "have all kinds of weapons in burnished order." He was also persuaded that the result depended upon Berkshire, where Sedgwick resided: ". . . it seems to me, that it would not be a difficult task to persuade them to unite their suffrages in you. County pride would easily kindle, if a few prudent persons would gently fan the latent Spark & feed the spreading flame with the oil of friendship. This would blunt the edge, the acrimonious edge of party rage, & beguile them into the way of life!" [12]

Sedgwick wrote Henshaw on May 15 about his last trial for election. He spoke of the great efforts to "make it absolutely certain that all the federal majorities of votes shall be delivered in season." He cautioned Henshaw to be sure to see the sheriff before he went to Boston to "know what votes remained unreturned. . . . The exertions of the Shaysites have made are unparalleled on any former occasion." He accused them of "infamous fraud" in circulating a copy of a Springfield paper in which a certificate (probably refuting the claim of Sedgwick being a defaulter) had been "taken out & the blank Occasioned thereby filled with other matter." [13]

CONNECTICUT

THE GENERAL Assembly of Connecticut met on October 9, 1788, and after listening to the governor's address, appointed a joint com-

Connecticut

At a General Assembly of the State of Connecticut in America holden at New Haven by Adjournment, on the first Thursday of January Anno Dom. 1789

Resolved by this Assembly that William Samuel Johnson Esqr. William Williams Esqr, Joseph Platt Cook Esqr and William Pitkhouse Esqr, Capt Jonathan Bull Capt Roswell Grant, Mr Elias Shipman, Mr Gideon Buckingham, Major Charles Phelps, Colo, Jeremiah Halsey Cole, Philip B. Bradley, Colo, Elijah Abel Mr Ezekiah Ripley, Capt Jonah Sabin, Mr Uriah Tracy, Capt Samuel Lee, Capt, Elephalet Holmes, Maj. William Hart Mr Matthew Hide and Capt Jeremiah Ripley, be and they are appointed a Committee to receive sort and Count the Votes of the Freemen sent in to this Assembly for Representatives of the People of this State in the Congress of the United States to be holden on the first Wednesday of March next, said Committee to attend this Business, on the sixth Day of Instant January in the Afternoon in the Council Chamber, and after being duely Sworn to proceed in the same manner as has been practised in Counting the Votes for Assistants in May Annually, And to declare those five Gentlemen who have the greatest number of Votes to be Chosen

In Pursuance of the above Resolve the said Committee therein named, being all duely sworn

To a faithfull discharge of the Trust committed to them proceeded to receive Sort and Count the Votes sent in to this Assembly by the People of this State, qualified agreeably to the Constitution, to Vote for their Representatives in the Congress of the United States, to be holden on the first Wednesday of March next; And said Committe having received Sorted and Counted the Votes aforesaid found by said Votes that, Jonathan Burges, Roger Sherman, Benjamin Huntington, Jonathan Trumbull, and Jeremiah Wadsworth Esquires, were Chosen to be the Representatives of the People of this State in the Congress of the United States aforesaid, and were by said Committe publicly declared accordingly

A true Copy of Record
Examin'd
By George Wyllys, Secry

COMMISSION OR CERTIFICATE OF ELECTION GIVEN REPRESENTATIVE JONATHAN TRUMBULL OF CONNECTICUT

From Letters of Jonathan Trumbull, Jr., Doc. 125, in the Henrietta W. Hubbard Collection, Connecticut State Library.

mittee to consider the resolution of Congress. The lower house on October 14 accepted the report of this committee and passed a bill "de organizing Congress under the new Constitution," agreeing the next day to the alterations by the Senate. This law provided for an election on November 10, 1788, when each freeman was to vote for twelve men, "each name fairly written on one Peice of Paper." The twelve having "the greatest number of Votes, shall stand on the nomination for Representatives of the People in Congress." The second popular vote was to take place on December 22, 1788, when each freeman was to vote for five. The votes should be received, sorted, and counted at a session of the General Assembly to be held at New Haven on January 1, 1789, and the names of the five having the highest number of votes (not necessarily a majority) declared elected. This method was in harmony with that used for the election of assistants of the state, who formed both the upper house and a council, twenty being so nominated and twelve elected, the governor and lieutenant governor being also elected out of the twenty.

On October 15, 1788, the General Assembly passed a bill appointing William Samuel Johnson and Oliver Ellsworth United States senators. Beyond the mere statement, the journal shows nothing; the act is entered in the state records ahead of the act for organizing Congress (but this is not necessarily significant), and was evidently entirely separate from that, though probably included in the report of the joint committee. It does not indicate an election in joint session.

The General Assembly met on January 1, 1789, to count the vote for representatives, but the two houses disagreed on the method and it was not until the 3d that a bill was passed to appoint a committee to sort and count the votes. The House journal names twenty as this committee, of whom four were "esq.," six "capt.," five "mister," two "major," and three "colonel." Jonathan Trumbull, Jr., was one of the five men elected; his papers contain his certificate of election, which is the resolve to count the votes and the report of the committee declaring the result, with the state seal stamped on frilled paper. It was not until December 1790 that the General Assembly authorized the governor to commission members of Congress. All of the five successful candidates were Federalists, all of the twelve nominated seem to have been so; the basis of the voting was entirely personal. Jeremiah Wadsworth, who was elected, wrote Hamilton in February 1789: ". . . there was great pains taken to oppose me by ye antis & a certain set of *Saints* who are always preaching about ye Country against employing in Government any of ye *unconverted*, one of which they very foolishly take me to be."[14]

The final service of the Connecticut General Assembly had to do with the presidential electors. Trumbull wrote Washington on October 28, 1788: ". . . this appointment [of electors] the Assembly have retained in their own power—thinkg. it more likely to be exercised with Judgment & Discretion by the legislature, than it would probably be, was it to be entrusted to the people at large." [15] It may be judged from this that the decision respecting electors was a part of the report of the joint committee on or before October 14, 1788; but there is nothing in the journal of the House until January 7, 1789, when it was resolved that seven named persons should be appointed electors. These seven included the governor, lieutenant governor, one assistant, and two members of the lower house. Erastus Wolcott was one of the twelve voted upon for House of Representatives, but not among those finally chosen, and he and his brother Oliver, the lieutenant governor, were both chosen electors. The journal does not indicate when the General Assembly declared the names of the representatives-elect, but a newspaper item indicates that it was on the day before the electors were voted upon; otherwise the question might have arisen whether the elector Erastus Wolcott was not disqualified by being one of the possible representatives-elect, though the Constitution only forbids representatives, which might be limited to those who are at the time actually members of the House of Representatives.

NEW YORK

DEADLOCK ON SENATORS AND ELECTORS

CONDITIONS were unusual in New York, because there the Federalists controlled the upper house by one vote, while the lower house, with the backing of the governor, had an Antifederalist majority. Hamilton wrote Madison on November 23, 1788: "In this state . . . A large majority of the *Assembly* was doubtless of an Antifoederal complexion; but a scism in the party which has been occasioned by the falling off of some [of] its leaders in the Convention leaves me not without hope, that if matters are well managed we may procure a majority for some pretty equal compromise. In the Senate we have as superiority by one." [16]

Governor Clinton did not issue his proclamation for a special session until October 13, 1788, a month after the resolution of Congress was passed, and appointed the meeting for December 8, less than a month before the electors must be chosen. There was no quorum until December 11. With this delay his critics found much fault. Hamilton wrote in a public letter on March 8, 1789: "This

procrastination appeared at the time extraordinary to everybody, and wore the aspect of *slight* and *neglect* at least. The Governor asserts that it was impracticable to convene the Legislature sooner; but he has not told us why it was so; and I scruple not to affirm, that if a reason is ever assigned, it will be found so flimsy a one, as to discover the insignificant light in which his Excellency is disposed to view and treat the National Government." The Federalist leader added that the popular election of electors, "a privilege which it is of great importance should be in the hands of the people," was thus made impossible.[17] Whether Hamilton really desired that presidential electors should be popularly elected is doubtful; the early Federalist leaning seems to have been for legislative choosing. It is noticeable that Clinton made a similar delay in calling the ratification convention.

In New York the contest over the method of choosing senators and electors was most spirited, and resulted in both cases in a deadlock. Elsewhere there was, apparently, more interest in the working out of the election of representatives. The two houses began simultaneously to consider the problem originated by the ordinance of the Continental Congress. On December 11 the Senate went into a committee of the whole on the matter and reported the next day for a special committee, which committee on the 13th reported on the appointment of electors, while on the 15th a bill for the appointment of senators was brought in.

Meanwhile, on December 13 Jones, prominent as an Antifederalist in the ratification convention, brought in a general bill in the House to carry into effect the Constitution of the United States, and on the 16th the committee of the whole reported the bill. Respecting senators, this provided that each house should nominate two, then hold a joint session at which the one or two on both lists should be considered elected, and employ a joint ballot to complete the election if needed. An amendment was offered that in case of disagreement on only one name there should be a joint ballot; but on both, then the Senate should choose one of the House names, and vice versa; but this was rejected by 31 to 20 and the original provision carried. The provision on electors contained as an excuse that time "would not permit of their being chosen by the People," but this was cut out by 29 to 22, possibly because it reflected on the lateness of the call of the session. Electors should be chosen as were the senators, and an amendment similar to that on the senatorial method was also rejected. Respecting representatives, the bill provided for election by districts, but without district residence. The residence requirement was rejected as an additional qualification and therefore unconsti-

tutional; but no such objection was raised to division into districts, although that also was foreign to the text of the Constitution. The House agreed to its tripartite bill on December 20.

The Senate bill for electors passed that house on December 18, 1788, by 9 to 7. It contained the statement rejected by the lower house about there being no time for a popular election, and provided for the appointment of four by each house, appointment of the eight by joint ballot, after the system required by the state constitution for the appointment of delegates to the Continental Congress, being rejected. The Senate bill for United States senators, similar to the amendment rejected in the House, was also passed on December 20 by 9 to 7. By it each house chose one of the other's choice if there was no agreement, and in case of disagreement on one, each house should suggest names until concurrence resulted. On December 22 the Senate received the House tripartite bill and amended it by substituting its own plan for electors and senators, and also made a slight alteration in the make-up of the districts for representatives. Thus amended, it returned the bill to the House on December 31. The House rejected the Senate bill on electors and senators on December 22 and 23, and rejected the Senate's amendment to its own bill on January 2, 1789. On January 5 the houses held a conference on the House bill, after which each house voted to adhere to its own determination; so that January 7 passed with no appointment of electors by this state.

As it was considered by some that January 7 was not a stop line to the appointment, since the date was one directed by the Continental Congress and not by the Congress under the Constitution, efforts were continued up to February 4 to agree upon a method. All were fruitless; and, in fact, Hamilton, who had gone up to Albany during the last days of the contest, advised against the effort. He wrote Sedgwick, January 29, 1789: "New York from the legislature having by their contentions let slip the day will not vote at all. For the last circumstance I am not sorry as the most we could hope for would be to ballance accounts and do no harm, The Antifederalists inclined to an appointment notwithstanding but I discourage it with the Federalists."[18] The benefit to the Federalist cause of this negation in New York was later emphasized by Knox in his letter to Carrington, given below (*see* p. 175).

Election of Representatives

Except for the minor differences respecting the make-up of the six congressional districts, the two houses seem to have agreed on the

Assembly's proposal for election to the national House of Representatives; but evidently it was considered that this lost out with the failure to agree on the rest of the bill. On January 9, 1789, the Senate appointed a committee to draft a bill on the election of representatives. The bill as reported called for a general vote for six, "provided that no more than one of them should be a resident in any of said districts," and the resident of each district having the highest state vote should be declared elected. This was on January 14 amended to an election by districts. The seven who voted against the amendment, Schuyler, Roosevelt, Duane, L'Hommedieu, Morris, Vanderbilt, and Fonda, were all Federalists. The bill, as amended, was sent down to the Assembly on January 15. On the 19th the House, by 36 to 12, amended the Senate bill by requiring residence in the district; but on the next day reconsidered and dropped the residence requirement, the Speaker casting the vote. There was also a slight amendment in the construction of the districts, to which the Senate agreed, and the bill became a law when approved by the Council of Revision on January 27. By this law there were six districts with a plurality election in each, no district residence being required. The election was to begin on the first Tuesday in March, the 3d, and the militia was not to be called out within 20 days of the election, except in case of invasion or insurrection. The uncounted votes were to be forwarded to the secretary of state, and examined by a committee on the first Tuesday in April, the 7th, and the result announced within 14 days. The first of the New York representatives took his seat on April 8, two days after Congress was able to organize.

FINAL CONTEST OVER SENATORS

In the conference which the houses held on January 5, the spokesman for the Assembly had called attention to the fact that a joint ballot for senators was in harmony with the constitution of the state; but the Senate spokesman held that this destroyed the equality of the houses and left the lower one in control; moreover, a joint ballot was not an act of the bicameral legislature. In Massachusetts the joint ballot had been objected to because contrary to the constitution of that state, though the claim that it was contrary to the bicameral status of the legislature was in agreement with the New York contention. Although the efforts to reach an agreement continued, the legislature adjourned on March 3 without appointing senators. "Observer" in the *Pennsylvania Packet* of February 8, 1789, pointed out that the controversy in the New York legislature, which delayed there the bill for the election of representatives and

prevented the choice of senators, showed the wisdom of the Constitution in giving Congress power to make and alter election regulations. General Knox wrote Edward Carrington the Federalist view of the result on March 8: "The legislature of New York have risen without appointing Senators. The Senate were inflexible, and have evinced a considerable degree of magnanimity—hazarding rather a local injury by the removal of Congress which may possibly be effected for want of the Senators from this State than to embarrass the general government with two antifederalists for a great length of time." [19]

The new legislature of New York was called in special session on July 8, 1789, to choose the senators. The Federalists were now in control of both houses. The committee of the whole of the Assembly reported a bill on July 9, providing for nomination by both houses, and if there was not concurrence each should choose one of the list of the other. A motion to substitute joint ballot, which had been insisted upon by the former House, was defeated by 38 to 23. In case of difference on one only of those nominated, the proposal embraced the earlier Senate proposition of mutual offer until there was concurrence. The bill was sent up to the Senate on July 10; and came back from the upper house three days later amended so that each house should ballot separately and the persons agreed upon in each house to be in nomination, "out of which number in each House respectively, shall by a majority of voices be chosen a Senator or Senators." The House nonconcurred, and the Senate receded. But on July 15 the Council of Revision objected:

> If by the Legislature is intended the members of the two Houses, not acting in their legislative capacity, no law is necessary to prescribe the mode of election, concurrent resolutions extending in this case, as well to the mode of election as to the choice of persons; . . . If the Legislature are only known in their legislative capacity, the Senators can constitutionally be appointed by law only, and no consideration arising from inconvenience, will justify a deviation from the Constitution of the United States. . . . when two Senators are to be chosen . . . in case of the disagreement of the two Houses . . . each House shall out of the nominations of the other choose one, . . . thus by compelling each House to choose one of two parties, neither of whom may meet with their approbation, establishes a choice of Senators by the separate acts of each branch of the Legislature, in direct opposition to the Constitution . . . which . . . declares that they shall be chosen by the Legislature.[20]

The Assembly then refused to pass the bill over the objection of the Council by 36 to 20, though it had passed it originally by 40 to 21, and took into consideration a motion to appoint Schuyler and Duane senators, defeating by 34 to 21 a motion for a joint ballot. Then the original motion was withdrawn and a new one for *a* senator

was considered, for which Schuyler and King were proposed. King was defeated by 37 (including his own vote) to 19, the 19 being all opponents of the original House bill. Schuyler was then named without a record vote. The resolution for another was then offered, Duane, King, and L'Hommedieu being nominated. L'Hommedieu lost by 20 to 34, King by 21 to 34, and Duane was approved by 35 to 19. On July 16 the concurrence of the Senate in Schuyler's appointment was announced, and L'Hommedieu substituted for Duane. The House refused to concur in L'Hommedieu by 34 to 24 and unanimously sent up King's name, after defeating by 43 to 12 a motion to substitute Lewis Morris. The Senate concurred in King. He took his seat on July 25 and Schuyler on July 27.

King had a conversation with Clinton on June 12, 1789, during which Clinton said that the Antifederalists were not united, that Lansing would not serve, and that Melancton Smith had queered himself by voting for ratification. Also it was important that "Officers of Great power shd. not all be concentered in a certain party or family association." This was a hit at the Livingstons. Clinton objected to Duane, and thought that there should be a mercantile character, though it was difficult to find a suitable one. He spoke of the possibility of King's availability, even though not himself mercantile.[21] King had recently married into the Alsop family, his father-in-law being a wealthy merchant. Morgan Lewis had written Hamilton on June 24, 1789, that the country members generally disapproved of King. Lewis was afraid that King's candidacy would also interfere with Schuyler's chances, the latter being Hamilton's father-in-law. The Federalists had supported Judge Yates, nominally an Antifederalist, against Clinton in the recent state election; and there seemed to be some necessity of convincing the public that this had not been done merely to remove Clinton, and the best way to do so was to support Yates for the Senate. King was undoubtedly agreeable to Hamilton; and the way in which the Livingstons were neglected by the national government worked out ultimately to the benefit of the party that arose against the Federalist administration. A study of "in-laws" is a not unimportant feature of political development in the colonial and early national days.

NEW JERSEY

ELECTION REGULATIONS

THE EFFORTS of New Jersey toward the organization of the new general government are of special interest because of certain unusual

features, even in the midst of the general unsettled conditions; but the records are inadequate. The legislature met on October 28, 1788. The journal of the Council, which served as the upper chamber, shows that on October 31 the House sent up the ordinance of the Continental Congress and the Council ordered a bill brought in "for carrying into Operation the said Constitution." On November 14 this bill, passed by 8 to 4, was sent down to the House. On November 20 it returned to the Council with amendments to which the Council agreed; and on November 21 the bill repassed the Council and copies were ordered distributed throughout the counties of the state. The act is dated November 21, 1788; by it, those having the franchise were to vote for four representatives in nomination at least 30 days previous to the day of election. The county clerks were to send these nominations to the governor to be published and transmitted to the sheriffs. Only persons so nominated at this early substitute for a primary were to be considered candidates at the actual election. The election was to begin on the second Wednesday of February 1789, the 11th, to be conducted by ballot, and to continue until the "same shall be legally closed." The governor and council should count the votes and commission under the great seal the four having the highest vote throughout the state.

Section 8 of this act directed the governor and council to choose on January 7, 1789, the presidential electors, who should be freeholders. This was the only case where the electors were not chosen by popular vote or by the legislature, or by a combination of the two. Section 10 of the act declared that United States senators should be elected by joint ballot of the two houses, and commissioned by the governor. No date of election was mentioned in the act, but on November 22 the council proposed November 25, to which the House agreed; and the joint meeting was held in the College Library Room at Princeton, William Paterson and Jonathan Elmer being chosen, being respectively of East and West New Jersey.

CHOOSING REPRESENTATIVES

Upon the passage of the law there was activity for union in nominations; a self-called body, claiming to be representative, proposed Elias Boudinot of Essex County, James Schureman of Middlesex, Thomas Sinnickson of Salem, and Lambert Cadwalader of Hunterdon, all of whom except Sinnickson were from the eastern counties. Ever since the state had been first settled in two sections, which remained separate colonies until 1702, there had been a recognized spiritual division, similar to that which now exists between

northern and southern California and in other states; but Hunterdon County, though in 1789 claimed as eastern, had been originally in West New Jersey. This ticket was, therefore, considered a reasonably fair one sectionally and according to population. Boudinot had long been prominent. Cadwalader had had an honorable army record in the early part of the Revolution and had also sat in the Continental Congress. He was a member of an important Philadelphia family. Schureman had also sat in the Old Congress. Sinnickson, from the region opposite Delaware, was less well known, so far at least as we now have the means of judging. Another proposed ticket was of Abraham Clark, a signer of the Declaration of Independence and somewhat of a radical, Jonathan Dayton, a signer of the Constitution, Schureman, and John Witherspoon, president of New Jersey College, and also a signer of the Declaration of Independence. This was even more an eastern ticket than the other one, though Witherspoon lived in Hunterdon County. There were other proposals, but also protests against tickets and evidently no concerted action, for the fifty-four names which appeared on the nomination ballots included most of the prominent men of the state.

Jonathan Elmer, writing to his brother on February 5, 1791, after the election to the Second Congress, and after he himself had failed of return to the Senate (he drew a two-year slip), although evidently laboring under the effect of his own disappointment, shows well a situation which existed in the minds of many in the state. Remarking that accounts from the eastward rendered it indubitable that Boudinot, Dayton, and Clark were elected to Congress, and that the fourth man also was probably from the east, he added:

> Perhaps the important County of Essex will honour the State with a complete representation. . . . What is the reason the politics of Jersey are conducted so strangely of late? Why did not your Legislature adopt a plan for securing a fair & equal Representation of the State? Why was not the State divided into Districts for choosing Representatives? . . . Probably the true answers would reflect no honour on the Agents or the State, & therefore it is best to give none. . . . It is undeniable, that, in every transaction which can affect the Interests or reputation of West Jersey, the western Members have either been palpably overreached, or have wilfully betrayed the Interests of their Constituents. The former is the most favourable Construction, & is *that*, I am told, which the more intelligent spectators have put upon their conduct. . . . Though personally affected, I shall be happy if none of my western fellow Citizens suffer more by it than myself.[22]

The population at that time was 131,525 in the eight eastern counties (including Hunterdon) and 75,214 in the five western ones. The division did not correspond accurately to the old one between

East and West New Jersey, and, as stated above, Hunterdon County the most populous in the state, though now considered eastern, had been originally mainly a part of West New Jersey. Essex County was not particularly populous, being the fourth in the state, though prominent because opposite New York City and the home of an unusual number of eminent citizens. The legislature having failed to state when the polls must be closed, the western counties seem to have kept them open in order to find out what the eastern returns were likely to be. All of the eastern counties but Essex had sent in their returns before the governor and council, on February 27, 1789, ordered the polls closed on March 10, though the logic of the situation would have required the closing to be before March 4. The western counties then reported, but as late as March 18 the returns from Essex had not been announced, her polls being "adjourned." The governor and council, ignoring that county, declared elected the four men having the highest vote in the rest of the state, who were the four on the first ticket named above, ranking in vote Schureman, Cadwalader, Boudinot, and Sinnickson. The governor's proclamation is dated March 19, 1789, and leaves the legality of the action "to whom it may appertain," that is, to the House of Representatives, to which was given by the Constitution the power to judge the election of its own members. Madison wrote Washington on this same day: "In New Jersey the election has been conducted in a very singular manner. The law having fixed no time expressly for closing the polls they have been kept open three or four weeks in some of the Counties by the rival jealousy between the Eastern & Western divisions of the State, and it seems uncertain when they would have been closed, if the Governour had not interposed by fixing on a day for receiving the returns, and proclaiming the successful candidates." [23] It is noticeable that although the dead-line was set at March 10, the governor waited more than a week beyond this for the Essex returns.

CONTESTED ELECTION

The question of the legality of the election came up before the House of Representatives. It was a letter from Matthias Ogden, a prominent easterner, received by the Speaker on April 28, 1789, that brought the matter up, being accompanied by petitions against the seating of the four, all of whom were already in attendance. The petitions claimed that Abraham Clark was said to have pressed closely the vote of Sinnickson, who was the lowest of the four declared elected, and Clark was an Essex County man, and that the inclusion of the Essex County vote would have changed the results. After

various considerations by a committee, the matter came up for debate in the House on July 15 over the question of taking testimony of witnesses *in situ*. Boudinot, in behalf of the contestees, argued that this would establish a very bad and cumbersome precedent, and that the certificate of the governor was "the best evidence the nature of this case requires"; and he likewise objected to the proposed admission of counsel for the petitioners to argue the matter before the House. The question turned upon the full right of the House to judge the matter, Madison holding that if the jurisdiction of the House was called in question it would be proper to hear counsel on that point. The matter went over, and when it came up again on September 2, the House, without further debate, declared the incumbents duly elected. There was no registered vote on the question.

The legislature on March 29, 1792, in a new act on the election of representatives continued the at-large principle, in spite of complaints like that by Elmer, but limited the election to two days where held by townships and to five days for county elections.

PENNSYLVANIA

ELECTION OF SENATORS

PENNSYLVANIA was in the van both at ratification and at organization. Her unicameral General Assembly was in session when Congress passed the resolution of September 13, 1788. President Mifflin and the council referred the ordinance to the legislature on September 17, whereupon a committee was appointed, of which George Clymer was chairman. Clymer was a signer of the Declaration of Independence and also of the Constitution. The committee reported on September 23 a bill for the popular election of representatives and electors, and a resolve on the choice of senators. Next day the Assembly voted to appoint senators by ballot on the 30th, out of nominations made the day before. An attempt to put off the election until the next Assembly was defeated, though the sitting house had been elected before the Constitution was known. Robert Morris and William Maclay were made senators, General William Irvine being the third in nomination. Tench Coxe had written Madison on September 16 that Morris and Maclay would be the choice "if the federal interest act in concert." Besides Irvine, General John Armstrong, William Findley, and Charles Pettit, late of the Continental Congress, were also considered; but Pettit and Findley "are decided for the resumption by the states of the power of direct taxation, and therefore we must earnestly hope they may not succeed."[24] Findley had, in fact, been prominent in opposition to ratification,

and was later to be noted as a Jeffersonian representative. Morris received 37 votes and Irvine 31. Coxe again wrote Madison, October 22: "Mr. Maclay, our Agriculture Senator is a decided federalist, of a neat clear landed property, with a law Education, a very straight head, of much more reading than the country Gentlemen in the middle states usually are, a man of fair character and great assiduity in Business. My own Opinion is that he is properest character for the Agricultural Member in the State, and he was elected by 66 Votes out of 67—all the opposition concurring in him, and all our friends but one. I consider this election of Mr. Maclay by all the opposition as of great importance, as a sort of Acceptance of the government." [25] Maclay was recognized as the country candidate. Morris' election would seem more natural, because of his great prominence, but he was not popular in the rural region and distinctly opposed by the Antifederalists. Maclay's Federalism turned out to be of a rather queer brand; he drew a short term, was not reelected, and is remembered now not for his services but for his valuable, though rather splenetic, journal of experience of two years in the Senate.

ACT FOR REPRESENTATIVES AND ELECTORS

On the same day as the senatorial election, the General Assembly agreed to the bill to elect representatives and electors. On the 29th an attempt, favored by Clymer and his fellow Signer, FitzSimons, but opposed by Findley, was made to have the election of representatives on the same day as that of electors, which would, among other things, save expense. The attempt was defeated. The bill was finally enacted on October 4, and 1,000 copies ordered printed and distributed to the prothonotaries of the respective counties. This act provided that the state's eight representatives and ten electors should be chosen at large; candidates to fulfil constitutional requirements, but no other qualifications given; plurality to elect. The day for the election of representatives was made the last Wednesday in November 1788, which was the 26th.

In the debate on September 24, Findley desired eight election districts for representatives, each to elect one member, this being the only way in which they could have the "local and common interest of their constituents throughout the state"; but he "was content to let the bill pass forward for the present," because of lack of time in which to digest a different one. This was further complicated by the fact that there would have to be different districts for the eight representatives and ten electors. Lewis considered separate districts unconstitutional, also district residence. The rep-

resentatives were to be elected by the people of the several states, not by the people of districts. It did not follow from this that they were all to attend at one spot to execute their privilege, though he admitted that the choice might be improved if this were the case, even though it was an impracticable exercise of democracy in a state the size of Pennsylvania. It was, however, the duty of the legislature "to take the next best step for obtaining the unanimous voice of the people." Clymer dwelt on "how much more likely a good and respectable representation was to be obtained by being selected from the state at large and voted for in the same manner, . . ." Findley answered that the Constitution gave the state the right to decide on the manner of the election, and also the general ticket method "went to extend the influence of the general government, without taking the proper care to conciliate the minds of the people." He hoped to be able to confine the general ticket to the first election.[26] By the act of March 16, 1791, the state was divided into districts, each to elect a representative, but district residence was not required; but on April 7, 1792, a further law reinstated the general ticket. This last was in anticipation of the increase in the number of representatives provided by the act of Congress of April 14, 1792, for on April 22, 1794, the district system was restored.

November 26 happened to be court day in certain counties and the Assembly would also be in session, so, as an early example of absentee voting, permission was, by an act on November 13, 1788, given to any voters who were at court, legislature, or council on that day to vote at the place of the court or at Philadelphia, on oath of not having voted elsewhere.

Coxe in his letter to Madison, September 26, 1788, said that representatives and electors on a general ticket were necessary "to avoid a special Session, . . . I think it will be safe in Pennsa both as to the Electors & fedl. Representatives, but it will give a precedent to the other states, where the Majority are unfavorable—such as N York &c—which may require the early attention of our friends in those places."[27] Madison on October 8, 1788, wrote Jefferson: "This mode of election will confine the choice to characters of general notoriety, and so far be favorable to merit. It is however liable to some popular objection urged agst. the tendency of the new System. . . . It is perhaps to be desired that various modes should be tried, as by that means only the best mode can be ascertained."[28]

CAMPAIGN

The political pot in Pennsylvania had not ceased to seethe since

the days of the ratification convention, and now it returned to boiling. The papers were enlivened by many letters over the popular pen-names of the day. The Federalists decided upon a conference at Lancaster to which Philadelphia and the various counties should send delegates. Those from Philadelphia County were appointed at a meeting at Germantown on October 10, 1788. On October 11 ward committees were appointed in Philadelphia City to select the city's delegates. They were admonished by "Citizen of Philadelphia" on October 17 to be careful in their choice, as Philadelphia had great interest in having a proper representation in Congress. The removal of the capital to that city, and matters of commercial revenue and public credit would come before the Congress, and Pennsylvania's share in national credit was much greater than her share in taxes, her citizens being collectively the largest public creditors. At a town meeting on October 18, Clymer being in the chair, the ward committees' report in favor of James Wilson and George Latimer as delegates was accepted, and the committees authorized to report the names of six suitable persons for the city's representation in Congress, and six for electors. "Brutus" on October 21 advised the ward committees of the necessity of the representatives being acquainted with the resources of the state, and of sufficient political experience. He feared that it would be difficult to detach the best men "from the active professional pursuits." On October 27 the ward committees' report of twelve suitable persons was accepted at another town meeting. Clymer and FitzSimons were on the list for representatives.

The conference met at Lancaster on November 3, 1788. All counties but one were represented, but not all by two delegates. The ticket nominated for Congress consisted of Clymer, FitzSimons, F. A. Muhlenberg, Thomas Hartley, Henry Wynkoop, Stephen Chambers, John Allison, and Thomas Scott. Wilson was one of the proposed electors. The ticket was praised as being well spread over the state, and though two of the candidates were "of the law," this stigma was softened by the fact that they were country residents.

The Antifederalists had held a convention at Harrisburg on September 3, 1788, before the Continental Congress passed its ordinance. There is no evidence, however, that a ticket was decided upon then; but one was announced on November 12 as coming from those who believed that the Constitution had "most glaring defects," especially those of submerging state governments and being without a bill of rights. A letter in *The Freeman's Journal* on this date by "A Friend to Liberty and Union" announced the ticket:

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A large number of freemen of Pennsylvania have, without noise or disturbance, resolved to invite their fellow citizens to accord with their inclinations, which they trust are the inclinations of a great majority of the freemen of this state. . . . They have therefore opened a communication with the different parts of the state; they have conferred freely together; they have corresponded: and the purpose of their investigation has been to discover men to represent them in Congress, who will give their aid to the effectuating the great objects of the late continental convention, that of promoting a continental government for the purpose of uniting our strength, and at the same time securing the liberties of the subject. In a word, of carrying into execution the new government, and at the same time amending it.

This ticket was constructed evidently upon the principle of divide and conquer, for it was made up partly of Federalists, but it did not include names on the rival ticket, except one for elector.

The Germans were not satisfied with either ticket. A handbill was sent out, dated November 13, 1788, pointing out that the Germans were a third of the population, and were honored by only one candidate on the Federalist ticket (Muhlenberg) and one elector, while neither senator was German. "Is this not degrading the character of the Germans to the lowest degree? . . . Rouse, worthy countrymen. Be for the future warm Germans."[29] The handbill named Peter Muhlenberg, in addition to his brother, and Daniel Hiester as representatives to be put on both Federalist and Antifederalist tickets. Hiester and Peter Muhlenberg were on the Antifederalist ticket, but all three men were credited with being good Federalists.

This handbill was supported by "German Federalist": "But it has been said, are we not all Americans, or Pennsylvanians, and why should the distinction of nations be kept up among us?" He considered that the Germans were differently circumstanced from the British or Irish, since many could not understand English, and "they are deprived of all kinds of information of what is going forward in government, unless they can receive it from German representatives, who are able to speak to them in their own language."[30] This was a specious argument, since German newspapers were available throughout the state. Another "German" commented upon this, saying that "we were ignorant Germans" except at election time, when "we see the papers filled with flatteries too absurd, in my opinion, to be digested by any but fools." But he failed to see how in national affairs the interests of the Germans differed from the rest, and advised laying aside all national distinctions. "If you think that the new federal constitution will benefit our country . . . then do not reject a ticket which you know will be favourable to this purpose, merely

because somebody has found out that the Germans, as such, have not their full proportion in it." [31]

ELECTIONS

In spite of this last very sound advice, the Germans evidently voted as Germans, for while at the election of November 26 the Federalist ticket otherwise prevailed by a good majority, the three Germans were elected. Excluding the Germans, the vote for the highest Federalist was 8275, and his majority over the highest Antifederalist was 1638. The two on the Federalist ticket who were defeated had higher votes than any on the Antifederalist ticket except the two Germans on it; but the vote in nine counties, mainly the western ones, was heavily Antifederalist, giving 4413 votes to the highest Antifederalist and only 1260 to the highest Federalist. Indeed, it is evident that the city and county of Philadelphia were primarily responsible for the Federalist success. The majority of the highest Federalist in that region was 1807, making his minority outside 169.

The New York *Daily Advertiser*, September 19, 1788, speaks of 69,000 electors in Pennsylvania; if this is correct, many did not vote. It was not until January 5, 1789, that the Supreme Council was able to proclaim the successful candidates for representatives, the delay of more than two weeks being caused by the wait for the Fayette County returns, though when they finally came, they showed only about 80 votes. Of the eight representatives elected two were signers of the Constitution and six had been in the ratification convention. Coxe wrote on December 17: "All the gentlemen are pretty good Judges what the people of Pennsa. can do, and what they can be brought to undertake. Some of them are men of experience & resources. I am upon the whole much more than satisfied with the Ticket, for five are as good [as] we could send the rest are very well, none bad." [32]

The vote for electors on January 7, 1789, was again a Federalist victory. One man, Hand, was on both tickets, and the defeated Antifederalist ticket included David Rittenhouse, who was also a Federalist. The vote for electors was proclaimed on February 3, the day before they were to meet at Reading, and then it was probably on incomplete returns. On February 27 the council resolved not to consider the question of credentials for the senators and representatives.

BY-ELECTION PROBLEM

One other point is of interest in the Pennsylvania proceedings. Thomas Scott, one of the representatives-elect, resigned, and the puzzled council transmitted, on February 5, 1789, the resignation

to the legislature. That body appointed a committee to confer with the council, which committee reported on February 13 that "no authority existing within the state are competent to accept Mr. Scott's resignation" [33] and moved that the assembly return the letter to the council. This was done. The council on February 17 resolved to return the letter to Scott, "with the intimation that it would be agreeable to Council if he would endeavour to serve during the first session of Congress, or untill his place can be supplied without expence to the State at the next annual election." [34] To replace him, under the existing law, would have required a state-wide special election. Scott informed the council from Philadelphia on March 27, 1789, that he was on his way to New York. He served throughout the Congress, and was also a member of the Third Congress.

DELAWARE

LITTLE can be ascertained of the Delaware proceedings. The legislature met on October 20, 1788, and on October 24 the lower house proposed a joint meeting "to put in nomination persons out of whom shall be elected by ballot two Senators." The upper house agreeing, the "General Assembly" met that afternoon, and George Read, Gunning Bedford, Jr., and Richard Bassett, all signers of the Constitution, were nominated. Later the same day Read and Bassett were elected. On October 27 the House sent up a bill for the election of representatives and electors. On October 28 this bill was enacted and the legislature adjourned. Only one other law was framed during the session, which lasted only nine days, including Sunday.

As Delaware had only one representative, there was no problem of qualifications beyond those imposed by the Constitution itself; however, each freeman was to vote for two persons, one of whom should not be a resident of the voter's county, the highest vote to elect. This was done to prevent any one of the three counties from being in a controlling position. In the election there seem to have been two candidates from each county, but one of these received the united vote of his county. All the candidates were Federalists. The state's election of electors was, however, by districts, each county being one; residential qualification was required of electoral candidates. The choice was on a plurality basis, and as the three having the highest votes should be declared elected apparently without respect to districts, it was theoretically possible for more than one to be chosen from a district. The representative and the electors were both chosen on January 7, 1789.

MARYLAND

Election Law

Maryland experimented with a combination system for its first national election. In that state, split by Chesapeake Bay, the Eastern Shore and Western Shore formed two natural divisions that left their mark on the state's politics; and this division influenced the basis of the election act. On November 8, 1788, the House of Delegates appointed a committee of twenty to bring in a bill for the election of representatives and electors; and on November 22 ordered the committee to report, which it did on November 24, but only on the election of representatives: "Great diversity of sentiment prevailing among the members," the whole time had been given to this topic. The committee proposed that the Western Shore should elect four representatives on a general ticket and the Eastern Shore two.[35] This report was considered in committee of the whole until December 3, when an amended bill was reported for six districts, four on the Western Shore and two on the Eastern Shore. Each voter throughout the state should vote for six, but his choice must be residents of the six different districts; the candidate of each district having the highest vote throughout the state should be declared elected. The vote was to be *viva voce* and on January 7, 1789; when also eight electors should be chosen, five to be residents of the Western Shore and three of the Eastern Shore, but the choice for electors was not otherwise restricted.

The proceedings of the committee of the whole, ordered published, declared that an attempt at district representation had been defeated by 31 to 35. This defeat was repeated later in the House by 28 to 39, and a further amendment to require a year's residence in the district was also defeated by 16 to 48. On the same day, December 10, the House passed the reported bill by 54 to 10. The Senate made no changes, and on December 12 engrossment was ordered and 1800 copies printed as handbills. The act was sealed and signed by the governor along with the rest of the laws at the end of the session. By an act of December 10, 1790, straight district representation was substituted for this combination method.

Senatorial Election

On December 3, 1788, the Senate ordered a committee of three to prepare a message to the House on the election of United States senators. The three members of this committee, Charles Carroll,

George Gale, and John Henry, together with Uriah Forrest of the House, were to become the four candidates for the office. The report was adopted the same day and transmitted to the House. It proposed that by joint ballot on December 6 the two houses should elect the senators, one from each shore, by majority of "all attending members." The commissions were to be issued by the governor in prescribed words. On December 5 the House substituted December 9 as the date, and defeated an attempt to do away with the "shore" division, and also one to substitute "majority on the ballot" for majority attending. It then approved the amended resolution, to which the Senate agreed. On the prescribed date the House notified the Senate of the nomination of the men mentioned above, and on the second ballot in the joint session Henry received 42 votes, a bare majority. His success eliminated Gale, who was also of the Eastern Shore. The third ballot was taken the next day, when Carroll had 42 votes to Forrest's 39, neither of them voting.

CAMPAIGN FOR REPRESENTATIVES

The Antifederalists had accused the Federalists of sharp tactics in the ratification convention, particularly in preventing the consideration of a proposal of amendments, and the bitterness persisted into the election. A caucus of Federalist legislators presented a ticket: "The following Arrangement comes from a Number of respectable Federal Characters in our Legislature, who were anxious to secure, at this important Crisis, a GENUINE FEDERAL REPRESENTATION. Finding it impracticable to communicate with each District on the Subject, they have, from the best Information, put in nomination those Gentlemen who were believed to be most acceptable in their respective Districts. This Ticket is therefore, with all possible Deference, recommended—and it is confidently expected it will meet the warm Support of the FEDERAL INTEREST throughout the State." [36] Daniel Carroll was the only Signer on the ticket.

On December 29, on the receipt of this ticket at Baltimore, "a number of respectable inhabitants met and unanimously concurred" in it. They also appointed a committee, of whom James McHenry, a signer of the Constitution, was one, to communicate the ticket "to as many gentlemen in the different counties" as the short time permitted. The necessity of union was pointed out, as the Antifederalist ticket "artfully introduced" some Federalists for the same reason as had inspired their action in Pennsylvania.[37]

The Antifederalist ticket was announced on December 29, 1788. "The following ticket is warmly recommended to the citizens of

Maryland, as a respectable and safe representation in the present crisis of public affairs. The nominations proceed from a number of gentlemen who are watchful guardians of the rights of the people, and avowably opposed to that aristocratical influence and spirit which are prevalent in the councils of this state, and dangerous to public liberty." [38]

Joshua Seney, one of those named, was also on the Federalist ticket. William Vans Murray, later prominent as a Federalist representative and minister abroad, was also originally on the Antifederalist ticket, but was displaced. He received only 425 votes, while the man who displaced him, though the least popular of those on the final Antifederal ticket, was given 1829 votes. Murray had announced himself as a candidate from the Eastern Shore on December 24, before the tickets were made up, saying: "Encouraged by the partiality of my friends, and flattered by their promised patronage, I have presumed to offer myself." He was "connected with no ticket," and he announced no platform.[39] The use of the word "presumed" in this connection sounds quaint to present-day ears. Daniel Carroll issued a letter to the "Citizens of the State of Maryland," saying: "Having concurred, in the General Convention at Philadelphia, to the Formation of that Constitution which this State hath since adopted, I shall esteem myself happy in being rendered instrumental, by your Approbation, in carrying it into Effect and Execution, as a Representative for the Sixth District." [40]

The Maryland papers were full of letters during the brief time of the campaign, and gave evidence of much interest, which, however, the size of the vote belied. Samuel Sterett (Sterret), of the Antifederalist ticket, seemed to have been the one most badgered. He replied in a bitter letter on December 31, declaring that he was not endorsed by "the Insurance Office," berating the "nocturnal councils at Evans's," which was the committee of Baltimore that advocated the Federalist ticket, and denouncing as "an illiberal, ungenerous Lie" the statement that he was unfriendly to the election of George Washington.[41] Sharp practices were also indicated. A letter signed "Caution," appeared on January 2, 1789, saying: "The friends of the last gentleman [Faw], knowing that his interest in certain Counties is not equal to that of Mr. Carroll, have formed a ticket in which, leaving Mr. Carroll's name in its proper place, they put that of Mr. Faw instead of Mr. Seney, and for a District, which, on account of non-residence, he cannot represent." [42]

The vote was heavily in favor of the Federalist candidates, both representatives and electors, more than two to one; but Seney,

on both tickets, received only 7725 votes. While Philadelphia County followed its city in going Federalist, the opposite was true of Baltimore County. Though the town was a Federalist stronghold, between a quarter and a third of the whole vote for the Antifederalist candidates came from Baltimore County. In further contrast, while western Pennsylvania was strongly Antifederalist, western Maryland was not. This is illustrated by the frequently quoted letter from a German farmer of Washington County, Maryland, to a friend in Baltimore, dated January 11, 1789:

> We had pain, when we heard of the people in your district, that they were wrong, and we thought it right to call the friends of the new government to give in their votes at the court-house, so we made out as many as 1,164 for the Federal ticket, and no man said against it. The last day, you would wonder to see so many people together, two or three thousand maybe, and not one "anti." An ox roasted whole, hoof and horn, was divided into morsels, and every one would taste a bit. How foolish people are when so many are together and all good-natured! They were so happy to get a piece of Federal ox as ever superstitious Christians or anti-Christians were to get relics from Jerusalem, . . . I am sorry for your differences; but they don't injure us; even the name federal will soon be forgotten here; there is no anti to keep it in remembrance." [43]

In accordance with the law, Governor Howard issued a proclamation on January 21, 1789, announcing the elected representatives.

VIRGINIA

Boss Henry

THE GENERAL Assembly of Virginia, which met on October 20, 1788, was boss-ridden, and the boss was Patrick Henry. Whatever was done there for the organization of the new government was at his orders and intended to advance the cause of the opposition. Washington wrote Madison on November 17, 1788: "The whole proceedings of the Assembly, *it is said* may be summed up in one word, to wit, that the Edicts of Mr. H—— are enregistered with less opposition by the majority of that body, than those of the Grand Monarch are in the Parliaments of France. He has only to say let this be Law, and it is Law." [43a] Indeed, Madison felt justified in writing Randolph on November 2, soon after the session began: "His enmity was levelled, as he did not scruple to insinuate, agst. the *whole System;* and the destruction of the whole System, I take to be still the secret wish of his heart, and the real object of his pursuit." [44] Henry Lee supported Madison's fear, declaring on November 19: "Mr. H is absolute, & every measure succeeds, which

menaces the existence of the govt."[45] Randolph, who was then governor of the state, in his letter to Madison on October 23, was more moderate in his estimation: "I believe I may safely say, that the elections will be provided for, and that no obstruction will arise to the government, or rather will be attempted: so far as a preparation for organizing it goes."[46] Randolph was right. Henry's purpose was not to prevent organization but to insure amendment, especially through a second convention, and to see that the Virginia members of Congress were such as would act in accordance with his own idea of the limitation on the powers of the national government.

ELECTORAL AND REPRESENTATIVE BILLS

In accordance with the custom before the development of the present elaborate system of standing committees, the Virginia measures for putting in operation the national Constitution were developed in committee of the whole. We have seen that elsewhere a special joint committee was sometimes used for this purpose. On October 31, 1788, the committee of the whole reported to the House of Delegates in favor of ten districts, in which those qualified to vote for delegates to the General Assembly should in each district "elect within its own limits" a representative. There should also be twelve districts for the election of presidential electors under similar qualifications. Bills for these purposes were brought in on November 5, considered for several days, and then on November 7 the bill for electors was ordered engrossed, and passed the next day.

The bill for representatives was reported on the 13th, when the motion to strike out "being a freeholder and resident of the district for twelve months" was defeated by 32 to 80. The bill was passed and sent to the Senate the next day. The Senate suggested minor amendments to both bills, and agreement on these being reached, the electoral bill became law on November 17, and the representative bill on November 20. In the case of electors, plurality would elect, and if there was a tie the sheriffs of the district should cast the vote. The election of representatives was to be on February 2, 1789, under the same rules. It might be supposed that with his complete control over the legislature, Henry would have left the appointment of electors to that body; but, like Samuel Adams and Thomas Jefferson, he was sternly an advocate of faithfulness to democratic principles, and his opposition to the Constitution was based on his belief that it would be subversive of these principles, and moreover he undoubt-

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edly believed that he had popular as well as legislative backing, providing it was properly schooled and manipulated. It was generally understood that Washington would be elected President no matter how the electors were appointed, and there is nothing to indicate that Henry was opposed to this; indeed, as an elector he voted for Washington.

SENATORIAL ELECTION

On November 1, 1788, the House of Delegates resolved upon the election of senators by joint ballot on November 8. To this the Senate agreed on November 4. The method employed was that for the election of delegates to the Continental Congress, the houses voting separately but with a joint count. On November 7 the House nominated James Madison, Richard Henry Lee, and William Grayson, and on the 8th Lee and Grayson were elected. They became the outstanding "Antis" in the First Congress. Grayson, however, died in 1790 and Monroe succeeded him. Lee had 98 votes, Grayson 86, Madison 77. Henry, who was a member of the lower house, took the floor to speak against Madison's candidacy. Henry Lee wrote on November 19: "Mr. Henry on the floor exclaimed against your political character & pronounced you unworthy of the confidence of the people in the station of Senator. That your election would terminate in producing rivulets of blood throughout the land." [47] Lee had seen Washington shortly before, and he added: "I had a full & confidential conversation with our Sachem on all these points," which included an agreement on Henry's conduct, and also on Madison's defeat being a blessing in disguise if he could be elected to the House, where he would be more useful.

Hamilton on November 23 also considered that his place was in the House: "I could console myself for what you mention respecting yourself from a desire to see you in one of the Executive Departments, did I not perceive that the representation will be defective in characters of a certain description—Wilson is evidently out of the question. King tells me he does not believe he will be elected into either house. Mr. G. M[orris] set out today for France . . . if you are not then in one of the branches, the Government may severely feel the want of men who unite to zeal all the requisite qualifications for parrying the machinations of the enemies. Might I advise it would be that you bend your course to Virginia." [48] Madison had been in attendance at the Continental Congress and was still in the North.

Henry, himself, exclaimed to Richard Henry Lee on November 15:

For to no purpose must the Efforts of Virga. have been expected to procure Amendments, if one of her Senators had been found adverse to that Scheme. The universal Cry is for Amendments, & the federals are obliged to join in it; but whether to amuse, or conceal other Views seems dubious. . . . how little Dependence can be placed on such occasional Conformity. And you know too well the Value of the Matter in Contest to trust their Safety to those whose late Proceedings, if they do not manifest Emnity to public Liberty, yet shew too little Sollicitude or Zeal for its Preservation. . . . I am indeed happy where I now live in the Unanimity which prevails on this Subject; for in near 20 adjoining Countys I think at least 19/20th are antifederal, & this great Extent of Country in Virga. lays adjoining to No. Carolina & with her forms a great Mass of Opposition not easy to surmount. This Opposition it is the Wish of my Soul to see wise, firm, temperate. It will scarcely preserve the latter Epithet longer than Congress shall hold out the Hope of forwarding Amendmts. I really dread the Consequences following from a Conduct manifesting in that Body, an aversion to that System. I firmly believe the American Union depends on the Success of Amendments. God grant I may never see the Day when it shall be the Duty of Whiggish Americans to seek for Shelter under any other Government than that of the United States.[49]

Randolph thought that Henry did not stand for the Senate himself because he was "unwilling to submit to the oath." [50]

POPULAR ELECTIONS

The voting for electors seems to have been a matter of no great interest in the state. A letter of January 22, 1789, which probably appeared in a Petersburg paper, called attention to the election of representatives on February 2, and added: ". . . it is hoped the citizens will pay greater attention on that day, than they have done in the appointment of electors." In some counties not more than half, and in some not one fifth attended to vote at the county court house; "it ought to be beneath the character of free men to neglect so glorious a privilege." [51] Greater interest was taken in the contest for representatives, as much more depended on the result of it. Candidacies were promoted chiefly by public letters in the newspapers. For instance, Francis Corbin, under date of January 17, 1789, announced that it was the duty of a candidate "to make himself known as well as he can." He would himself prefer personal contact for this, but since conditions prevented, he followed the example of others in using a public letter: "I am a friend to the federal constitution, but no enemy to general amendments. . . . The voice of the people as expressed in the convention should be my voice. Their instructions, should be my creed. . . . I shall always strive, NOT TO ACQUIRE, but to *deserve*, the good opinion of my fellow-citizens." [52] He was defeated. Arthur Lee used a broadside.

Outside interest centered chiefly in Madison's candidacy. He wrote Washington on December 2, 1788, from Philadelphia: "I am pressed much in several quarters to try the effect of presence on the district into which I fall, for electing a Representative, and am apprehensive that an omission of that expedient, may eventually expose me to blame. At the same time I have an extreme distaste to steps having an electioneering appearance, altho' they should lead to an appointment in which I am disposed to serve the public; and am very dubious, moreover whether any step which might seem to denote a solicitude on my part would not be as likely to operate against as in favor of my pretensions." [53] On January 14, 1789, from his home he wrote again: "I have pursued my pretensions much farther than I had premeditated; having not only made great use of epistolary means, but actually visited two Counties, Culpeper & Louisa, and publicly contradicted the erroneous reports propagated agst. me. It has been very industriously inculcated that I am dogmatically attached to the Constitution in every clause, syllable & letter, and therefore not a single amendment will be promoted by my vote, either from conviction or a spirit of accomodation." [54]

Edward Carrington in a letter to Knox on February 16 indicated that this personal activity by Madison had been essential to his success: "Mr. Madison has carried his Election, which could not have been effected a fortnight sooner than it happened. . . . Mr. Madison had every species of misrepresentation to combat in his district—do not understand me as charging Monroe—his party, however, was exceedingly industrious." [55] On January 31, 1789, Tobias Lear, writing to John Langdon from Mount Vernon, where Washington was through visitors and correspondence taking an active, though private, interest in the contest, said: "He [Henry] divided the state into districts, obliging each district to chuse one representative who should be an inhabitant of that district; taking care to arrange matters so as to have the County of which Mr. Madison is an inhabitant thrown into a district of which a majority were supposed to be unfriendly to the Government, & by that means exclude him from the Representative body in Congress. . . . the voice of the people . . . clearly shews that their sentiments were not justly represented in that body [the legislature], . . ." [56] Earlier, on December 20, 1788, Carrington had expressed his expectation of this as the final result of Henry's bossism:

> I resumed my seat in, I verily believe, one of the most antifederal assemblies that could possibly have been collected from amongst the people. This Body met in Phrenzy, and Mr. Henry took advantage of that circumstance to

push and carry measures that could not have been obtained in the latter part of the session. He began with a majority of 40, and this majority diminished upon every subsequent question until it was reduced to about ten at the completion of his projects. It is with pleasure however that I can assure you of these proceedings having given considerable disgust amongst the people—the marks of intemperance and malice are so strongly exhibited that many who were of the most fixed Enemies to the Govt. have determined to defeat that side of the question, holding its supporters as unfounded in their opposition.[57]

James Monroe was Madison's opponent. Joseph Jones, a friend of both, wrote Madison on December 14, 1788: "M—e has I fear been prevailed on to do what I think if he succeeds will hurt his private prospects, unless his visit to N. Y. may further his views in another respect and his lady I doubt not wishes to make a trip there." [58] He wrote again on April 5, 1789: "I avoided all interference . . . and dissuaded Monroe from offering; but the party as it is called had too much influence with him, for, though he resisted for a time they at length prevailed on him to come forward." [59] Monroe explained his conduct to Jefferson on February 15, 1789, as follows: "It wod. have given me concern to have excluded him [Madison], but those to whom my conduct in publick life had been acceptable, press'd me to come forward in this govt. on its commencement, and that I might not loose an opportunity of contributing my feeble efforts, in forwarding an amendment of its defects nor shrink from the station those who confided in [me] wod. wish to place me, I yielded." [60] He, as well as Madison, canvassed the district thoroughly. They even had some joint debates.

Lear and Carrington were good prophets, for, in spite of Henry's influence, the Federalists were generally successful. Madison classified those elected as seven Federalists and three Antifederalists, the latter, Theoderick Bland, Isaac Coles, and Josiah Parker, being of the southern range of counties where, as Henry wrote, his followers were powerful. Madison defeated Monroe by about 300 votes, carrying his own county almost unanimously, although the eight counties of the district, made up by an early example of gerrymandering, had had as a whole a strong majority against ratification in the Virginia convention.

SOUTH CAROLINA

UPON the action of this state, and also of its southern neighbor, the record is very scant. In the former, the act for the election of representatives and appointment of electors is dated November 4, 1788. Electors were to be appointed by the legislature; and the five representatives chosen by districts at the general state election time,

which was the last Monday in November and the day following, the 24th and 25th. A plurality would elect. District residence was not required. William Loughton Smith made an address in St. Michaels Church at Charleston on or about November 26, in which he said: "Although one of my opponents has endeavoured to prejudice you against me by disingenuous insinuations, yet standing under this sacred roof . . . ill would it become me . . . to add to his depression. . . . Should my fellow citizens in the other parishes of Charleston district concur . . . gratitude will be added to other ties, . . ."[61] This is the only bit of detail which is now available concerning the election.

Charles Pinckney wrote Rufus King on January 26, 1789, that the senators, Ralph Izard and Pierce Butler, who were probably chosen early in that month, were "both strong federalists." Pinckney added that he could probably have been a senator himself, but "considerations of a private nature prevented me from becoming a candidate."[62] Butler, whose Federalism proved not of sterling quality, was a signer of the Constitution; Izard had had some diplomatic experience and both had been members of the Continental Congress. Besides Smith, there was one other Federalist representative, Daniel Huger. General Sumter and Aedanus Burke had been elected as Antifederalists. Burke had made himself conspicuous by his opposition to the Society of the Cincinnati, and to the ratification of the Constitution. Of the proclivities of the fifth representative, Dr. Thomas Tudor Tucker, Pinckney professed no knowledge. Smith's election was contested on the plea that he had not been a resident of the United States during the requisite period. He was a native of South Carolina, but had been abroad during the Revolution, and therefore had not been within the "United States," and a citizen thereof, for seven years. The House of Representatives confirmed his election. David Ramsay, the contestant, wrote John Eliot on November 26, 1788, that he was defeated at the polls "on two grounds. One was that I was a northern man [he was born in Pennsylvania], & the other that I was represented as favoring the abolition of slavery."[63] Governor Thomas Pinckney sent to each of the representatives-elect an official letter of announcement which according to the law was to serve as a commission.[64]

GEORGIA

ALL THAT we know of the Georgia arrangement is that the act on representatives was passed on January 23, 1789, and that on January 27 the governor issued a proclamation for voting for three persons "to

be of three years standing residence in the three brigade districts respectively"; that is, while the freemen voted for three persons, they had to choose one from each district, a plan similar to that used in Maryland. The earliest act of Georgia upon this subject of which the text is available is that of February 22, 1796, the fourth law on the matter. This also requires residence of three years and regular payment of taxes during that time. This 1796 act, however, provided for a straight election at large of the two representatives to which the state was then entitled. No act on senators or electors is indicated in 1789, both being functions reserved there to the legislature itself. The election for representatives took place on February 9, 1789, and the returns were to be sent in within fifteen days. The successful candidates were announced in Savannah by February 26. Abraham Baldwin, a signer of the Constitution and member of the Continental Congress was one; James Jackson and George Mathews were the others, the latter having been governor of the state. The senators were William Few, also a signer and member of the Old Congress, and James Gunn. They were elected either on or just before January 22, 1789. Job Sumner wrote General Knox from Savannah: "Our friend Wayne, aims at a Senatorial appointment . . . Wayne, Few, Telfair, and Mathews are mentioned as Candidates, & Baldwin, if he gives up his appointment by Congress."[65] Baldwin was commissioner of Georgia accounts with the general government. He did not resign until April 30, 1789, ten days after he took his seat as representative.

REVIEW

THIS account shows the conditions under which the various legislatures more or less groped out their respective systems, all of which were tentative, and most of which were soon superseded. Representatives were elected by general vote in four states, New Hampshire, Connecticut, Pennsylvania, and New Jersey; by districts in four, Massachusetts, New York, Virginia, and South Carolina; and by a combination in two, Maryland and Georgia: but the drift toward a more general use of the district system was soon indicated. Delaware elected only one representative. Electors were chosen popularly in four states, Pennsylvania, Virginia, Maryland, and Delaware; by the legislature in the first instance in three, Connecticut, South Carolina, and Georgia; by the legislature in New Hampshire out of a popular list, because of the lack of proper majority in the popular election; by popular nomination in Massachusetts except for the two at large, with the ultimate vote by joint ballot of the General Court; and by the governor and council in New Jersey.

In New York there was no choice. The vote for senators was by joint ballot in Virginia, Maryland, New Jersey, and Delaware, and concurrent in New Hampshire, Massachusetts, and New York, while the method employed in Connecticut, South Carolina, and Georgia is uncertain. The Pennsylvania legislature was unicameral.

On the whole, popular interest in the elections seems to have been rather slight. Remarks respecting the stay-at-homes in New Hampshire and Virginia have been given above; and it is a fair estimate that only about three or three and a half percent of the free population voted, and perhaps on an average not more than one-third of those eligible to vote. If the statement of 69,000 electors in Pennsylvania is accurate, probably less than a fourth of them voted.

The Presidential Election

ELECTORAL PRESCRIPTIONS

THE ELECTION of representatives and senators has been discussed in the last chapter, where, also, the appointment of the electors was studied. According to the requirements of the Constitution, the presidential electors should assemble by states and vote all on the same day; and by the ordinance of the Continental Congress the date was the first Wednesday in February 1789, which was the 4th. Also the Constitution prescribed that the number of electors for each state be equal to the number of representatives and senators. On January 7, 1789, all of the states that had ratified the Constitution, except New York, chose their presidential electors, some popularly, others by legislative act, still others by a combination of these, and in New Jersey by the governor and council. New York was deprived of her right by the inability of the legislature to decide how the two houses of that body should proceed to the election of the electors; and New Hampshire barely succeeded in making her selection before midnight of January 7. The question whether January 7 was legally the last day on which electors could be appointed, is discussed in Chapter II. The place where the electors should assemble and vote was prescribed in each case by the act or resolution concerning them. Usually the place was at the state capital. Also provisions were made for the per diem and traveling expenses of the electors.

WASHINGTON FOR PRESIDENT

THE POLITICAL lineup, so far as one existed for electors, was much the same as that for representatives; where there were tickets, they were Federalist and Antifederalist, but without hard and fast distinction, as some on the Antifederalist tickets were known to have favored ratification, and it was well understood that for the election of the President at least politics stood adjourned. There was only one candidate, one demanded unanimously throughout the country

except by one man—the reluctant candidate himself. The desire for George Washington as civil head of the nation went back to the days when he was the military head and when he so sternly suppressed a movement to make him king. His attendance at the Convention of 1787 that drafted the Constitution was recognized as a political necessity not only in Virginia but throughout the land by the advocates of the convention; and his choice as president of the convention followed as a matter of course. Otto, the French chargé, wrote home on June 10, 1787: "The general convention has begun its meetings, after unanimously electing General Washingon as President. This appointment will certainly give additional prestige to all which may emanate from that important and respectable assemblage. It is to be hoped that the resolutions will bear the seal of the wisdom, moderation, and foresight which form the chief traits in the general's character." [1]

Though the fact was politely suppressed in the debates of the convention, it was generally recognized that the expectation of his leadership was potent in the organization given the executive in the development of the Constitution; and reliance was placed on this expectancy as an equally potent argument for ratification by the state conventions. Pierce Butler, a member of the Convention, wrote to a relative in England on May 5, 1788: "The President of the United States is the Supreme Executive Officer. . . . I am free to acknowledge that His Powers are full great, and greater than I was disposed to make them. Nor, Entre Nous, do I believe they would have been so great had not many of the members cast their eyes towards General Washington as President; and shaped their Ideas of the Powers to be given to a President, by their opinions of his Virtue." [2] Even before the plan of the Constitution was known outside, Benjamin Rush wrote Timothy Pickering from Philadelphia, August 30, 1787, that "General Washington it is said will be placed at the head of the new Government"; [3] while on October 11, 1787, less than a month after the Convention adjourned, an unidentified correspondent informed Jefferson that "General Washington lives; & as he will be appointed President, jealousy on this head vanishes." [4]

HIS RELUCTANCE

FOLLOWING the accomplishment of ratification, the evidences of the public wish and expectation in newspapers and correspondence became marked. It was on July 4, 1788, that the celebration turned for the first time upon the hopes for the prosperity of the new government, and the civil trend of the toasts to Washington is noticeable.

The Cincinnati at Wilmington proposed "farmer Washington. May he like a second Cincinnatus be called from the plough to rule a great people." At Havre de Grace the toast was to "The man of the people. George Washington, Esq." At Frederick, Maryland, they added this wish: "May the Saviour of America gratify the ardent wishes of his countrymen, by accepting that post which the voice of mankind has assigned him." A new federal song at the York, Pennsylvania, celebration had as refrain:

> Great Washington shall rule our land,
> While Franklin's council aids his hand.[5]

Long before this, though, Washington felt called upon to notice the movement, as when, in writing to Thomas Johnson on April 30, 1788, about the convention to meet in that state, he said: "I have but one public wish remaining. It is, that in *peace* and *retirement*, I may see this Country rescued from the danger which is pending, and rise into respectability maugre the Intrigues of its public and private enemies."[6] The italics are his. Five days later, writing to General John Armstrong, he told why he had thought it incumbent upon himself to attend the Convention of 1787, adding: "Altho' you say the same motives induce you to think that another tour of duty of this kind will fall to my lot, I cannot but hope that you will be disappointed, for I am so wedded to a state of retirement and find the occupations of a rural life so congenial; with my feelings, that to be drawn into public at my advanced age [he was 56!], would be a sacrifice that would admit of no compensation."[7] This same letter, however, discloses his thoughts respecting the obligations of the presidency, and anyone familiar with Washington's career can readily read into this the thought, even then, of his own possible call to duty:

> Your remarks on the impressions which will be made on the manners and sentiments of the people by the example of those who are first called to act under the proposed Government are very just; and I have no doubt but (if the proposed Constitution obtains) those persons who are chosen to administer it will have wisdom enough to discern the influence which their example as rulers and legislators may have on the body of the people, and will have virtue enough to pursue that line of conduct which will most conduce to the happiness of their Country; as the first transactions of a nation, like those of an individual upon his first entrance into life, make the deepest impression, and are to form the leading traits of its character, they will undoubtedly pursue those measures which will best tend to the restoration of public and private faith and of consequence promote our national respectability and individual welfare.[8]

Before the month was out he voiced similar reluctance to Rochambeau

and Lafayette, pretending, in his statement to the latter, that it might well be a case of the fox and the sour grapes.

With the ensuing months the sentiment took a more positive form. A letter from Augusta, Georgia, of October 6, 1788, reminds: "Let it ever be remembered that a Washington is to guide the helm";[9] and when the appointment of senators was beginning and it was noticed that five of the six from Connecticut, Delaware, and Pennsylvania were signers of the Constitution, a writer added: "To crown the whole, the universal voice of America is prepared to call to the chair of President of the United States, the venerated President of the Fœderal Convention."[10] When the Maryland campaign for representatives was progressing, the Baltimore Federalist committee on December 29 pointed out: "There is another reason of no small weight for wishing the Federalist Ticket to succeed. It is hoped by every true Federalist, that GEORGE WASHINGTON will be called to fill the high and important office of President of the United States: But to induce him to accept of that trust, there ought to be a certain prospect of his meeting men in both houses of Congress, in whom he can place confidence, from their well known character and attachment to the New Constitution."[11]

CALL TO DUTY

WASHINGTON read the newspapers, at least when he could find the time to do so; but even if he had been able to shut his eyes to the obvious sentiment they expressed, he could not fail to read the prophecy of his own personal letters. Not only did his foreign correspondence begin early to rejoice for his country because of the probability of his presidency, but many of his American friends besides Johnson and Armstrong, such as Hamilton, Henry Lee, Lincoln, Gouverneur Morris, Madison, Thomas Johnson, Jonathan Trumbull, William Gordon, received replies deprecating their sentiments and trusting that they were bad forecasters.

Hamilton wrote on August 13, 1788: "I take it for granted, Sir, you have concluded to comply with what will no doubt be the general call of your country in relation to the new government. You will permit me to say that it is indispensable you should lend yourself to its first operations. It is to little purpose to have *introduced* a system, if the weightiest influence is not given to its firm *establishment*, in the outset."[12] Again in September:

> I have however reflected maturely on the subject and have come to a conclusion, (in which I feel no hesitation) that every public and personal consideration will demand from you an acquiescence in what will *certainly* be the

unanimous wish of your country. . . . It cannot be considered as a compliment to say that on your acceptance of the office of President the success of the new government in its commencement may materially depend. Your agency and influence will be not less important in preserving it from the future attacks of its enemies than they have been in recommending it in the first instance to the adoption of the people. . . . Your signature to the proposed system pledges your judgment for its being such an one as upon the whole was worthy of the public approbation. If it should miscarry (as men commonly decide from success or the want of it) the blame will in all probability be laid on the system itself. And the framers of it will have to encounter the disrepute of having brought about a revolution in government, without substituting any thing that was worthy of the effort. They pulled down one Utopia, it will be said, to build up another. This view of the subject, if I mistake not my dear Sir will suggest to your mind greater hazard to that fame, which must be and ought to be dear to you, in refusing your future aid to the system than in affording it. I will only add that in my estimate of the matter that aid is indispensable.[13]

Henry Lee wrote on September 13:

. . . our peace & prosperity depends on the proper improvement of the present period, my anxiety is extreme, that the new govt. may have an auspicious beginning. To effect this & to perpetuate a nation formed under your auspices, it is certain that again you will be called forth. . . . Without you the govt. can have but little chance of success, & the people of that happiness which its prosperity must yield. In this dilemna, it seems wise that such previous measures be in time adopted, which most promise to allay the fury of opposition, to defer amendments, till experience has shewn defects, & to ensure the appointments of able & honest men in the first Congress.[14]

And Lincoln on September 24: "I have no doubt, but every exertion will be made to introduce into the new government, in the first instance characters unfriendly to those parts of it, which in my opinion are the highest orniments and its most precious jewels. . . . They will endeavour, as one of the most probable means by which they can effect their purposes, to prevent your Excellencys acceptance of the Presidency, your election they cannot hinder." [15] And Gouverneur Morris on December 6: "I have ever thought, and said that you *must* be the President. No other Man can *fill* that Office. No other Man can draw forth the Abilities of our Country into the various Departments of civil life. You alone can awe the Insolence of opposing Factions, & the greater Insolence of assuming Adherents." [16]

PROGRESS TOWARD OBEDIENCE

TO ALL of his friends Washington made practically the same reply, for instance, to Hamilton on August 28, 1788:

On the delicate subject with which you conclude your letter, I can say nothing; because the event alluded to may never happen; and because, in case

it should occur, it would be a point of prudence to defer forming one s ultimate and irrevocable decision, so long as new data might be afforded for one to act with the greater wisdom and propriety. I would not wish to conceal my prevailing sentiment from you. For you know me well enough, my good Sir, to be persuaded, that I am not guilty of affectation, when I tell you, that it is my great and sole desire to live and die, in peace and retirement on my own farm.[17]

And to Henry Lee on September 22:

The principal topic of your letter is, to me, a point of great delicacy indeed; insomuch that I can scarcely, without some impropriety touch upon it. In the first place, the event to which you allude may never happen; among other reasons because, if the partiality of my fellow citizens conceive it to be a means by which the sinews of the new government would be strengthened, it will of consequence be obnoxious to those who are in opposition to it, many of whom, unquestionably will be placed among the Electors.

This consideration alone would supersede the expediency of announcing any definite and irrevocable resolution. You are among the small number of those who know my invincible attachment to domestic life, and that my sincerest wish is to continue in the enjoyment of it, solely, until my final hour. But the world would be neither so well instructed, nor so candidly disposed as to believe me uninfluenced by sinister motives, in case any circumstance should render a deviation from the line of conduct I had prescribed to myself indispensable.

Should the contingency you suggest take place, and (for argument sake alone let me say it) should my unfeigned reluctance to accept the office be overcome by a deference for the reasons and opinions of my friends; might I not, after the Declarations I have made (and Heaven knows they were made in the sincerity of my heart) in the judgment of the impartial World and of Posterity, be chargeable with levity and inconsistency; if not with rashness and ambition? Nay farther would there not even be some apparent foundation for the two former charges? Now justice to myself and tranquillity of conscience require that I should act a part, if not above imputation, at least capable of vindication. Nor will you conceive me to be too solicitous for reputation. Though I prize, as I ought, the good opinion of my fellow citizens; yet, if I know myself, I would not seek or retain popularity at the expense of one social duty or moral virtue.

While doing what my conscience informed me was right, as it respected my God, my Country and myself, I could despise all the party clamor and unjust censure, which must be expected from some, whose personal enmity might be occasioned by their hostility to the government. I am conscious, that I fear alone to give any real occasion for obloquy, and that I do not dread to meet with unmerited reproach. And certain I am, whensoever I shall be convinced the good of my country requires my reputation to be put in risque; regard for my own fame will not come in competition with an object of so much magnitude. If I declined the task, it would lie upon quite another principle. Notwithstanding my advanced season of life, my encreasing fondness for agricultural amusements and my growing love of retirement augment and confirm my decided predilection for the character of a private citizen: yet it would be no

one of these motives, nor the hazard to which my former reputation might be exposed, or the terror of encountering new fatigues and troubles that would deter me from an acceptance; but a belief that some other person, who had less pretence and less inclination to be excused, could execute all the duties full as satisfactorily as myself.[18]

It is to be noticed in his disclaimer, however, that more and more he is prone to acknowledge that he would have to make a decision; and even as early as November 19, 1788, Lee wrote Madison: "He will come forward if the public happiness demands it";[19] and he must have been convinced even before the electors voted, that the public happiness or at least the public in search of happiness did demand it. He began to be pestered by office-seekers before the end of 1788. Tench Coxe wrote Madison on January 27, 1789: "The election of the President seems likely to be unanimous. It is perhaps the greatest personal point that will ever occur in this Country." [20] Certainly nothing has happened in 150 years to prove Coxe in error. Jefferson, from far Paris, speaking with an intimate knowledge of the man's career and character, and from the information sent by his various American correspondents, had no doubt of the wisdom of the choice; though, when he wrote on March 13, 1789, to Francis Hopkinson, he could not have known of the actual electoral vote, even though that was no secret long before April 6:

With respect to the re-eligibility of the president . . . since the thing is established, I would wish it not to be altered during the life of our great leader, whose executive talents are superior to those I believe of any man in the world, and who alone by the authority of his name and the confidence reposed in his perfect integrity, is fully qualified to put the new government so under way as to secure it against the efforts of opposition. But having derived from our error all the good there was in it I hope we shall correct it the moment we can no longer have the same person at the helm.[21]

VICE PRESIDENTIAL POSSIBILITIES

Since Washington was a Virginian, the natural conclusion would be that his associate on the Federalist ticket should be a northerner; also, as the counterpart of Virginia in the North was Massachusetts, choice from that state seemed determined. There was, however, no outstanding and entirely unobjectionable character either there or elsewhere. Many persons of importance within their states did not rise to interstate eminence. Franklin was too old, and besides it would not be fitting to put him in a secondary place. Jay and Hamilton of New York were of sufficient prominence, but Hamilton was under the required age for president, and could not therefore

be on a joint ballot where both were voted for that office, even though the vice presidency was intended. At that time no special qualification for the vice presidency was mentioned in the Constitution, because of this voting for two for one office; when the segregation was made by Amendment XII, qualifications were added. Jay seems not to have been seriously considered for the office. Within Massachusetts mention was made of John Adams, John Hancock, Samuel Adams, and Henry Knox, also, though infrequently, James Bowdoin; but it narrowed down soon to the two Johns, of whom the superiority of Adams' ability was unquestioned by anyone familiar with the career of both. Though Washington had a good opinion of Knox's ability, it was mainly in connection with military affairs. Samuel Adams, like Patrick Henry, was an old warrior for democratic rights, but, like Henry, his political power was destructive rather than constructive. There was, however, some idea that John Admas would or should head the Supreme Court. From New York in July 1788 it was reported: "The concurring voice of the country has placed our illustrious commander in chief in the Presidential chair; and a very respectable majority of influential characters are determined to support the pretensions of governor Hancock, as president of the Senate." [22] And at the same time a similar sentiment was expressed in Philadelphia because of the probable judicial position for Adams.

We find this idea also in the correspondence of the time, though not always with the association of Hancock as the alternative. Jonathan Trumbull wrote Washington on October 28, 1788: "I wish the States were like to be as happily unanimous in their Vice President—for myself—since our minds seem so much to be turned towards Massachusetts for filling that Office—& since Mr. Adams is so much talked of as One, if not the first, of the supreme federal Court—I could wish to hear the Name of Mr. Bowdoin more generally mentioned. . . . It would afford me much satisfaction to reflect on the Aid & support which you, my Dear Sir, would receive from the Wisdom, Prudence & Discretion of such a Character, in the arduous situation to which you will—you *must* be, advanced." [23] The complimentary close of this letter is of interest as an example of the courtesy of the day, the mere formality and irksomeness of which, however, was sufficiently realized to cause many, including Washington, to give it briefer recognition. Trumbull, in this letter to his late commander, for he had been Washington's military secretary, gave full length and breadth to his sentiment. He wrote: "With sentiments of the highest Esteem respect & regard—I have the honor

to be My Dear General Your very affectionate—obliged and faithfull Friend—& humble Servant."

Lincoln was lieutenant governor of Massachusetts at this time, and Governor Hancock's attitude toward him was not friendly. Lincoln wrote Sedgwick on August 6, 1788: "Governour Hancock is seriously thought of. I very much suspect that he would not accept the office if chosen. I think that he should be called on by some of his intimate friends, *in the most secret way* to know whether he would accept if he was appointed, other wise the whole may be injured. This Common wealth would certainly suffer should he decline. This matter should be immediately attended to. I do not know however whether he could be brought to be explicit." [24] There is no mention of Adams in this letter; but by the end of the month Gore was able to write Sedgwick: "I believe it is clearly ascertain'd that Mr. John Adams would be gratified by being chosen V. President"; and "the sober part of the community" at Portsmouth, N. H., were desirous that this should take place, although Hancock had lately been given a flattering reception there. It was understood that Hancock contemplated a visit to Connecticut also.[25] Lincoln also, when he wrote Washington the letter of September 24, already mentioned, indicated a more evident public trend:

> It seems to be the general voice. . . . that Massachusetts may expect the vice President will be taken from this State. . . . It is said that the Governour [Hancock] has publicly declared that he would not accept it should he be appointed to the office. I think he will not be too open in divulging this sentiment, though I am of opinion that in some unguarded moment it might have escaped him for he is I am confident flattered by his friends, that from the nature of making the choice he may possibly be the president. This in the idea of some is above all things to be deprecated, however we need not be anxious it cannot take place, for there certainly will be a division of the votes between Mr. Hancock & Mr. Adams the latter in my opinion will be the man . . . I am prompted to wish that Mr. Adams might come in from the double motive, that from his knowledge and rectitude he will be able to render the most essential services to the United States and that with him your Excellency will be perfectly happy. . . . I am, from a free conversation with him, as well as from his general character perfectly convinced that there is not a man in this part of the confederacy, if one can be found throughout the whole of it, who would render your Excellency['s] situation at the head of the government more agreeable or who would make it more his study that your Administration should be honorable to yourself and permanently interesting to the people.[26]

These are statements from New England. Madison, writing to Jefferson in cipher on October 17, 1788, gives an outside opinion, in this case of one who had not had direct contact with either, since his service in the Continental Congress was later than theirs, but who

must have had many secondary means of acquiring information:

> The vice president is not at all marked out by the general voice. . . . Both [Hancock and Adams] . . . are objectionable & would I think be postponed by the general suffrage to several others if they would accept the place. Hancock is weak, ambitious, a courtier of popularity, given to low intrigue and lately reunited by a factious friendship with S. Adams. J. Adams has made himself obnoxious to many particularly in the Southern states by the political principles avowed in his book. Others recollecting his cabal during the war against general Washington, knowing his extravagant self-importance and considering his preference of an unprofitable diginity to some place of emolument better adapted to private fortune as a proof of his having an eye to the presidency, conclude that he would not be a very cordial second to the General and that an impatient ambition might even intrigue for a premature advancement. The danger would be the greater if particular factious characters, as may be the case, should get into the public councils. Adams it appears is not unaware of some of the obstacles to his wish and through a letter to Smith has thrown out popular sentiments as to the proposed president.[27]

This letter by Adams to Smith has not been identified, his son-in-law, William Stephens Smith, probably being the man meant. More suavely Madison wrote Washington on November 5:

> The public conversation seems to be not yet settled on the Vice President. Mr. Hancock & Mr. Adams have been most talked of. The former *it is said* rejects the idea of any secondary Station; and the latter does not unite the suffrages of his own State, and is unpopular in many other places. As other Candidates however are not likely to present themselves, and New England will be considered as having strong pretensions, it seems not improbable that the question will lie between the Gentlemen above named. Mr. Jay & Genl. Knox have been mentioned: but it is supposed that neither of them will exchange their present situation [Knox was secretary at war and Jay secretary for foreign affairs] for an unprofitable dignity.[28]

Writing to Randolph, Madison said on October 28 that Hancock's rejection took the form of saying that "he has declared to his lady, *it is said*, that she had once been the first in America, & he wd. never make her the second.[29] Further south, David Ramsay answered on November 26, 1788, from Charleston the query of John Eliot: "You ask who will be Vice President? I think John Adams deserves any place he chuses after that of the President . . . Hancock will not (if I may be allowed to predict) have the votes of the Carolina electors." [30]

HANCOCK'S SUPPOSED INTRIGUE

HANCOCK'S opponents in Massachusetts evidently had no idea that his real attitude was such as that expressed by Madison. On September 9, 1788, a letter was sent from Biddeford (in present Maine)

by Jeremiah Hill to George Thacher, then attending the Continental Congress:

However I will give you an extract from the *Teltale* "Yesterday set out from his Seat in B[osto]n B[enjami]n H[ichbor]n Esqr. Solicitor extraordinary for his E[xcellenc]y J[ohn] H[ancock] Esqr. to the S[outhern] [State]s to negotiate for a Lieutenancy on board the new Ship *federal Constitution* now on the Stocks, it is said the Commission is a Secret and all things must be conducted under the Rose" . . . I wish you to tell me who they have in view at the Southward, wont Mr. Adams stand a fair Candidate. You know his political Reasoning has prejudiced me in his favor . . . the old feds of '86 are calculating for the dons of that day to take the helm of affairs, when the new Constitution is put in Motion, and the Antis are for those who can shift sides *upon occasion*.[31]

What is meant by Hill's last sentence is shown in the contemporary "Laco Letters":

The *popular demagogues*, and those who were very much embarrassed in their affairs, united to oppose it [ratification of the Constitution] with all their might; . . . The former of those descriptions were conscious, that a stable and efficient government, would deprive them of all their future importance, or support from the publick; and the latter of them knew, that nothing but weakness and convulsions in government could screen them from payment of their debts. How far Mr. H. was influenced by either, or both of those motives, it is not easy to determine; but no one, who recollects his general habits, who knows his situation and views, and was acquainted with the open conversation and conduct of his cabinet counsellors, can have a doubt of his being opposed to it. We all know, that Mr. Quondam and Mr. Changeling, as well as the once venerable old patriot [Samuel Adams], who by a notable detection [defection] has lately thrown himself into the arms of Mr. H. in violation of every principle; and for the paltry privilege of sharing in his smiles, has at the eve of life, cast an indelible stain over his former reputation—it is well known, I say, that these men do not dare to speak in publick, a language opposite to that of their patron; and it is equally notorious, that they were open in their opposition to the Constitution. . . . The good sense of the *Mechanicks of Boston*, had produced some manly and spirited resolutions, which effectually checked Mr. H. and his followers in their opposition to the Constitution; . . . Mr. H. accordingly intimated . . . that he would appear in its favour, if they would make it worth his while . . . nothing more would be required on the part of Mr. H. than a promise to support him in the chair [governorship] at the next election. This promise, though a bitter pill, was agreed to be given; for such was the state of things, that they were much afraid to decide upon the question, whilst he was opposed to it. The famous conciliatory proposition of Mr. H. as it was called, was then prepared by the advocates, and adopted by him, but the truth is he never was consulted about it, nor knew its contents, before it was handed to him to bring forward in Convention . . . he called it his own, and said it was the result of his own reflections on the subject, in the short intervals of ease, he had enjoyed, during a most painful disorder. . . . an attempt to deceive both parties, . . . When the constitution was adopted . . . a new scene opened, to fire Mr. H's ambition. It was thought by the Cabinet, from the manner of

electing the Presidents, that Mr. H. might, by a general vote in his favour, under the idea of his being second, possibly become the first president in the Union. . . . if they could have succeeded, the whole junto would soon have been in office. To promote these views a trusty hand was sent off to the Southern States, to solicite votes in his favour [according to Hill this was Hichborn, but James Sullivan is also named], . . . this same agent, as he himself said before he sat off, attempted to draw from Dr. Adams, a relinquishment of any pretensions to the chair of Vice President, under the idea of his being placed at the head of the Judiciary. . . . treated with proper contempt. Nor were they more successful in the other States . . . we cannot but wonder at the presumption and folly of that motly cabinet, in entertaining the idea, that Mr. H. could among men of sense, have any chance in competition with so great a character as Dr. Adams.[32]

Christopher Gore wrote Rufus King on March 27, 1789: "I am perfectly in opinion with you that the disclosure of anything relative to Mr. H's conduct during the covention is unjust, ungenerous, & highly impolitick. I know not the author of those writings signed Saco [sic]—though I believe they flow from a source the streams of which will ever be fetid and corrupt."[33] This was rather a poor guess by Gore, for Stephen Higginson, who wrote the Letters, was a political, and also a social, friend of both Gore and King. Henry Jackson wrote Knox to the same effect on March 7: ". . . the abuse of him [Hancock] in the Papers is infamous & very injurious to government—the author of Laco is not yet known—many are suspected, but I doubt whether it is either of them."[34]

ADAMS' CANDIDACY

SINCE between them later Adams and Hamilton dug the grave of their Federalist party, the opinion of the latter respecting Adams' candidacy is of special importance. Hamilton wrote Theodore Sedgwick of Massachusetts on October 9, 1788: "The only hesitation in my mind with regard to Mr. Adams has arisen within a day or two; from a suggestion by a particular Gentleman that he is unfriendly in his sentiments to General Washington. Richard H. Lee, who will probably, as rumour now runs, come from Virginia, is also in this stile. The Lees and Adams' have been in the habit of uniting; and hence may spring up a Cabal very embarrassing to the Executive and of course to the administration of the Government. Consider this—sound the reality of it and let me hear from you."[35] Sedgwick replied from Stockbridge on October 16: "Mr. Adams was formerly infinitely more democratical than at present, and possessing that jealousy which always accompanies such a character, he was averse to repose such unlimited confidence in the commander in chief as was

then the disposition of congress." [36] He added on November 2 from Boston: "Mr. Hancock has been very explicit in patronising the doctrine of amendment. The other gentleman [Adams] is for postponing the conduct of that business untill it shall be understood from experience." [37]

Hamilton then informed him on November 8: "I have upon the whole concluded that the latter ought to be supported. My measures will be taken accordingly." [38] It is interesting to note how here and elsewhere in Hamilton's correspondence there is evidence of his self-appointed leadership. He also wrote Madison on November 23, 1788, to the same effect as above, saying that he intended to support Adams, though "not without apprehensions." He had reached this conclusion because Adams was a firm supporter of postponing amendments to experience, he was a character of importance in New England and if not Vice President must have some other office "for which he is less proper, or will become a malcontent." [39] Under date of May 28, 1789, Senator Maclay wrote in his diary: "I began now to think of what Mr. Morris had told me, that it was necessary to make Mr. Adams Vice-President to keep him quiet." [40]

William Duer wrote Madison from New York in November 1788 to the same effect: "I have ascertained it in a mode perfectly satisfactory that [Adams] . . . if chosen, will be a Strenuous Opposer, against calling a Convention; . . . that he and his old Coadjutor R. H. Lee, will be perfectly opposite in all measures, relative to the Establishment of the Character and Credit of the Government—I am therefore anxious, that the Foederalists to the Southward may join in supporting his Nomination as Vice President. A Greater Knowledge of the World has cured him of his old Party Prejudices." [41]

WASHINGTON AND ADAMS

THE QUESTION of Adams' attitude toward Washington naturally raised the question of the latter's opinion of Adams as his running mate. The General refused, however, to be drawn out. He replied to Lincoln's letter of September 24 on October 26:

> So much have I been otherwise occupied, and so little agency did I wish to have in electioneering, that I have never entered into a single discussion with any person nor to the best of my recollection expressed a single sentiment orally or in writing respecting the appointment of a Vice President. From the extent and respectability of Massachusetts it might reasonably be expected, that he would be chosen from that State. But having taken it for granted, that the person selected for that important place would be a true Fœderalist; in that case, I was altogether disposed to acquiesce in the prevailing sentiments of the Electors,

without giving any unbecoming preference or incurring any unnecessary ill-will. Since it here seems proper to touch a little more fully upon that point, I will frankly give you my manner of thinking, and what, under certain circumstances, would be my manner of acting.

For this purpose I must speak again hypothetically for argument's sake, and say, supposing I should be appointed to the Administration and supposing I should accept it, I most solemnly declare, that whosoever shall be found to enjoy the confidence of the States so far as to be elected Vice President, cannot be disagreeable to me in that office. And even if I had any predilection, I flatter myself, I possess patriotism enough to sacrifice it at the shrine of my Country; where, it will be unavoidably necessary for me to have made infinitely greater sacrifices, before I can find myself in the supposed predicament: that is to say, before I can be connected with others, in my possible political relation. In truth, I believe that I have no prejudices on the subject, and that it would not be in the power of any evil-minded persons, who wished to disturb the harmony of those concerned in the government, to infuse them into my mind. For, to continue the same hypothesis one step farther, supposing myself to be connected in office with any gentleman of character, I would most certainly treat him with perfect sincerity and the greatest candour in every respect. I would give him my full confidence, and use my utmost endeavours to co-operate with him, in promoting and rendering permanent the national prosperity; this should be my great, my only aim, under the fixed and irrevocable resolution of leaving to other hands the helm of the State, as soon as my services could possibly with propriety be dispensed with.[42]

Later, however, when the trend towards Adams was more evident, Washington was also more direct. He wrote Knox on January 1, 1789: "From different channels of information, it seemed probable to me (even before the receipt of your letter) that Mr. John Adams would be chosen Vice President. He will doubtless make a very good one: and let whoever may occupy the first seat, I shall be entirely satisfied with that arrangement for filling the second office." [43] Also to Lincoln on January 31: "I will only add, that, in Maryland and this State, it is probable Mr. John Adams will have a considerable number of the votes of the Electors. Some of those gentlemen will have been advised that this measure would be entirely agreeable to me, and that I considered it to be the only certain way to prevent the election of an Antifederalist." [44] And finally to Knox on March 2: "To hear that the Votes have run in favor of Mr. Adams gives me pleasure." [45]

ADAMS' ATTITUDE

ADAMS' own attitude toward the candidacy is not a matter of much record. He wrote to his wife on December 2, 1788: "My mind has balanced all circumstances, and all are reducible to two articles—vanity and comfort. I have the alternative in my power. If they

mortify my vanity, they give me comfort. They cannot deprive me of comfort without gratifying my vanity." [46] Also he wrote Mercy Warren on March 2, 1789, after the election was evident: "This delightful Retreat [his home in Braintree], humble as it is, I shall quit with great regret. The Period from the 17. June, 1788, to this 2d of March, 1789, has been the Sweetest Morsel of my Life and I despair of ever tasting such another. There never was and never will be found for me, an office in public Life that will furnish the Entertainment and Refreshment of the Mountain the Meadow and the Stream." [47] Washington had been in his loved retirement for most of the preceding five years, while Adams had not found repose until more than four years later. There seems to be no reason to doubt his candor here, any more than the candor of Washington. The members of the Adams family throughout the five generations during which they have been national characters, have never had their integrity doubted, been prone to sidestep facts or issues, or dealt otherwise than in the truths as they saw them. They hit hard, even at themselves.

EXPECTED STATUS OF THE VICE PRESIDENT

A DIGRESSION may be allowed here. It will have been noticed in various of the quotations above that a divergence existed in respect to the probable position of the holder of the vice presidency. To Trumbull and Lincoln he was to be at the President's right hand, chief adviser and renderer of "most essential services." Jeremy Belknap carried out this idea in his letter to Postmaster General Hazard on April 20, 1789: "I think it must be a great advantage to General Washington to have a man of so much political knowledge as Mr. Adams constantly at his elbow. An union and mutual confidence between two such truly great characters must augur well to the United States." [48] To Madison, however, the office was an "unprofitable dignity." Washington was chiefly concerned, according to his letter to Lincoln, to have someone there to whom he could turn over the presidency as soon as possible. Adams' own idea of the position, whether he thought of it as legislative or executive, is not made clear by his letter to Jefferson on March 1, 1789; for his interest in the amendments was a legislative matter, but his desire for complete separation of the powers traverses this. He informed Jefferson that he was to be Vice President: "Amendments to the Constitution will be expected and no doubt discussed. Will you be so good as to look over the Code and write me your Sentiments of Amendments which you think necessary or usefull? That greatest and most necessary of all amendments the Seperation of

the Executive Power, from the Legislative Seems to be better understood than it once was, without this our Government is in danger of being a continual Struggle between a Junto of Grandees, for the first Chair."[49] Maclay presents him as being ludicrously uncertain about his position: "I am possessed of two powers; the one in *esse* and the other in *posse*. I am Vice-President. In this I am nothing, but I may be everything. But I am president also of the Senate. When the President comes into the Senate, what shall I be? I can not be [president] then. No, gentlemen, I can not, I can not. I wish gentlemen to think what I shall be."[50] A solution of his dilemma was found, however, in the later regulations, which prescribed that he should abandon his chair to the President, but from a seat on the floor should continue to be the presiding officer (*see* p. 399). Neither the Washington papers nor the available Adams ones indicate that Washington considered Adams a member of his administration or a regular adviser; though there were instances of his counsel being sought, if he was at the capital, especially during the early period on foreign relations (*see* p. 424).

THE DUAL VOTE AND ADAMS

HAMILTON saw danger in too great an agreement on Adams. He wrote Madison on November 23, 1788: "If it should be thought expedient to endeavour to unite in a particular character, there is a danger of a different kind to which we must not be inattentive—the possibility of rendering it doubtful who is appointed President. . . . it would be disagreeable even to have a man treading close upon the heels of the person we wish as President. May not the malignity of the Opposition be in some instances exerted even against him? Of all this we shall best judge when we know who are our electors: and we must in our different circles take our measures accordingly."[51] Hamilton took his measures very effectually, as it turned out; raised a fear before the election and indeed prevented Adams from receiving even a majority of the votes, and, according to his own statement, which finds support in the opinion of later members of the Adams family, incurred Adams' own antagonism thereby.

Edward Carrington of Virginia wrote Jeremiah Wadsworth of Connecticut on January 16, 1789:

> A push is making by the Antifederalists in Virginia, which may require some attention of the Federalists of your quarter. Mr. Henry, the leader of the Anti's here, has recommended to his party the Election of Clinton for Vice President, and I am confident from the accounts received of the choice of Electors in the several districts, a very great majority are chosen agreeably

to his plan [Carrington was mistaken in this]. It is not to be doubted that communications of this plan, have been made to all the States where there could be a prospect of drawing any into it, and it may well be expected that some in South Carolina & Georgia, and nearly all in New York will concur; from Pennsylvania also some may be expected; there is a remarkable industry here for the attainment of this object which leaves it clear that the suggested communications must have been made. . . . if the Federal votes be much divided, no person voted for will equal the number for Clinton . . . that precautions may be taken for concentering the federal votes. I am sorry that I have not been able to learn with tolerable certainty on whom the Eastern views will most generally turn in order that the federal vote here might take the same turn.[52]

He mentions Hancock and Knox as rumored around New York City; he does not mention Adams. Hamilton did not share in Carrington's fear, however, and so informed Madison. Carrington had on December 20, 1788, written Knox the same warning he later gave Wadsworth, adding: " . . . it has been brought into Contemplation with some I know, & with them I have joined my own wishes, that this appointment should turn upon yourself. So, in Confidence tell me whether there is likely to be such a concurrence to the Eastward as to give you a prospect of the Election, or on what footing this business is likely to be placed in that quarter." [53]

Jonathan Trumbull wrote Adams after the election:

In the choice of V. P. you had certainly no rival. All that could be done by your enemies was to deprive you of a number of votes. Many of your friends were duped on that occasion. I will inform you how it was managed in Connecticut. On the day before the election Colonel [S. B.] Webb came on express to Hartford, sent, as he said, by Colonel Hamilton, &c. who, he assured us, had made an exact calculation on the subject, and found that New Jersey was to throw away three votes, I think, and Connecticut two, and all would be well. I exclaimed against the measure, and insisted that it was all a deception: but what could my single opinion avail against an express, armed with intelligence and calculations? [54]

Jeremiah Wadsworth wrote to Hamilton: "Our Votes were given agreeably to your wishes . . . " [55] It is to be noted here that even in that early day the electors were not looked upon as entirely free agents. Hamilton, Madison, Carrington, Sedgwick, Trumbull, Wadsworth, none of them was an elector; all were, however, political leaders in their states and their judgment evidently was potent upon the minds of the actual vote-casters. Wadsworth's "our votes" meant that the vote of the state was settled before the presidential electors assembled. Adams' son or grandson wrote many years later: "What he [John Adams] did complain of, and very reasonably too, was, the secret effort made to reduce the votes for him everywhere,

to such a degree as to leave him the representative of a minority." [56]

When the split in the Federalist party came in 1800, Hamilton explained: "Great was my astonishment and equally great my regret, when, afterwards, I learned from persons of unquestionable veracity that Mr. Adams had complained of unfair treatment in not having been permitted to take an equal chance with General Washington, by leaving the votes to an uninfluenced current." [57] There is little doubt that Adams did consider himself as Washington's intellectual equal or superior, and by study, training, and experience better fitted for the duties of President, and it is equally probable that Washington agreed with him; but there is no reason to believe that Adams expected the presidency, and the effort to prevent his election or tie with the General was more thorough than was at all necessary, though it is recognized that the conditions under which the election were held rendered it difficult, if not impossible, to stop the defection at any particular point.

ELECTORAL VOTE

THE PRESIDENTIAL electors assembled in accordance with the ordinance of the Continental Congress on February 4, 1789, at the place in each state specified in the act of the respective legislatures on the subject. As North Carolina and Rhode Island were not yet in the new Union, and, as explained above, New York had lost its vote, there were only 73 electors. Of these, two in Maryland and two in Virginia failed to appear, so that the total vote was 69. Washington received every vote; Adams had 34, one less than a majority of those who voted. New Hampshire gave him five, Massachusetts ten, Connecticut five, New Jersey one, Pennsylvania eight, and Virginia five, New Hampshire and Massachusetts alone being unanimous. John Jay had three votes in Delaware and five in New Jersey, undoubtedly in accordance with a previous understanding. Hancock had two in Pennsylvania. All the six attending electors of Maryland gave their second vote to Robert Hanson Harrison of that state. The other five votes in Virginia went three to Clinton, one to Hancock, and one to Jay; while all the South Carolina and Georgia votes went to various local men, except one to Hancock and one to Lincoln. In Georgia one of the electors received two votes. The three votes for Clinton are all that can be called really Antifederalist, one of them being undoubtedly Henry's vote. At least sixteen, and probably twenty-seven, scattered votes would without the Hamiltonian manipulation have been given to Adams.

Some newspaper accounts survive of the meetings of the electors.

A letter from Reading, Pennsylvania, of February 5, said: "Yesterday the Electors for Pennsylvania met at this place. . . . Having proceeded to the Court-house, . . . they balloted. The business of the day being over they returned to Witman's, the Federal Inn, of the borough; and dined with a number of gentlemen who were of their suite. A few other gentlemen of the place supped with the electors, and concluded the evening with great hilarity, circulating the glass in honor of the Constitution, General Washington and Doctor Adams. I believe there can be no doubt that the former will be the President and the latter Vice President, which God in his infinite mercy grant."[58] A Boston account dated February 4 declared that the electors met and balloted unanimously for Washington and Adams, "without a single debate on the subject."[59] This meeting was at 10 o'clock in the Senate Chamber of the State House at Boston. The account from Annapolis closed with "We shall be excused for closing this account with a wish that the people of America may have many other such opportunities of reassuring this great man of their love and attachment."[60] From Augusta, Georgia, came the statement that after the balloting the electors "politely acknowledged" that the vote had been unanimous for Washington.[61]

The early papers of the United States Senate, now in the National Archives, contain the votes as forwarded to New York and opened by the president pro tem on April 6, 1789, before the joint session of Congress. In some cases the papers are in duplicate. They were probably all forwarded to Charles Thomson, secretary of the then expired Continental Congress; but only in seven cases are there letters addressed to him, and in only two is he requested to acknowledge receipt of the packet entrusted to him. There is little system in the contents of the packets. The letter from the Georgia council, dated February 8, undoubtedly intended for Thomson but not so addressed, after stating that Captain William Thomson was commissioned and would have the honor to deliver a list of the votes of the electors of that state, adds: "I can assure you, Sir, that the people of this State, are favorably impressed, and animated with hopes of tranquility, advantage, and glory, resulting from the establishment of the foederal Government." Most of the papers, however, are entirely business ones. Sometimes the letters to Thomson are signed by one or more of the electors, sometimes by a regular state official. Some of the packets include the acts or resolves for the appointment of the electors; the Pennsylvania one contains also the original returns from the counties of the state on the election of the electors themselves. There are certificates of various kinds, some on the electors, others on the

authority of the officials who in turn certify to the authority of the electors or their vote; sometimes the state seal is in evidence, sometimes not.

In each case, however, there is a statement of the vote signed by the electors; this is on parchment for New Jersey and Pennsylvania, and from New Hampshire there is nothing whatever except this signed list. The certificate of the South Carolina electors, one of the more elaborate ones, states: "We the Subscribers being duly appointed in the manner directed by the Legislature . . . Electors . . . did meet at twelve oClock on this fourth Day of February, at the Exchange of the City of Charleston . . . and being duly sworn before his Excellency the Governor, agreeably to an act . . . and having also taken the Oath of Allegiance and Abjuration . . . did vote by ballot for two Persons accordingly and on opening the said ballots, we found that . . . All which we do Certify and in Testimony thereof . . ." It is signed, with individual seals, by the seven electors, Christopher Gadsden, Henry Laurens, Edward Rutledge, Charles Cotesworth Pinckney, Thomas Heyward, Jr., John Faucheraud Grimké, and Arthur Simpkins, showing that in this state, as in Connecticut, the legislators saw fit to honor important men with the duty. Although all the voting was done on the proper day, the certificate of the Maryland electors is dated the next day. There was evidently considerable delay in forwarding the packets in some cases. The letter to Thomson from the Delaware electors is dated February 28, as is the letter of the secretary of the Pennsylvania Supreme Council, and one of the certificates from Delaware is signed and sealed as of March 6.

As stated above, the Georgia packet was taken to Thompson by messenger, as was also the Virginia one. The archives of the latter state contain a receipt dated February 5 by John Beckley, who was clerk of the House of Deputies, for three several packets addressed to the secretary of the United States in Congress Assembled, "covering each a fair transcript of the foregoing votes," which "I promose safely to convey as addressed, in such manner as that one at least of the said packets shall be duly delivered on or before the third day of March next." [62] Beckley became clerk of the House of Representatives. The manner of the conveyance of the other packets is not shown.

State of New Hampshire

We the Subscribers being appointed by the Legislature of this State Electors of two persons for President of the United States met at Exeter in said State on Wednesday the fourth Day of February AD 1789 agreeably to resolve of Congress and Act of this State and Voted by Ballot for two persons for said Office and upon counting the Votes it appeared there were five Votes for His Excellency George Washington Esqr and five for the Honble John Adams Esqr of the Massachusetts for President of the United States and we hereby Certify the same accordingly — Given under our Hands at Exeter the Day and Year aforesaid —

Benj^a Bellows
John Pickering
Jno Sullivan
Ebenezer Thompson
Jno Parker

ELECTORAL VOTE OF NEW HAMPSHIRE

From the Senate Records in the National Archives

The Organization of Congress

A DEATH AND A BIRTH

THE PRELUDE being over, the curtain rises on the main play. New York City rang down the curtain on the Confederation by a salute of thirteen guns on March 3, 1789, and rang up the curtain on the new government the next morning by a salute of eleven guns, much bell ringing, and flag waving. In Philadelphia a volunteer corps of artillery met on March 4, drank toasts, and discharged thirteen cannon shots. In Boston there were bells and guns. Providence fired several salutes of eleven guns; and at Georgetown there was a ball. The papers gave space to many dramatic and poetic utterances, of which the following is typical:

> The day—the long wished for day is arrived—and we hail it welcome—welcome, as the harbinger of times propitious to the PROSPERITY and HAPPINESS of our county:—Welcome, as *the era* which shall perpetuate the triumph of REASON and PATRIOTISM, over *local prejudices*, and *selfish prepossessions*—over the *views* of *ambition*, and the *arts* of *designing men*—and which shall give our country, in the eyes of the *Old World*, that respectability, dignity and importance, which her extent of territory—her immense resources, and the genius of her citizens, entitle her to:—Welcome, as again witnessing to the unanimous call of MILLIONS to the illustrious WASHINGTON, again to take under his direction, the welfare of that country, his valour so lately saved—and which has been since threatened with destruction.
>
> That this day may be the commencement of a period, wherein those blessings which were expected from our independence—those advantages which have been anticipated from the Constitution, may be realized:—That from it we may date our national prosperity and solid union:—That each revolving year, as it rolls down the current of time, may present in it renewed felicity to our country: And that it may be celebrated as the happy birth-day of a happy nation, until the exit of time shall be performed on the Theatre of this World—'*is a consummation devoutly to be wished.*'

An EMPIRE's born, let cannon loud
Bid echo rend the sky,
Let every heart adore,
High Heaven—OUR GREAT ALLY.[1]

In fact, as the youthful but already caustic John Randolph of Roanoke wrote to St. George Tucker on March 8: "The New Congress . . . met the other day, but there was not a sufficient number to proceed to business. However, there was as great a fuss made as if the world was to be annihilated. There was a speech in the papers as long as my arm, in which it was said that the old constitution expired in a Blaze of Eloquence, and that this Phoenix which had sprung from its ashes was to be productive of the greatest Happiness, and a great deal more of such finery."

DATE OF THE NEW GOVERNMENT

In so celebrating, the cities and elsewhere had the justification of the ordinance of the Continental Congress, which declared that "the first Wednesday in March next be the time and the present seat of Congress the place for commencing proceedings under the said constitution." Obviously, the proceedings could commence only with the meeting of the new Congress, since there could be no executive until Congress declared him elected, and no judiciary until Congress made the necessary provisions for the department.

Members-elect of the First Congress under the Constitution of the United States had been dropping into New York City for some days before March 4, especially from the adjoining states and from New England in general. Senator-elect Langdon of New Hampshire departed for New York from Portsmouth about February 18: "His excellency was escorted as far as Greenland (where a collation was provided) by a number of respectable gentlemen, citizens of this town." Inclement weather prevented many others from paying "that respect, on his quitting the town, which his exertions in that cause of freedom and good government, so justly entitled him to receive." [2] Senator-elect Caleb Strong left Northampton, Massachusetts, on February 25: "A number of gentlemen, to shew their respect to this great Senatorial Character, appeared before his door in sleighs, at sun-rise, and escorted him to Springfield." [3] When those present met in Federal Hall on March 4, there was no quorum in either house, and they could merely "adjourn" to the next day. This adjourning "from day to day" continued to be their only constitutional duty until April 1 for the House and April 6 for the Senate; so that the new government had no functional existence on March 4, except as the different executive bureaus left by the Confederation continued to carry on. This fact naturally raised the question whether the new government existed legally from that day. A case,

Owings *v.* Speed, 5 Wheat. 420, was before the Supreme Court in 1820, turning upon whether an act passed by the Virginia General Assembly in 1788 was contrary to the constitutional prohibition of the impairment of the obligation of contracts. Chief Justice Marshall declared:

> In fact [Continental] Congress did continue to act as a government until it dissolved on the first of November, by the successive disappearance of its members. It existed potentially until the 2d of March, the day preceding that on which the members of the new Congress were directed to assemble. The resolution of the Convention might originally have suggested a doubt, whether the Government could be in operation for every purpose before the choice of a President; but this doubt has been long solved, and were it otherwise, its discussion would be useless, since it is apparent that its operation did not commence before the first Wednesday in March, 1789, . . .

It will be noticed that the date of the end of the Confederation is given here as March 2 rather than March 3; this is undoubtedly a slip, but whether by the reporter, printer, or chief justice, cannot now be determined, as a search in the records of the Supreme Court has not located the original manuscript of the decision. It is probably only a coincidence that Secretary Thomson's last entry in the journals of the Continental Congress is dated March 2. Also attention is called to the fact that all that the chief justice says is that the new government did not begin operation *before* March 4, not that it began then; however, later decisions have accepted the statement in an unqualified sense. On March 25, 1872, Justice Swayne, in Ex parte McNiele, 13 Wall. 236, said: "The Constitution took effect on the first Wednesday of March, 1789." There are other judicial statements to this effect.

Other facts support this. The members present "adjourned from day to day," as authorized to do by the Constitution when a quorum was not present. The journals and laws state that this first session "was begun and held at the City of New York on Wednesday, March 4, 1789." On April 30, 1790, the House appointed a committee to join with one from the Senate "To . . . report . . . when . . . the terms . . . shall be deemed to have commenced." In the debate, it was claimed that congressmen had a right to two years of service, but both houses agreed that the terms began on March 4, 1789. They did this by concurrent resolution on May 18, 1790.[4] This resolve referred also to the executive offices, so that President Washington's first term ended on March 3, 1793. The House proposed to bring in a bill in harmony with the resolve, but no act resulted. It is a fair conclusion from the varying amounts paid the members for their

first session services and traveling expenses, that the per diem of the congressmen for those present from March 4 began on that day. Obligations, such as the payment of pensions out of federal revenue, were assumed from March 4.

Hugh Williamson, delegate to the Old Congress from North Carolina, wrote his governor on March 9, 1789: "On the fourth Instant . . . sundry members of the new Congress . . . met . . . since that time the Members of the Old Congress have not attempted to form a House."[5] Williamson represented a state not yet in the new Union, and although he had remained in New York, is not recorded as having participated in any attempt to hold a session of the Old Congress after November 3, 1788; while a delegate of the other recalcitrant state, Rhode Island, had been present as late as February 12, 1789, and in May 1789 the people of Rhode Island voted for delegates to the Continental Congress. If the Confederation could be considered as still operating, its power would be limited to these two states, since, not having ratified the Constitution, they were not members of the new Union; and that Williamson was not entirely satisfied that the Old Congress was finally deceased is shown by a letter of March 23, 1789: "Hitherto I consider myself in the service of the State as a Member of Congress and shall continue so to do until the New Government is in Operation, hence I claim the right of Franking Letters, . . ."[6] Perhaps he also claimed his salary, collected from his state government, but the record of his final account is no longer available. This statement indicates a contemporary doubt respecting March 4; but on the whole the action supports the legal decision of the beginning of the government under the Constitution on that date.

RECONSTRUCTION OF FEDERAL HALL

THE FIRST part of this work has told the story of the struggle over the place for the beginning of the operations of the new government. The Continental Congress had held its meetings in the City Hall on Wall Street at the head of Broad Street; and when New York City was finally decided upon as the first capital of the new Union, this building was the most appropriate one as the capitol, but it required alterations to accommodate two houses and the offices in connection with them. For this purpose money was raised, or at least advanced, by public-minded citizens and the alterations made after plans by Major L'Enfant. These called for an enlargement as well as interior changes and redecorations. The Old Congress moved out. Mayor Duane

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informed it on September 29, 1788 of the intention to make the repairs and the next day the Congress appointed a committee to consider the matter. This committee reported on October 1: ". . . that the Repairs and Alterations intended to be made in the Building in which Congress at present assemble, will render it highly inconvenient for them to continue Business therein, and that it will therefore be necessary to provide some other place for their accommodation. The Committee having made Enquiry find no place more proper for this purpose than the two apartments now appropriated for the Office of foreign Affairs; and they therefore recommend that the said Apartments be immediately prepared for the Reception of Congress and the Papers of the Secretary." [7] This report was adopted on October 2. George Thacher, writing on this last date to Nathan Dane, shows that the work did not await the congressional moving, though it could have but just begun: "The new Building is going on with spirit. Congress has this day adjourned till Monday, and then to meet in the Rooms where Mr. Jay kept his office. This had become necessary, as the Old Hall and Court Room are to be new-modled; and the workmen made such a continual noise that it was impossible to hear one another speek. I should not wonder if by the middle of next week Congress were to adjourn without delay. Many are uneasy and are for going home." [8]

The office of the secretary for foreign affairs was in 1788 at the southeast corner of Broad and Pearl Streets; later it was on the west side of Broadway near the Battery. Evidently the second site was that to which the office was moved when Congress took over the other location. October 2 was a Thursday. Congress did not meet again until Monday, October 6, presumably at the new quarters. Thacher's prophecy of speedy dissolution was fulfilled, though not by formal action. The last day on which business was transacted was on October 10; after that no quorum was ever secured, though Secretary Thomson faithfully kept the record through March 2, 1789, when one delegate attended. Meanwhile, a new confederate year had begun on November 3, 1788, and as no member is mentioned as attending twice after that November 3, and some of them were new delegates, it is probable that they came merely to leave their credentials with Thomson.

By March 4, 1789, the Senate Chamber in Federal Hall was ready for occupancy, but the House Chamber not yet entirely prepared, so that the thirteen representatives assembled in a room adjoining the Senate on the upper floor. Also, the gilt eagle on the pediment was not displayed that day as expected.

PAYMENT FOR IT

ON SEPTEMBER 17, 1788, Mayor Duane informed the Common Council, also called the Corporation, of the selection of the city as the first capital: "Thereupon resolved that the whole of the City Hall of this City be appropriated for the accommodating of the General Government of the United States and that this Board will provide means for defraying the Expence of putting the same in proper Order & Repair."[9] A committee was appointed to consult with the gentlemen commissioners and report. The Continental Congress had not occupied all of the old building; the Corporation and some at least of the city offices and courts were also there. The last meeting of the Corporation in the building was at the end of September. The committee then reported a plan by L'Enfant and recommended its adoption, which was agreed to. This was quick work, if nothing had been started before Duane's message, or even before September 13, when the ordinance of Congress was passed.

The gentlemen commissioners who were superintending the work were probably William Maxwell, Robert Watts, Alexander Macomb, James Nicholson (who was an assistant alderman), and Pierre Charles L'Enfant, evidently appointed by the public-spirited citizens who had started the movement, of whom Jay was one, and who had pledged their own credit. On this pledge the Bank of New York advanced money before it began to do so on the credit of the City. On December 3, 1788, the Corporation voted £1,000. It added to this sum from time to time until by April 13, 1789, it was pledged for £11,600, and had given the bank bonds for £11,000 specie, with interest at 7 percent. On April 27, 1789, the City "Resolved that this Corporation will not lend its Credit for any further advances of Money for the purpose aforesaid. And the Commissioners for superintending the said Repairs & Improvements are requested to govern themselves accordingly."[10] However, on June 18, following a report by a committee, the Corporation became responsible for £2,000 more; "and that the Directors of the Bank be informed that this Board, on a full and careful Investigation of the Subject and an Estimation of the Expence, have reason to believe this Sum will be competent to the Completion of the Repairs & Improvements to the City Hall."[11] "The bank, however, was fed up and refused to advance any more; and a committee was appointed to discover if possible where £1,200 might be had, and the accounts of the commissioners were to be examined and reported on by the city treasurer. This was on June 24; later some money in hand from the sale of stone was appropriated to the work.

Meanwhile, the question of payment of the debt had come up. Fisher Ames wrote on March 25, 1789, that the improvements would cost £20,000, York money; [12] and the *Pennsylvania Packet* on January 19 said that the amount subscribed by the citizens had been £9,000, but its estimate of the cost was only £15,000, which may have been specie value. On January 7, 1789, Jay and others, who had "lent their credit," asked the Common Council to apply for a legislative provision for their indemnity, and the Council petitioned the legislature for power to raise £13,000. On January 22 an act permitting the city to raise £13,000 by tax was passed. On September 9 the treasurer was ordered to pay to the Bank of New York towards the discharge of the notes given by the citizens such present tax money "as he shall deem the proportion for that purpose as directed by Law"; [13] and on October 6 he was ordered to pay £1,300 on the accounts of certain persons against the commissioners, providing the bank consented. These last were evidently some final outstanding debts not covered by previous arrangements, as indicated by the £1,200 which the resolve of June 24 proposed to raise.

Since the City's credit was pledged to the extent of £11,600, York money, if the citizens had advanced £9,000 and there was a final bill of £1,300, the cost must have been about £21,900. An act of February 19, 1790, authorized the Corporation to raise by lottery £13,000, in addition to what had been "hitherto raised." This last phrase evidently refers to the amount to which the citizens had pledged their credit, and for the payment of which a tax had been granted. Two lotteries were held, in 1790 and 1791, which netted about £13,000. The minutes of the Common Council do not give further information about the reimbursement of the citizens.

LATER USES

BEFORE the first lottery was finished, Congress had transferred the capital to Philadelphia, and Federal Hall was again on the City's hands. On October 23, 1788, the *New York Journal and Weekly Register* had said: "The readiness with which the citizens entered into a subscription for defraying the expence, shews that we are sensible of the honor conferred on us by Congress; and the expedition with which the work is carried on, is a sufficient proof of our public spirit and ardent attachment to the federal cause. We hope the respect that has ever been shewn by the citizens of New-York to Congress, and the exertions made to render their situation agreeable, will so far justify the choice they have been pleased to make, as to prevent any contention in future on the subject of adjournment."

When the bill for the tax was before the legislature in January 1789 it was stated that the alterations "will prove very beneficial to the inhabitants of this State at large, as that Honorable Body may thereby be induced to reside in the said city longer than they could otherwise conveniently have done." [14] These proved to be vain expectations, and the citizens and the City must have felt that they had wasted money. In place of Congress the legislature of the state, when it met at New York City, evidently moved in. On October 4, 1796, the Common Council passed an order for further alterations "to make more Room for the accommodation of the Members of the Legislature whose numbers are considerably encreased." [15] Again the City was out of luck, for on November 21 of that year the legislature ended its last session there, meeting thereafter always at Albany. Courts and offices occupied the building, various societies had rooms or held meetings there, and the Corporation seems also to have met there for a while after January 12, 1807, at least. Meanwhile the present City Hall was being built, and all the offices were removed from the old one before April 27, 1812. The building was sold on May 13, 1812, for $425 and torn down, being much dilapidated, by August 10 of that year.

L'ENFANT'S HONORARIUM

ON OCTOBER 12, 1789, the Common Council returned its thanks to L'Enfant, gave him the freedom of the city, and offered him ten acres of common lands. This plot, as described in the minutes and located on the map of the common lands, seems to have been in the region of Second Avenue and 65th Street; but it is not possible to make this statement with any too much assuredness. It was to become of great value, but the city did not grow out to it for many years after L'Enfant's death. On May 14, 1790, the minutes show a correspondence with L'Enfant in which he refused the land. He asked for no compensation at that time, but on January 19, 1801, an indirect application in his behalf was put aside to await a direct request. On January 26 it was resolved to grant him $750, which he refused as inadequate; and the Common Council then resolved "not to reconsider the subject." On February 28, 1820, in poverty and old age, he repeated his petition, which was refused on April 17, a committee reporting that by his declining the ten acres the Corporation had been "led to infer that it was altogether voluntary on his part & that his object was the honor of the performance rather than pecuniary reward." [16]

DESCRIPTION OF THE HALL

SEVERAL contemporary descriptions of Federal Hall exist, as well as various views of it. The building was of stone, the basement or first story front Tuscan with seven openings and the four pillars of the three center openings supporting four Doric columns above and a pediment. On the pediment was an eagle with wings displayed and other insignia. The frieze had thirteen stars in the metopes, and the tablets over the windows of the second story contained bunches of thirteen arrows and olive branches. There was a gallery 40 feet wide and 12 feet deep behind the Doric columns, with an iron railing. This opened through three glass doors, of which the center one was arched, into the Senate Chamber. There were two windows on either side of the gallery. (*See* illustration on p. 658.)

The basement entrance led into a vestibule from which opened the House Chamber and public and private stairways to the floor above. This House Chamber was 61 feet deep, 88 feet wide, and 36 feet high, with a coved ceiling. It was an octagonal room, four of the sides being rounded. The windows were placed 16 feet above the floor; beneath them there was merely a plain wainscot and above this Ionic pillars and pilasters. There were four fireplaces, and on the panels between the windows there were trophies and "U. S." in cipher. The Speaker's chair was opposite the entrance and the members' seats in semicircle in two rows, with separate chairs and desks. There were two galleries opposite the Speaker and evidently reached from the upper story. The lower one projected 15 feet; the upper, which was the members' gallery, was not so large. There was also floor space for the public behind the bar. Besides the main entrance there were three other doors. The curtains and chairs were in light blue damask. A statue of Liberty was to be placed over the Speaker's chair, and trophies on the chimney places.

The public stairs to the left of the vestibule led up to a lobby from which the gallery of the House and the Senate Chamber could be reached. The Senate Chamber was 40 feet by 36, and 20 feet high, with arched ceiling. Besides the glass doors to the front gallery there were three windows in the rear. The walls were decorated with pilasters having capitals of a fanciful kind, which L'Enfant designed. The ceiling was plain, with a sun and thirteen stars in the center. The fireplaces were of American marble. The President's chair was 3 feet above the carpeted floor of the chamber and had a canopy of crimson damask. Above, it was planned to place the national arms. Crimson curtains were at the windows. The senators' chairs were in a semicircle.[17]

It would seem that among other rooms planned for the hall was one in which the President should receive the respective houses. When the Senate replied to Washington's inaugural address, they went to the presidential mansion to present it. The House on May 7 resolved: "That as the chamber designed for the President's receiving the respective Houses is not yet prepared, this House will wait on the President to present their address, in the room adjacent to the Representatives' Chamber."[18] This was done, but when the replies to the first annual address were to be presented Washington decided that that of the House should be made at his mansion, since this had been the case with the Senate address and also "because it seems most consistent with usage and custom—2d, because there is no place in the Federal Hall (prepared) to which I could call them, and to go into either of the chambers appropriated to the Senate or Representatives, did not appear proper; . . ."[19] This was on January 13, 1790, so that evidently this room was never prepared and put to its intended use.

MAKING QUORUMS

HAMILTON had written Sedgwick on January 29, 1789: "On many accounts indeed it appears to be important that there should be an appearance of zeal and punctuality in coming forward to set the Government in motion."[20] He was, however, to be disappointed, for to this Federal Hall on March 4, 1789, came, intent to organize the First Congress of the United States, only eight senators and thirteen representatives. The senators were Langdon and Wingate of New Hampshire, Strong of Massachusetts, Johnson and Ellsworth of Connecticut, Maclay and Morris of Pennsylvania, and Few of Georgia; twelve others were absent, the New York ones not having been yet elected. Few had been in attendance as delegate to the Continental Congress the previous autumn, and probably had remained in the North during the winter. Except for him and the two Pennsylvania senators, the prompt ones were all from New England, only one of the senators of that region being absent, and he was ill. Those present in the House were four of Massachusetts' eight, three of Connecticut's five, four of Pennsylvania's eight, and one each from Virginia and South Carolina. The Senate received no additions until the 19th, when Paterson of New Jersey appeared, his colleague, Elmer, being ill. Meanwhile those present had sent two circular letters urging immediate attendance to the absent ones. Richard Bassett of Delaware appeared on March 21, Jonathan Elmer of New Jersey on March 28, and finally on April 6 Richard Henry

Lee of Virginia made up the required number. It will be noticed that though New York had not yet elected her senators, they were included in the number necessary to make a quorum.

The House received five additions on March 5, four of them from New England and one from Pennsylvania. Madison was among the three Virginians who arrived on March 14; another of them came on March 17 and a fifth on the 18th. On the 25th, the Virginia delegation was increased to seven and on the 30th to eight. Meanwhile one member from New Jersey and two from Maryland came in, and on April 1 a quorum was secured by the arrival of the second member from New Jersey and the sixth from Pennsylvania. From then to the 6th there arrived one further member from New Jersey, Pennsylvania, Massachusetts, and Maryland, respectively; thus the twelve senators and thirty-four representatives present on April 6 were seventeen from New England, fourteen from the Middle States, and fifteen from the South. Numbers continued to drop in during the session, the last, Abiel Foster of New Hampshire, who came in on a by-election, not attending until August 14. In all, twenty-two senators and fifty-nine representatives attended the session.

There were various reasons for the delay in making a quorum and also for the later arrivals. In the case of the New York delegates, late elections were the cause. Travel conditions were heavy, roads more or less bottomless, ferriage over the rivers often impracticable, private conveyance frequently the only means of transportation, sea voyages made insecure by storms. The South Carolina and Georgia members came by water for the most part. Jeremiah Wadsworth wrote on March 29, 1789, that they could not be expected sooner than April 10 or 15.[21] In fact, three South Carolina members appeared on April 13, and two Georgia ones on April 20. Thomas Lowther who, though not a member, traveled north somewhat later on a shorter voyage from North Carolina, reported on May 9, 1789, "a very tedious and disagreeable passage of fourteen days."[22] There was also in various cases the necessity of getting personal affairs in shape before leaving, for communication with home would be very slow and uncertain, and matters could not be left at loose ends, as might be entirely safe nowadays. Finances probably also had their share in the matter; for there was no previous national provision for travel money or for the expenses at the capital until Congress should decide upon the compensation of its members. Evidence is lacking of states' advancing money to their congressional members for the first session; but later the Rhode Island legislature loaned her senators-elect $150 specie apiece, "to enable them to take their Seats in Congress."

Ready money or exchange was often difficult to get together, even if the members-elect had the potential means. Precautions, even in slight illnesses, were considered much more necessary then than now, and delays due to sickness were common. The excuse of poor health is a frequent expression in the debates of Congress down to the Civil War. As we have seen in an earlier portion, the lateness of the election in some cases prevented members from beginning their preparations or journeys more promptly.

CRITICISM OF THE DELAY

NONE the less, there was considerable agitation over the failure to organize promptly. Fisher Ames of Massachusetts, who was in his seat on March 4, wrote on March 25, 1789: ". . . we are still in a state of inaction. This is a very mortifying situation. . . . I am inclined to believe that the langour of the old Confederation is transfused into the members of the new Congress. . . . We lose £1,000 a day revenue. We lost credit, spirit, every thing. The public will forget the government before it is born. The resurrection of the infant will come before its birth."[23] Franklin wrote Moustier, French minister, April 27: "I regret with you that the new Congress was so long in Assembling. The Season of the Year was not well chosen for their Meeting, & the uncommon Length of the Winter made it the more inconvenient. But this could hardly excuse the extreme Neglect of some of the Members, who not being far distant might have attended sooner, and whose Absence not only prevented the public Business from being forwarded, but put those States, whose Members attended punctually, to a vast Expense which answered no purpose."[24] Knox, too, complained on March 30: "The Spring impost amounting by computation to 300000 Dollars will be lost to the General Government by its not meeting at the time appointed."[25] This opinion echoed that of his Massachusetts correspondent, Henry Jackson, who on March 22 wrote: "We are much disappointed & mortified in the Government being so long in assembling together—its enemies make a handle of this circumstance, the friends of it, are unhappy at the delay."[26] Washington himself was uneasy over the symptoms. He replied to Knox on April 10:

> Not to contemplate (though it is a serious object) the loss which you say the General Government will sustain in the article of Impost, the stupor, or listlessness with which our public measures seem to be pervaded, is, to me, matter of deep regret. Indeed it has so strange an appearance that I cannot but wonder how men who sollicit public confidence or who are even prevailed upon to accept of it can reconcile such conduct with their own feelings of propriety. The delay is inauspicious to say the best of it, and the World must condemn it.[27]

Also there was newspaper indication that this fear was shared by the public: "The greatest anxiety pervades all ranks of people, on account of the great delays which prevent the sessions of the new Congress. Business stands still; and the public are impatiently waiting for something from the assembled wisdom of the Continent, whereby to direct their future conduct."[28]

The fact that the New England members were generally on hand early was a cause of uneasiness to some. Williamson, in his letter of March 9, 1789, to the governor of North Carolina, added: "You will observe that the Members of the New Congress hitherto arrived, are chiefly from the Eastward, and I presume that a House will be formed and several Officers chosen before the Southern Members arrive. This may be the first of the distorted effects to be expected from the Seat of Congress being far distant from the Center of the Union."[29] The *Pennsylvania Packet* of March 7 declared that this promptness gave point to the demand that the capital be moved to a more central point; while one of the current satirists wrote:

> I wish that you . . . was in this town, for a few hours, if it were only to view the *Old New Building, nick* nam'd *Federal Hall*, and by others who are ill natured call'd *Fools Trap*. They insist on it *cunningly* and in *whispers*, that some of the southern delegates, (who never saw a large house in their lives, unless it was a tobacco warehouse, or a rice-barn) will be so delighted with this huge building, and the *Eagle on top*, that they will forget that seven is more than six, and will stand gazing at the fine house, while the less curious, and less pompous New England delegates are forming laws, and culling out offices for the convenience of their constituents."[30]

HARMONY

WHEN Congress did get down to work, however, the fears subsided and the general excellent character and harmony of the body were recognized, especially by those who, being members of experience, were the best judges. Madison, as he left Virginia, was rather pessimistic. He wrote, March 1, 1789, from Alexandria to Randolph: "I see on the lists of Representatives a very scanty proportion who will share in the drudgery of business. And I foresee contentions first between federal & antifederal parties, and then between Northern & Southern parties, which give additional disagreeableness to the prospect. Should the State-Elections give an antifederal colour to the Legislatures, which from causes not antifederal in the people, may well happen, difficulties will again start up in this quarter, which may have a still more serious effect on the Congressional proceedings."[31] When affairs were in operation, however, he wrote Jefferson on May 27 in a happier mind: "The proceedings of the new Congress are so

far marked with great moderation and liberality; and will disappoint the wishes and predictions of those who have opposed the Government. The Spirit which characterizes the House of Reps. in particular is already extinguishing the honest fears which considered the system as dangerous to republicanism."[32]

Fisher Ames of Massachusetts, though less experienced, also had a keen and cultured mind. He shared Madison's opinion, writing to Richard Minot on April 4: "The House is composed of sober, solid, old-charter folks, as we often say. . . . They have been in government before, and they are not disposed to embarrass business, nor are they, for the most part, men of intrigue. . . . There are few shining geniuses; there are many who have experience, the virtues of the heart, and the habits of business. It will be quite a republican assembly. . . . I presume the *antis* will laugh at their own fears. They will see that the aristocracy may be kept down some years longer." Three months later his opinion was much the same: "There is less party spirit, less of the acrimony of pride when disappointed of success, less personality, less intrigue, cabal, management, or cunning than I ever saw in a public assembly."[33] Wingate of New Hampshire in the Senate had the same opinion. He wrote Timothy Pickering, March 25: "I think the members of both houses will almost unanimously be firm friends of the government. Those who heretofore have had their objections will be so few that they will probably not think it expedient to raise difficulties. I am told that your old friend Mr. Gerry speaks very moderately upon the subject."[34] Some observers reached the same conclusion. Thomas Lowther in his letter to Judge Iredell on May 9 said: "I have constantly attended the debates of the House of Representatives, and have received great pleasure from observing the liberality and spirit of mutual concession which appear to actuate every member of the House."[35]

POLITICS AND SECTIONALISM

NATURALLY, as the houses got deeper into the detailed problems of legislation, sharper distinctions might be noticed. On May 15 Ames moved an adjournment of the House during the discussion of the tariff bill, "fearing gentlemen would grow warm upon the question."[36] Yet the session remained surprisingly harmonious. This peace was due probably less to the spirit of mutual concession than to the fact that the complexion of both houses was predominantly Federalist. The preliminary evidences of this had been very pleasing to Washington. He wrote Lafayette on January 29, 1789: "I will content myself with only saying, that the elections

have been hitherto vastly more favorable than we could have expected, that federal sentiments seem to be growing with uncommon rapidity, and that this encreasing unanimity is not less indicative of the good disposition than the good sense of the Americans." [37] The Virginia senators, Gerry and one other representative from Massachusetts, two or three from Virginia, and a majority of the South Carolina representatives, were about all whose Antifederalism was marked when they were elected; and even these, except in the debate on the necessary amendments, were not inclined to change the character of the legislation of this first session. When the evidences of party began to show in the second session, the grouping had little reference to the attitude of the members as early Federalists and Antifederalists; the party of opposition grew up around Madison rather than around the followers of Patrick Henry.

Madison in the Convention of 1787 had declared that the real threat against the Union would not be the division between the large and small states, but sectionalism; and this fact began to make itself evident even during this first session, in the debate especially over the tariff schedule, which added some drops of bitterness to those distilled by the debate over the site of the permanent capital. Southern fears have been touched on in the matter of the promptness of the New England representation and the efforts made by New York City to keep Congress sitting there; but the following quotation from a letter of Senator Butler of South Carolina, who was a signer of the Constitution, to Judge Iredell on August 11, 1789, presents altogether too dark a picture, even while its very vehemence discloses that the sectionalism was not all on one side. Maclay, who more often than otherwise shared the views of Butler, yet declaimed against him on June 10: ". . . ever and anon crying out against local views and partial proceedings; and that the most local and partial creature I ever heard open his mouth." [38] The exact reason for Butler's outburst, providing there was a specific one, is not evident. He was rather bilious mentally, and seems likely also to have had the slavery interests specially in mind, though the beginning of the agitation against this cherished institution began during the second session. He arrived while the Senate was discussing the tariff bill, which provoked his antagonism, and this may still have been on his mind. He wrote:

The Southern interest calls aloud for some such men as Mr. Iredell to represent it—to do it justice. I am almost afraid to enter on the subject of the Constitution, yet I will confess to you . . . that I am materially disappointed. I find locality and partiality reign as much in our Supreme Legislature as

they could in a county court or State legislature. . . . I find men scrambling for partial advantages, State interests, and in short, a train of those narrow, impolitic measures that must, after a while, shake the Union to its very foundation. . . . I confess I wish you to come into the confederacy, as the only chance the Southern interest has to preserve a balance of power.[39]

Maclay himself was not noted for impartiality; his own outburst on May 6 is probably no truer indication of real conditions than was Butler's. He wrote in his diary: "I have been a bird alone. I have had to bear the chilling cold of the North and the intemperate warmth of the South, neither of which is favorable to the Middle State from which I come. Lee and Izard, hot as the burning sands of Caroline, hate us. Adams with all his frigid friends, cool and wary, bear us no good-will. I could not find a confidant in one of them, or say to my heart, 'Here is the man I can trust.' "[40]

However, Madison's fear was shared by others. Thomas B. Wait's query from Portland on August 9, 1789, to George Thacher, the Maine district representative, is evidence of this: "How do the Southern and Northern gentlemen agree? is there evidently a clashing of interests. I am anxious to hear your answers to these questions. If an illiberal and unaccommodating spirit is discoverable *now*—Men of consideration have reason to tremble, and tremble they will, at the very glimpse of futurity."[41]

PERSONNEL: PREVIOUS PUBLIC SERVICE

THERE were, as said above, twenty-two senators and fifty-nine representatives at the first session of the First Congress, eighty-one men in all. In those days their country was mainly built upon an agricultural economy, and these men reflected this fact, for almost all of them, even though ostensibly of other callings, owned lands and were interested in farming in one form or another. Part of them had been elected on a district basis, and were necessarily rural in their point of view; and even where this was not the case, as in Pennsylvania, the choice was well distributed over the state. Maclay was elected senator because, although with legal training, he was considered an agriculturalist; and even his colleague, Robert Morris, one of the greatest merchants and financiers of the period, took pleasure in his landed interests. Of the eight representatives from that state, only Clymer and FitzSimons were from Philadelphia. This was considerably more than its proportion, since it had only about a tenth of the population of the state; but on the other hand the region was so much more Federalist than the rest of the state that the inclination to profit by this and the principle of putting the best men on the ticket irrespective of residence must have been strong.

As respects active occupations, thirty-nine were or had been lawyers, or had studied the law; sixteen were merchants; three surveyors; three ministers, past or present; three teachers on a like basis; sixteen planters or farmers, three doctors, and one ex-shoemaker. The average age was 50; the oldest man, Roger Sherman of Connecticut, was 68, the youngest, John Vining of Delaware, was 31. Fisher Ames of Massachusetts and William Loughton Smith of South Carolina were but little older. Seven of them had been born in Ireland or England. Thirty-five had attended college, although all did not possess degrees; Harvard was best represented by twelve, then came Princeton with seven and Yale with six, Pennsylvania, Rutgers, William and Mary, and Columbia were also represented, and abroad Edinburgh and a German university.

All had previous public service of one kind or another; seventy had served in colonial or state legislatures or in the provincial congresses; forty-seven had been members of the Continental Congress, of whom eight had signed the Declaration of Independence; thirteen had sat on the bench; twenty-three had been state executives below the grade of chief, and three had been chief executives of their states, including one acting governor; fourteen had had local executive activity, especially in the early days of the Revolution in committees of correspondence or safety or such like offices; eight had been members of state constitutional conventions; four had been at the Annapolis Convention; nineteen had attended the Convention of 1787, of whom sixteen had signed the Constitution; thirty-two had voted for or against ratification; one man, Johnson of Connecticut, had attended the Stamp Act Congress, and another, Izard of South Carolina, had seen diplomatic service. Various of them had been more or less active in military service; three in the French and Indian War, and thirty-six in the Revolution, while two or three had seen service in the British army.

For a few of them, such as Sherman and Johnson of Connecticut, Morris of Pennsylvania, Lee, Grayson, and Bland of Virginia, public service was now terminating; others had before them many years of public life, culminating in the presidency for Madison and the vice presidency for Gerry; several were to be governors; two, Ellsworth of Connecticut and Paterson of New Jersey, sat later in the Supreme Court, Ellsworth as chief justice. Rufus King's career was to be a varied one of senator, diplomat, and presidential candidate. Ames of Massachusetts, one of the most promising as well as youngest, was to have his career cut short by poor health. Paine Wingate of New Hampshire was to be the last of them to die, his decease in 1838, just

short of 99 years of age, coming less than a year after that of John Brown of Kentucky, 80 years old, and two years after that of Madison at 85. These three were the last survivors of delegates to the Continental Congress also, and Madison the last survivor of those who attended the Convention of 1787; but General Thomas Sumter of South Carolina, who died in 1833, was almost 101, and Charles Carroll, who died in 1832, the last survivor of the signers of the Declaration of Independence, was 95.

LENGTH OF SERVICE

THE POSITION to which these men had been elected was new and the election therefore was in many cases experimental; some members might prove to be square pegs in round holes, others did not care to continue, and the development of partisan politics alienated the constituents of others. In general, the service in Congress of the men of the first session was not long; twenty were in only one Congress, twenty in two, eleven in three, nine in four, seven in five, eight in six, one in seven, one in eight, two in nine, and two in ten. Half of the members of the Third Congress were not in the First Congress. The service of King, a signer of the Constitution, in ten congresses was not continuous, neither was that of Sumter in ten, though the latter missed only two congresses; but King's service was entirely in the Senate, while Sumter's was in both houses. The service of Gilman of New Hampshire, a signer of the Constitution, of nine congresses was four in the House and five in the Senate, but not continuous; while that of Baldwin of Georgia, also a signer, while continuous, was five in the House and four in the Senate. John Brown began his eight congresses as representative from the Kentucky district of Virginia, and ended them as senator from Kentucky, the service being continuous. Thacher of Massachusetts and Parker of Virginia served six consecutive terms in the House, and Langdon of New Hampshire, a signer of the Constitution, six consecutive congresses in the Senate.

PROBLEM OF NOVELTY

THE BURDEN which these men were called upon to assume was a heavy one. Madison wrote Jefferson on June 30, 1789: "The federal business has proceeded with a mortifying tardiness, chargeable in part on the incorrect draughts of Committees, and the prolixity of discussion incident to a public body, every member of which almost takes a positive agency, but principally resulting from the novelty and complexity of the subjects of Legislation. We are in a wilder-

ness without a single footstep to guide us. Our successors will have an easier task, and by degrees the way will become smooth, short and certain." [42] The advice of Joseph Jones to Madison on May 28, 1789, was also sound:

> The bill for levying imposts . . . I am well satisfied it was wise to limit its duration—laws regulating the commerce of the States where their measures and interests have been so different cannot it is to be presumed in the outset be made so as to give general satisfaction, time and experience will prove the best exposition of the propriety of the regulations, and if found usefull and convenient may easily be continued, but if oppressive and injurious to some to the benefit and advantage of other states, the repeal will perhaps be difficult. State prejudices and interests are to be removed and reconciled by degrees. The first movement of the governmt. should be actuated by the spirit of accommodation—that mild feature shd. be seen in all the acts of the Congress, and will gradually establish the government in the hearts of the people.[43]

Sedgwick did not take his seat until June 15, and wrote his first impressions to his wife twelve days later: "We are proceeding very slowly, this is in a great measure owing to very natural causes. A majority of the house appear to me to be actuated by pure motives, but their several systems having been formed on limited views, it is with difficulty that their minds can extend so as to comprehend extensive and national objects." [44] But our present interest is not in a history of the acts of the First Congress, but in an account of its organization and the precedents it established.

HOUSE ORGANIZATION

THE HOUSE of Representatives, having a quorum on April 1, 1789, proceeded to organize, and its first act was to elect a Speaker. Frederick Augustus Conrad Muhlenberg received a majority of the votes, while his opponent, Jonathan Trumbull of Connecticut, had a "respectable" following. Muhlenberg, who was from Pennsylvania, was successful partly because of his knowledge of parliamentary affairs, since he had presided over his General Assembly and his state's ratification convention, and as being therefore the most available man from the Middle States, to which the choice really belonged, since the South would have the President and New England the Vice President. Trumbull was to succeed him in the Second Congress, and to be in turn succeeded by him in the Third, in both cases because of Muhlenberg's growing attachment to the forming Republican party. The clerk elected was John Beckley, who had held a similar position in the Virginia House of Delegates, and who had brought up the Virginia electoral returns. On the first ballot

Samuel Stockton of New Jersey had had an equal vote. Beckley remained clerk until 1797, and served again in 1801–07.

On April 2 a committee on rules and proceedings was appointed, and a doorkeeper and assistants ordered, who were elected on the 4th. On the 6th the House resolved on a form of oath to be taken by its members, and then went to the Senate Chamber for the counting of the electoral votes, having been notified by one of the senators that that body was organized and ready for that purpose. After the House returned to its own chamber it sent Madison, a member, to the Senate to carry the order of the House desiring that the Senate attend to the notification of the President and Vice President elect. This he did by "addressing" the Senate.

On April 7 the House received the report of the committee on standing rules and orders, consisting of four divisions: 1. Duty of the Speaker; 2. Decorum and Debate; 3. Bills; 4. Committee of the Whole. Of the forty-three present standing rules of the House, thirteen can be traced back through various modifications to the original list; in some few cases the agreement is almost verbatim. One of the rules provided for the appointment of committees by the House; but in the second session on January 13, 1790, it was ordered: "That so much of the standing rules and orders of this House, as directs the mode of appointing committees, be rescinded; and that hereafter it be a standing rule of the House, that all committees shall be appointed by the Speaker, unless otherwise specially directed by the House, in which case they shall be appointed by ballot." [45] This great power of the Speaker continued until the insurgency of 1910.

On April 8 the chief justice of the State of New York, Richard Morris, administered the oath ordered on April 6 to the thirty-four members then present; and the House, under Madison's leadership, went into its first committee of the whole and plunged into the debate on the tariff bill. Its final measure of organization was to elect a sergeant-at-arms, who had a per diem and, evidently then or later, fees, the latter being forbidden in 1870.

SENATE ORGANIZATION

THE SENATE reached its quorum on April 6 and organized by electing by ballot John Langdon president for the "sole purpose of opening and counting the votes for President of the United States." The votes having been counted in the presence of the two houses, the House of Representatives retired to its own chamber; and the Senate then elected Langdon president pro tem for general services until the arrival of Adams. A doorkeeper was chosen on the 6th;

on the 7th a committee was appointed to prepare rules for conducting the business of the Senate; and on the 8th Samuel Alleyne Otis of Massachusetts was elected secretary, Thomson, secretary of the Old Congress, being passed over. It is not certain that Thomson wished the position; desiring, it was said, the foreign relations portfolio. He wrote Senator Morris the day before Otis' election: "I cannot express the anxiety I feel on the determination I had taken to retire to private life, while so many of my friends . . . express such an earnest desire that I should continue in a public line." He then suggested the creation of a quite impossible super-secretaryship for him, by which he would be known as "Secretary of the Senate and of the United States or Congress," with custody of the seal, acts, and archives of Congress, and "not be under the necessity of attending except on special occasions and when the great business of the Nation is under deliberation." [45a] There was, however, much complaint of his treatment by the Senate, and Otis, who had been a delegate to the Continental Congress, electioneered vigorously for the place, having lost out on his candidacy for the new Congress, and informed Nathan Dane on March 28: "I stand so good a chance to be elected Clerk of the Senate that if you were here to counterplot Charle [Thomson] and father Johnson I think I need not fear." [46] Otis needed the job. His son, Harrison Gray Otis, wrote his grandfather, Harrison Gray, on February 9, 1789: "My Father is not elected to the new Congress, but has the prospect of some appointment in which if he fails, God knows how he will support himself and the little ones." [47] Other candidates were William Jackson, who had been the inefficient secretary of the Convention of 1787, and John R. Livingston. Otis's chief claim to fame is in being his son's father. Senator Maclay was emphatic in his criticism of him as secretary: inaccuracy, untruthfulness, and roguery are among the attributes given him by the bitter pen of the senator. The best answer to this is probably the fact that Otis continued as secretary until he died in 1814, although from the region intolerant of, and not esteemed by, the administrations of Jefferson and Madison.

OPEN AND SECRET SESSIONS

THE NEWSPAPERS announced that on April 8, 1789, the House opened it doors for admission of citizens, having presumably sat secluded until the Senate was in session. The Senate did not follow the example of the lower house, but sat in secrecy, as did the Continental Congress, and to which, as being representative of the states, it was more the successor than was the House of Representatives.

This was a cause of much popular complaint, voiced in newspapers and by individuals, and also by legislatures; but objection by individual senators was slight, if it existed at all, and a movement from within to open the doors was not in evidence. Wingate wrote Timothy Pickering on April 29: "I do not desire that the private conduct or public proceedings of this body should be exposed to the daily inspection of a populace. I think to be a little more out of view would conduce to its respectability in the opinion of the country, who would then judge of that body by its public acts and doings, which should be sent abroad, as immediately concerning them. You know I am not a friend to mystery and hypocrisy, but there are certain foibles which are inseparable from men and bodies of men and perhaps considerable faults which had better be concealed from observation." [48] Adams informed his wife on April 17: " . . . the debates of the House of Representatives, which are conducted with open galleries. This measure, by making the debates public, will establish the national government or break the confederation. I can conceive of no medium between these extremes." [49]

Randolph gave Madison notice on September 26, 1789, of the feeling in Virginia respecting the matter, which was tied up with the question of titles and other criticisms of the Senate's attitude, to be considered later: "The assembly [of Virginia] draws near, and will probably, if some persons can satisfy themselves of the propriety of saying any thing on the subject, remonstrate with the senate upon shutting their doors. Nothing restrains me from concurring, but a doubt, whether it may not pave the way for real incroachments from the state legislatures." [50] In obedience to instructions from their legislature the Virginia senators moved for the change in the second and third sessions and again in the Second Congress, but the opposition had a comfortable majority in each case. Maclay mentions the debate in the third session, showing it turned upon the point of instructions from the states, which are considered in a later section. When the question of Gallatin's eligibility to a seat in the Senate was deliberated in February 1794, the doors were opened, and at the same time the Senate finally yielded to the growing popular sentiment and voted to sit publicly during legislative business after the end of that session and when galleries were constructed. The debates are not reported, however, until the session which began in December 1795.

Washington professed ignorance of the Senate's reasons, writing to Stuart on July 26, 1789: "Why they keep their doors shut, when acting in a Legislative capacity, I am unable to inform you; unless it is because they think there is too much speaking to the Gallery in

the other House, and business thereby retarded."[51] Maclay made reference to the atmosphere of the Senate in "striking contrast to the independent loquacity of the Representatives belowstairs": but he had, nevertheless, an answer to Washington's opinion:

> The objections against it, viz, that the members would make speeches for the gallery and for the public papers, would be the fault of the members. If they waged war in words and oral combats; if they pitted themselves like cocks, or played the gladiator, for the amusement of the idle and curious, the fault was theirs; that, let who would fill the chairs of the Senate, I hoped discretion would mark their deportment; that they would rise to impart knowledge, and listen to obtain information; that, while this line of conduct marked their debates, it was totally immaterial whether thousands attended, or there was not a single spectator.[52]

Joseph Jones, a good Federalist, who had sat in the secret Old Congress, agreed with Maclay, though their sentiments had at this time usually little in common. He wrote Madison on May 28, 1789: "How comes it that the doors when the Senate sit in their legislative capacity are shut and those of the representatives open. It appears to be equally proper and necessary for the information and satisfaction of the people that their conduct and proceedings in the character I have mentioned should be as public and well known as that of the other house."[53]

Not only were the galleries of the House open, but the proceedings and debates appeared regularly in papers all over the country, forming in each issue during the first session a large portion of the news. The influence of this was both extensive and admirable. The following came evidently from a Philadelphia paper of October 8, 1789: "The publication of these proceedings in the news papers, has proved a fountain of information, to every part of the union; the streams conveyed through the medium of the innumerable channels of intelligence, with which these rising states are so highly favoured, have served to give the government a more realized existence, by bringing it home to the door of every citizen."[53a]

INTER-HOUSE COMMUNICATIONS

ON APRIL 6, 1789, the two houses had exchanged messages by the means of members; on April 9 the Speaker received a letter from a member of the Senate asking for a committee to confer with one of the Senate on rules for conferences and appointment of chaplains. On the 17th a letter was received from the Senate communicating a report of a joint committee to which the Senate had already agreed, respecting chaplains and the conduction of conferences. The House

agreed to the report, which shows that at that early day conference reports were merely suggestions for action by the two houses and not formal agreements: ". . . such committess shall, at a convenient time, to be agreed on by their chairman, meet in the conference chamber, and state to each other verbally, or in writing, as either shall choose, the reasons of their respective Houses for and against the amendment, and confer freely thereon."[54] As to chaplains, each house was to appoint one, of different denominations, but the chaplains were to interchange weekly. The Senate asked also for a joint committee "on an eligible mode of conveying bills, papers, and messages," to which the House also acceded. On April 23 this joint committee reported a plan, to which the Senate agreed. This provided:

> When a bill or other message shall be sent from the Senate to the House of Representatives, it shall be carried by the Secretary, who shall make one obeisance to the Chair, on entering the door of the House of Representatives, and another on delivering it at the table into the hands of the Speaker. After he shall have delivered it, he shall make an obeisance to the Speaker, and repeat it as he retires from the House.
>
> When a bill shall be sent up by the House of Representatives to the Senate, it shall be carried by two members, who, at the bar of the Senate, shall make their obeisance to the President, and thence, advancing to the Chair, make a second obeisance, and deliver it into the hands of the President. After having delivered the bill, they shall make their obeisance to the President, and repeat it as they retire from the bar. The Senate shall rise on the entrance of the members within the bar, and continue standing until they retire.
>
> All other messages from the House of Representatives, shall be carried by one member, who shall make his obeisance as above mentioned; but the President of the Senate, alone, shall rise.[55]

The House, however, was not agreeable to so much ceremony and distinction between the two houses, and referred the report back to the committee on April 24. Meanwhile, communication was by letter between the Vice President and the Speaker; and in the Senate the question was discussed whether the Speaker should be addressed as "Honorable." This was on April 24, and Maclay who was the chief opponent of all ceremonies, just as Vice President Adams was evidently the chief proponent, wrote: "It passed in the negative, and from this omen I think our Vice-President may go and dream about titles, for none will he get."[56]

On April 28 the joint committee reported again: "When a message shall be sent from the Senate to the House of Representatives, it shall be announced at the door of the House by the doorkeeper, and shall be respectfully communicated to the Chair, by the person by

whom it may be sent. The same ceremony shall be observed when a message shall be sent from the House of Representatives to the Senate. Messages shall be sent by such persons as a sense of propriety in each House may determine to be proper." [57] To this the House agreed, but the Senate on May 1 rejected it, and on the next day voted that "until a permanent mode of communication shall be adopted," the Senate would receive messages by "the Clerk of the House, if the House shall think proper to send him; and papers sent from the House shall be delivered to the Secretary at the bar of the Senate, and by him be conveyed to the President." [58] This same day a message was received brought up by the clerk; and on May 7 the Senate sent down a message by its secretary.

On May 5 the Senate, having passed the bill on oaths, "*Ordered*, That the Secretary carry the aforementioned bill to the House of Representatives, together with the amendments, and address the Speaker in the words following:

'SIR: The Senate have passed the bill, entitled An act to regulate the time and manner of administering certain oaths, with amendments, to which they desire the concurrence of your House.' " [59] According to Maclay, this resolution was the subject of much discussion in the Senate because "the other House had affronted the Senate by sending up the bill in a letter, and now we would not send it down by a member. The dignity of the House [Senate] was much insisted on." [60] The analogy to the House of Lords and the House of Commons, and also the idea of the Senate as a Council, was continually present to plague these early efforts to establish the intercourse between what were by the Constitution clearly coordinate houses.

On May 7 the Senate passed a further order, which may be considered as a retreat on its part: "*Ordered*, That, when a messenger shall come from the House of Representatives to the Senate, and shall be announced by the door-keeper, the messenger or messengers being a member or members of the House, shall be received within the bar, the President rising when the message is by one member, and the Senate also when it is by two or more: if the messenger be not a member of the House, he shall be received at the bar by the Secretary, and the bill or papers that he may bring shall there be received from him by the Secretary, and be by him delivered to the President." [61] The House continued to send its messages by the clerk. This affair was a part of the general contention over titles and ceremonies, of which the chief phase is discussed later.

BILLS AND RESOLUTIONS

THE MATTER of inter-organization advanced another step when a joint committee was appointed on May 7 to report "joint rules . . . for the enrolment, attestation, publication and preservation of the acts of Congress; as also on the mode of presenting addresses, bills, votes, or resolutions, to the President";[62] and, as a counterpart of the latter part of this, on May 26 another joint committee was to consider "the proper method of receiving into either House bills or messages from the President."[63] This question of communications between the executive and Congress is considered in a later section. On May 13 still another joint committee began to consider what newspapers should be furnished the members at public expense. Later this same committee was ordered to consider the matter of public printing. The committee reported in favor of furnishing only one newspaper, of the member's own choosing. The House disagreed to this report and no provision for newspapers was made. Both houses accepted the report on public printing on June 3. This left the contracting for printing and binding to the secretary and clerk, and provided for 600 copies of the acts and 700 of the journals, and for the distribution of them; but as this provided only for the copies of the bound acts, session by session, a further concurrent resolve provided, on June 5, that twenty-two printed copies of each act of that session should be sent to the President for transmission to the eleven state executives, the copies to be signed and certified by the secretary and clerk. On May 15 the Senate carried out the constitutional provision for dividing its members into two classes, so that the term of only one third would expire each two years.

It was not until August 6 that the report on the joint rules respecting bills was finally adopted by the two houses. This provided that while bills were on their passage between the houses they should be on paper under the signatures of the secretary and clerk (*see* p. 359). After a bill had passed it should be enrolled on parchment by the clerk or secretary, according to the house in which the bill had originated. Enrolled bills should be examined by a standing joint committee of one from the Senate and two from the House, who should correct any errors in the enrolment. After this, each bill was to be signed "in the respective Houses, first by the Speaker . . . and then by the President of the Senate." It was the duty of the standing joint committee to present the signed bill to the President for his approbation, it being first endorsed on the back by the secretary and clerk, signifying the House in which it had originated. The

same proceedure applied to "all orders, resolutions, and votes" which were to be presented to the President for his approval. The joint rule had a further paragraph: "That, when the Senate and House of Representatives shall judge it proper to make a joint address to the President, it shall be presented to him in his audience chamber by the President of the Senate, in the presence of the Speaker, and both Houses." [64] The audience chamber mentioned here was undoubtedly the room spoken of above, which never was prepared or used. Nor did the two houses ever present a joint address to Washington.

INTER-HOUSE COURTESY

IT WAS on August 7, the day after this joint rule was perfected, that Adams was for the first time absent from the chair. Langdon was again elected president pro tem of the Senate, only for that day evidently, and it is equally evident that his earlier election was deemed to expire when Adams arrived. On June 17 the House provided seats within the bar for such senators as were pleased to attend the debates of the House. Senators availed themselves of this courtesy from time to time, but the Senate, which sat in secrecy, did not reciprocate. There is no evidence that members of the House listened to the Senate debates; but on June 26 a "number of members [of the House] attending the interesting conference [committee] which to-day took place with the Senate [committee] on the impost and tonnage bills, no business was done in this House." [65]

PROCEDURE

IN ACCORDANCE with the requirement of the rules, the House considered its bills in committee of the whole. One clause of the rules stated: "Upon the second reading of a bill, the Speaker shall state it as ready for commitment or engrossment, and, if committed, then the question shall be whether to a Select Committee, or to a committee of whole House; . . ." [66] Reference of a bill to a select committee (there were no standing ones for that purpose, the committee of elections being the only one provided by the rules of the House) was rare. Committees were, however, appointed to bring in bills; and a select committee on ways and means was appointed on July 24. Ames declared that the system of too great use of the committee of the whole was unwieldy even in the then small House: "A great, clumsy machine is applied to the slightest and most delicate operations . . . We could not be so long doing so little, by any other expedient." "Too little use is made of special committees." [67]

The Senate did not go into committee of the whole on any of its bills any more then than it does now; and there was no provision for it in the Senate's "rules for conducting business." There was, however, a rule adopted later, when consideration of the tariff bill began, by which "all bills on a second reading shall be considered by the Senate in the same manner as if the Senate were in a committee of the whole." [68] Maclay said that it "was for the Senate forming something like a committee of the whole. However, it seemed to amount to nothing more than suspension of our rules for the time mentioned or alluded to in it." [69] Adams did not leave the chair. It is to be noticed that the tariff bill discussion under this rule began on May 25, and that the bill was not given its "second reading in the Senate" until June 4, after which the various provisions were considered anew. On July 6 Maclay, with reference to whether the judiciary bill was up for its second or third reading, said: "The Vice-President insisted that the bill had been read twice. So it certainly had, but the second reading was in a committee of the whole Senate. He said former bills had been so treated just as he wanted this one treated. We know, or at least I know, that this was not the case. He showed a peevish obstinacy, as I thought. He does not like the doctrine of a committee of the Senate; nor has he ever submitted to it, for he ought to leave the chair. To-morrow, however, was assigned for the third reading, with a kind of saving privilege to make amendments." [70]

UNFINISHED BUSINESS

AT THE beginning of the second session of the Congress, the two houses, following the report of a joint committee, resolved on January 25, 1790: "That the business unfinished between the two Houses at the late adjournment ought to be regarded as if it had not been passed upon by either." [71] This was in accordance to British rule and was also followed by the states, though Hartley in the House declared there was a distinction between the prorogation of Parliament and the adjournment of Congress. The approval seemed based on the idea that the opportunity recess afforded the members "of consulting their constituents . . . enabled them to form a more certain opinion with respect to the propriety of their measures, than any other thing could possibly do." [72] This was of more value than the continuance of business. Not until 1818 did the House rule that unfinished business there began at the next session of the same Congress where it left off,[73] and this did not affect measures between the houses until a joint rule was made in 1848.[74]

OATH BILL: STYLE OF ENACTMENT

THE FIRST act passed, June 1, 1789, was that on the oath to be taken by the national and state legislators and officials. We have noticed that by a simple resolution the House provided for an oath for its members then present, taken on April 8. Except for these thirty-four men and President Washington after April 30, no one was under oath to support the Constitution until this bill became law, except that two representatives from South Carolina had when they attended on April 13 voluntarily gone before the chief justice of New York and taken the same oath as that of their colleagues on April 8.

It is interesting to trace the progress of this first act. The rules of the House stated that the enacting style of bills should be: "Be it enacted by the Senators and Representatives of the United States in Congress assembled." This, it will be observed, is the old style used under the Articles of Confederation, with "Senators" and "Representatives" tacked on; so that it was the senators and representatives of the United States in a Congress rather than the Congress of the United States composed of senators and representatives, as described in the Constitution. On April 24 the House rescinded this enacting style. On April 6 leave was given in the House to bring in a bill on the oath, and five members were appointed a committee to frame it; on April 14 the committee reported and the bill was read a first time; on April 16 it was read a second time and sent to a committee of the whole, which began consideration of it on April 20, and reported it to the House on April 22. On April 25 it was taken up in the House and agreed to as amended in committee of the whole, ordered engrossed, read a third time on April 27, when it was passed and sent to the Senate. Unfortunately there is no report of the debate in the House on this bill, so that our first knowledge is what Maclay says of it in the Senate. The bill was sent up after the rescinding of the enacting style.

In the Senate the bill was received and given its first reading on April 28; on April 29 after the second reading it passed into the hands of a committee of five. This committee of five reported on May 2, with amendments, which were considered on May 4. The first of these changed the enacting style from "Congress of the United States" to "Senate and Representatives of the United States of America, in Congress assembled", which was nearly like the rule that the House had rescinded, except for the curious substitution of "Senate" for "Senators", but leaving "Representatives" rather than "House of

Representatives"—the members instead of the body. According to Maclay: "It was openly avowed by Mr. Izard [who was not one of the committee] that the dignity and pre-eminence of the Senate was the object aimed at by the amendment." Maclay and Ellsworth spoke against the change; "it is under the *Firm* of *Congress* that we have received our *authority* and *power*."[75] The amendment, however, was adopted. Izard and Vice President Adams also wished to add the President's name to the style, and so did Ellsworth. The last, according to Maclay, held " . . . that the great and dignified station of the President and the conspicuous part he would act in the field of legislation, as all laws must pass in review before him, and were subject to his revision and correction, etc., entitled him to have his name or place marked in the enacting clause of all laws; or at least he should be brought into view among the component parts of Congress."[76] There was no motion to carry out the suggestion, however.

The second of the Senate's amendments required the state legislators and officials to take the oath, the existing ones before August 1, 1789; this being evidently similar to a provision voted down in the House. This also provoked the opposition of Maclay and Ellsworth. The former wrote: "The question was not whether the [state] officers should take the oath, but was it our business to interfere in it? . . . the subject was a doubtful one every way. . . . the power of Congress at any time, or the propriety of exercising it at this time, . . . I greatly doubted at least the propriety of meddling with it unless the States should be guilty of neglect."[77] He pointed out that Connecticut had already passed a law on the subject, though Massachusetts seemed to think the power of doing so was congressional. This amendment was also voted; and on May 5 the bill as amended was returned to the House. The matter of oath-taking by state officials is further considered later.

When consideration was resumed in the House on May 6 we have a report of the debate. Gerry supported Maclay's contention respecting the second amendment, that even the "necessary and proper" power of Congress could not extend to a power not vested in Congress; and "there is no provision for empowering the Government of the United States, or any officer or department thereof, to pass a law obligatory on the members of the Legislatures of the several States, and other officers thereof, to take this oath."[78] Theoderick Bland, who, like Gerry, had been an Antifederalist, and who had voted against ratification, and John Laurance of New York, Roger Sherman of Connecticut, and Elias Boudinot of New Jersey, all Federalists, declared the amendment both constitutional and advisable. James

Jackson of Georgia and Peter Silvester of New York acknowledged the constitutionality but doubted the expediency, "because some jealousies exist respecting the jurisdiction of the Federal and State Governments."[79] The House adopted the Senate amendment with a slight change, to which the Senate agreed on May 7. Thus even with the first bill began the question of strict or liberal construction of the Constitution. The House made no objection to the change in enacting style.

The bill was now hung up, apparently awaiting the joint determination of the houses on the pending matter of enrolment, signing, and presentation to the President; but as stated above this was not fully settled until August. On May 18 the Senate finally appointed one member to join with a House committee to lay the bill before the President after it had been enrolled, examined by the committee, and signed by the Speaker and Vice President. The House agreed on May 19 and appointed two members to its committee; this precedent of the size of the joint committee was followed in the August agreement. The House journal does not state what happened later there, but on May 22 the Vice President signed it and the committee took it to Washington.

Here arose another question—how should Adams sign. The point had arisen earlier on May 16 in the consideration of the Senate's reply to Washington's inaugural address. Maclay then declared: " 'Sir, we know you not as Vice-President within this House. As President of the Senate only do we know you. As President of the Senate only can you sign or authenticate any act of that body.' He said after I sat down that he believed he need not put the question; a majority of those who had spoken seemed to be in favor of his signing as President of the Senate. Mr. Carrol said he need not put the question, and none was put."[80] But when the question of signing this bill came up, Adams said, according to Maclay: " 'I have, since the other day, when the matter of my signing was talked of in the Senate, examined the Constitution. I am placed here by the people. To part with the style given me is a dereliction of my right. It is being false to my trust. Vice-President is my title, and it is a point I will insist upon.' He said several other things, then paused and looked over the bill. He then addressed the Senate again, and with great positiveness told them that he would sign it as Vice-President of the United States and President of the Senate."[81] And he did, and so have all the Vice Presidents since. Nor has the enacting style been changed, except that beginning with the second act of this session it is "House of Representatives" instead of "Representatives."

Maclay wrote that the first debate in the Senate on the tariff bill was over the enacting style, "but the style of the law which had already passed was adopted." When the tariff bill came before the Senate the enacting style was, as the House had made it on the first bill, the "Congress." The House refused to concur in the Senate's change for this second bill, however; and the Senate in turn adhered to its vote. Finally, when the bill was again before the House on June 23, George Thacher of Massachusetts "moved to agree to the amendment of the Senate in the enacting style, with an amendment. The House originally sent the bill up in this form, 'Be it enacted by the Congress of the United States;' the Senate proposed as an amendment, 'Be it enacted by the Senate and Representatives;' and Mr. Thatcher wished to add the words 'House of' before 'Representatives'—observing that the word Senate spoke of the collective body of the Senators, and the word Representatives alluded to the individual members of this House only, and did not comprehend their legislative function. There ought to be an equality in the enacting style; therefore the words 'House of' were necessary. This motion was agreed to." [82] The Senate also agreed, and thus the enacting style assumed its final form.

Washington approved the oath bill on June 1, and returned it to the House, which informed the Senate of the fact. As yet there was no legislation respecting the custody of the acts of Congress. On the 2d the Speaker swore in the members of the House, eighteen in number, who had not taken the earlier oath, a clause in the act stating that the taking of this earlier oath was sufficient. On the 3d the Senate asked the House for the act, and, receiving it, first the Vice President and then the senators took the oath that day.

SALARY BILL

THOUGH this is an account of the organization of Congress, not a history of its legislation, the bill concerning the salaries of the members is really a part of the organization and may be considered here, especially as it is enlightening on the attitude then toward public life. On May 1, 1789, the day after his inauguration, a motion was made in the House respecting the compensation of the President of the United States, which was referred to a committee of the whole. The matter came up again on May 25, when the reference to a committee of the whole was discharged, and a committee of twelve appointed to consider the compensation of the President, Vice President, and members of Congress. Baldwin of Georgia, as chairman of the committee, reported on June 1, and the

report was laid on the table and not taken up until July 13. Vining of Delaware, one of the committee, then expressed a desire for its consideration: ". . . he wished gentlemen to consider the situation of every one concerned in this business, themselves, and the continent at large."[83] He thought that it could be disposed of in a day. A demand arose for a committee of the whole; FitzSimons, also of the committee, objected because members had been generally consulted by the committee before it reported, and the question was "delicate." Page of Virginia said: "We must also provide something for our own expenses, or it may reduce gentlemen . . . to depend upon a friend for what the public ought to furnish."[84] The House did not go into committee, but spent the whole day in discussion, chiefly of the President's allowances. Discussion was resumed on July 16, executive salaries disposed of, and the question of pay of congressmen taken up.

The committee had proposed a per diem of $6.00 for senators and representatives "for their attendance at the time appointed for the meeting of their respective Houses," and $6.00 for every twenty (later twenty-five) miles of travel, the Speaker to have a per diem of $12.00. Sedgwick of Massachusetts moved to make the pay of representatives $5.00, the senators receiving $6.00: "His reasons for introducing this distinction was, that the convention had made it in the constitution. The Senators are required to be of an advanced age, and are elected for six years. Now this term taken out of the life of a man, passed the middle stage, may be fairly deemed equal to a whole life, for it was to be expected, that few, if any, of the Senators could return to their former occupations, when the period for retirement arrived; indeed, after six years spent in other pursuits, it may be questioned whether a man would be qualified to return with any prospect of success." As to the House pay: "He hoped gentlemen, would pay some deference to the public opinion, on the present occasion; this he thought to be in favor of small salaries."[85]

Jackson of Georgia denied Sedgwick's reasons for the distinction: "Now, unless gentlemen mean that we should depress ourselves and thereby set the Senate above us, I cannot conceive what foundation there will be for a discrimination."[86] Madison favored the discrimination: ". . . it had been evidently contemplated by the constitution, to distinguish in favor of the Senate, that men of abilities and firm principles, whom the love and custom of retired life might render averse to the fatigues of a public one, may be induced to devote the experience of years, and the acquisitions of study, to

the service of their country. And, unless something of this kind is adopted, it may be difficult to obtain proper characters to fill the Senate, as men of enterprise and genius will naturally prefer a seat in the House, considering it to be a more conspicuous situation." [87] But Vining held that those who became Senators would not be likely to be influenced by financial considerations, while "The Representatives in this House, being the choice of their fellow-citizens, among whom rank and dignity is rather unpopular, will consist of men in middling circumstances. Now if any thing is to be drawn from arguments like these, it is in favor of this House." Also, the House salary should be increased, "that it be not so low as to throw the business of legislation into the hands of rich and aspiring nabobs, but such as to compensate a man in the middle grade of life. . . . Any man who lives decently, will find six dollars a day not more than sufficient to defray the expense of a casual residence in a splendid city." [88] Seney of Maryland opposed the discrimination and threatened to call for the yeas and nays on it: "Gentlemen, have brought forward the constitution on this occasion but I conceive it to be opposite to the very principle they mean to advocate. This will destroy the independence of the several branches, which is to be strictly observed." [89]

The rest of the debate rang the changes on these arguments, and the fear of an aristocracy was mentioned also. The discrimination was defeated, and a committee appointed to bring in a bill or bills. The committee reported a separate bill for congressional salaries on August 4, including compensation for the employees of the houses. On this the House went into a committee of the whole on August 5, when the whole matter was reviewed, and again next day in the House on the report of the committee of the whole. There was evidently considerable alarm over the public reaction to $6.00 a day, although it was pointed out that, except New Jersey, all of the states had allowed their delegates to the Continental Congress a per diem of $6.00 or more. There were some decidedly one-sided statements in the newspapers about the short time congressmen "worked" each day. The bill came up for passage on August 10, the opponents forcing the yeas and nays; but, bearing the $6.00 per diem, it passed by 30 to 16.

Madison, explaining what was probably the main reason for the amount, wrote to Archibald Stuart on August 12: "The rate allowed is unpopular in this quarter of the Union. But the truth is that 6 dollars [is more necessary] for the distant states . . . and a defective allowance would put the states at a distance under disadvantages of a very serious nature." [90] Sedgwick, too, recognized the sectional phase

of the question. He wrote to his wife on July 23: "The ideas of the Southern gentleman as to allowances to officers of the government and as to their own wages are so very different from ours that I have much to fear on that account . . . Violently to oppose what they call liberal grants would only tend to create a suspicion that one was actuated by a mean desire to acquire popularity from that source. Indeed the habits of the two ends of the continent are so different that what would be a liberal allowance to the members of one might be considered as parsimonious by the other." [91]

In the Senate the bill was first read on August 11, 1789, and consideration given on August 25. Maclay moved for $5.00: "Mr. Morris almost raged, and in his reply to me said he cared not for the arts people used to ingratiate themselves with the public. In reply I answered that I had avowed all my motives. I knew the public mind was discontented. I thought it our duty to attend to the voice of the public." [92] Morris moved for $8.00 for senators, being supported by Izard and Butler, the South Carolina members. The latter "said a great deal of stuff of the same kind; that a member of the Senate should not only have a handsome income, but should spend it all." [93] King declared the matter was "delicate" and moved for a committee of five. King, Morris, Carroll, Izard, and Lee made up the committee, which was not such a membership as Maclay would wish. It reported on August 27 an amended bill that gave senators $8.00 a day after March 4, 1795, and made twenty miles a day's travel. The Senate considered this on the next day, made the deferred increase $7.00 and, thus modified, returned the bill on the 31st. "The doctrine," exclaimed Maclay, "seemed to be that all worth was wealth, and all dignity of character consisted in expensive living. Izard, Butler, King, Morris, led boldly." Carroll, "though the richest man in the Union, was not with them." Maclay "was totally against all discrimination; that we were all equally servants of the public; that if there really was any difference in dignity, as some contended, it could not be increased by any act or assumption of ours—it must be derived from the Constitution, which afforded, in my opinion, no authority for such distinction." [94] Meanwhile, sometime during this month, President Washington had written Madison in confidence asking his opinion on various matters, among them: "Being clearly of opinion that there ought to be a difference in the wages of the members of the two branches of the Legislature would it be politic or prudent in the President when the Bill comes to him to send it back with his reasons for nonconcurring?" [95] Madison's reply has not survived.

On September 1 the House disagreed to the Senate's amendment of discrimination. The Senate on September 7 adhered by 12 to 5. Maclay was absent, so we have no account of the proceedings. On September 8 the House asked a conference, and its committee reported on September 10: ". . . that they had come to no precise agreement; that the Senate could not be induced to recede from their amendment; but, by way of compromise, the committee, on the part of the Senate, proposed that the compensation provided for by the present bill should be limited to seven years, the last of which, the compensation of the Senate, to be at seven dollars: Or they proposed that the House should pass a law providing for their own compensation, without including the Senate."[96] A motion was made to recede and add a clause limiting the act to March 4, 1796. This was defeated by a vote of 24 to 29. Boudinot then moved for a committee to bring in a bill for compensation for one year only, which was not acted upon.

Burke of South Carolina the next day moved a reconsideration. He regretted that the House had not held up the bill to compensate the President and Vice President "as a hostage for the passage of the other through the Senate, . . . As the majority had not taken this precaution, he supposed they would be obliged to agree to the discrimination; the necessity of the case demanded all consideration, as they were obliged, by the constitution, to fix upon a compensation for their own services; . . ."[97] The end of the session was near, and there was much other business that had to be disposed of; none the less Jackson of Georgia insisted on holding the fort: ". . . for his part, he would rather go without pay than accept it with the condition proposed. He hoped the bill would not be reconsidered; perhaps some expedient might be devised to enable gentlemen to get money enough to defray their expenses, and so warrant them to let the bill die.[98] Madison, though he favored the discrimination, considered the motion out of order, as the bill was dead; but the Speaker declared against him, reconsideration was voted by 29 to 25, and by 28 to 26 the bill was limited to March 4, 1796, and passed.

The Senate agreed. Maclay wrote:

This week has been one of hard jockeying between the Senate and House of Representatives. The Senate insisted, and adhered, too, for a mark of superiority in their pay. It was a trial who should hold out longest. The House of Representatives gave way, more especially after the Senators told them that if you want your pay send us a bill for yourselves and we will pass it. I really wonder, in the temper the House is in, that they had not done it; but they were aware that the majority of the Senate would fly from this proposal,

as I believe many of them need money as much as any of the Representatives can do. It was a trial of skill in the way of starvation, and the dignity or precedence, or call it what you will, which could not be gained from the understanding of the House of Representatives, was extorted from their purses.[99]

The President signed the bill on September 22. The success of the Senate must have been considered to consist in the recognition, however postponed, of its right to the dignity of a higher remuneration, and the hope that, once established, it would continue to receive that recognition in later salary acts. If this was the case, disappointment was to follow. The act of March 10, 1796, did away with the discrimination, and the recognition of the equality of the houses, except as indicated by the Constitution, has gone unquestioned since.

Public opinion supported the contention of the House, although it considered $6.00 excessive. Alexander White, writing Madison on August 25, 1789, from western Virginia, probably correctly estimated the views of that section at least in saying: "The Idea of a discrimination in the pay of the Members of the two Houses, has by every Man whom I have heard mention it, been disapproved, I think I might say, reprobated." [100] Henry Van Schaack of Pittsfield, Mass., called it "this monstrous extravagance." [101] In contrast, Carrington's statement of September 9, also to Madison, showed the more aristocratic view: "I think the Representatives ought to have had five, & the Senators eight dollars." [102] The hard-headed Yankee, Thomas B. Wait, was also not alarmed, though he saw no reason for the discrimination. He wrote Thacher on August 9: "Upon the whole, I think the Compensations (except that of the Speaker; and that of the V. president's is too low) are about right. the President, Senators and Representatives are now put into easy and no more than easy circumstances . . . I forgot to tell you how extremely pleased I am that Senators and Representatives receive the same sum for the same services—that is right—it is truly republican." [103]

REVENUE MEASURES

ONE of the constitutional inequalities is the right of the House to originate bills for raising revenue, the Senate having, however, the right of amendment in this as in other respects. That there should be no question of the legislative equality of the Senate in all other respects was entirely determined by its action in this first session. Not only did such important bills as the great judiciary act of September 24, 1789, originate in that body; but its discussion and amendment of the tariff bill, strictly a revenue one, as well as

its attitude toward bills for the appropriation of money and the bills of a more formative character, were conclusive of this. The changes which the Senate made in the tariff bill were usually reductions, but not entirely so, and the House acceded to various of the Senate's increases and additional duties.

We shall in later sections find various matters in the relations of Congress with the executive, especially the Senate in these relations, wherein this first session established other precedents that have remained unchanged.

INTER-HOUSE RELATIONS

SENATOR Wingate summed up his impressions of the relations between the two houses on July 6, about midway of the session, in a letter to Belknap:

> There has as yet been as good harmony between the two houses, as well as between the respective members of each house, as could be expected. Whilst the impost bill was under consideration, there was sometimes suggested a jealousy respecting the different interests of the northern and southern states. But they were kept out of sight as much as possible, and every suggestion of the kind disapproved of by the prudent and moderate. . . . I know that it is natural for the two branches of the Legislature to be jealous of each other, and tenacious of their own rights, and the Senate by reason of their long duration in office, may in some future time be disposed to extend their powers as far as possible, and encroach upon the Executive, as well as other part of the Legislative powers; but at present I am persuaded there is no such disposition. And I believe that the people in general will often derive considerable advantages from the check of the Senate over so numerous a branch of government as the other house will consist of. Their decisions will sometimes be in danger of being tumultuous, and may be the sudden effects of heat and party. The Senate, being a smaller and older body of men, and being appointed equally from the small and large states, will be more likely to be deliberate and impartial. This, you may say, is owing to my partiality. It may be so, and I will say no more about it.[104]

Inauguration of President Washington

COUNTING THE ELECTORAL VOTE

THE FIRST task that confronted the finally organized First Congress on April 6 was the counting of the electoral votes. These votes, as described in an earlier chapter, having been received by Secretary Thomson of the Old Congress, were now opened and counted by the president pro tem of the Senate, John Langdon of New Hampshire, in the presence of both houses. A senator, Oliver Ellsworth, was sent to notify the House that the Senate was organized and ready to discharge the duty of counting the votes, having also appointed one of its members as clerk to list the votes as declared. The House appointed two for this also; and, headed by the Speaker, attended in the Senate Chamber. Langdon personally counted the votes as well as opened them, and declared the result; and Adams did the same in 1793, but in 1797 he merely opened the returns and had the secretary of the Senate read them. Since then the president of the Senate on opening the votes has passed them to the tellers to read and list. There continued to be only one teller from the Senate until 1877; since then there have been two. The votes were counted in the Senate Chamber in 1792 and in 1801 and 1805; but in the House Chamber in 1797 and from 1809 on. The president of the Senate has continued to announce the results and declare the election.

NOTIFICATION

AFTER the House retired, it requested the Senate to make arrangements for the notification of the successful candidates, and Senator Wingate wrote that many had applied for the honor of being the messengers. The choice fell on Charles Thomson to notify Washington and Sylvanus Bourne, Adams. Both left on their mission the next day, Bourne going by packet. With a favorable wind he made a swift passage, reaching Warwick Neck, R. I., where he landed, the

next evening and Braintree at 6 P. M. on April 9—an express-rate travel of only fifty hours. He returned to New York with Adams as private secretary. Thomson attributed his privilege to the fact that he had "been long in the confidence of the late Congress and charged with the duties of one of the principal civil Departments of Government."[1] He traveled rather slowly, spent the night of the 9th in Philadelphia and reached Mount Vernon at about noon on the 14th.

PREPARATION FOR DEPARTURE

BOTH Washington and Adams had been aware of their election for some time, and had made preparations accordingly. In Washington's case this was for a future which he declared to be "a scene of darkness and uncertainty."[2] He made a visit to his mother at Fredericksburg on March 7, "in order probably to discharge the last Act of *personal* duty, I may (from her age) ever have it in my power to pay." He drew up for his farmer, overseers, and the nephew who was to act as manager of the estate, elaborate instructions for the carrying on of Mount Vernon during 1789; and to the agent who looked out for the leased lands further inland unusally strict orders concerning the tenancies. He was, as always after the Revolution, in need of current cash, and was forced to borrow money in order to leave home free from obligations and to have the funds necessary for the journey and the requirements of his exalted office. This money to the extent of £600 he obtained from Richard Conway, an Alexandria merchant, a debt which was finally discharged in December 1790.

Washington was, as he wrote, much tied up by his "private business and numerous avocations." Among such he would probably have included the admonition on March 23 to a nephew, now 17, who was "now arrived at that age when you must quit the trifling amusements of a boy, and assume the more dignified manners of a man," in a long letter of those "advisory hints" he seemed fond of writing to his young relatives.[4] Also there exists a "rough and incorrect draught of a letter" to one Thomas Green, a ne'er-do-well carpenter and painter, in which with incisive detail all of his shortcomings are made evident.

CLOTHES

AND HE had to have clothes. He was always careful respecting his appearance and attire, and the position he was soon to assume

would, as he must have realized, be a social as well as a political one. The conditions of the time and of his own training would presume the existence of something akin to a court, of which he would be the head, an official society in which his example of simplicity or ostentation would be of great influence. An exaggerated idea of this, in its political phase at least, was held by some of the Federalists, such as James McHenry, his erstwhile military secretary, who wrote on March 29, 1789: "You are now a king, under a different name; and, I am well satisfied, that sovereign prerogatives have in no age or country been more honorably obtained; or that, at any time they will be more prudently or wisely exercised. . . . That you may reign long and happy over us, and never for a moment cease to be the public favorite is a wish that I can truely say is congenial to my heart."[6]

In this matter of clothes the intermediary was Secretary at War Knox, then in New York. Washington wrote Knox on January 29, 1789, calling attention to an advertisement of "superfine American Broad Cloths" in a New York paper. He wanted enough for a suit of clothes, and would leave the color to Knox. Mrs. Washington would also like enough of what was called "London Smoke" for a riding habit; a statement, incidentally, which seems to indicate an activity rather late in life, as she was then 57. At this time for the General only cloth and twist for the buttonholes were wanted; later there were some complications over metal engraved buttons as well. Knox replied on February 12 that there were no American cloths on hand, but four pieces were hourly expected, of light grey, Hartford grey, bottle green, and dark brown: "I shall have the choice of them and will secure the quantity you request for yourself and Mrs. Washington and forward the same by the Stage. But I am a little apprehensive you will be disappointed with respect to the fineness, it being about the quality of a second english cloth."[7] On the 16th the cloths had not yet arrived, but were expected "by the first wind." On the 19th he sent 13 yards of bottle green of ¾ width, Hartford manufacture, it being the only really satisfactory piece. He expected it would be enough to make a coat and waistcoat as well as Mrs. Washington's habit. The price was $2.00 a yard New York currency, which was 8 percent below par. Washington acknowledged the package on March 2. It exceeded his expectations; but this was the last we know concerning this bottle-green cloth, except Lear's account of the payment later in New York.

Jeremiah Wadsworth, congressman-elect from Connecticut, had promoted the Hartford manufactory. Knox wrote Washington on March 5 that Wadsworth had stated he would have "some superfine

brown Hartford cloth intended for you" next week;[8] and Wadsworth wrote Peter Colt at Hartford on March 15 that Lear had written for a piece of the "fine Brown" that was evidently for Mrs. Washington. ". . . you may send as much Brown of the best quallity as can be Spared besides the Suits for the President & Vice Presidt. What with Mrs.[?] Washington and Col Few & others I can sell immediately 100 Yrds."[9] On March 22, again to Colt, he expressed the wish that "the company wd present the Vice President as well as the President with a suit."[10] Daniel Hinsdale from the Hartford manufactory wrote Washington on March 23 that he was sending "a pattern of fine Cloth of our Fabrick which the Company flatter themselves Your Excellency will Receive as a Token of their Respect & Esteem."[11] Washington on April 8 acknowledged the receipt of the cloth, with "best thanks" and praise for its quality, as well as pleasure over the dawning "spirit of industry economy and patriotism" which the making of such fabrics in America indicated.[12] This brown broadcloth became the inaugural costume and it was perhaps made up during the week the President-elect was in New York before he took office.

POPULAR ENTHUSIASM

WASHINGTON gave thought to his journey to New York and also to his lodgings there. He deprecated, as always, display or popular enthusiasm, but recognized that they must be endured as a penalty of his fame. An Alexandria Quaker wrote the General on March 28 that the Friends in Philadelphia were fearful of mob violence if the city was illuminated in his honor, "as it concerns a numerous people in that City who suffered much in their propperty, had their persons insulted and were in danger of their lives from the Outrages of a Mob at the last General illumination."[12a] Presumably the patriotic antagonism was aroused by the fact that the tenets of the Quakers did not permit such honoring of a man, and in consequence their houses were dark. Washington replied on April 1:

> As it seems that it will be my unavoidable lot to be again brought into publick life, however contrary to my inclinations, I must prepare myself to meet with many occurences which will be painful and embarrassing; but I can truly say that few events would distress me more than the realizing of the apprehensions of so respectable a body of my fellow Citizens, as the Quakers of Philadelphia, . . . If I must go on to New York, and my wishes and inclinations were consulted on the occasion, they would lead me to proceed in as quiet and peaceable a manner as possible. But, situated as I am at present, and knowing nothing of the intentions of the people respecting my passing through the several towns, more than what the publick papers inform me of, (and these may be conjecture,) I do not see how I can, with any degree of

propriety or delicacy, interfere, at this moment, to prevent the ill effects which are feared from an illumination of the City of Philadelphia. Could any way be pointed out to me by which I might ward off the evil dreaded by the Quakers, I would, with peculiar pleasure, take every proper step to prevent it; for altho' I have no agency in these matters, yet nothing would be more painful to me than to be the *innocent* cause of distress or injury to any individual of my Country.[13]

The mayor of Philadelphia, Samuel Powel, was himself originally a Quaker and Washington's friend and correspondent. There is no evidence that the President-elect made any request, but Powel issued a proclamation on April 18 directing that there be no illumination of private houses in Washington's honor "by setting up candles in their windows." [14] The Supreme Council of the state had recommended this restraint as early as March 13, and the city council had requested Powel to issue the proclamation.

HOSPITALITY

WASHINGTON received various letters offering hospitality on his travel to New York, none of which he accepted except that of Robert Morris of Philadelphia. To McHenry's offer of his house at Baltimore Washington replied on April 1: " . . . however pleasing it might be to me, on any other occasion, to render this proof of my regard for you, I cannot consistently with my ideas of propriety (under the existing circumstances) consent to give so much trouble in a private family. The party that may possibly attend me, the crowd that always gather on novel occasions, and the compliment of visiting (which some may incline to pay to a new character) all contribute to render a public house the fittest place for scenes of bustle and trouble." [15]

Both Governor Clinton and John Jay offered their residences at New York for the President-elect's accommodation until he was otherwise suited. He answered Clinton on March 25: ". . . if it should be my lot (for Heaven knows it is not my wish) to appear again in a public *Station*, I shall make it a point to take hired lodgings, or Rooms in a Tavern until some House can be provided. Because it would be wrong, in my real Judgment, to impose such a burden on any private family, as must unavoidably be occasioned by my company: and because I think it would be generally expected, that, being supported by the public at large, I should not be burdensome to Individuals." [16] He wrote Madison, who was in New York awaiting the organization of Congress, five days later:

I have been favored by your Letter of the 19th; by which it appears that a quoram of Congress was hardly to be expected until the beginning of the *past*

week. As this delay must be very irksome to the attending Members, and every days continuance of it (before the Government is in operation) will be more sensibly felt; I am resolved, no interruption shall proceed from me that can well be avoided (after notice of the Election is announced); and therefore take the liberty of requestioning the favor of you to engage Lodgings for me previous to my arrival. Colo. Humphreys, I presume, will be of my party; and Mr. Lear who has already lived three years with me as a private Secretary, will accompany, or preceed me in the stage.

On the subject of lodgings I will frankly declare, I mean to go into none but hired ones. If these cannot be had tolerably convenient (I am not very nice) I would take rooms in the most decent Tavern, till a house can be provided for the more permanent reception of the President. I have already declined a very polite and pressing offer from the Governor, to lodge at his house till a place could be prepared for me; after which should any other of a similar nature be made, there would be no propriety in the acceptance. But as you are fully acquainted with sentiments on this subject, I shall only add, that as I mean to avoid private families on the one hand, so on another, I am not desirous of being placed early in a situation for entertaining. Therefore, hired (private) lodgings would not only be more agreeable to my own wishes, but, possibly, more consistent with the dictates of sound policy. For, as it is my wish and intention to conform to the public desire and expectation, with respect to the style proper for the Chief Magistrate to live in, it might be well to know (as far as the nature of the case will admit) what these are before he enters upon it.[17]

FIRST PRESIDENTIAL MANSION

HOWEVER, on April 15 Congress resolved: "That Mr. Osgood, the proprietor of the house lately occupied by the President of Congress, be requested to put the same, and the furniture thereof, in proper condition for the residence and use of the President of the United States, and otherwise, at the expense of the United States, to provide for his temporary accommodation."[18] The first presidential mansion was ready for its occupant when he arrived on the 23d. Tobias Lear, the private secretary, went up for this purpose by stage before Washington left Mount Vernon. This house, No. 3 Cherry St., on the north side and near what was then St. George's Sq. and later Franklin Sq., had been built in 1770 by Walter Franklin. Samuel Osgood, who married Franklin's widow and was owner in 1789, became postmaster general in September of that year. The house was square, three stories high and five windows wide, but was neither very spacious nor conveniently situated. Later, it was a music store and a bank and was torn down in 1856.

OFFICE-SEEKERS

MUCH of Washington's time during the last month had been occupied in answering applications for office. His reply was invariably

the same. To Benjamin Harrison, signer of the Declaration of Independence and ex-governor of Virginia, who had opposed the Constitution in the Virginia convention and now solicited a position under it, went on March 9, 1789, a characteristic answer:

> In touching upon the more delicate part of your letter (the communication of which fills me with real concern) I will deal by you, with all that frankness, which is due to friendship, and which I wish should be a characteristic feature in my conduct through life. I will therefore declare to you, that, if it should be my inevitable fate to administer the government (for Heaven knows, that no event can be less desired by me; and that no earthly consideration short of so general a call, together with a desire to reconcile contending parties as far as in me lays, could again bring me into public life) I will go to the chair under no pre-engagement of any kind or nature whatsoever. But, when in it, I will, to the best of my Judgment, discharge the duties of the office with that impartiality and zeal for the public good, which ought never to suffer connections of blood or friendship to intermingle, so as to have the least sway on decisions of a public nature.[19]

The importunities were not confined to Washington. The correspondence of the time shows that others believed to have the ear of the General were solicited by many to use influence in their behalf. The correspondence of Knox, for instance, contains letters to this effect from Edward Carrington, Benjamin Lincoln, Nathaniel Gorham, Henry Jackson, John Brooks, Sebastian Bauman, and various other willing patriots. Later Representative Sedgwick wrote his wife, August 1, 1789: "This city is indeed crowded with the candidates who expect to obtain the means of subsistance under a government, whose adoption they wished for that very end. By this herd I have been pestered incessantly ever since I arrived in town." [20]

RELUCTANCE

THUS, arrayed and waiting, not happy, but resigned, Washington received Thomson's announcement on April 14. He had written Knox on April 1, apropos the tardiness of Congress: "For myself, the delay may be compared to a reprieve; for in confidence I assure *you*, with the *world* it would obtain *little credit*, that my movements to the chair of Government will be accompanied by feelings not unlike those of a culprit who is going to the place of his execution: . . ." [21]

ADAMS' JOURNEY

MEANWHILE, the Vice President-elect was making his preparations and his state was preparing to give him a proper send-off, Governor Hancock, whatever may have been his private feelings, rising to the occasion and issuing the order for a proper military escort. Henry

Jackson kept Knox informed of the plans. On March 1, 1789, he wrote: "Yesterday I sold Colo. Smith [William Stephens, Adams' son-in-law] that Elegant Coach that was Mr. Swans. It never ran but twice and is the handsomest thing in the Country. He said he wanted it for himself—but I rather think, it is intended for the V. P. He gave 150 £ny [New York currency?] for it." [22] He reported further on March 7: "The Coach . . . is preparing with four Horses to convey His Excellency on to the Seat of Government. We shall make some Parade on his departure." [23] And on March 22: ". . . his Excellency the Govr. has invited him to take a *cold cut* at his house on the day of his departure. A large party of gentlemen are invited to partake of the *Feast*. The several *Corps of Cavalry* in the State, are order [sic] to be in readiness to receive his *Excellency the Vice President* & Escort him from County to County through the Commonwealth. This will do Harry—I think a pretty good beginning." [24] His final report was on April 12: ". . . the Bells in the several Towns thro which he will pass will set a ringing & the Gentlemen will turn out & Escort him from Town to Town, this besides the Military—indeed there will be one general *Huzza* through the State." [25]

On Monday, April 13, at 10 in the morning Adams left his house at Braintree (now Quincy) with an escort of horse which had arrived "at 8 o'clock, breakfasted at Mr. Adams's, and were treated with that attention which an enlightened republican however dignified, will ever pay to a free people." [26] At Boston he was met by a party of gentlemen on horseback and accompanied, with artillery salute, to the governor's mansion, where there was a cold dinner of which some 300 partook; after which the carriage of the lieutenant-governor, General Lincoln, joined the forty others that accompanied Adams on his departure from the Hub with an augmented escort of horse and a cavalcade of 150 citizens. The Middlesex Horse relieved the Suffolk troops, and the first night was passed at Sudbury. The horse of other counties succeeded to the honor of the escort, which was taken over by the Connecticut troops at the state border beyond Springfield. Ezra Stiles, president of Yale College at New Haven wrote in his diary on April 16: "The Freedom of this City to Dr. Jno. Adams voted this day at a City Meeting." And on the 17th: "This day his Excelly. Dr. Jno. Adams V. P. of Congress [sic] was escorted into Tn. by 35 or 40 Horse & prps. 60 Chaises—We met him 5 m. towrds. No. Haven. He rested in the City an Hour, when the Diploma of the Freedom of it was presented to him. Then we accomp. him 2 m. out to Milford Hill." [27]

Adams himself wrote to his wife from Rye, N. Y., on April 19: "We arrived at this house last night (Saturday), shall rest here to-day, and go into New York tomorrow. At Hartford, the manufacturers presented me with a piece of broadcloth for a suit of clothes. At New Haven, the corporation presented me with the freedom of the city. At both these towns the gentleman came out to meet us, and went out with us. At Horseneck we were met by Major Pintard and Captain Mandeville, with a party of horse from the State of New York, and there is to be much parade on Monday."[28] He arrived at New York at 4 P. M. April 20 in the rain, being met at Kingsbridge by officers of the militia, a numerous concourse of citizens, and a committee of both houses of Congress. On passing the Fort a federal salute was fired. He put up at Jay's house. The house Adams selected for his residence in New York was a country seat at Richmond Hill near present Charlton and Varick streets, built about 1767. Later it became a public garden and theater, and was demolished in 1849.

TAKING THE CHAIR

HE WAS waited upon by the Mayor and Corporation of the City the next morning, and then went to Federal Hall, escorted by the committee appointed for that purpose. Langdon, as president pro tem, met him on the floor of the chamber, welcomed him, and conducted him to the chair. On taking his seat the Vice President made a considerable address, pointing out that he was more accustomed to share in public debates than to preside in their deliberations. His speech included a paragraph of praise of Washington, who, he said, was possessed of "qualities so uncommon" that they were "no common blessings to the country that possessed them. By those great qualities, and their benign effects, has Providence marked out the head of this nation, with a hand so distinctly visible, as to have been seen by all men, and mistaken by none."[29] If Maclay's word is to be accepted, Adams as presiding officer often forgot that he was no longer expected to take part in the debates.

LOCAL PREPARATIONS TO HONOR WASHINGTON

THE VARIOUS towns through which Washington should pass on his journey to New York made preparations to receive him properly. Formal addresses and replies were a necessary element of such reception in those days, and if a reply was expected at the time of the presentation of the address a copy was usually sent on ahead. McHenry on April 12 sent to Mount Vernon such a copy of the proposed Balti-

more address. More tardily, on April 20 McKean enclosed addresses by the University of Pennsylvania, the Pennsylvania supreme court, and the Cincinnati, and desired to know when the various bodies might wait on Washington to present them, the General being already in Philadelphia. The plans of the Baltimore reception were forwarded on the day he was to arrive there. There is not much information on the method of the more material preparations. Sometimes they were in the hands of volunteer committees, sometimes official, doubtless usually a combination of the two. The Supreme Council of Pennsylvania appointed on March 12 a committee of five on "the most respectfull mode or manner of receiving General Washington, and if necessary, an estimate of the probable expence thereof." [30] On March 13 the committee reported verbally in favor of an address, estimated that £199 7s. 6d. would be needed for the military escort, and proposed that the assembly be requested to authorize the expenditure. The minutes of the General Assembly, however, do not indicate any action by that body, or, indeed, the reception of the request from the council; but on September 1 an assembly committee reported that an expense of £113 6d. had been incurred for ordnance stores and fireworks on the occasion of receiving Washington. The address was agreed upon by the council on April 18.

THOMSON AT MOUNT VERNON

THOMSON brought the formal certificate of election prepared by a committee of four of the Senate and signed by President pro tem Langdon, as well as a letter from Langdon expressing the hope that "so auspicious a mark of public confidence will meet your approbation, and be considered as a sure pledge of the affection and support you are to expect from a free and an enlightened people." [31] Thomson presented these in the banquet hall of Mount Vernon at about 1 o'clock on April 14, and also made an address, saying that Congress did not "harbour a doubt of your undertaking this great this important Office," and stating that he was commanded to accompany the President-elect to New York.[32] Washington in his reply said:

> I have been accustomed to pay so much respect to the opinion of my fellow-citizens, that the knowledge of their having given their unanimous suffrages in my favor, scarcely leaves me the alternative for an option. I can not, I believe, give a greater evidence of my sensibility of the honor which they have done me than by accepting the appointment. . . . Upon considering how long a time some of the Gentlemen of both Houses of Congress have been at New York, how anxiously desirous they must be to proceed to business, and how deeply the public mind appears to be impressed with the necessity of doing it speedily, I can not find myself at liberty to delay my journey. I shall there-

fore be in readiness to set out the day after tomorrow and shall be happy in the pleasure of your company; for you will permit me to say that it is a peculiar gratification to have received the communication from you.[33]

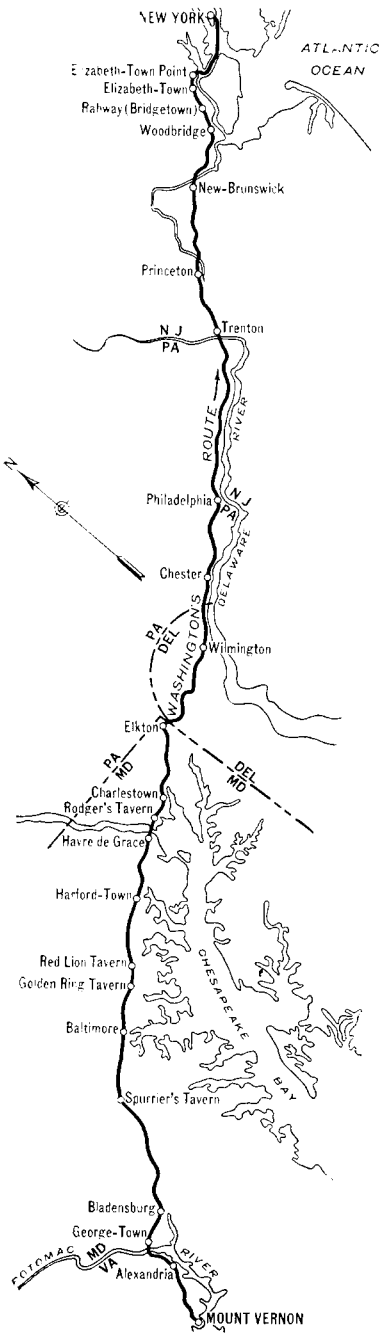
He also wrote Langdon to the same effect.

WASHINGTON'S PROGRESS

IT IS not possible to give here all of the details of the triumphant progress. The party which left Mount Vernon at 10 o'clock on the morning of April 16 consisted of Washington, Thomson, and Colonel David Humphreys, formerly a military aide, long a guest at Mount Vernon, and, with Lear, the first selected for the President's official family. They rode in a coach with four horses, but there were also led horses for riding, and probably one or more other vehicles with baggage and servants. Mrs. Washington did not leave home until May. The first stop was at Alexandria, he being met some miles outside by an escort of citizens, and partaking of an early dinner at Wise's Tavern, with thirteen toasts. The first of the many addresses was presented. It was a feeling farewell to an honored and cherished neighbor. In the reply Washington dwelt upon the painful emotions which the election had caused, and his reasons for acceptance, which were:

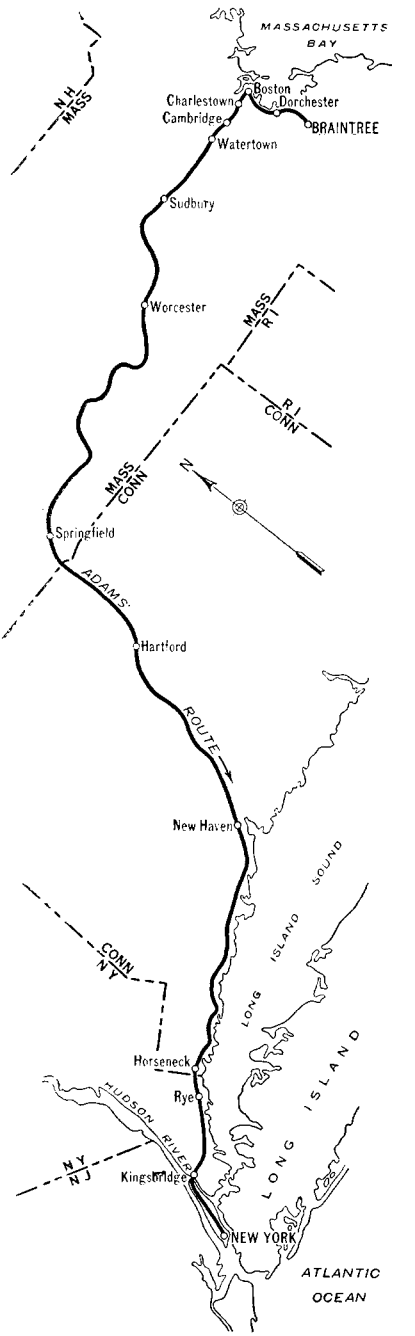
> The unanimity of the choice, the opinion of my friends, communicated from different parts of Europe, as well as of America, the apparent wish of those, who were not altogether satisfied with the Constitution in its present form, and an ardent desire on my own part, to be instrumental in conciliating the good will of my countrymen towards each other . . . just after having bade adieu to my domestic connexions, this tender proof of your friendship is but too well calculated still farther to awaken my sensibility, and encrease my regret at parting from the enjoyments of private life. All that now remains for me is to commit myself and you to the protection of that beneficent Being, who, on a former occasion has happly [sic] brought us together, after a long and distressing separation. Perhaps the same gracious Providence will again indulge us with the same heartfelt felicity. But words, my fellow-citizens, fail me: *Unutterable sensations must then be left to more expressive silence: while, from an aching heart, I bid you all, my affectionate friends and kind neighbours, farewell!* [34]

At 2 o'clock the party was ferried across the Potomac to Georgetown, where the Alexandria escort gave way to the Georgetown one that accompanied him to Bladensburg where, most probably, he spent the night. Although proverbially an early riser, he did not reach Baltimore the next day until too late for the public dinner, dinner in those days being usually about 3 or 4 o'clock. He had been met at the county line by the usual escort of citizens and wel-



GEORGE WASHINGTON'S ROUTE

Bladensburg, April 16; Baltimore, 17th; Wilmington, 19th; Philadelphia, 20th; Trenton, 21st; Woodbridge, 22d; New York, 23d



JOHN ADAMS' ROUTE

Sudbury, April 13; Worcester, 14th; Springfield 15th; Hartford, 16th; New Haven, 17th; Rye, 18th; New York, 20th

comed by the usual artillery salute, but it was fully 6 o'clock before the committee of citizens waited upon him at the tavern with an address and an invitation to supper. "A great Number of the Citizens were presented to him, and very graciously received." He retired from the supper about 10, and the "next morning he was in his Carriage at Half past Five o'Clock, when he left town, under a Discharge of Cannon, and attended as on his Entrance, by a Body of the Citizens on Horseback. These Gentlemen accompanied him Seven Miles, when alighting from his Carriage, he would not permit them to proceed any further; but took leave of them, after thanking them in an affectionate and obliging Manner for their Politeness." In his reply to the address he said:

> It appears to me, that little more than common sense and common honesty, in the transactions of the community at large, would be necessary to make us a great and a happy Nation. For if the general Government, lately adopted, shall be arranged and administered in such a manner as to acquire the full confidence of the American People, I sincerely believe, they will have greater advantages, from their Natural, moral and political circumstances, for public felicity, than any other People ever possessed. In the contemplation of those advantages, now soon to be realized, I have reconciled myself to the sacrifice of my fondest wishes, so far as to enter again upon the stage of Public life.[36]

It is not known where he spent the night of the 18th, but probably at Havre de Grace, though possibly at Harford. Wilmington was reached under escort from the state border on the 19th, and because it was Sunday the houses were not illuminated but a ship in the river was decorated instead. The address here was from the Burgesses and Common Council. The Delaware escort the next morning accompanied him to the state line, where a body of Pennsylvanians took over the honor. This included President Thomas Mifflin, the Speaker of the Assembly, and the Philadelphia First Troop of Horse, a "silkstocking" aggregation, and one other troop. At Chester breakfast was eaten, and Washington then mounted his white horse, and with continuous augmentations by both civil and military bodies the procession proceeded to Philadelphia. At the bridge of boats which had displaced the Schuylkill Ferry, there were triumphal arches of laurel, and an avenue of flags and evergreens, while a wreath of laurel was lowered as the hero passed through. In the city, with much noise of bells, salutes, and cheers, the procession came finally at 3 P. M. to the City Tavern for the banquet which awaited and the fourteen toasts which followed. The ships in the stream were decorated and at night there were "brilliant and ingenious" fireworks. Washington spent the night at the home of

Robert Morris. The master of the house was undoubtedly there to play host, as he was absent from the Senate from April 11 to May 12. The General left the next morning at 10 o'clock, after receiving and answering the addresses, and as it was raining he declined the escort of horse that was ready to accompany him.

The rain ceased before the party crossed the Delaware at the site of present Morrisville at 2 P. M., which brought him to the New Jersey shore south of Trenton. Here he was met by a parade of military and citizens and, again mounted on his white horse, he entered the town across the Assanpink Creek, which stream had been the scene of his strategic maneuver before the battle of Princeton, by which he eluded Cornwallis' main force. Here was enacted the crowning scene of the journey. Again there was a triumphal arch, this time on thirteen pillars, erected under the direction of the ladies of the town, who attended on the bridge. As the General passed beneath the arch an original song was rendered by a female chorus, the young folks of which, in white, strewed the way with flowers at the proper point in the song. In the acknowledgment which he wrote to the ladies, Washington said: "The astonishing contrast between his former and actual situation at the same spot, the elegant taste with which it was adorned for the present occasion, and the innocent appearance of the *white-robed Choir* who met him with the gratulatory song, have made such impressions on his remembrance, as, he assures them, will never be effaced." He dined, held a reception, and lodged in Trenton, and the next day proceeded through Princeton and New Brunswick to Woodridge, where he slept, having had a succession of military escorts.

The final day of his journey, the 23d, was a strenuous one. He was met by the escort five miles below Elizabethtown. On arrival at that place he partook of a "cold collation" and at Elias Boudinot's house met the committees of Congress that had been deputed to greet him. These consisted of three senators, Langdon, Carroll of Maryland, and Johnson of Connecticut, and five representatives, Boudinot, Bland of Virginia, Tucker of South Carolina, and Benson and Laurance of New York. With these men and still escorted and attended by the people, he proceeded to Elizabethtown Point, where he reviewed the troops, taking leave of the Jerseymen and embarking at noon for New York.

WELCOME AT THE NATIONAL CAPITAL

NEW YORK City, both official and non-official, had turned its thoughts to the reception of the President-elect long before. By the

middle of March the New York papers were able to announce, for instance, that the subscription for the fireworks on his arrival had been so successful "as to afford every expectation of such a sum being procured as will be sufficient to accomplish the design, at once extensive, grand, and majestic." [38] At Philadelphia the fireworks were at the charge of the state. There is, in fact, no evidence that the New York City government authorized any expenditures for the occasion. On April 9 the Senate and on the 13th the House appointed the committees to consider and confer over arrangements for receiving the President and Vice President. The reception committees were elected on the 16th. The state and city governments, Congress, and the public all had a share in the great welcome which greeted Washington on his arrival. Some fifty private citizens had a barge 47 feet long especially constructed at a cost of £250. The rowers of it were thirteen pilots dressed in white uniforms, with Thomas Randall, an exshipmaster, as coxswain; and Randall was directed to present the barge to the President-elect on his arrival.

It was this barge which brought Washington across the harbor from Elizabethtown Point to Murray Wharf at the foot of Wall Street. In it and six accompanying barges were also the congressional committee and the state and city delegates, consisting of Chancellor Livingston, the adjutant general, and the recorder of the city. This flotilla was joined by other craft in which were Secretary Jay and Secretary Knox, the postmaster general, the members of the Treasury Board, other dignitaries, and many citizens. Boudinot wrote his wife:

> Boat after Boat & Sloop after Sloop added to our Train gaily dressed in all their naval Ornaments made a most Splendid Appearance. Before we got to Bedler's Island, a large Sloop, came with full sail on our Starboard Bow when there stood up about 20 Gentlemen & Ladies & with most excellent Voices sung an elegant Ode prepared for the Purpose to the Tune of God Save the King, welcoming their great Chief to the Seat of Government. On the conclusion, we gave them our Hats, and then they with the Surrounding Boats gave us three Cheers. Soon after another Boat, came under our Stern & presented us with a number of Copies of another Ode, and immediately about a dozen Gent'. began to sing it in parts as we passed along. Our worthy President was greatly affected with these tokens of profound respect.[39]

The ships in the harbor, including a Spanish sloop-of-war, were dressed and manned, and fired salutes, as did the Battery.

When, after 3 o'clock, Washington stepped ashore at the head of the carpeted ferry stairs, he was again saluted and the bells of the city began to ring. The Corporation had on the day before especially requested the bell-ringing: "And it is . . . recommended that the Bells of the several Churches and other public Buildings commence

ringing on the Presidents landing and continue for half an Hour." [40] He was greeted at the landing by Governor Clinton in the presence of the French minister and Spanish chargé. In the midst of an extensive military procession Washington and Clinton, with many officials, walked through the decorated streets to the presidential house at Cherry Street, half a mile away, going by Queen (now Pearl) Street. The crowd was so dense and so enthusiastic that progress was much obstructed and at times impossible. At the house there was immediately a reception, at which, according to the French minister, wine and punch were served. The guard which the governor intended for the house was dismissed by Washington, who disclaimed the need of it.

Later the General and the official party dined with Governor Clinton. The day closed with a general illumination. The Corporation had on April 22 passed an order: "Whereas the Board have reason to believe that a very great proportion of the Citizens are earnestly desirous to illuminate their Houses on the Evening of the arrival of the President of the United States, as a Testimony of their Joy on that interesting Event; and that Preparations are already made for that purpose It is therefore recommended to the Citizens to illuminate their Houses from the Hour of seven to nine; in full confidence that every Act of Violence & Disorder will be avoided and the utmost Attention paid to guard against Accidents by fire: . . ." [41] This was in direct contrast to the Philadelphia action, and was perhaps intended to be, for though Powel did not issue his proclamation until April 20, the intention was known earlier. The illumination seems to have been general: "every house is illuminated except those of the Quakers." Even the Moravians, less stubborn or less courageous than the Friends, put up their candles. One of them wrote in his diary: "At night the whole city was illuminated, and we were obliged to do the same to our house, else we should have had our windows broke." [42] Some of the illuminations were evidently elaborate; that by Sir John Temple, the British consul general, was especially noticed. The streets were again crowded, though there was a heavy rain which evidently prevented the fireworks, which suggests that the house displays, however elaborate, must have been entirely inside.

Washington's accounts state that the journey cost him $182.78. Joseph Jones wrote Madison on May 10: "The Generals journey to N. York shews the people still retain the same respect and veneration for his person and character they heretofore entertained and altho' he is little captivated by ceremonial distinctions yet he could not fail

of being sensibly gratified by such universal demonstrations of affection as were exhibited through his progress, among them none I conceive could be more pleasing than his reception at Trenton bridge."[43] Washington's own reaction to the final burst of enthusiastic welcome is indicated in a diary entry quoted by Irving, but now lost: "The display of boats which attended and joined us on this occasion, some with vocal and some with instrumental music on board; the decorations of the ships, the roar of cannon, and the loud acclamations of the people which rent the skies, as I passed along the wharves, filled my mind with sensations as painful (considering the reverse of this scene, which may be the case after all my labors to do good) as they are pleasing."[44]

INAUGURATION PLANS

WE HAVE no special information on Washington's actions during the week that ensued before the inauguration, except that he received many calls of respect from congressmen, officials, and others, paid calls of ceremony on the congressmen at least, and even this early was made aware of the necessity of scheduling his time. Maclay mentions the call on himself, the General coming on horseback and not sitting down. Doubtless he wrote his inaugural address at this time. There survive fragments of a paper of more than 62 pages in Washington's handwriting which has been considered as possibly a draft for the address, though the surviving portions have little relation to the address as delivered. If there was an unnecessary delay between his arrival and induction, the fault was with Congress over what Maclay called an "endless business." It was during this week that the lively contest between the houses over titles arose, though it had its chief contest after the inauguration. It will be considered later.

On April 23 the Senate resolved: "That a committee, consisting of three members, be appointed to consider and report . . . the time, place, and manner, in which, and the person by whom the oath prescribed by the Constitution, shall be administered to the President; and to confer thereon with such Committee as the House of Representatives shall appoint for that purpose. Mr. Lee, Mr. Izard, and Mr. Dalton were chosen."[45] The House being informed that day of the Senate resolution, also appointed a committee of five, consisting of Benson, Ames, Madison, Carroll of Maryland, and Sherman. The two committees made a report on April 25:

> That the President hath been pleased to signify to them, that any time or place which both Houses may think proper to appoint, and any manner which

shall appear most eligible to them, will be convenient and acceptable to him; that requisite preparations cannot probably be made before Thursday next; that the President be on that day formally received by both Houses in the Senate Chamber: that the Representative's Chamber being capable of receiving the greater number of persons, that, therefore, the President do take the oath in that place, and in the presence of both Houses. That, after the formal reception of the President in the Senate Chamber, he be attended by both Houses to the Representatives' Chamber, and that the oath be administered by the Chancellor of the State of New York.[46]

This was accepted and further committees, the Senate's being the same and the House's Benson, Ames, and Carroll of the earlier one, were appointed to "take order for conducting the ceremonial." On the 27th they suggested the transfer of the oath-taking to the outer gallery, and a procession later to St. Pauls for divine services. The former suggestion was adopted by both houses; the latter was not presented to the House by its committee, but the Senate's adoption was agreed to in a modified form a day later. Instead of "attending" the President to the chapel, the houses would "accompany" him, by which it was probably intended to emphasize the equality of the departments of government and the democratic position which the House assumed respecting titles and such "trappings of royalty." The Senate did not receive the House's modification until two days after the inauguration and the procession.

THE INAUGURATION

ON THE 29th the official arrangements were formally issued, a few copies being printed. April 30 was Inauguration Day. In the Senate there seems to have been much confusion and perturbation over how the President-elect and the members of the House should be received. Adams expressed much doubt, desired instruction and, according to Maclay, was generally fussy over it. In the midst of it all, the Speaker and members of the House walked in, and they all sat waiting for over an hour, a delay due to the fact that the Senate committee stayed there instead of going for Washington.

Outside, the day, which was fair, began with an artillery discharge at sunrise. The bells began to ring at 9 o'clock and ceased half an hour later, when congregations gathered in the churches of the city for services. At 12 the military procession, numbering about 500 men, under the marshalship of Morgan Lewis, was at the President-elect's door to escort him to the Federal Hall. Washington rode in a state coach with four horses, properly attended by six "assistants" on horseback, most of whom had served intimately under him in the Revolution. Lear and Humphreys followed in the

General's own carriage, the congressional committees, city, state, and national officials, and diplomats were also in the procession. At the Hall, Washington walked between the files of troops to the entrance and was taken by the committees to the Senate Chamber, where the Vice President conducted him to the elevated seat between the chairs of the Vice President and Speaker, the members rising. Seats were also provided in the Chamber for Cyrus Griffin, late president of the Old Congress, Arthur St. Clair, governor of the Northwest Territory, the six persons who were the heads of the national departments, the French minister, Spanish chargé, chaplains, President's suite, governor, lieutenant-governor, chancellor, the supreme court of New York State, and Mayor Duane of New York City. On Adams' announcement that matters were ready for the oath, he, Washington, and Chancellor Livingston walked through the middle door of the Senate Chamber to the outside gallery, which fronted Wall Street and the head of Broad. The senators were to pass through the right door and the representatives through the left, while "such of the persons who shall have been admitted into the Senate Chamber, and may be desirous to go into the gallery, are then also to pass through the door on the right." [47]

Besides the inadequate newspaper statements, various accounts of the ceremony by eye-witnesses have survived, some written at the time, others as reminiscences. They differ considerably in detail and it is not possible to make an exact picture of the event. Certainly, if the prescribed arrangements were carried out as given above, it is not probable that any of the later paintings and engravings of the scene can be accepted as being accurate in detail. The gallery, according to the description given in an earlier chapter, contained about 480 square feet, which, making an allowance for the space necessary for the ceremony, might accommodate fifty or sixty people. There were probably seventeen senators and forty-nine representatives present in the chamber, their secretary and clerk, and provision had been made for the above twenty or more guests in addition. All of the ninety or so persons in the chamber did not go into the gallery, evidently; Gardoqui wrote of "the others that chose to follow" the congressmen. Although it is certainly plausible that most of the persons usually named as present in the gallery were there, with the exception of Baron von Steuben, for whose attendance among the otherwise strictly official guests there is no proper authority, it is not possible to state definitely the presence of any except Washington, Adams, and Livingston. Washington wore the brown broadcloth suit and the rest of his costume is said to have

included white stockings, plain silver buckles on his shoes, a dress sword, and his hair powdered and in a bag. It is probable that the chancellor wore his gown. The oath prescribed by the Constitution was given by the chancellor and repeated by Washington, his hand on a Bible hastily procured at the last moment from the St. Johns Masonic Lodge nearby. The chancellor, waving his hand, exclaimed "Long live George Washington, President of the United States," to which the great crowd in the streets and the windows and house-tops gave an answering shout and repeated hurrahs. Another salute was fired, and the party returned to the Senate Chamber, where Washington gave his inaugural address.

INAUGURAL ADDRESS

WASHINGTON had not yet learned ease, if he ever did, as a speaker, and the solemnity of the occasion had evidently affected him deeply. Maclay said: "This great man was agitated and embarrassed more than ever he was by the leveled cannon or pointed musket. He trembled, and several times could scarce make out to read, though it must be supposed he had often read it before." [48] Ames' impressions are more pleasing: "He addressed the two Houses in the Senate Chamber; it was a very touching scene, and quite of the solemn kind. His aspect grave, almost to sadness; his modesty, actually shaking; his voice deep, a little tremulous, and so low as to call for close attention; added to the series of objects presented to the mind, and overwhelming it, produced emotions of the most affecting kind upon the members. I, Pilgarlic, sat entranced. It seemed to me an allegory in which virtue was personified, and addressing those whom she would make her votaries. Her power over the heart was never greater, and the illustration of her doctrine by her own example was never more perfect." [49]

Maclay called the address "heavy," though he considered it received "merited applause." It was one of about 1500 words, in the preparation of which, according to Rives, Madison assisted. It was the direct, plain production of a man professedly doubtful of his abilities in an exalted but untried position, responsive to his country's call, and dependant upon the beneficent Providence that had already given to America tokens of His agency in its affairs. After giving to Congress "the tribute that is due to the talents, the rectitude, and the patriotism which adorn the characters selected to devise and adopt" the proper measures for putting the new government into operation, he warned them that there was an "indissoluble union between virtue and happiness" and that the "preservation of the

sacred fire of liberty, and the destiny of the Republican model of Government are justly considered as deeply, perhaps as finally staked, on the experiment entrusted to the hands of the American people."

He took pains to present his opinion on the subject of amendments in words which certainly harmonized with Madison's ideas, though they may be considered as yielding rather more to the demand than indicated by the President's own earlier utterances:

> Besides the ordinary objects submitted to your care, it will remain with your judgment to decide, how far an exercise of the occasional power delegated by the Fifth article of the Constitution is rendered expedient at the present juncture by the nature of objections which have been urged against the System, or by the degree of inquietude which has given birth to them. Instead of undertaking particular recommendations on this subject, in which I could be guided by no lights derived from official opportunities, I shall again give way to my entire confidence in your discernment and pursuit of the public good: For I assure myself that whilst you carefully avoid every alteration which might endanger the benefits of an United and effective Government, or which ought to await the future lessons of experience; a reverence for the characteristic rights of freemen, and a regard for the public harmony, will sufficiently influence your deliberations on the question how far the former can be more impregnably fortified, or the latter be safely and advantageously promoted.

One other point in the address may be noticed. He announced that he "must decline as inapplicable to myself, any share in the personal emoluments, which may be indispensably included in a permanent provision for the Executive Department; and must accordingly pray that the pecuniary estimates for the Station in which I am placed, may, during my continuance in it, be limited to such actual expenditures as the public good may be thought to require."[50] This intention is shown in the early items of Lear's presidential accounts, and in Ledger G, and it has often been unquestionably accepted as to what was done. This is a mistake. It was constitutionally impossible, since Congress had no power except to provide a fixed salary and the Treasury had none to issue warrants except under such a law. Evidently Washington recognized this fact; the Treasury warrants show the payment of the exact sum due him on the basis of $25,000 a year, the law for his salary directing that payments should begin with the date of his taking office. There was, probably, nothing to prevent his turning back into the Treasury such amounts as he considered excessive, but he never did this, and indeed declared that the salary was "inadequate to the expence of living."[51]

FINAL OBSERVANCES

WHEN the address was finished, those in the Senate Chamber walked in procession to St. Pauls Chapel, seven blocks away, the military lining the street at the end. Here services were conducted by Bishop Provoost, and then the President was escorted by the committees, in carriages, back to his house. In the evening fireworks at the Battery and more illuminations, the Federal hall being "grandly illuminated." The foreign envoys made a great show. The French minister indulged in a Latin motto as part of his transparencies; and the Spanish chargé displayed "two magnificent transparent gardens, adorned with statues, natural size, imitating marble, representing the most peculiar attributes of Spain, viz., Justice, Integrity, Wisdom, Sobriety, Friendship, and Generosity. There were also various flowerpots, different arches with foliage and columns of imitation marble, and on the sky of these gardens were placed thirteen stars, representing the United States of America—two of which stars showed opaque, to designate the two States which had not yet adopted the Constitution. Above them all the sun could be seen, which gave them light; and, to cap it all, in the clouds could be seen the figure of Fame, with the clarion in one hand and the royal standard of Spain in the other." He also held a fête attended by the Vice President and many officials, as well as the "most prominent ladies" and "gentlemen of distinction." [52]

The public fireworks, provided by means of a subscription, were, according to the Moravian diarist, the "most brilliant . . . that ever was in America." [53] They were in six parts, beginning with a discharge of thirteen cannon and ending with one of twelve cannon, with two shots in each part. The detailed program lists tourbillions, gerbs, and other more familiar terms, such as wheels, shells, fountains, cascades, and stars, indicative of the elaborate character of display, each part of which began and ended with a flight of thirteen rockets. Included was an allegorical transparency between Bowling Green and the Fort, which was "unmasked" at the first discharge of cannon. Lear wrote: "The President, Colonel Humphreys, and myself went in the beginning of the evening in the carriages to Chancellor Livingston's and General Knox's, where we had a full view of the fire-works. We returned home at ten on foot, the throng of people being so great as not to permit a carriage to pass through it." Indeed, to prevent accidents, a newspaper had requested the day before that all horses and carriages be kept off the streets during the fireworks.

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The Bill of Rights

DESIRE FOR A SECOND CONVENTION

THE MASSACHUSETTS ratification convention was the one in which was devised the plan to propose amendments to the Constitution, but to ratify it without requiring the amendments, merely expecting that the proposals would be given due consideration by the First Congress. All the states that ratified later in 1788 followed this plan, except Maryland, and there there were proposals that did not reach the floor of the convention. North Carolina, where a convention was held that year, presented her amendments and postponed ratification until they received consideration, an attitude justified by the fact that ratification was secured without her participation, so that by holding out she had a better chance to secure her proposals. This plan of proposing amendments made ratification possible. It was a compromise between the advocates and the antagonists of the Constitution, the former yielding to the proposal and the latter giving way on the requirement of amendment before ratification. Amendment before ratification would be possible only through another convention, for the system proposed by the Constitution would not be operative unless the new government was organized.

In New York the Federalists bought ratification by agreeing to their opponents' demand for a circular letter advocating another convention, which Governor Clinton, as president of the convention, addressed to all the other states; but since the necessary number of states had ratified already, this call was to be to Congress under the provisions of the Constitution that directed that body to convoke a convention whenever two-thirds of the states required it. The letter expressed the expectation that the call would "be among the first [acts] that shall be passed by the new Congress." Jay, who wrote the New York circular letter, explained his own attitude toward it in a letter to Washington on Septmber 21, 1788:

> The opponents in this State to the Constitution decrease and grow tem-

perate. Many of them seem to look forward to another Convention rather as a Measure that will justify their opposition, than produce *all* the Effects they pretend to expect from it. I wish that Measure may be adopted with a good grace, and without Delay or Hesitation. So many good Reasons can be assigned for postponing the *Session* of such a Convention for three or four Years, that I really believe the great Majority of its Advocates would be satisfied with that Delay. After which I think we should not have much Danger to apprehend from it; especially if the new Governmt. should in the mean Time recommend itself to the People by the Wisdom of its Proceedings, which I flatter myself will be the Case.[1]

Hamilton advised this subtle policy in a letter to Sedgwick on November 9: "The rage for Amendments is in my *opinion* rather to be parried by address than encountered with open force. . . . The *mode* in which amendments may best be made and twenty other matters may serve as pretext for avoiding the evil and securing the good." [2] Other Federalists were, however, alarmed. General Lincoln wrote Sedgwick on September 7: "May Heaven avert the design. Rhode Island that little trollop of a sister will . . . be flattered in her wickedness and encouraged in her obstinacy. . . . Truly we cannot think seriously of calling a convention. It is a measure of all others to be dreaded." [3]

Pennsylvania was the second state to ratify, and the Antifederalists there continued their agitation after the defeat in the convention. Robert Whitehill probably originated the Harrisburg Convention in that state. Representatives of townships in his county, Cumberland, met in June 1788, called for a conference at Harrisburg on September 3, and sent out a circular letter declaring that unless the friends of amendment combined "in some plan in which they may confidentially draw together, and exert their power in unison, the liberty of the American citizens must lie at the discretion of Congress, and most probably posterity become slaves to the officers of government." [4] The convention was attended by thirty-three men from Philadelphia and twelve counties. Blair M'Clenachan, a Philadelphia merchant and seemingly in the wrong pew, was chairman, and such outstanding Antifederalists as Smiley, Bryan, Pettit, and Whitehill were there. So was Albert Gallatin, whose resolutions to support the New York call for a second convention were rejected as too strong and not sufficiently specific. The convention resolved that: "In full confidence of obtaining a revision of such exceptionable parts by a general convention, and from a desire to harmonize with our fellow citizens, we are induced to acquiesce in the organization of the said constitution." [5] A petition was presented to the General Assembly to take the earliest opportunity to make application to the new Congress

for a general convention, and twelve desired amendments were proposed. There is no evidence in the minutes of the next meeting of the legislature that any attention was paid to this petition.

VIRGINIA'S CALL FOR A CONVENTION

IT WAS natural that the Antifederalists in Virginia should seize upon the New York proposal as a basis for further opposition. Madison wrote Washington on June 27, 1788, soon after the Virginia ratification convention adjourned: "Mr. H—y declared previous to the final question that altho' he should submit as a quiet citizen, he should sieze the first moment that offered for shaking off the yoke in a *constitutional way*. I suspect the plan will be to engage ⅔ of the Legislatures in the task of undoing the work; or to get a Congress appointed in the first instance that will commit suicide on their own Authority." [6] Governor Randolph seemed to think that Henry would not be content with the new convention idea. He wrote Madison on October 23: "I am told, that he appears to be involved in gloomy mystery. Something is surely meditated against the new constitution, more animated, forcible and violent, than a simple application for calling a convention. Whether the thing projected will issue forth in language only, or the substance of an act, I cannot divine." [7] Possibly Randolph's point of view was influenced by the fact that he himself, as a Federalist, was an advocate of the convention, and that therefore Henry in his extreme opposition could scarcely consider it adequate.

Randolph had based his reasons for not signing the Constitution in the Convention of 1787 partly on the lack of provision for a second convention. He wrote Madison on August 13, 1788:

> Gov. Clinton's letter . . . is this day published by my order. It will give contentment to many, who are now dissatisfied. The problem of a new convention has many difficulties in its solution. But upon the whole, I believe the assembly of Virginia *perhaps* ought, and probably will concur in urging it. It is not too early; because it will only incorporate the theory of the people with the theory of the convention; & each of these theories is intitled to equal respect. I do indeed fear that the constitution may be enervated, if some states should prevail in all their amendments; but if such be the will of America, who can withstand it? For my own part, I fear that direct taxation may be too much weakened. But I can only endeavour to avert that particular evil, and cannot persuade myself to thwart a second convention merely from the apprehension of that evil. This letter [from Clinton] will probably carry me sooner into the assembly, than I intended. I will prepare a draught upon this subject, and forward a copy to you, as soon as I can. My object will be, (if possible) to prevent instructions from being conclusive, if any should be offered, and to leave the convention perfectly free.[8]

Madison replied on August 22:

The effect of Clinton's circular letter in Virga. does not surprise me. It is a signal of concord & hope to the enemies of the Constitution every where, and will I fear prove extremely dangerous. Notwithstanding your remarks on the subject, I cannot but think that an *early* convention will be an unadvised measure. It will evidently be the offspring of party & passion, and will probably for that reason alone be the parent of error and public injury. It is pretty clear that a majority of the people of the Union are in favor of the Constitution as it stands, or at least not dissatisfied with it in ye form; or if this be not the case it is at least clear that a greater proportion unite in that system than are likely to unite in any other theory. Should radical alterations take place therefore they will not result from the deliberate sense of the people, but will be obtained by management, or extorted by menaces, and will be a real sacrifice of the public will as well as of the public good, to the views of individuals & perhaps the ambition of the State legislature." [9]

Randolph made his rejoinder on September 3:

I sincerely wish that the valuable parts of the constitution may suffer no ill from the temper, with which such a body will probably assemble. But is there no danger, that, if the respect, which the large minorities at present command, should be effaced by delay, the spirit of amendment will hereafter be treated as heretical? I confess to you without reserve, that I feel great distrust of some of those, who will certainly be influential agents in the government, and whom I suspect to be capable of making a wicked use of its defects. Do not charge me with undue suspicion; but indeed the management in some stages of the convention created a disgustful apprehension of the views of some particular characters. I reverence Hamilton, because he was honest and open in his views. Perhaps the states may not concur in any particular correction of the new theory. But if dissention in opinion should prevent an amendment, the constitution remains as it is. If on the other hand they should be in unison as to even one amendment, it will satisfy, and bear down all malcontent.[10]

Randolph resigned the governorship to enter the House of Delegates. His conduct caused Francis Corbin, one of the prominent Federalists of Virginia, to write Madison on October 21: "He will injure his political Reputation by his doubtings and turnings. He is *too Machiavelian* and not *Machivaelian Enough.*" [11] Randolph sent Clinton's letter to the General Assembly on October 21, 1788, and in the House of Delegates, of which Henry was a member, it was referred to a committee of the whole on October 25. This committee considered it for several days and then reported on October 30: "Whereas, the Convention . . . did ratify . . . and did also declare that sundry amendments to exceptionable parts of the same ought to be adopted; and whereas, the subject matter of the amendments . . . involved all the great essential and unalienable rights, liberties and privileges of freemen; many of which, if not cancelled, are rendered

insecure under the said constitution until the same shall be altered and amended: . . . "[12] The resolve proposed a call upon Congress to summon a convention, and it also proposed a circular letter to the other states supporting the New York letter. A motion to substitute an application to Congress to pass an act recommending to the legislatures of the states the ratification of "a bill of rights, and of certain articles of amendment proposed by the Convention of this State," was defeated by 39 to 85, and the original resolve adopted.

On November 11 a committee reported the texts of the application to Congress, the reply to Clinton, and the circular letter to the other states. These were written by Henry, evidently, but according to Monroe, "revised and corrected by [Theodrick] Bland" and partaking of "his usual fire and elegance." [13] That to Congress said:

> All America will find that, so far as it depended on them, that plan of Government will be carried into immediate operation. . . . At the same time that, from motives of affection to our sister States, the Convention yielded their assent to the ratification, they gave the most unequivocal proofs that they dreaded its operation under the present form. . . . In making known to you the objections of the People of this Commonwealth to the new plan of Government, we . . . think proper . . . to declare, that, in our opinion, as those objections were not founded in speculative theory, but deduced from principles which have been established by the melancholy example of other nations in different ages, so they will never be removed, until the cause itself shall cease to exist. The sooner, therefore, the public apprehensions are quieted, and the Government is possessed of the confidence of the People, the more salutary will be its operations, and the longer its duration . . . The anxiety with which our countrymen press for the accomplishment of this important end, will ill admit of delay. The slow forms of Congressional discussion and recommendation, if, indeed, they should ever agree to any change, would, we fear, be less certain of success. Happily for their wishes, the Constitution hath presented an alternative, by admitting the submission to a convention of the States. . . . we do, therefore, in behalf of our constituents, in the most earnest and solemn manner, make this application to Congress, that a convention be immediately called, . . . [14]

These texts were adopted by the House on the 14th, and on the 19th the Senate acceded with verbal amendments, to which the House agreed on the next day.

Henry had once more worked his will on the General Assembly. Richard Bland Lee, a member of the House, wrote Madison on October 29, while the plan for a second convention was under consideration: "I fear we shall not be able to defeat the measure altogether. I hope however, we shall be able to modify it so as to divest it of its inflammatory drift or to postpone it's operation to such a distant period as to give the people of America a fair experiment of the Government.

This however is but a hope as he [Henry] is old in parliamentary science and is supported by the prejudice and apprehensions of many members of the Assembly. . . . Our Assembly is *weak*. Mr. Henry is the only orator we have amongst us—and the friends to the new government, being all young & inexperienced, form but a feeble bond against him." [15] Again on November 17, after the passage through the House, he added that the substitute resolutions were "couched in such terms and the minority is so respectable, as in my opinion, will not only turn the tide of sentiment in our favor in this state, but will destroy the effect of our measures in the other states." [16]

STATE ANSWERS TO VIRGINIA'S CALL

WHETHER or not he was justified in his hope of this influence, certainly the results fulfilled his prediction. No state within the Union except Virginia took favorable action on Clinton's circular letter, and New York alone supported the Virginia measure; and when that state's application to Congress was presented to that body on May 5, 1789, it was disposed of in the House, after a commitment to a committee of the whole was dropped, by being entered at large on the journal and filed, since Congress could take no action until two-thirds of the states had made such an application. On the next day the House merely filed a similar direction from the New York legislature. The legislature of North Carolina, that state, it will be remembered, being not yet in the Union, appointed five Antifederalist delegates to attend the convention, if it was called. In Rhode Island also the General Assembly in October 1788 put to the towns the question of delegates to such a convention. The reply was unfavorable.

In Connecticut the legislature refused, "by a great majority," to recommend Governor Clinton's letter to the succeeding General Assembly. Jeremiah Wadsworth wrote Knox on November 2, 1788: "My cousin James & the rest of the Antis have lost their influence in our assembly & the circular letter from N York Convention had no other notice taken of it than to be read before both houses as all public letters are. No body dared to call it up to notice." [17] It was this James Wadsworth, and not Jeremiah, as has been often stated, who voted against ratification in the Connecticut convention.

In Pennsylvania the council laid the Virginia letter before the legislature on February 6, 1789, and it was refused a reference by 38 to 15. Then, when the action of the New York legislature was presented, a committee reported that the resolution and letter which accompanied it should be considered as "matter of information." But on March 3 the Virginia letter was read again, when Clymer

made a motion, which was taken up and passed by 41 to 20, an attempt to approve of a second convention being rejected by 42 to 18. Clymer's motion was a resolve rejecting the Virginia request, and on March 6 President Mifflin wrote Governor Randolph a reply in which he quoted the resolve, as follows:

> That tho' it is possible this Constitution may not be a system, exempt in all its parts from error, yet the House do not perceive it wanting in any of those fundamental principles which are calculated to ensure the Liberties of their Country. As it is, they conceive the happiness of America, and the Harmony of the Union to depend altogether on suffering it to proceed undisturbed in its operations by premature alterations or amendments, which however plausible they may be in the Theory or necessary perhaps to the idea of a perfect form of Government. Experience after all can demonstrate, whether they would be real improvements or not.[18]

In Massachusetts Sedgwick reported to Hamilton on November 2, 1788: "We yesterday committed to a committee of both houses the circular letter from your convention. The event is uncertain, for a considerable number of federalists have been brought over to the amendment system, the prospect is notwithstanding that the real friends of the constitution will prevail, every thing depends upon it, and the exertion will be proportion[ate] to the magnitude of the object." [19] Sedgwick was unduly alarmed. Governor Hancock in his message of January 8, 1789, said:

> The States of Virginia and New York are very important members of the Union, and will always receive great friendship and sincere regard from this Commonwealth. The Gentlemen who are in government in either of them, are very respectable for their wisdom and patriotism, and can never be capable of introducing a measure which they do not conceive will tend to the interest of the United States: nevertheless I am constrained to observe, that in my opinion, all the purposes which they wish to effect, will be better accomplished by recommendations from the Congress to the Legislatures of the States. A Convention will be expensive, if not dangerous to the interest of the nation. . . . I disclaim all other than open undisguised politicks, and can assure you, that although I would by all means avoid another general Convention, yet I am no less in favour of amendments than I was when I held a seat in the Convention of this State. Your resolutions . . . will undoubtedly . . . give assurances . . . that although this Commonwealth are zealous for an efficient general government, yet we will not fail in our endeavours, to provide such checks and barriers as are necessary to the freedom and security of each individual in the great Republick.[20]

The General Court seized upon the main statement here and neglected the protestation, and after some differences between the two houses, replied on January 27: ". . . though this Commonwealth, will embrace every opportunity of evidencing their great

friendship and sincere regard of these important members of the union, the Legislature perfectly concur in opinion with your Excellency that the calling of a general Convention at this period would be expensive, if not dangerous to the Union. . . . full confidence that the Representatives of this Commonwealth, will not fail, to exert their utmost influence and use all reasonable and legal measures that the alterations and provisions aforesaid be duly considered in Congress."[21] And on February 17 the General Court resolved: "Whereas the answer to His Excellency's Message at the beginning of the present Session . . . is expressive of the Opinion of the Legislature on that subject," the governor was requested to reply to Virginia and New York accordingly.[22]

In Maryland, as in Pennsylvania, no amendments had been suggested by the ratification convention, and the Antifederalists were desirous of putting the state on record as participating in the demand for them. On November 5, 1788, the governor laid Clinton's letter before the House of Delegates, which took no action on it; neither did the Senate. On December 13, 1788, the Senate received from Virginia the circular letter of that state, had it read, and then "referred to the consideration of the house of delegates," taking no action itself. In the House it was merely read; but on December 19:

> The following question being propounded to the house, viz. Whereas . . . many of the good citizens of Maryland are disquieted from apprehensions that the great and fundamental rights of the people are not sufficiently guarded under the said constitution, and are persuaded that valuable amendments may be made therein: And whereas similar impressions operating in the minds of our fellow-citizens in other states, have prevented the ratification of this form of government in two states, . . . and have also induced the conventions of five other states, who have ratified, earnestly to recommend alterations in the said consitution. In order therefore to reunite our fellow-citizens of all those states which have heretofore composed the confederacy, to quiet apprehensions, insure that harmony and confidence, without which the government cannot be lasting, or the people happy, RESOLVED, That it be earnestly recommended to the first congress . . . to adopt such mode of procuring any amendments . . . as may . . . appear necessary, . . .[23]

This was read the first and second time and referred to the next day by a vote of 28 to 23. On December 20 this order of the day was considered and sometime spent on it. This was to have been the last day of the session, but it continued for three days. Nothing further was done on the resolve; evidently the Federalists were able in the rush of last days' business to prevent further consideration even of this mild substitute for the call of a convention.

In New York on December 11, 1788, Governor Clinton met the

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legislature with the statement that "it is my duty to call your particular attention to the amendments proposed by our Convention, . . . it was assented to on the express *confidence*, that the exercise of different powers would be suspended, until it should undergo a revision by a General Convention of the States." [24] The "express confidence" of the suspension of congressional powers is undoubtedly an overstatement to explain the desertion of his followers in the convention. The lower house on December 22 appointed a committee to draft an application for a second convention, which committee reported one, January 29, 1789, because a majority of the New York convention had considered the "Constitution so exceptionable, that nothing but such confidence, and an invincible reluctance to separate from our sister States, could have prevailed upon a sufficient number to assent to it, without stipulating for previous amendments; . . ." [25] On February 4 an attempt to substitute a request to Congress to take the need of amendments into early consideration was defeated by 43 to 9, and on February 7 the Senate concurred in the call.

Meanwhile, on December 26, 1788, Clinton had submitted the Virginia circular letter, saying that ". . . it will give you satisfaction to find a State, so respectable for wisdom and patriotism, perfectly concurring in sentiment with our Convention respecting the necessity of amendments to the new system of General Government, and the means of obtaining them." [26] It is evident that the Federalists in the legislature stood by the bargain made in the convention. The Senate in its reply on December 24 to the governor's address indicated this: ". . . we cannot but contemplate the approaching change, as a great and most desirable blessing. . . . we cannot but contemplate the adoption of the present system . . . with the utmost satisfaction, . . . but since it is susceptible of saluatory improvement, and as it is our inclination as well as duty, to pursue every constitutional measure, to insure to the government, the greatest possible degree of such 'confidence and good will' and as respect for the late Convention, is an additional motive, we shall without hesitation, recommend a submission of the system, to a general Convention." [27] Robert Yates moved to substitute: ". . . we cannot refrain expressing our perfect concurrence with the sentiments contained in their circular letter, and your Excellency's speech, respecting the amendments proposed. We are sensible that a revision of the system, by a Convention of the States, will be necessary, not only to correct its defects, but to allay the apprehensions which the exceptionable parts of it have so fully and generally occa-

sioned, . . ." [28] This substitute was defeated by 10 to 8, a strict party vote.

PUBLIC OPINION ON THE CALL

THE SURVIVING evidences of public reaction to this convention movement and to the whole question of amendments at this period, while the elections for the new government were progressing, indicate that the chief interest was not in the bald question of amendment or no amendment, but rather in the policy of immediacy or awaiting the lesson of experience. The *Pennsylvania Packet* of January 1, 1789, quoting evidently a Boston paper of December 15. said:

> 'Tis from *experience* that we reason best' . . . The great Mr. Adams has very judiciously observed, to this effect, 'That the wisdom and magnanimity which led this great people to desire and frame . . . a form of government, calculated to embrace so many apparently discordant interests will doubtless lead them to make such alterations and amendments as *experience* shall dictate to be necessary'—and before we have had this *experience* to set the whole business afloat, under the idea of making the constitution more perfect, is quitting the SHEET ANCHOR of our hope as a people, and trusting to the most uncertain of all contingencies, the caprice and local prejudices of interested individuals, whether this country shall ever be blessed with any settled form of government, or not. . . . steer clear of all antifederal amendments and suspicious characters, at the ensuing election.

Madison wrote Jefferson, then in Paris, on September 21, 1788, respecting the attitude toward the New York and Virginia plan for a second convention: "The measure will certainly be industriously opposed in some parts of the Union, not only by those who wish for no alterations, but by others who would prefer the other mode provided in the Constitution; as more expedient at present for introducing those supplemental safeguards to liberty agst. which no objections can be raised; and who would moreover approve of a Convention for amending the frame of the Government itself, as soon as time shall have somewhat corrected the feverish state of the public mind, and trial have pointed its attention to the true defects of the system." [29] Crèvecœur assured Jefferson on January 3, 1789, that "ye sticklers for amendments are only those who are head over heels in debt." [30] This was scarcely a shrewd observation, however, for though possibly it may have been influential in the attitude of many of the rank and file of Antifederalists, it certainly could not apply to its leaders, men like Henry and Clinton. Jefferson himself was anxious to have a bill of rights, and desired a plan to restrict reeligibility for the presidency; however he assured Madison on November 18, perhaps in answer to the above letter if it had had a quick passage, "I should deprecate with you indeed the meeting of a new convention," [31] and

believed that most of the opposition would be made content by a bill of rights.

John Armstrong wrote Washington on January 27, 1789: "It is said that a large number & amongst them men of distinction too, are still harping on sudden or early amendments, as they call them—this at the outsetting of the new Government in our national situation, is not a little absurd. true there is wisdom requisite in hitting the proper medium of time for a revision—but perhaps some promisary good words early thrown out, assigning for delay a few of the many reasons that exist, may command the patience of the disquiet, as to this effect I have heard some of them ready to give their assent."[32] This it will be noticed was in harmony with the views of Jay and Hamilton. The latter indeed seemed to think the whole question of little moment. In his answer to Sedgwick on November 9, 1788, quoted above, he added that there should be no schism amongst the Federalists over the question of amendments, "between those who wish to trust alterations to future experience, and those who are desirous of them at the present juncture."[33] Washington himself declared to Henry Lee on September 22, 1788: "For it is to be apprehended, that by an attempt, to obtain amendments before the experiment has been candidly made, 'more is meant than meets the ear' that an intention is concealed, to accomplish slily, what could not have been done openly, to undo all that has been done."[34] Gratified by the way the elections were going, he added on December 4 to Jonathan Trumbull: ". . . it will not be in the power of its Adversaries to throw everything into confusion by effecting premature amendments."[35]

Finally we have in a letter of William Stephens Smith, Adams' son-in-law, to Jefferson on February 15, 1789, a typical statement of what the opponents of a second convention believed would result from it: ". . . against which [the Constitution] many have sett their faces, both in this [Massachusetts or Virginia] & some other States, but with Ideas so different and in pursuit of such opposite projects, that I seriously believe, were they to meet in pursuit of amendments as they stile them, they would soon be convinced of the utter impossibility of an accomodation, for their systems are partial and have local objects in view, which if once permitted to gain an establishment, will unavoidably check the great system & embarass the federal Legislature."[36] Washington had expressed a similar view months earlier, before ratification was accomplished.[37]

The advocates of the New York-Virginia plan were also voicing their opinion at this time. Monroe, one of Henry's chief supporters,

wrote Jefferson on February 15, 1789: "The weight of business that wod. devolve on the govt. itself if no other consideration might occur was suppos'd a sufficient reason why this trust shd. be repos'd in another body. It cod. in no event be productive of harm, for the discussion of subjects however important by the deliberative bodies of America, create little heat or animosity except with the parties on the theatre." [38]

When the following letter of an unknown correspondent was sent from Albany in February 1789, the contest in the New York legislature over the enactments there for the organization of a new national government was going on, influenced by the impending state election, in which the reelection of Clinton was the chief issue:

We ought to consider that the next election will perhaps be as important to the general interest of America as any that ever has been or will be held in this country; for upon it may greatly depend whether the new constitution is to continue in its present form, or to receive such amendments as have been proposed by many of the state conventions, and are anxiously desired by so great a proportion of the citizens of America. That the leaders of the advocates for the new system throughout the United States are opposed to those amendments which are considered as most essential, is now beyond a doubt. Their conduct in all the legislatures whose proceedings we have had any account of, and the corresponding sentiments held out by their writers in the public papers, and the indefatigable pains that are taken to get in those who call themselves federalists at the next election for state and continental representatives, establishes this truth in any opinion beyond all contradiction; for if they are not opposed to the amendments, why are they opposed to having such persons to represent us as we are assured will use their endeavors to obtain them? I defy any one to give a satisfactory answer to the question; for it is clear that the highest or the fartherest object which the warmest opponents to the new constitution can now have in view, is to have the amendments take place which so many of the states have declared to be necessary for the security of our state governments, and of the inestimable rights of freemen. We may easily see from this, if we wish for amendments, the absolute necessity of exerting ourselves to get into the elective offices, both of our own and of the general government, persons possessed of the same wishes. We cannot suppose any one to be a sincere friend to the amendments recommended by the state convention who shall advise us to trust those of a contrary character to obtain them: the absurdity of such a supposition would be too glaring not to strike the most common observer. It is the favorite sentiment with the federal writers to postpone amendments till we experience defects in the system by its operations, which is as much as to say, they wish us to bow our unwilling necks to the yoke until the experiment can be fairly tried, whether the people cannot be goaded into a tame submission to it without alteration: but it is unquestionably my opinion, if we wait till the fetters are fairly and completely rivetted on, that nothing but steel, aided by a strong arm will be able to file them off.[39]

The statement of "Federal Correspondent" in a Boston paper on September 11, 1788, is typical of a milder demand that was limited to the need of a bill of rights: "The freemen of these states have a foresight to discern, that their liberties may be in danger, although not attacked, if an avenue is left open, through which they may at some future time be attacked; they will, therefore, naturally be anxious, that any aperture in the barrier between powers delegated and retained, be closed, explicitly defined, and well understood." [40]

EXPECTED ATTITUDE OF CONGRESS

THE QUESTION of a possible second convention was decided adversely before the Congress assembled. In the elections the Federalists had been so successful that they had a full two-thirds majority or more in both Houses, and the decision as to amendments was entirely in their hands. What would they do about it? A communication in the *Massachusetts Centinel* for February 28, 1789, stated the case:

> Notwithstanding the insinuations and charges which the lovers of anarchy have made against the federalists of being advocates for an aristocracy, &c. it is well known, that on the subject of the federal Constitution the federalists have had but one opinion and determination; and this has been to oppose every idea of having amendments *sought for, previous to the Constitution's being put in operation;* and to seek for such as may appear to be necessary to the *assembled wisdom* of the continent, in the mode pointed out in the 5th art. of the Constitution. Under the smiles of Divine Providence, their first object has been happily accomplished—and on Wednesday next the Constitution will be put into operation. The federalists will now, in the prosecution of their original determination, examine the objections made to the Constitution—strip them of their fallacy—and where it appears that the rights of the people can be better secured; and the government not rendered inefficient, they will, without doubt, pursue all reasonable methods to effect the security. And it is to be wished, that that overruling Providence, which has so far smiled on the exertions of the federalists, will still smile on and approve of THEIR DETERMINATION TO PROMOTE THE BEST INTERESTS AND MOST LASTING GOOD OF THE PEOPLE.

Franklin had expressed to La Rochefoucauld on October 22, 1788, the expectation that the "first Congress will probably mend the principal ones [faults], & future Congresses the rest." He added: "We are making experiments in Politicks; what Knowledge we shall gain by them will be more certain, tho' perhaps we may hazard too much in the Mode of beginning it." [41] Washington, as we have seen, in his inaugural address pointed to the advisability that a bill of rights be framed. Madison had denied during his canvass that he was opposed to all amendments, and had promised due consideration of what the state ratification conventions had offered. He had written Jefferson on October 17, 1788:

My own opinion has always been in favor of a bill of rights; providing it be so framed as not to imply powers not meant to be included in the enumeration. At the same time I have never thought the omission a material defect, nor been anxious to supply it even by *subsequent* amendment, for any other reason than that it is anxiously desired by others. I favored it because I have supposed it might be of use, and if properly executed could not be of disservice. I have not viewed it in an important light 1. because I conceive that in a certain degree, though not in the extent argued by Mr. Wilson, the rights in question are reserved by the manner in which the federal powers are granted, 2. because there is great reason to fear that a positive declaration of some of the most essential rights could not be obtained in the requisite latitude . . . 3. because the limited powers of the federal Government and the jealousy of the subordinate Governments, afford a security which has not existed in the case of the State Governments, and exists in no other. 4. because experience proves the inefficiency of a bill of rights on those occasions when its controul is most needed. . . . What use then it may be asked can a bill of rights serve in popular Governments? . . . 1. The political truths declared in that solemn manner acquire by degress the character of fundamental maxims of free Government, and as they become incorporated with the national sentiment, counteract the impulses of interest and passion. 2. Altho' it be generally true . . . that the danger of oppression lies in the interested majorities of the people rather than in usurped acts of the Government, yet there may be occasions on which the evil may spring from the latter sources; and on such, a bill of rights will be a good ground for an appeal to the sense of the community. . . . *absolute* restrictions in cases that are doubtful, or where emergencies may overrule them, ought to be avoided.[42]

There is nothing to indicate that his belief as to the *need* of such amendments was in any way altered before Congress met, but at least his understanding of the policy and advisability of them seems to have become fixed. He wrote to an unmentioned correspondent on January 27, 1789: "I held it my duty . . . to oppose every previous amendment, as opening a door for endless and dangerous contentions among the states, and giving an opportunity to the secret enemies of the union to promote its dissolution. . . . the secure establishment of the plan proposed, leaves me free to espouse such amendments as will, in the most satisfactory manner, guard essential rights, and will render certain vexatious abuses of power impossible: . . ." [43] He desired to include a bill of rights, periodical increase of representatives "until the number shall amount to the fullest security on that head," and a prohibition of appeals to the federal courts in cases that might be vexatious or superfluous.

This last statement by Madison found its way into the newspapers, and Henry may have had it in mind when he wrote to Senator-elect Grayson on March 31, 1789: "Federal and anti seem now scarcely to exist; For our highest toned Feds say we must have

the amendments. But the Enumeration stops at direct Taxtation Treaties Trade &c. &c., so that I perceive it will be a Question of prudence. How far the Temper of the Times will carry the Condiscention of party or whether apprehensions will extort concession to any salutary purpose I from my secluded situation cannot guess—You perhaps can tell me how far the appearances tend that way." [43a]

Jefferson summed up the impression which he had gained from his wide correspondence with the folks at home in a letter to John Paul Jones on March 23, 1789: "The most important of these amendments will be effected by adding a bill of rights; and even the friends of the Constitution are become sensible of the expediency of such an addition were it only to conciliate the opposition, in fact this security for liberty seems to be demanded by the general voice of America, & we may conclude it will unquestionably be added. N. York, Virginia & N. Carolina have also demanded that a term be fixed after which the president shall be no longer eligible, but the public has been silent on this demand; so we may doubt it's success." [44]

AMENDMENTS PROPOSED BY RATIFICATION CONVENTIONS

It is well here before entering upon the action in Congress on the matter, to indicate the character of the amendments which the various ratification conventions had demanded, and also those read before the Maryland convention, and those adopted at Harrisburg. Later Rhode Island was to add a further list, but it did not come in any sense before the Congress at its first session.

Only three conventions, those of Virginia, New York, and North Carolina, gave full scope to the demand for a bill of rights, with most of the others selecting special items. Especially popular was the requirement for a jury trial in civil cases; no quartering of troops in time of peace; religious freedom; freedom of speech, press, assembly, and petition: dependence on the militia and the right to bear arms; fair trial and due process of law. Other demands involving individual rights included the statement of the right to life, liberty, and happiness; the rule of the people; the right to alter government; separation of powers; free and frequent elections and no right to exclusive privileges; further strengthening of habeas corpus; free and prompt justice; no excessive bail or fines or unusual punishments; grand jury; challenge of jurors; right of scruples against military service; no suspension of laws or the execution of them; and no one to be twice in jeopardy for the same offense. In each of the lists of proposed amendments there was a reservation of the powers of the

states and in some cases of the people, sometimes phrased by a limitation of national powers to those expressly delegated.

None of the lists is confined to the protection of the rights of the individual. All protested against direct taxes unless a requisition was first tried, and even then, in some of the demands, the power could not be used unless the indirect taxes were not sufficient. Madison wrote Tench Coxe on July 30, 1788: "The conspiracy agst. direct taxes is more extensive & formidable than some gentlemen suspect. It is clearly seen by the enemies to the Constitution that an abolition of that power will re-establish the supremacy of the State Legislatures, the real object of all their zeal in opposing the system."[45] Next in importance to this was the denunciation of national regulation of elections except when the states neglected the duty or executed it subversively. There was also a desire for a numerous representation, usually taking the form of no increase in the ratio of one to thirty thousand until there were two hundred members, but in one case with the initial ratio at one to twenty thousand. In other respects an alteration in the organization of Congress was desired in some cases, such as the district residence qualification for representatives, senators serving not more than six years in twelve and being subject to recall, the dropping of the right of state executives to make appointments to the Senate, and the right to serve in Congress limited to natural born citizens or citizens in 1789 who were freeholders. The freehold was also to be a qualification for President and Vice President. Open sessions were demanded in both houses, the yeas and nays callable at the request of two members, journals and financial statements to be published at least once a year; members of Congress not to hold office during the period for which they had been elected; changes in legislative salaries not to take effect until after an election; the court of impeachment to consist of the senators, Supreme Court justices, and head judge of each state, and no trial of an impeached senator by the Senate.

In relation to the powers of Congress, in addition to the general reservation of state powers and direct tax matters, some of the demands were: no capitation tax; no excise on American products except liquors; all imposts to be credited to the state where originating and deducted out of the state's quota of common expenses; no borrowing except by a two-third vote of those present in each house; no navigation law except by a similar majority; no creation of commercial monopolies; bankruptcy laws to be limited to merchants, leaving to the states authority over other insolvent debtors; no declaration of war except by a two-thirds vote; a similar restriction on

the declaration of the existence of rebellion; no standing army in time of peace except by a special majority ranging from two-thirds of those present to three-fourths of all the members; no enlistments for longer than four years except during war and then to terminate with peace; and no foreign troops without a two-thirds vote. Further provisions on the organization and control of the militia were desired: the right of the state to organize it if Congress neglected to do so; not to serve beyond the borders of the state save for a few weeks without the consent of the legislature; not to be subject to martial law except during actual strife; or in the extreme demand, subjection to the rules of Congress or ordering out of the state not to be without the consent of the state legislature. It was asked that the national exclusive control over the seat of government and sites be limited to police and good government, and given other restrictions. The restrictions on the powers of government were not to be interpreted to extend its power but to be exceptions to specified powers; the prohibition of ex post facto laws should be limited to criminal ones; Congress should never consent to officials receiving foreign honors; the regulation of coast trade should be elucidated; Congress should not interfere with the redemption of the existing paper money of a state or its liquidation of public securities.

The reeligibility of a President should be limited to eight years in sixteen or, as bluntly expressed in one case, "no third term"; and the person who became by congressional enactment the President on the failure of both President and Vice President should not serve beyond the remainder of the existing term. There should be no pardon for treason except with the consent of Congress, and no active command in the field by the commander-in-chief except at the desire of that body. Treaties were not to be contrary to the Constitution, or to alter national laws, or even to operate so as to alter state constitutions, though one list would permit the last two, providing the House of Representatives consented. Commercial treaties should be ratified by a two-thirds vote of all members of the Senate, and treaties that affected adversely territorial rights or fishing rights in American waters or navigation rights on American rivers should not be promulgated until ratified by a three-fourths vote of all members of both houses.

The article on the judiciary was a target for much criticism. It should be limited to a Supreme Court and courts of admiralty. Its jurisdiction was not to be extended by any fiction or, except on a few subjects, to cases arising before the Constitution went into operation. Cases under the Constitution and laws, between a state

and citizens of other states, between citizens of different states (except in land-grant matters or on some lists in cases involving a certain minimum value), and between a state and foreigners were withdrawn from its jurisdiction. Appeals to the Supreme Court under common law should be by writ of error only; there should be no appeal in criminal cases or in cases involving land (except grants as above); its decisions, except in equity and admiralty, should be on matter of law only. All writs should run in the name of the People of the United States. Where the Supreme Court had original jurisdiction there should be an appeal to a commission appointed by the President. Judges should not hold any other office and their salaries might be increased or diminished by general regulations at fixed intervals. Finally it was demanded that national legislators and officials should take an oath not to violate the constitution or rights of the respective states; and in one case it was required that there be no *other* religious test except the taking of the oath or affirmation. This last, one of the few proposals from South Carolina, was called by Roger Sherman ingenious but of no great importance.[46]

The lists show that both in the quantity and character of the demands there was much divergence; that though the proposed requirements were above all, outside the bill of rights, for the protection of the states, the quality of the protection differed with the locality. To this extent the criticism of the Federalists was supported, but there was little in the divergence that was contradictory. It is questionable whether the enactment of any one of the proposed amendments would have been objected to by any Antifederalists except as not being thorough enough, or as precluding further amendment.

ATTITUDE OF MEMBERS OF CONGRESS

PAINE WINGATE, senator from New Hampshire, wrote Timothy Pickering on March 25, 1789, before Congress was able to organize, but after he had been on the spot for three weeks: "Nobody thinks that a general convention will be called, and possibly in a convenient time Congress may take up the consideration of amendments or alterations, and may recommend some that may quiet the fears and jealousies of the well-designing and not affect the essentials of the present system. I am rather inclined to suppose that this cannot be attended to immediately, but must be postponed for other more important matters."[47] Ralph Izard, senator-elect from South Carolina, writing Jefferson on April 3, 1789, from Charleston just before starting for New York, where he attended Congress on April 13, gave utterance to an opinion that was evidently shared by many

of his colleagues: "Every Man of common Sense, & common affection for America must be strongly affected by the consideration of the humiliating state into which we are plunged. The evil has arisen principally from the want of an efficient, & energetic Government, pervading every part of the United States. By whatever appellation therefore Gentlemen may choose to be distinguished; whether by federal, or antifederal, I hope we shall not be wasting time with Idle discussions about amendments of the Constitution; but that we shall go to work immediately about the Finances, & endeavour to extricate ourselves from our present embarrassed, & disgraceful situation." [48]

Madison had evidently been quietly at work finding out what would be likely to be the attitude of his fellow congressmen. He wrote Randolph on April 12, 1789: "On the subject of amendments nothing has been publickly and very little privately said. Such as I am known to have expressed, will so far as I can gather, be attainable from the federalists, who sufficiently predominate in both branches; though with some, the concurrence will proceed from a spirit of conciliation rather than conviction. Connecticut is least inclined though I presume not inflexibly opposed, to a moderate revision. A paper . . . under the signature of a Citizen of New Haven, unfolds *Mr. Shermans* opinions. Whatever the amendments may be it is clear that they will be attempted in no other way than thro' Congress. Many of the warmest of the opponents to the Govt. disavow the mode contended for by Virginia." [49]

This contribution by Sherman appeared in December in the New Haven paper, but was given wider circulation by the *New York Packet* on March 20, 1789, being copied by the *Pennsylvania Packet* on April 4 and other papers. He made no direct reference to the bill of rights but said: "The immediate security of the civil and domestic rights of the people will be in the government of the particular states. And as the different states have different local interests and customs, which can be best regulated by their own laws, it would not be expedient to admit the federal government to interfere with them, any further than is necessary for the good of the whole." He mentioned seven proposals to change the frame of the government as the only ones that had come to his attention that could not be provided for by law, namely: (1) special majority to pass certain acts, (2) trial of impeachments, (3) pardons for treason, (4) restricted eligibility for reelection of President and senators, (5) congressmen and office, (6) special majorities for treaties, (7) the South Carolina proposal on religious tests. He concluded:

On the whole, will it not be best to make a fair trial of the Constitution, before any attempts are made to alter it? It is now become the only frame of government for the United States, and must be supported and conformed to, or they will have no government at all as confederated states. Experience will best shew whether it is deficient or not; on trial it may appear that the alterations proposed are not necessary, or that others not yet thought of may be necessary. Every thing that tends to disunion, ought to be carefully avoided. Instability in government and laws, tends to weaken a state, and render the rights of the people precarious. The Constitution which is the foundation of law and government ought not to be changed without the most pressing necessity. When experience has convinced the people in general, that alterations are necessary, they may be easily made, but attempting it at present may be detrimental, if not fatal to the union of the states, and to their credit with foreign nations.

For this attitude, as emphasized later in the discussion of the proposed amendments, Richard Henry Lee in writing to Samuel Adams on August 8, 1789, called Sherman "our former respected, republican friend," and lamented that "so wonderfully are mens minds lican friend," and lamented that "so wonderfully are mens minds now changed upon the subject of liberty, that it would seem as if the sentiments which universally prevailed in 1774 were antediluvian visions, and not the solid reason of fifteen years ago!" [50]

Adams, earlier associated with the Lee faction in the Continental Congress, on April 22 hoped that "the federal Congress is vested with Powers adequate to all the great Purposes of the federal Union; & if they have such adequate Powers, no true & understanding federalists would consent that they should be trusted with more—for more would discover the folly of the People in their wanton Grant of Power, because it might and, considering the Disposition of the human Mind, without Doubt would be wantonly exercised to their Injury & Ruin. . . . Few Men are contented with less Power than they have a Right to exercise, the Ambition of the human Heart grasps at more. This is evinced by the Experience of all Ages." [51] Later, August 24, he assured Lee: "I mean, my Friend, to let you know how deeply I am impressed with a Sense of the Importance of Amendments; that the good People may clearly see the Distinction, for there is a Distinction, between the *federal* Powers vested in Congress & the *sovereign* Authority belonging to the several States which is the Palladium of the private & personal Rights of the Citizens." [52]

Neither of these men had taken to heart the lesson of the failure of the Confederation, but still lived under the recollection of British tyranny over the colonies, now merely transferred

to the liability of national tyranny over the states. Belknap, commenting on Adams' speech at his investiture as lieutenant governor, wrote Wingate on May 29: "You will see . . . that he has not thrown off the old idea of 'independence' as an attribute of each individual State in the 'confederated Republic'—& you will know in what light to regard his 'devout & fervent wish' that 'the people may enjoy well grounded confidence that their *personal & domestic rights* are *secure*.' "[53]

Grayson, the other Antifederalist senator from Virginia, was discouraging in his report to Henry. He wrote on June 12:

> . . . it appears to me that both houses are almost wholly composed of federalists; those who call themselves Antis are so extremely lukewarm as scarcely to deserve the appellation: Some gentlemen here from motives of policy have it in contemplation to effect amendments which shall effect personal liberty alone, leaving the great points of the Judiciary, direct taxation &c, to stand as they are; their object is in my opinion unquestionably to break the spirit of the [Anti] party by divisions; after this I presume many of the most sanguine expect to go on coolly in sapping the independence of the state legislatures. In this system however of *divide et impera*, they are opposed by a very heavy column, from the little States, who being in possession of rights they had no pretensions to in justice, are afraid of touching a subject [amendments] which may bring into investigation or controversy their fortunate situation.[54]

MADISON'S INTRODUCTION OF AMENDMENTS

BEFORE Grayson wrote, Madison had instituted the proceedings for the consideration of amendments. On May 4, 1789, he announced in the House his intention to bring up the matter in the latter part of the month, but did not do so until June 8, by which time both the bills for import and tonnage duties had been sent up to the Senate. Thomas Lowther, who was often in the gallery of the House at that time, wrote Iredell on May 9 that Madison's announcement had excited general expectations, "though it appears to be the general opinion of the people out of doors that nothing will be done," arguing from the House's refusal a day later to commit the Virginia petition for a second convention.[55] The Federalists generally in North Carolina, which was the home of both Lowther and Iredell, and where the campaign for a second ratification convention was active, were well pleased with Madison's action. Davie wrote Iredell, at this time that "nothing ever gave me so much pleasure, and this, coming from a Federalist, has confounded the Anties exceedingly, . . ."[56] He wrote Madison on June 10, 1739, before he knew what the proposals were, respecting the attitude of the state: "Instead of

a Bill of rights attempting to enumerate the rights of the individual or the State Governments, they seem to prefer some general negative confining Congress to the exercise of the powers particularly granted with some express negative restriction in some important cases."[57]

The belief that Madison had taken the wind out of the Antifederalist sails was also voiced later by Edmund Pendleton: "I am of opinion that nothing was further from the wish of some, who covered their Opposition to the Government under the masque of uncommon zeal for amendments, & to whom a rejection or a delay as a new ground of clamour, would have been more agreeable. I own also that I feel some degree of pleasure, in discovering obviously from the whole progress, that the public are indebted for the measure to the friends of Government, whose Elections were opposed under pretense of their being averse to amendments."[58]

Madison stated, when he rose on June 8 to move a committee of the whole on the question of amendments that he might bring forward his propositions, that he considered himself "bound in honor and in duty" to do so. Objection was raised by nine of the members, and only Page of Virginia supported his colleague. The objectors were both Federalists and Antifederalists, including Sherman, Smith of South Carolina, Vining of Delaware, and Jackson of Georgia on one side, and Gerry of Massachusetts and Burke and Sumter of South Carolina on the other. The two chief objections were the necessity of getting the government organized first, especially of putting through the bill for the collection of imposts, and the advisability of waiting upon experience. Substitutes were suggested, including a special committee to consider the business and the presentation of Madison's proposals, to be laid on the table and printed for the inspection of members. Madison and Page emphasized the need of quieting the apprehensions of a large class of citizens by taking the measure into consideration, as otherwise they might be influenced into giving new life to the movement for another convention. Vining raised the novel question whether the provisions of the Constitution did not require the consent of two-thirds of each house to the consideration of amendments as well as to the passage of them, probably finding his reason in the use of the term "propose" in Art. V.

Madison then withdrew his proposal for a committee of the whole and substituted a select committee, and took the occasion then to make a lengthy speech in defense of the need of amendments and to state his proposals. He said:

I wish, among other reasons why something should be done, that those who have been friendly to the adoption of this constitution may have the

opportunity of proving to those who were opposed to it that they were as sincerely devoted to liberty and a Republican Government, as those who charged them with wishing the adoption of this constitution in order to lay the foundation of an aristocracy or despotism. . . . There is a great body of the people . . . who at present feel much inclined to join their support to the cause of Federalism, if they were satisfied on this one point. . . . I do conceive that the constitution may be amended; that is to say, if all power is subject to abuse, that then it is possible the abuse of the powers of the General Government may be guarded against in a more secure manner than is now done, while no one advantage arising from the exercise of that power shall be damaged or endangered by it. . . . There have been objections of various kinds made against the constitution. . . . but I believe that the great mass of the people who opposed it, disliked it because it did not contain effectual provisions against encroachments on particular rights, and those safeguards which they have been long accustomed to have interposed between them and the magistrate who exercises the sovereign power; nor ought we to consider them safe, while a great number of our fellow-citizens think these securities necessary. It is a fortunate thing that the objection to the Government has been made on the ground I stated; because it will be practicable, on that ground, to obviate the objection, so far as to satisfy the public mind that their liberties will be perpetual, and this without endangering any part of the constitution, which is considered as essential to the existence of the Government by those who promoted its adoption.[59]

MADISON'S PROPOSALS

HIS PROPOSALS, nine in number, were offered for insertion in various places in the original Constitution. They comprised: (1) a statement to be prefixed to the Constitution, presumably as part of the preamble, of the right of the people to rule and to be protected in their rights to life, liberty, property, and the pursuit of happiness, and to change their government; (2) a more liberal basis of representation; (3) changes in the salaries of members of Congress not to operate until after an election; (4) personal rights, substantially those now in Amendments I, II, III, IV, VIII, and IX; (5) protection of religious freedom, freedom of the press, and jury trial from state violations also; (6) appeal to the Supreme Court limited to cases involving a certain minimum value; (7) an addition to Art. III. § 2. cl. 3, which was grouped with part of his fourth proposal and became Amendments V and VI of the completed Bill of Rights; (8) separation of powers; (9) reservation of state powers. The purpose of the final element of his fourth proposal, that which gave general protection to the rights of the people, was to check the claim that the detailing of certain rights left the rest exposed.

Renewed objections were then made both to the need of a bill of rights, and to a special committee, which last was called disrespectful to the states which had proposed amendments and a trifling

with the demand for changes. Sumter and Gerry both demanded that when the question was taken up, all of the proposals of the states should be considered. The latter, while objecting to immediate action, desired early consideration because it would hasten the ratification by North Carolina and Rhode Island, adding:

> I have another reason for going early into this business. It is necessary to establish an energetic Government. . . . from the view which we have already had of the disposition of the Government, we seem really to be afraid to administer the powers with which we are invested, lest we give offence. We appear afraid to exercise the constitutional powers of the Government, which the welfare of the State requires, lest a jealousy of our powers be the consequence. What is the reason of this timidity? Why, because we see a great body of our constituents opposed to the constitution as it now stands, who are apprehensive of the enormous powers of Government. But if this business is taken up, and it is thought proper to make amendments, it will remove this difficulty. Let us deal fairly and candidly with our constituents, and give the subject a full discussion; after that, I have no doubt but the decision will be such as, upon examination, we shall discover to be right. If it shall then appear proper and wise to reject the amendments, I dare to say the reasons for so doing will bring conviction to the people out of doors, as well as it will to the members of this House; and they will acquiesce in the decision, though they may regret the disappointment of their fondest hopes for the security of the liberties of themselves and their posterity. Thus, and thus only, the Government will have its due energy, and accomplish the end for which it was instituted.[60]

Though there is little in the conduct of the first session of the First Congress to justify the accusation of timidity, Gerry's point is of interest especially for its recognition of the growing power of Federalism, particularly in Massachusetts, and of the realization that those who had opposed the Constitution must take this into account as representatives.

Jackson in reply held that to open the discussion to all the proposed amendments would mean a labyrinth of business from which they could not extricate themselves. Madison as his third parliamentary move then withdrew his motion for a special committee and moved the propositions as a resolution to be adopted by the House. The discussion and complexities over this led finally to the renewal of the motion for a committee of the whole, which was adopted, though no time was set.

Madison wrote on June 15, 1789, to an unknown correspondent, respecting his proposals: "It [the proposition on amendments] is limited to points which are important in the eyes of many and can be objectionable in those of none. The structure & stamina of the Govt. are as little touched as possible, . . . the Article which I fear most is that which respects the representation. The small States betray

already a coolness towards it." [61] The unfriendly Grayson informed Henry in his letter of June 12: "Last Monday a string of amendments were presented to the lower House: these altogether respected personal liberty; . . . Even these amendments were opposed by Georgia, New Hampshire & Connecticut; . . . I understand that the mover was so embarrassed in the course of the business that he was once or twice on the point of withdrawing the motion, & it was thought by some that the commitment was more owing to personal respect than a love of the subject introduced." [62] Joseph Jones, after seeing a copy of Madison's proposals, wrote him from Richmond on June 24: "They are calculated to secure the personal rights of the people so far as declarations on paper can effect the purpose, leaving unimpaired the great powers of the government. They are of such a nature as to be generally acceptable and of course more likely to obtain the assent of Congress than wod. any proposition tending to separate the powers or lessen them in either branch." [63]

This opinion of the sufficiency of the changes for the purpose contemplated by Madison and by Washington in his inaugural address seems to have been shared generally by the moderate Federalists. Some considered it rather too much of a purge. Fisher Ames wrote to Timothy Dwight on June 11, 1789: "They are the fruit of much labor and research. He has hunted up all the grievances and complaints to newspapers, all the articles of conventions, and the small talk of their debates. . . . This is the substance. There is too much of it. . . . Risum teneatis amici? Upon the whole, it may do some good towards quieting men, who attend to sounds only, and may get the mover some popularity, which he wishes." [64] To Minot on the next day he wrote: "There is a prodigious great dose for a medicine. But it will stimulate the stomach as little as hasty-pudding. It is rather food than physic. An immense mass of sweet and other herbs and roots for a great drink." [65]

There was comparatively little comment in the newspapers at the time, though the journals published Madison's proposals, and also later the text of the joint resolution in its various stages of development toward the final enactment. Comments were infrequent perhaps becuase the papers became absorbed in the controversy over titles and salaries. Later, too, the reports of the French Revolution took up much space and interest, and after the adjournment of Congress the President's tour was important news. One of the comments is the following from the *Federal Gazette* of Philadelphia on June 30: "The manifestation of good faith, which this motion carries, is matter of no dishonourable reflection on the friends of the

new Constitution, and the ingeniousness and moderation discovered by the gentlemen of the House, who have desired amendments, excites feelings of the most comfortable nature. The people must rejoice to find, that their rulers, of however diversified opinions, are equally anxious for their country's happiness." This comment is followed by a detailed analysis of the proposals. A New York statement on July 22, just as the matter came up again in the House, is more an echo of Ames' opinion: "It has been said the Constitution of the Union is as well established at the present moment as if it had been in operation a century. If this is the case, and it will be difficult to prove the contrary, it is very problematical whether attempts to strengthen its foundations will not tend rather to weaken than confirm it." [66]

SELECT COMMITTEE IN THE HOUSE

THE AMENDMENT question did not come up again in the House until July 21, when Madison requested the committee of the whole hitherto ordered. Meanwhile the attention of the representatives had been upon the collection of duties and the departments of foreign affairs, war, and treasury. All these bills had been sent up to the Senate. The House had also considered the Senate amendments to the impost and tonnage bills, matters of western lands, the compensation of the President, and the contested New Jersey elections. Madison requested the consideration of the proposed amendments at this time because "there appeared, in some degree, a moment of leisure." [67] Ames moved for a special committee as the best means of culling out "those of the most material kind, without interrupting the principal business of the House." [68] There was much arguing pro and con respecting the time-saving value of a special committee over that of a committee of the whole and the question of a consideration of all the amendments proposed by the states. Gerry insisted that no time would be saved by a special committee, "because no gentleman could pretend to deny another the privilege of bringing forward propositions conformably to his sentiments. . . . such procedure might tend to prejudice the House against an amendment neglected by the committee, and thereby induce them not to show that attention to the State which proposed it that would be delicate and proper." [69] This intention, avowed by Gerry, of questioning every part of the frame of the Constitution was considered by Ames as "the same as forming themselves into a convention of the United States." [70]

Ames' motion for a special committee was voted by 34 to 15. The committee, one from each state, was directed to take the "subject of amendments . . . generally into their consideration," and all of

the amendments proposed by the states as well as Madison's propositions were referred to it. Madison, Baldwin, Sherman, and Clymer, all signers of the Constitution, were members of the committee, of which Burke of South Carolina was the only avowed Antifederalist. Ames' private opinion found expression in a letter to Minot on July 23: "We have had the amendments on the *tapis*, and referred them to a committee of one from a State. I hope much debate will be avoided by this mode, and that the amendments will be more rational, and less *ad populum* than Madison's. It is necessary to conciliate, and I would have amendments. But they should not be trash, such as would dishonor the Constitution, without pleasing its enemies. Should we propose them, North Carolina would accede. It is doubtful, in case we should not." [71]

The committee reported rather promptly on July 28, the report being laid on the table and not taken up until August 13, when a reference to a committee of the whole, made by Lee of Virginia, was discussed along the old lines of precedence of other business before the House, especially the judiciary bill. FitzSimons of Pennsylvania finally stated the wise wish that "gentlemen would suffer the question to be put, and not consume the time in arguing what should be done. If a majority was not in favor of considering amendments, they might proceed to some other business." [72] The question being put, the committee was ordered, and consideration was given the proposals through August 18, when the committee reported to the House.

ORIGINAL CONSTITUTION AND AMENDMENTS

THE PROPOSITIONS as reported by the select committee were essentially the same as Madison's proposals, all other demands being ignored; and like the original ones offered by Madison, were to be incorporated in the body of the Constitution. Sherman objected to this in the committee of the whole, as destructive of the whole fabric: "We might as well endeavor to mix brass, iron, and clay, as to incorporate such heterogeneous articles; the one contradictory to the other. . . . it is questionable whether we have the right to propose amendments in this way. The constitution is the act of the people, and ought to remain entire. But the amendments will be the act of the State Governments." He offered as a substitute "*Resolved* . . . That the following articles be proposed as amendments to the constitution, and when ratified by three-fourths of the State Legislatures shall become valid to all intents and purposes, as part of the same." [73]

This seems to be the first mention of the method of ratification.

Madison contended that "there is a neatness and propriety in incorporating the amendments into the constitution itself; in that case the system will remain uniform and entire; it will certainly be more simple, when the amendments are interwoven into those parts to which they naturally belong, than it will if they consist of separate and distinct parts." [74] Clymer supported Sherman: ". . . the amendments ought not to be incorporated in the body of the work, which he hoped would remain a monument to justify those who made it; by a comparison, the world would discover the perfection of the original, and the superfluity of the amendments." [75] To which Stone of Maryland added: "If the amendments are incorporated in the body of the work, it will appear, unless we refer to the archives of Congress, that GEORGE WASHINGTON, and the other worthy characters who composed the convention, signed an instrument which they never had in contemplation." [76] Sherman's motion was voted down, after the rest of the day was given to its consideration; but later, as we shall see, it was adopted. Livermore of Massachusetts raised the question whether a two-thirds majority was necessary in the votes of the committee, but the chairman ruled that "a majority of the committee was sufficient to form a report," [77] and on appeal the committee supported the ruling.

CONSIDERATION IN COMMITTEE OF THE WHOLE

THE FIRST proposal of the select committee was to add to the preamble a statement of the derivation of powers from the people. This was part of Madison's original amendment on the basis of powers, shorn of the right of revolution. Objection was made to its being added to the preamble, since that was no part of the Constitution proper, and moreover it loaded with unnecessary words a beautiful sentence, "the most forcible" ever "prefixed to any constitution." [78] The amendment was carried, but struck out later in the House. The second proposition was that upon the apportionment of representation; the one to thirty thousand should remain until there were one hundred members, but membership was not to exceed one hundred seventy-five. Ames proposed forty thousand, but this was rejected. There was a direct divergence of opinion whether, left to itself, Congress would be likely to increase the number of representatives. Ames, with accurate foresight, held that there was a "constant tendency in a republican Government to multiply what it thinks to be the popular branch." [79] A motion to change one hundred to two

hundred was lost, but the one hundred seventy-five was increased to two hundred and the whole proposal approved.

The third item was also Madison's third, namely, to require an election before a change in the compensation of members of Congress should go into effect. Vining said as the sole, but sufficient, reason for it, "there was, to say the least of it, a disagreeable sensation occasioned by leaving it to the breast of any man to set a value on his own work; it is true it is unavoidable in the present House, but it might, and ought to be avoided in future; . . ." [80] Gerry and Sedgwick were not so sure of human nature, though they did not foresee the Salary Grab, and were inclined to think congressmen more likely to act so as to be popular with their constituents and also render the place ineligible to competitors. The proposal was voted.

Next day, August 15, discussion began on elements of the Bill of Rights, but, under the report and the decision of the committee, cut up and inserted here and there in the original Constitution, the first clause, that for religious freedom (Amendment I) being inserted in the prohibition upon the powers of Congress in Art. I. § 9. Sherman considered it unnecessary, as Congress "had no authority whatever delegated to them by the constitution to make religious establishments; . . ." [81] Carroll of Maryland, a Catholic, wished it retained, "as many sects have concurred in opinion that they are not well secured under the present constitution, . . ." [82] Huntington of Connecticut wanted it worded so as "not to patronize those who professed no religion at all." [83]

This protection being voted, freedom of speech, press, assembly, and petition (Amendment I) were next considered and approved, though Sedgwick said that freedom of speech included assembly, and the descent to so much "minutiae" was derogatory to the dignity of the House. Tucker noticed the absence of the right to instruct their representatives, which was also omitted from Madison's list. Page agreed with Tucker that instruction and representation were inseparably connected in a republic; but the majority of the committee, after a long and rather desultory discussion, thought otherwise, and the motion to add was defeated, Hartley of Pennsylvania evidently expressing the more general opinion when he said that they ought to be supposed to have the confidence of the people during the period for which they were elected. Clymer added that logically the idea including the binding of representatives by these instructions, which was "a most dangerous principle, utterly destructive of all ideas of an independent and deliberate body, which are essential requisites in the Legislatures of free Governments; . . ." [84] Madison warned against

attempting too much: "I venture to say, that if we confine ourselves to an enumeration of simple, acknowledged principles, the ratification will meet with but little difficulty. Amendments of a doubtful nature will have a tendency to prejudice the whole system; the proposition now suggested partakes highly of this nature." [85]

Gerry renewed his plea of the right of a general discussion and individual proposals: "It is natural, sir, for us to be fond of our own work. We do not like to see it disfigured by other hands. . . . But other gentlemen may crave a like indulgence." [86] Burke, too, expressed dissatisfaction with the attempted limitation:

> I do not mean to insist particularly upon this amendment; but I am very well satisfied that those that are reported and likely to be adopted by this House are very far from giving satisfaction to our constituents; they are not those solid and substantial amendments which the people expect; they are little better than whip-syllabub, frothy and full of wind, formed only to please the palate; or they are like a tub thrown out to a whale, to secure the freight of the ship and its peaceable voyage. In my judgment, the people will not be gratified by the mode we have pursued in bringing them forward. There was a committee of eleven appointed; and out of the number I think there were five [four] who were members of the convention that formed the constitution. Such gentlemen, having already given their opinion with respect to the perfection of the work, may be thought improper agents to bring forward amendments. Upon the whole, I think it will be found that we have done nothing but lose our time, and that it will be better to drop the subject now, and proceed to the organization of the Government.[87]

At Ames' motion, the committee rose and in the House he moved its discharge. "He was led to make the motion from two considerations: first, that as the committee were not restrained in their discussions, a great deal of time was consumed in unnecessary debate; and, second, that as the constitution required two-thirds of the House to acquiesce in amendments, the decisions of the committee, by a simple majority, might be set aside for the want of the constitutional number to support them in the House. He further observed, that it might have an evil influence if alterations agreed to in committee were not adopted by the House." [88] Gerry, who had already been seven times on his feet during the day, objected. Ames withdrew the motion finally, as Livermore declared "it would have a disagreeable aspect to leave the business in the unfinished state it now stood. He thought it had better been altogether let alone." [89] Ames did, however, ask for a two-thirds vote in committee to carry a question, but adjournment was taken without a vote on the matter.

On August 17 consideration began of the right to a militia and to bear arms (Amendment II), which was also Madison's next.

Gerry was fearful that the right of religious objectors, which was part of the item, might become a tool in the hands of tyranny through the power to declare who were the religiously scrupulous and prevent all such from bearing arms, thus promoting his pet bugbear, a standing army. The proposed amendment was adopted, however, as reported; after which Burke attempted to get an anti-standing-army addition to it, but without success. The question of quartering troops (Amendment III) came up next; a motion to prohibit nonconsent quartering in time of war was defeated, and the clause adopted. The balance of the personal relations proposals—rights of the defendant in trial, due process of law, eminent domain (Amendment V), excessive bail and fines and unusual punishments (Amendment VIII), and general warrants (Amendment IV), were adopted with little discussion, as was also that on the reserved rights of the people (Amendment IX).

The fifth proposition, the committee following Madison's list, was a prohibition on the states of measures violating right of conscience, freedom of press and speech, and trial by jury. This was to be added to §10 of Art. I. Tucker, a state-rights supporter, moved to eliminate it, considering it best not to interfere with the states any more than had already been done. Madison considered it as necessary to the protection of the people as the restriction on the national government. The committee agreed.

The limitation of appeal to the Supreme Court (proposition six) was proposed at $1,000 and, with the retention of the rules of common law in the reexamination, agreed to; as was the proposed substitution for Art. III. § 2. cl. 3 on the rights of the defendant in a criminal trial (Amendment VI).

On August 18 Gerry and Tucker in the House made another effort to have a committee of the whole on all the state proposals not reported by the special committee, but on a call of yeas and nays it was lost by 16 to 34. Again in committee, the balance of what became Amendment VI was considered and adopted, the two elements being, as originally adopted, much less concise than as we have them in the amendments. Jury trial in suits at common law (part of Amendment VII) was evidently adopted without discussion.

This completed the proposals that were primarily elements of a Bill of Rights; but the special committee had also reported Madison's endorsement of the separation of powers. Sherman objected to it as unnecessary, and Madison upheld it because he "supposed the people would be gratified," and "it might also tend to an explanation of some doubts that might arise respecting the construction of the con-

stitution."[90] The committee of the whole adopted this, as it did that reserving to the states the nondelegated powers, rejecting Tucker's addition of "expressly" delegated powers, but possibly adding the clause "or to the people," which Carroll suggested. This suggestion by Carroll is mentioned in the *Annals* as adopted, but it is not mentioned in the journal, nor does it appear in the resolve as it passed the House; whether it was inadvertently omitted cannot now be said. It was added by the Senate. Madison, still in agreement with Washington and Hamilton, answered Tucker by saying that "it was impossible to confine a Government to the exercise of express powers; there must necessarily be admitted powers by implication, unless the constitution descended to recount every minutia."[91] The proposals on separation of powers and nondelegated powers were to be a new Art. VII in the Constitution, the original Art. VII to become Art. VIII. The committee then reported to the House on this August 18. Tucker moved a long list of amendments, altering the character of the Constitution, to be referred to a committee of the whole; but the proposal was rejected without a division.

As the propositions of the special committee were practically identical with those of Madison, with certain blanks filled out, likewise these proposals had passed the committee of the whole virtually without change. The promptness of the report of the special committee is easily understood, as their whole work was scarcely more than one of phraseology. Senator Butler wrote Iredell on August 11, 1789: "If you wait for substantial amendments, you will wait longer than I wish you to do, speaking *interestedly*. A few *milk-and-water* amendments have been proposed by Mr. M., such as liberty of conscience, a free press, and one or two general things already well secured. I suppose it was done to keep his promise with his constituents, to move for alterations; but, if I am not greatly mistaken, he is not hearty in the cause of amendments."[92] Madison's own opinion at this stage of the proceedings was expressed to Randolph on August 21: "The progress has been exceedingly wearisome, not only on account of the diversity of opinions, that was to be apprehended, but of the apparent views of some to defeat by delaying, a plan short of their wishes, but likely to satisfy a great part of their companions in opposition throughout the Union. It has been absolutely necessary in order to effect any thing to abbreviate debate, and exclude every proposition of a doubtful & unimportant nature. . . . Two or three contentious additions would even now prostrate the whole project."[93]

PASSAGE IN THE HOUSE

THE REPORT of the committee of the whole came up in the House on August 19, when Sherman renewed his proposals to make the amendments supplementary to the original Constitution and not incorporated in it; and now the House by a two-thirds vote ordered the change. The proposed expression of the derivation of powers from the people failed to receive the necessary majority and was dropped. The matter of apportionment of representation brought up a renewal of Ames' proposal of forty thousand as the basis; but the matter was tabled, and acquiescence in the report of the committee of the whole proceeded until objection was raised to the conscientious scruple against bearing arms, which, however, was retained. No further objections, beyond verbal changes, arose until August 21, when Gerry renewed, according to the *Annals*, the proposal to reserve to the states, "or to the people," the powers not "expressly" delegated to the United States; but on a yea and nay vote this was again rejected by 17 to 32. It is to be noticed here that Gerry's proposal either included that which Carroll is supposed to have made, or else was now first used; but again the journal does not include the phrase.

The report of the committee of the whole being thus agreed to substantially, except for the still pending question of apportionment, efforts were renewed for the consideration of substantive amendments. Burke led off with that prohibiting the regulation of election by Congress except in case of state delinquency, which it will be remembered, was a favorite proposal of the ratification conventions. Madison declared that it would "tend to destroy the principles and the efficacy of the constitution," [94] and he opposed it in spite of the unusually heavy state demand for it. Burke's proposal received only 23 votes to 28 against. Before the adjournment on August 21, the House reached a complicated agreement on the apportionment question, one to every thirty thousand until there were one hundred, thereafter not fewer than one hundred or fewer than one to every forty thousand, until there were two hundred members, and after that, at least two hundred members and not fewer than one for each fifty thousand.

Tucker followed Burke on the 22d with an amendment against direct taxes, but received only nine votes, though one more of the lists of desired amendments had included this than had objected to congressional regulation of elections. He and Gerry continued the assault however, though equally without success for any of their proposals, which respected the judiciary, the oath, monopolies, and titles of nobility. A committee of three was then appointed to

arrange the amendments, which being done, with the preliminary resolve according to Sherman's idea, the proposed amendments were sent up to the Senate on August 24.

SENATE ATTITUDE AND CHANGES

AS THE Senate sat in secrecy, there is unfortunately little material on the discussion there. Maclay ignored it, after its reception, being ill during most of the time of its consideration. The Senate received the resolution as seventeen articles on August 25, but did not take it up until September 2, sending it back to the House amended on September 9. The articles as received by the Senate consisted of (1) apportionment; (2) compensation of members; (3) religious freedom (4) free speech, press, assembly, and petition; (5) right to bear arms and have religious scruples respecting military service respected; (6) quartering of troops; (7) general search warrants; (8) right of accused as to double jeopardy, self-witness, and due process of law, and also eminent domain; (9) right to a speedy trial, witnesses, and counsel; (10) an impartial jury of vicinage, unanimous verdict, challenge, and grand jury; (11) limitation on appeal to the Supreme Court and reexamination there according to rules of common law; (12) jury trial in civil cases; (13) bail, fines, and punishments; (14) prohibition on states; (15) rights of the people; (16) separation of powers; (17) rights reserved to states. Upon the proposals in this form a political correspondent from New York commented: "The business of Amendments has been managed with great candour and address by those who are friends of the Constitution, and such as were indifferent to any Amendments. . . . the principal part of the advocates of amendments appear pretty well contented with the report." [95]

Senator Lee wrote to Charles Lee on August 28: "The enclosed paper will show you the amendments passed the H of R to the Constitution. They are short of some essentials, as Election interference & Standing Army &c, yet I was surprised to find in the Senate that it was proposed we should postpone the consideration of Amendments until Experience had shewn the necessity of any. As if experience were now necessary to prove the propriety of those great principles of Civil liberty which the wisdom of Ages has found to be necessary barriers against the encroachments of power in the hand of frail Man." [96] On September 13 he added to his brother, Francis Lightfoot Lee: "They have at length passed the Senate, with difficulty, after being much mutilated and enfeebled. It is too much

the fashion now to look at the rights of the People, as a Miser inspects a Security, to find out a flaw. What with design in some, and fear of Anarchy in others, it is very clear, I think, that a government very different from a free one will take place eer many years are passed." [97]

Lee, an outstanding Antifederalist, showed the attitude of the irreconcilable leaders, those that Richard Peters had in mind when he wrote Madison on August 24: "I believe that a Firmness in adhering to our Constitution 'till at least it had a longer Trial would have silenced Antifederalists sooner than magnifying their importance by Acknowledgments on our Part & of ourselves holding up a Banner for them to rally to. All our offer comes not up to their Desires & as long as they have one unreasonable Wish ungratified the Clamour will be the same." [98] That the Senate had the same idea as Peters is indicated by the fact that the changes there were those of elimination. Maclay on August 25, speaking of the reception of the resolve in the Senate, said that the proposals were treated contemptuously by Izard, Langdon, and Morris, and a motion made to postpone consideration until the next session, which was defeated.

In the Senate the seventeen articles were reduced to twelve partly by elimination and partly by combination. The Senate made a change in the apportionment article, but the House refused to accept this, and the Senate receded. In the article on religion "nor shall the rights of conscience be impunged" was struck out, and it and the next article were united. The protection of conscientious objectors was cut out of the article on the right to bear arms. All the elements of the House's tenth proposal were dropped except that on the grand jury, while later this right was added to the eighth proposal. The limitation upon appeals to the Supreme Court was struck out, retaining the requirement of reexamination in accordance with common law, and to the article was joined the next one upon a jury trial in civil cases, with a limitation to cases of the value of $20 or more. The prohibition on the states was rejected, as was also the statement of the separation of powers, while to the reserved rights of the states was added the phrase "or to the people," thus possibly merely correcting an error in the resolve as sent up by the House. As a preamble to the resolve was added the following as a reason for the proposals: "The Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restricted clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the benificent ends of its institution:" [99] There were also

verbal changes that procured in many cases the precise terse form of the Bill of Rights as we now have it.

In the process of these changes, the Senate rigorously suppressed the many proposals of the Virginia senators, Lee and Grayson, who evidently tried to add all the demands made by the Virginia ratification convention. Usually this was done without a record vote; when they tried to add the right to instruct representatives they were the only voters in favor of it; though in their amendment against the standing army they had four supporters against an opposition of nine.

CONFERENCE AND FINAL PASSAGE

THE HOUSE received the Senate's twenty-six amendments on September 10, and on September 21 agreed to ten of them and rejected the rest. The Senate on September 21 receded from its change in the apportionment matter and adhered to the rest of its changes. The committee of conference which then took charge consisted of Madison, Sherman, and Vining in the House, all good supporters of the idea of the less the better, and of Ellsworth, Carroll, and Paterson in the Senate, who were similarly minded. They reported on September 24 to accept all the Senate's remaining changes, but with a verbal alteration in the amendment on religious liberty, and the restoration of the right to trial by jury in criminal prosecutions. The word "less" in the amendment on apportionment was changed to "more," so that after there were two hundred members there could not be more than one to every fifty thousand of inhabitants. The House agreed to these on September 24, and the Senate on the 25th, which, therefore, is the date when the Bill of Rights finally passed Congress, there being in this case no necessity of reference to the President for his approval. On September 28 the resolve was reported to the House as "truly inrolled" and the Speaker signed it that day. The Vice President's signature was undoubtedly added on that day also. The engrossed parchment, undated except as being the work of the session begun and held on March 4, 1789, bears also the signatures of the secretary of the Senate and the clerk of the House. The document was deposited in the custody of the secretary of state and is now on exhibit in the National Archives.

REFERENCE TO THE STATES

ON SEPTEMBER 26 Congress passed a concurrent resolution requesting the President to send copies of the resolve to the executives of the eleven states in the Union, and also to North Carolina and

Rhode Island. This Washington did, and probably then or later Vermont also received a copy. These copies are virtual replicas of the original, being also on parchment of approximately the same size, about 29″ x 29″, and differing from the engrossed resolve and from each other only in a few minor matters like lineations and occasional changes in capitalization and punctuation. The four officials who signed the original signed also the copies, and the President accompanied the engrossed copy in each case with a copy of the concurrent resolution authorizing him to furnish each state executive with one. Washington's letter enclosing the documents is, in the case of that sent to Governor Hancock of Massachusetts, dated October 3, 1789. As Congress adjourned on September 29, only a day after the resolve for the amendments could have reached the President, the various copies, bearing the signatures they did, must have been quickly prepared. The statement here made is premised entirely upon the surviving copies. Only three of these are now known to exist; those sent to Massachusetts and Connecticut are still in the state archives, and another one is now in private hands, though to what state it was delivered is not disclosed.

PUBLIC RECEPTION

As STATED above, the finished amendments were not the subject of any special newspaper comment, and there is little comment in the available correspondence. Patrick Henry wrote to Senator Lee on August 28, 1789, before the Senate had made its eliminations: "As to my Opinion of the Amendments I think they will tend to injure rather than to serve the Cause of Liberty—provided they go no further than is proposed as I learn. For what good End can be answered by giving [?] Rights the tenure of which must be during pleasure. For Rights, without Force Power & Might is but a Shadow. Now it seems that it is not proposed to add this Force to the Right by any Amendment." [100] He does not say how he thought this should be done. Lee answered on September 14 after the Senate changes: "The most essential danger from the present system arises, in my opinion, from its tendency to a consolidated government instead of a union of Confederated states. . . . Some valuable rights are indeed declared, but the power to violate them to all intents and purposes remains unchanged." [101] He added on September 27: ". . . yet small as it is, how wonderfully scrupulous they have been in stating rights? The english language has been carefully culled to find words feeble in their nature or doubtful in their meaning." [102] Grayson wrote Henry on September 29: "The lower house sent up amend-

ments which held out a safe guard to personal liberty in great many instances, but this disgusted the senate, and though we made every exertion to save them, they are so mutilated and gutted that in fact they are good for nothing, and I believe, as many others do, that they will do more harm than benefit." [103] Evidently the three most prominent advocates of the essential changes had rather divergent ideas still, but at least they were united in a denunciation of the insufficiency of the amendments.

STATE RATIFICATION

THE AMENDMENTS were now before the states. Their disposal of them seems to have caused little comment either in the legislatures or outside, except in the case of Virginia. As North Carolina and Rhode Island both ratified the Constitution during this disposal, and as Vermont was admitted during the period, there were fourteen states to vote, with eleven needed to procure final indorsement of any amendment. It is to be remembered that under a later decision of the Supreme Court the date of ratification depends upon the passage through the legislature only; questions of any other requirements for the validity of state laws, such as the approval of the governor, the signing by the speakers of the houses, enrolment, date of activity of acts, etc., are entirely foreign to any action in which the legislatures are governed entirely by the requirements of the Constitution of the United States, even though the ratification should be, as it generally was, passed as a state law rather than as a resolution of the legislature. According to this ruling the various proposed amendments became a part of the Constitution on the day the last necessary state legislature, that is the eleventh, approved them. The exact date of each state's ratification cannot in all cases be stated here, because of the lack of availability of the necessary records; but it is accurate in most instances.

New Jersey led in the approval, agreeing on November 20 to all of the proposals except the second (salaries); Maryland was for all twelve on November 30; and North Carolina completed the roster for 1789 by voting all the amendments on December 8. In Maryland the House received the proposed amendments from the governor on November 9, together with a letter from Clinton about the approval by the New York legislature in February of a second convention. Both were referred to a committee of nineteen, of which McHenry was one, which reported on November 12 to adopt the amendments and ignore the letter. This report was accepted unanimously, and a committee of seven appointed to bring in a bill accordingly. This

bill, being brought in on the 23d, was accepted by the House on the 25th and by the Senate five days later. The journals of the North Carolina legislature indicate merely that a member of the House, being given leave to introduce a bill of ratification, did so on November 23, and the measure went quickly through the required three readings house by house, being checked only once when it was withdrawn in the lower house for four days for amendment.

In South Carolina the House referred the matter to a committee; its report was taken up on January 18, 1790, adopted that day and in the Senate the next day. All twelve proposals were approved. The New Hampshire legislature, like the New Jersey one, also rejected the second article, but approved the rest on January 25, 1790. The consideration there began on January 1, when two hundred fifty copies of the amendment were ordered printed and distributed to the members of the legislature. The House originally rejected both the propositions on the organization of Congress, but that body yielded to the Senate's desire to approve the one on apportionment. Delaware, the smallest of the states, was alone in rejecting this first article, while approving the rest on or before January 28, 1790.

In New York, where the arch Antifederalist Clinton was still governor, the House went into committee of the whole on the matter on January 26, 1790, and voted by 52 to 5 to reject the compensation amendment, and then agreed to the rest, appointing a committee to bring in a form of ratification, which was done on February 12 as a bill. Considered again in committee of the whole, the question came up whether it should be a bill or resolve, but the latter was defeated by 49 to 2, and the bill sent up to the Senate on February 22. That body approved on February 24, which is the date of the New York acceptance, even though the Council of Revision did not report that it was "not improper" until the 27th.

The Pennsylvania Supreme Council submitted the amendments to the unicameral General Assembly on November 3, 1789. Reference was made to a committee of the whole, one hundred copies of the proposals being meanwhile printed. There was some consideration given the matter that month, but action by the committee was not taken until the next session, when on February 24, 1790, it was voted to approve all of the measures except the first two. On March 1 an attempt to reconsider the apportionment proposal was defeated by 27 to 32, and a bill ordered on the ten that were approved, which after going through the various stages, became a law on March 10, 1790. About September 21, 1791, the legislature under the new state constitution gave its approval to the apportionment article. This

was the first exercise of the right to reconsider the rejection of a proposed amendment.

The State of Rhode Island and Providence Plantations having ratified the Constitution on May 29, 1790, her legislature followed suit on June 15 by approving the Bill of Rights and the apportionment article, but rejecting the second item of the resolve of Congress, that on compensation. Thus by the middle of June in 1790, less than nine months after Congress had proposed the Bill of Rights, it had received the approval of nine of the then thirteen states, but ten were needed; while the first proposition had been ratified by only seven states, and the second one by only four. There was then a pause in the work for over a year, during which time Vermont was admitted. On November 3, 1791, the new state gave its approval to all twelve of the articles.

VIRGINIA AND THE PROPOSED AMENDMENTS

VIRGINIA was the home of the man who had originated the proposed amendments and also of the men most active in considering the work as valueless. The two senators reported to the House of Delegates on September 28, 1789:

> We can assure you Sir that nothing on our part has been omitted to procure the success of those Radical Amendments proposed by the Convention and approved by the Legislature of our Country [meaning Virginia] which as our Constituent we shall always deem our duty with respect and reverence to obey. . . . It is impossible for us not to see the necessary tendency to consolidated Empire in the natural operation of the Constitution if no further Amended than now proposed. And it is equally impossible for us not to be apprehensive for Civil Liberty when we know no instance in the Records of history that shew a people ruled in freedom when subject to an undivided Government and in habiting a Territory so extensive as that of the United States, and when, as it seems to us, the nature of Men and things joined to prevent it. . . . such amendments therefore as may secure against the annihilation of the State Governments we devoutly wish to see adopted. . . . unless a dangerous Apathy should invade the public minds it will not be many years before a Constitutional number of Legislatures will be found to demand a Convention for the purpose.[104]

The lively correspondence of the time supplements vividly the account in the journals of the two houses. The General Assembly met on October 19, 1789, on which day the above letter was referred to the House of Delegates, read, and laid on the table. Hardin Burnley, a member of the House, wrote Madison on November 5: ". . . the greater part of those who wished either to postpone or reject, are not dissatisfied with the amendments as far as they have gone, but are apprehensive that the adoption of them at this time

will be an obstacle to the chief object of their pursuit, the amendment on the subject of direct taxation." [105] Madison wrote Washington on November 20:

> . . . the amendments have been taken up, and are likely to be put off to the next Session, the present house having been elected prior to the promulgation of them. This reason would have more force, if the amendments did not correspond as far as they go with a propositions of the State Convention, which were before the public long before the last Election. . . . If it be construed by the public into a latent hope of some contingent opportunity for prosecuting the war agst. the Genl. Government; I am of opinion the experiment will recoil on the authors of it. As far as I can gather, the great bulk of the late opponents are entirely at rest, and more likely to confine a further opposition to the Govt. as now Administered than the Government itself.[106]

This last statement was a true prophecy, but by a quirk of fate the leaders of this opposition, including Madison himself, were among the chief supporters of the proposed amendments. On the 22d Edmund Randolph, also a member of the House of Delegates, not yet having become attorney general of the United States, informed the President: "Mr. Henry has quitted, rather in discontent, that the present assembly is not so pliant as the last. He moved before his departure to postpone the consideration of the amendments until the next session. . . . A motion will also be made tomorrow to publish an inflammatory letter, written by our senators to the assembly." [107]

These letters were written while the House was debating in committee of the whole the proposed amendments as part of its consideration of the state of the commonwealth. On the 25th the committee of the whole agreed to its report on the subject, though it was not presented until November 30. Randolph wrote again on the 26th: "Mr. Henry's motion . . . was negatived by a great majority. The first ten were easily agreed to. The eleventh and twelfth were rejected by 64 against 58. I confess, that I see no propriety in adopting the two last." [108] He added that the letter from the senators had been printed without authority by the enemies of the Constitution. David Stuart wrote Washington on December 3 relative to this senatorial letter: "I was happy in hearing much indignation expressed at it, by many who were strong Antifœderalists, and had voted against the constitution in the Convention. . . . Mr. Henry appears to me by no means content. But if the people continue as much satisfyed, as they at present appear to be, he will be alone in his sentiments. He however, tried to feel the pulse of the House with respect to the Constitution, in two or three instances, and received at length I understand, a very spirited reply

from Col. [Henry] Lee."[109] Madison, writing to Washington from his home on the 5th and before he knew what the House would do about the report, was critical of Randolph's attitude:

> The fate of the Amendments . . . is still in suspense. In a Comc. of the Whole House the first ten were acceded to with little opposition; . . . on the two last a debate . . . ended in rejection. Mr. E. Randolph who advocated all the others stood in this contest in the front of opposition. His principal objection was pointed agst. the word '*retained*' in the eleventh . . . and that as there was no criterion by which it could be determined whether any particular right was retained or not, it would be more safe that this reservation against constructive power should operate rather as a provision agst. extending the powers of Congs. by their own authority than a protection to rights reducible to no definite certainty. But others, among them I am one, see not the force of the distinction. . . . if the House should agree to the Resolution for rejecting the two last, I am of opinion that it will bring the whole into hasard again, as some who have been decided friends to the ten first think it would be unwise to adopt them without the 11th & 12th . . . the difficulty started agst. the amendments is really unlucky, and the more to be regretted as it springs from a friend to the Constitution. It is still greater cause of regret, if the distinction be, as it appears to me, altogether fanciful.[110]

The House resolved on November 30 that such articles "as are conformable with the alterations recommended . . . by the Convention of this Commonwealth, ought to be ratified,"[111] and considered all twelve as coming within this category. Whereupon Randolph wrote again to Washington on December 6:

> Upon the report being made to the house, and without a debate of any consequence the whole twelve were ratified. They are now with the senate, . . . That body will attempt to postpone them; for a majority is unfriendly to the government. . . . In the house of delegates, it was yesterday moved to declare the remainder of the amendments, proposed by our convention, essential to the rights and liberties of the people. An amendment . . . the general assembly ought to urge congress to a *reconsideration* of them . . . carried by the speaker, giving a casting vote. This shows the strength of the parties, and that in the house of delegates, the antifederal force has diminished much since the last year. . . . It [the amended resolution] will be pushed; because it seems to discountenance any further importunities for amendments; which in my opinion is *now* a very important point. . . . eleventh amendment, which is exceptionable to me, in giving a handle to say, that congress have endeavoured to administer an opiate, by an alteration, which is merely plausible.[112]

The Senate received the amendments on December 2 and in committee of the whole discussed them on December 5, 7, and 8, then reporting in favor of striking out the third article (Amendment I), the eighth (Amendment VI), and the eleventh and twelfth (Amendments IX and X), postponing these four "till the next session of Assembly, for the consideration of the people";[113] and at the same

time increasing the number of copies of the propositions to be printed from the House number of 200 to 1000. The votes in the Senate to strike out these four items were either 8 to 7 or 8 to 6, and by 8 to 7 those who had voted to omit were permitted to enter their reasons on the journal.

These reasons, signed by eight members, stated that the amendments proposed by Congress "fall far short of affording the same security to personal rights, or of so effectually guarding against the apprehended mischiefs of the government" as would the analogous ones desired by Virginia and other states. As to the third article it was "dangerous and fallacious, as it tends to lull the apprehensions of the people on these important points, without affording them security; . . ." The objection to the eighth article was that it did not sufficiently secure the right to a "jury of the vicinage," since the districts of the judiciary act were state-wide and that was indicative of the attitude of Congress. The eleventh article was not asked for by Virginia or any other state, and therefore "the people of Virginia should be consulted with respect to it . . . but it appears to us highly exceptionable." It was greatly defective as a measure intended by implication to guard against the extension of the powers of Congress; "and as it respects personal rights, might be dangerous, because, should the rights of the people be invaded or called in question, they might be required to shew by the constitution what rights they have *retained;* and such as could not from that instrument be proved to be retained by them, they might be denied to possess." As Madison had added this particularly to make sure that the mention of certain protected rights would not lessen the claim to others, it is interesting to note here that according to this protest, which agrees with Randolph's attitude, the effect of it would be just the reverse. The twelfth article would be all right, stated those who voted to omit it, except for the "or to the people," since that "is not declared to be the people of the respective States; but the expression applies to the people generally as citizens of the United States, and leaves it doubtful what powers are reserved to the State Legislatures. . . . Congress might, as the supreme rulers of the people, assume those rights which properly belong to the respective States, and thus gradually affect an entire consolidation." [114] Four of those who voted to include the rejected articles entered a protest on the journal against the appearance of the above reasons, holding that the right pertained only to the minority. They later added their own reasons, saying that they "considered the accepting of such as were at present offered as a measure better calculated to

insure others, than either rejecting or postponing the consideration of them." [115]

The Senate decision was returned to the House on December 9, 1789, and the House disagreed on the 11th and asked a conference. The eight members of the House committee included Randolph, Henry Lee, Corbin, Marshall, and Carrington, all good Federalists. The Senate appointed three Antifederalists, and on December 12, after the conference committee reported, voted by 7 to 6 to adhere to its own decision. This ended the business. Randolph wrote Washington on December 15: "It has been though best by the more zealous friends of the constitution to let the whole of them rest. I have submitted to their opinion; . . . The ground . . . is a resolution to throw the odium of rejection on the senate." [116]

Jefferson expressed his opinion of the whole affair in a letter to Short in Paris on December 14: ". . . the gentlemen who opposed it [the Constitution] retain a good deal of malevolence towards the new govt. Henry is it's avowed foe, he stands higher in public estimation than he ever did, yet he was [so] often in the minority in the present assembly that he has quitted it, never to return, unless an opportunity offers to overturn the new constitution." [117] Carrington, a member of the House, wrote Madison on December 20 that Henry began his feeling of the pulse of the House by trying first to get a vote of thanks to Lee and Grayson. He made a speech but the matter "was never stirred again." His next effort was to refer the amendments to the next session, alleging that they were not satisfactory, but moved to lay his own resolution on the table and went home. The "intemperate and unprecedented conduct" of the Senate in adhering to its rejection of part of the amendments left the House no choice but to adhere also.[118] Madison summed up the matter on January 4, 1790, when he wrote Washington that the result "will do no injury to the Genl. Government. On the contrary it will have the effect with many of turning their disgust towards their own Legislature. The miscarriage of the 3d art. particularly, will have this effect." [119]

The session of the Virginia General Assembly in October 1790 did nothing concerning the matter. Henry was a member of the House again, but seems to have left on November 13. Senator Lee wrote Henry on June 10, 1790, several months before the Assembly convened for that year's session: "There appears to be no prospect of further amendments to the constitution, this session, and I own, 'tis my wish, that the amendments generally, as proposed at the last session, had been adopted by our legislature; for although there is

much force in your observations, upon that subject, yet when I consider one great object of declaration beyond which governments may not go, to wit: that they inculcate upon the minds of the people, just ideas of their rights, it will always be hazardous for rulers, however possessed of means, to undertake a violation of what is generally known to be right, and to be encroachments on the rights of the community; besides that by getting so much as we can at different times, we may at last come to obtain the greatest part of our wishes." [120]

At this same time Jefferson, already critical of the Hamiltonian policy, and fast displacing Henry as the political leader in Virginia, showed in the letter to George Mason on June 13, 1790, his growing dissatisfaction, although that dissatisfaction was to be with the administration and interpretation rather than with the Constitution itself, just as Madison had predicted a year before: ". . . tho I approve of the mass, yet I would wish to see some amendments, further than those which have been proposed, and fixing it more surely on a republican basis." [121] He added to Moustier on December 3 his belief in "adding those principles which several of the states thought were necessary as a further security for their liberties." [122]

In the session of 1791 Henry was not a member of the legislature. He had written Monroe on January 24, 1791: "And altho' The Form of Governt. into which my Countrymen determined to place themselves, had my Enmity, yet as we are one & all imbarked, it is natural to care for the crazy Machine, at least as long as we are out of Sight of a Port to refit." [123] The change of heart thus indicated progressed until the great patriot was vehement in his objection to Jefferson's and Madison's Kentucky and Virginia Resolutions in 1798, and supported for Congress at that time both John Marshall and Henry Lee, active antagonists in the contest over the sufficiency and ratification of the amendments. On October 25, 1791, on the ninth day of the session, a committee of the whole of the House reported in favor of ratifying the first article, the one on apportionment, to which the House agreed at once and the Senate on November 3, after discharging a committee of the whole from the consideration of it. On December 5, the House under the same conditions sent the rest of the amendments up to the Senate, which considered them for two days in a committee of the whole and then on December 15 ratified without a record vote. This, as said above, completed the necessary ratification of the first ten amendments.

CONSUMMATION

PRESIDENT Washington from time to time notified Congress of the

ratifications by the states. On December 30, 1791, he thus announced Virginia's approval; but did not tell of Vermont's until January 18, 1792, although that state had preceded Virginia in her consent. Jefferson, as secretary of state, sent out the announcement of the acceptance of the present first ten amendments as part of the Constitution on March 1, 1792.

MASSACHUSETTS, CONNECTICUT, AND GEORGIA

MASSACHUSETTS, Connecticut, and Georgia did not ratify any of the proposals sent down by Congress. In the first of these states, Governor Hancock on January 14, 1790, sent to the General Court the proposed amendments, with a message in which he said: "As it is the ardent wish of every patriot, that the plan may be as compleat as human wisdom can effect it, This resolve, I am confident, will demand your serious and careful attention." [124] Five days later in his speech before the General Court he said:

> As Government is no other than the united consent of the people of a civil community, to be governed in a particular mode, by certain established principles, the more general the union of sentiment is, the more energetic and permanent the government will be. Upon this idea, the adoption of some of the proposed amendments becomes very important; because the people of this Commonwealth felt themselves assured by the proceedings of their Convention, which ratified the Constitution, that certain amendments, amongst which were some of those, would be effected: The seventh, eighth & ninth articles appear to me to be of great consequence. . . . These articles therefore, I believe, will meet your ready approbation. Some of the others appear to me as very important to that personal security, which is so truly characteristick of a free Government.[125]

The legislators in answer assured the governor: "We are anxious that the whole body of the People should have the fullest confidence, that their rights and liberties are secured to them in the General Government, by the most explicit declarations, which have a tendency to give energy to its authority and laws." [126] On January 29 the Senate voted to adopt all the articles but the first and second; and the House considered them on February 2, and agreed in the rejection of the first and second, but also rejected the twelfth article. The Senate yielded its preference for this, and a joint committee was appointed to bring in a bill; which committee never reported. On January 20 the Senate proposed a joint committee to "consider what further amendments are necessary to the Federal Constitution." The House joined on this on February 2; so that two committees were in existence, one to prepare a bill of ratification of amendments and the other to suggest further amendments. The latter committee

reported before the General Court adjourned on March 9 and its report was printed as a supplement by the Boston paper most given to upholding the rights of the states, but was ignored by the Federalist organ.

Henry Jackson wrote Knox on March 7, 1790: "You will observe in the Thursday Paper some proposals as amendments to the Federal Constitution—they originate with your friend *Dane* & B Austin of the Senate, & Mr. Bacon of the house, they are the heads of the Junto that are endeavoring to distress & weaken the General Government—the Court will not act on them this session." [127] The Senate ordered the report printed and voted to consider it, but the consideration did not come up. The proposals of the committee looked to the strengthening of the powers of the states rather than to the protection of the rights of the people. In its general statement the committee said: "The Committee by no means agree with those who contend, that the natural tendency of a system like ours, is towards an undue encrease of the powers of the State Governments, nor with those who contend that the democratic temper of the people, is a sufficient check upon the extensive powers of the general Government." One of the specific proposals of the committee was "That the general Government exercise no power but what is expressly delegated." [128]

It has been contended that the General Court, having shown clearly its intention to ratify most of the amendments, "failed to act because it became involved in an attempt to propose even more exclusive definitions of the rights of the people." It is reasonable to suppose that the report of this committee may have been awaited, in order to act upon it before the General Court gave final consideration to the bill of ratification; but the report was known in the General Court by February 24, almost two weeks before adjournment, was printed by order of the Senate, and appeared also in a newspaper on March 4, which would seem to give time enough even in the rush of the end of a session for final consideration and passage of the bill to ratify. Whether or not the intentions of the General Court in appointing a committee for further consideration of the amendments was better to sustain the rights of the people, the report of that committee, as said above, had little of that character. It should be noticed that if the proposed amendment mentioned above on expressed powers was approved, there would be little need of the final article of the propositions from Congress, except the afterthought clause of "or of the people." It is possible to think that in rejecting this amendment the House may have anticipated the report of the joint committee, and there is no reason to suppose

that the House would have agreed with the Senate of Virginia in its objections. Nor does this, or anyting else that happened in this session, account for the entire disregard, so far as the records show, of any consideration of the proposed amendments by later sessions of the General Court, although there were four of them before it was known that the Bill of Rights had become a part of the Constitution.

Massachusetts was already on her way to become the stronghold of Federalism. On January 2, 1790, the Federalist organ, the *Massachusetts Centinel*, printed with evident approval from a New York paper the statement: "The amendments . . . proposed . . . it ought to be remembered that they are the result of a concession on the part of the majority, who were satisfied with the system in its original form—but from the best motives were induced to acquiesce in amendments to reconcile, if possible, opposition, and to conciliate the doubting." It is entirely consistent to believe that the lack of action on the amendments by the Bay State was due to the increasing satisfaction with the Constitution as it was, to the belief that even the conciliation of the doubting was no longer necessary. Her failure to act on Amendment XI supports this, even though she did not reject it, as did Connecticut and Delaware, two other strong Federalist states.

Connecticut even more than Massachusetts was disinclined to innovation, her conservatism was pronounced, and she also became and remained for many years a consistent supporter of the Federalist party. The General Assembly met in October 1789 and on the 23d the lower house ordered the consideration of the proposed amendments on October 27, on which latter date that body passed a bill to ratify all but the second article, and on the next day approved a committee of conference on the amendments. There are no further records for that session. In the upper house consideration was referred to the next General Assembly, which met in May 1790. On May 18, 1790, the lower house again ratified all but the first and second proposals; there is a confusion in the journal, however, for in one place the second article is called approved and in another rejected, but the balance of the evidence favors the rejection of the second one. The upper house dissented, and a committee of conference was appointed that did not promote an agreement, each house adhering to its original vote. In the session in October 1790 the lower house on the 16th rejected all the proposals, but on the 25th concurred with the Senate in referring the matter to the session of May 1791. There is no indication that the affair was ever resumed. The lack of action by the Connecticut legislature

was in harmony with that of her congressman, who, led by Sherman, were often in opposition even to Madison's mild proposals.

Of the attitude in Georgia we have but a single reference. On December 1, 1789, a joint committee of both houses reported that "the proposed amendments to the defective parts of the Constitution of the united States, and which are particularly the object of, and referred to in the said Communication cannot be effectually pointed out, but by experience,—therefore Resolved, that the further consideration of the message be postponed." The Senate accepted this, and the House then laid it on the table.[129]

These three states, as part of their celebration of the Sesquicentennial of the Constitution and to register their approval of the principles upheld by it, formally ratified the national Bill of Rights in 1939.

The Executive Departments

OLD FOREIGN OFFICE

ALL OF the executive departments authorized during the first session of the First Congress to assist the President in his administration were the successors of organizations under the Continental Congress and the Confederation. Scarcely had the Congress begun its meetings in 1775 before the need was felt of some body within it to handle foreign relations, and two committees were formed, that of the secret committee on supplies and on September 18, 1775, the committee of secret correspondence. The membership of these was usually partially identical, and since the supplies had also to come from abroad there was considerable common ground between them. The former became the commercial committee and the latter on April 17, 1777, the committee of foreign affairs, which after a very unsatisfactory career, chiefly in the hands of one man, James Lovell of Massachusetts, was superseded by the Department of Foreign Affairs.

The movement for this department began in 1780; a committee reported it on June 12, but the report was not considered until January 1781. On the 10th of that month the department was authorized, with a paid secretary not a member of Congress, to be called the secretary for foreign affairs. His business was to correspond with the American ministers abroad and the ministers of foreign powers, with "liberty to attend Congress [which sat in secrecy], that he may be better informed of the affairs of the United States, and have an opportunity of explaining his reports respecting his department." [1] He should also keep the papers of his department, and might employ one or more clerks as needed. The salary was fixed, on January 17, 1781, at $4,000, exclusive of office expenses. No appointment was made until August 10, 1781, after the Congress had passed under the Articles of Confederation; and Robert R. Livingston, then chosen, did not take office until October 20. He resigned on June 4, 1783, and after a vacancy of a year and a half was suc-

ceeded by John Jay on December 21, 1784. Jay continued in office not only during the rest of the Confederation, but at Washington's request as a hold-over under the Constitution until Jefferson was sworn in as first secretary of state on March 22, 1790, though meanwhile Jay had become chief justice of the United States. The Department of Foreign Affairs under the Confederation was not a satisfactory organization. Jay voiced many complaints on the limited scope of his authority. He was, of course, servant of, and responsible to, the Continental Congress, which remained the real executive.

FINANCES BEFORE 1789

FINANCES became an all-engrossing question as soon as the Continental Congress met in its second session in 1775, and continued to be a vexatious problem throughout the whole of the ante-Constitution period. With lightheartedness, Congress started its printing presses almost at once, and continued to issue bills of credit through 1779. These rapidly depreciated and from 1781 on had practically no value. This was due to the failure to supply funds to preserve the credit. Having no means to lay taxes itself, Congress made requisitions on the states and borrowed at home and abroad. The returns from these were inadequate. Under the Confederation more loans were secured from abroad and there was a dribble from the states in response to the requisitions which were, aside from loans and bills of credit, the only financial resources allowed by the Articles of Confederation to the national government. The attempts to get permission from the states to lay indirect taxes were never successful.

To administer this small and irregular revenue and to provide for the wartime and other expenditures, or to fail to provide for them, there was a succession of organizations. On July 29, 1775, two treasurers were appointed, one of them, Michael Hillegas, continuing his connection with the financial administration of the government until September 11, 1789. He should have been retained as treasurer under the new Department of the Treasury. Washington's failure to appoint him then was probably a matter of geographical distribution of the offices, and cannot otherwise be explained. It left Hillegas himself and many who knew his worth "extremely disappointed and troubled," as Wingate expressed it.[2] Congress also authorized a committee of claims of its own members, and on February 17, 1776, a standing committee of five to superintend the officials and attend to the issuing of the paper money. This committee, or treasury board, was the germ of the later Treasury Department. In 1778 changes

were made, with additional officials, comptroller, auditor, treasurer, and chamber of accounts, all of course under the congressional board. On July 30, 1779, the board was changed to two members of Congress and three outside men.

On February 7, 1781, the same day that the departments of war and marine were authorized, the treasury board gave way to a superintendent of finance, to which position Robert Morris was unanimously appointed thirteen days later. Morris was given great power, though he worked under responsibility to the Congress, and performed various financial miracles; but, disgusted by the lack of state support through the payment of requisitions, the failure to obtain authority to levy indirect taxes, and the attitude of Congress itself, he retired toward the end of 1784, and was succeeded by a reversion to a Treasury Board of three commissioners, who continued the fight against financial collapse until displaced by the new Treasury Department.

EARLIER WAR DEPARTMENT

THE ATTITUDE of Congress toward the war power was indicated as late as June 3, 1776, in a letter which its president, John Hancock, wrote to General Washington thanking him "for the Assistance they have derived from your military Knowledge and Experience, in adopting the best Plans for the Defence of the United Colonies." [3] The interference of Congress and its impracticable orders were a thorn in Washington's side, but later in the purely military matters the statesmen had the good grace to defer to the wisdom of the General, so far as means permitted; being, in return, always treated by Washington with the deference due to the sovereign civil power. Various committees were sent by Congress to the camp, and Washington on several occasions went to Philadelphia for direct consultation. In June 1776 Congress established a Board of War of five members. In 1777 an outside board of three and then of five to conduct business under the existing inside board was created; Gates and Mifflin, the two chief members of this at first, were involved in the Conway Cabal against Washington. A year later the boards became a single one of three outside members and two delegates; and with numerous changes of personnel continued thus until superseded by the secretary at war. This position, as one of the necessary elements of the general executive reform which the Congress instituted in 1781 of abolishing the clumsy boards and substituting one-man control, was authorized on February 7, 1781, and General Benjamin Lincoln became the first secretary, being elected on October 30. He resigned in 1783 at

the end of the war, and General Henry Knox was finally appointed to succeed him on March 8, 1785, holding the office until he became the secretary of war under the Constitution. At the same time in 1781 a Marine Department was authorized and even an appointment made, but the appointee, Alexander McDougall, declined and no one was substituted for him, naval affairs being placed under the superintendent of finance. There had been an earlier committee which passed through much the same changes as those for the management of war affairs.

CONTINENTAL POSTOFFICE

ANOTHER of the present great departments originated in these early times. This was the Postoffice. It was already a general institution before the American Revolution began. Congress took it over and authorized a postmaster general on July 26, 1775, Franklin being the first occupant of the office. The Articles of Confederation continued in the Congress the "sole and exclusive right and power of . . . establishing or regulating post-offices from one state to another, throughout all the united states, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expences of the said office." [4] Its management was the subject of frequent complaint, but it continued more or less uninterruptedly throughout the earlier period. An elaborate ordinance of regulation of it had its first reading on February 14, 1787, but never reached enactment, and the report of another ordinance was evidently committed on March 25, 1788. Apparently the Postoffice was at the beginning of the new government functioning under an ordinance passed on October 22, 1782, though later amended in some particulars.

CONVENTION OF 1787 AND EXECUTIVE DEPARTMENTS

THE CONVENTION of 1787 considered a provision for an executive council and also for executive departments, there being some idea that these might form part of a council of revision on the bills of Congress. This resolved itself finally into the veto power of the President and his right to "require the Opinion, in writing, of the principal Officers in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices." [5] This statement and the power given Congress to vest the appointment of inferior officers in the "Heads of Departments" are the only direct recognitions in that document of the right of such executive departments to exist, although it has never been questioned that their creation was a proper exercise of the power of Congress to "make all

Laws which shall be necessary and proper for carrying into Execution . . . Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." [6]

Gouverneur Morris in the convention said: "There must be certain great officers of State; . . . of finance, of war, of foreign affairs &c." [6a] The Committee of Detail had before it a plan, undoubtedly connected with the Pinckney one, which directed Congress to "institute Offices and appoint Officers for the Departments of for. Affairs, War, Treasury and Admiralty," which the President should inspect; [7] but the committee did not utilize the idea in its report. Later, Charles Pinckney renewed the matter, including the secretaries of domestic affairs, commerce and finance, foreign affairs, war, and marine in a council, and also specifying their duties; but although a committee on August 22 reported in favor of such a privy council, consisting of the above five secretaries, it did not define their duties other than to advise the President "in matters respecting the execution of his Office, which he shall think proper to lay before them: But their advice shall not conclude him, nor affect his responsibility for the measures which he shall adopt." [8] This, shorn of the mention of the offices, was finally boiled down to the "opinion" phrase in the Constitution. Here, as elsewhere in the Constitution, the Framers showed the wisdom of adhering to main ideas, to a scheme of government, not a code of laws, leaving to Congress to fill in the details.

PRELIMINARY CONSIDERATION IN THE HOUSE

THE MATTER of executive departments came up in the House of Representatives on May 19, 1789, the bill to lay import duties having been sent up to the Senate on the 16th. In a committee of the whole on the state of the Union, Jonathan Trumbull in the chair, Elias Boudinot of New Jersey, who had moved for the committee, and had indeed tried to get consideration earlier, called attention to the fact that the "great executive departments which were in existence under the late confederation, are now at an end, at least so far as not to be able to conduct the business of the United States. If we take up the present constitution, we shall find it contemplates departments of an executive nature in aid of the President: . . ." He suggested that the proper thing to do was to settle principles for organizing them and then to appoint a committee to bring in a bill accordingly. Because of the danger of confusion and ruin due to the lack of proper regulations concerning the care and payment of the pressing debts which the new government had inherited, he moved for an officer "for the management of the finances," and since there was now a separa-

tion of powers the old departments could not be considered as models for the new ones. He advised that the secretary and all under him should be restrained from being concerned in commerce, and the chief should inspect the collections and the expenditures of the revenue and examine the debts and engagements.[9] Debate ensued respecting the number and character of departments; and Madison moved for the establishment of three, Foreign Affairs, Treasury, and War, each to have a secretary "who shall be appointed by the President, by and with the advice and consent of the Senate; and be removable by the President."[10] Vining added a Domestic Department to the list; but on it being argued that the duties of this could be blended with the others, he withdrew the motion, and it was not until 1849 that such a separate Department of the Interior came into existence. The committee agreed to the establishment of the Department of Foreign Affairs, with a secretary of foreign affairs at its head, but got involved in a debate over the appointment and removal, which will be considered in a later chapter.

Discussion then took place over the Treasury Department, with emphasis on a single head or a board to control. This continued into the next day. Gerry feared the one-man power, human nature being weak, and admitting the "innumerable opportunities for defrauding the revenue, without check or control," it was "next to impossible he should remain unsullied in his reputation, or innoxious with respect to misapplying his trust." He thought there was only one man in the country fit for such a position and he (Robert Morris) was now employed in another branch of the government, and could not be called to this trust. Gerry added:

> I am desirous of supporting the President; but the Senate requires to be supported also in their constitutional rights. To this body belongs the confidence of the States; while the President rests his support upon them he will be secure. They, with this House, can give him proper information of what is for the public interest, and, by pursuing their advice, he will continue to himself that good opinion which is justly entertained of him. If we are to establish a number of such grand officers as these, the consequences appear to me pretty plain. These officers, bearing the titles of minister at war, minister of state, minister for the finances, minister of foreign affairs, and how many more ministers I cannot say, will be made necessary to the President. If by this establishment we make them more respectable than the other branches of the Government, the President will be induced to place more confidence in them than in the Senate; the people will also be led to consider them as more consequential persons. But all high officers of this kind must have confidence placed in them; they will in fact be the chancellors, the ministers of the nation. It will lead to the establishment of a system of favoritism, and the principal magistrate will be governed by these men. An oligarchy will

be confirmed upon the ruin of the democracy; a Government most hateful will descend to our posterity, and all our exertions in the glorious cause of freedom will be frustrated: we shall go on till we reduce the powers of the President and Senate to nothing but a name.[11]

This direful prophecy did not impress the committee however, even though the alternative looked to an executive subordinate to the legislative power of the government. Jeremiah Wadsworth, whose wide financial experience with the national government both during and after the Revolution gave him a right to speak, pronounced the conduct of the Treasury while under its board as far beneath the efficiency shown by Morris as superintendent of finance. This difference Boudinot emphasized as an "intolerable comparison." Baldwin and Madison agreed with Wadsworth as to the need of a single head who, the former pointed out, would have proper checks upon him through the duties of the subordinate comptroller, auditor, register, and treasurer. The War Department of Madison's resolution was also voted.

FOREIGN DEPARTMENT BILL

ON MAY 21 the House approved of the resolution of the committee of the whole and appointed a committee of eleven, one from each state, to bring in a bill or bills thereon. Baldwin, Vining, Madison, Benson, FitzSimons, Wadsworth, and Gerry were members of this. On June 2 the special committee made two reports, one of a bill for the Department of Foreign Affairs and the other a bill for the Department of War. These were committed the next day. The bill for the Treasury Department was reported on June 4. On June 16 the House went into committee of the whole on the first of these bills, that on foreign affairs, and the debate was immediately resumed on the power to remove, continuing for four days, when by a vote of 34 to 20 the right of the President to remove was retained.

Carroll of Maryland then proposed to limit the duration of the office, expressing the hope that we should be able to retire into our own shell: "He viewed the national situation of this country as some security against our being drawn into the vortex of European politics; but the present bill afforded a means of attraction which it was prudent to guard against."[12] Several members supported him, including Gerry. Stone desired it "in order that the house might preserve their due share of the Government. If the officer became expensive, and was so much under the control of the President, he would never consent to the repeal of a law which thus extended his influence."[13] Maclay's later support of the idea is worth recording: "Neutrality, the point of profit, the grand desideratum of a wise

nation, among contending powers. Multiplied engagements and contradictory treaties go to prevent this blessing and invite a nation in foreign quarrels. China, geographically speaking, may be called the counterpart to our American world. Oh, that we could make her policy the political model of our conduct with respect to other nations—ready to dispose of her superfluities to all the world! She stands committed by no engagement to any foreign part of it; dealing with every comer, she seems to say, 'We trade with you and you with us, while common interest sanctifies the connection; but, that dissolved, we know no other engagement'." [14]

Ames, famous later for his Jay Treaty speech, answered the isolationists: "The United States is a member of the society composed of the assemblage of all the nations of the earth; and it is impossible, as a member of this great society, but that there ever will be a natural obligation to maintain an intercourse with them." [15] Sedgwick "was of opinion that the commerce of America would flourish under the new Government, and, as that extended, he apprehended the necessity of maintaining this officer would increase; . . ." [16] Madison thought that the power to grant salaries "always secured to the House its due proportion of the powers of Government." [17] Carroll withdrew his motion, the clause respecting the salary was struck out, and the bill reported. Next day in the House Carroll renewed his motion, but lost on it. The debate began again on the power of removal, which was finally reexpressed, by a vote of 30 to 18, so as to avoid the implication of a legislative grant of power to the President, although this reference of the power back to the Constitution made it even more objectionable to the opposers of it. There was no debate upon the powers and duties of the secretary and the bill was sent up to the Senate by a vote of 29 to 22 on June 24.

The Senate received the bill the same day, considered it on July 14–17, and passed it on the 18th with amendments, to which the House agreed on the 20th. In the Senate there was an effort to strike out the clause about the removal by the President, which was lost, 10 to 9, by the Vice President's casting vote; and the motion to substitute for the detailing of the secretary's duties merely the "duties of his office with integrity, ability, and diligence" was lost, as was also a motion to strike out the appointment of the chief clerk by the secretary; but by a vote of 10 to 9 the necessity that the President approve such appointment by the secretary was omitted.

Maclay in the Senate expressed the fear that these bills establishing departments tended "to direct the most minute particle of the

President's conduct. If he is to be directed, how he shall do everything, it follows he must do nothing without direction. To what purpose, then, is the executive power lodged with the President, if he can do nothing without a law directing the mode, manner, and, of course, the thing to be done? May not the two Houses of Congress, on this principle, pass a law depriving him of all powers?" [18] As a substitute he suggested that when the President thought such or such an officer necessary in the execution of the government he should inform the Senate and nominate a man for it. If the Senate consented to the appointment, then the President would notify the House of the need of a salary, and by withholding the salary the House could interdict the department. The President gave his approval of the bill on July 27, 1789.

It is a short act in four sections. It assigns to the secretary such duties as the President should enjoin or intrust "agreeable to the constitution" relative to foreign affairs, the department being conducted according to the orders or instructions of the President. Section two provides for a chief clerk to be appointed by the secretary, who "whenever the said principal officer shall be removed from office by the President," or through other vacancy, should have charge of the records of the office. Maclay, the suspicious, saw in this an attempt to give the President the power to "exercise this office without the advice and consent of the Senate as to the affair." All he had to do was to get a clerk appointed that he wanted, there being no need of Senate approval of this, and then remove the secretary and neglect to appoint another one. "The objects ostensibly held out by the bill are nugatory. The design is but illy concealed." [19] This design he indicated on another occasion: "I entertain no doubt but that many people are aiming with all their force to establish a splendid court with all the pomp of majesty." [20] The two other sections put the two officials under oath, and direct that the department have charge of the records and papers of the old Department of Foreign Affairs. There is no mention of salaries.

DEPARTMENT OF STATE

ONE OF the departments mentioned above was that of home affairs. Vining renewed the resolution for this on July 23, 1789. Some of the duties of the head of it should be to correspond with the states, see to the execution of the laws, be custodian of the seals and public acts, and also of the papers of the Old Congress, look out for post roads and report on the need of new ones, manage the census, have charge of territorial affairs, copyrights, and patents. He

pointed out that these important duties had not been included in the services of the three departments then already provided for. Vining's motion was defeated, as was also Sedgwick's motion to intrust several of these functions to the Department of Foreign Affairs; but on July 27 the report of a committee respecting the enrolment, attestation, publication, and preservation of the acts of Congress, included the suggestion of a committee to prepare a bill "to provide, without the establishment of a new department" for the safe-keeping of acts, records, and seals, for the authentication of records and papers, with proper fees for copies of them, and for the publication of acts. Sedgwick was chairman of the committee appointed for this purpose, which reported the bill on July 31. It was not considered in the House until August 25, but was sent to the Senate on the 27th, which body returned it amended on September 7. The House agreed and it became a law on September 18, 1789.

It provided that the Department of Foreign Affairs should be called the Department of State and its head secretary of state; that as additional duties the secretary should be custodian of the laws and see to their publication, make out all commissions to officers appointed by the President, have charge of the seal of the United States (the one used by the Old Congress being taken over) and affix it to such commissions but to no "other instrument or act, without the special warrant of the President therefor." [21] By later acts copies of copyrighted books were to be deposited with the secretary of state, but he had no hand in granting the copyright; while he and the secretary of war and attorney general should grant patents. No control over the administration of the territory was given him when the Ordinance of 1787 was taken over, or when the Territory South of the Ohio was organized. The first census was taken by the district marshals.

WAR DEPARTMENT BILL

THE SECOND of the bills brought in by the Baldwin committee was that for a Department of War. It was considered in the committee of the whole only during part of June 24 and 25, and the bill was sent up to the Senate on the 27th. There it was read the first time on July 6, but not really considered until August 3 and sent down to the House the next day amended. The House agreed to the amendments on August 5. There was an effort in the Senate to strike out the inclusion of naval affairs, which was rejected, as was also by 10 to 9 again, though without the Vice President's vote, the attempt to strike out from this bill the President's sole power of removal. Between the two votes on this subject in the Senate the New York Senators had

taken their seats, and they favored the presidential power. In this bill as in the earlier one the Senate struck out the presidential approval of the appointment of the assistant secretary. The President made the bill a law on August 7, 1789.

It, like that for the Department of Foreign Affairs, is brief. It authorizes a principal officer to be called the "Secretary for the Department of War," who should perform such duties as the President might enjoin relative to military and naval affairs, Indian affairs, and grants to veterans, and who should take over the papers of the old War Department. Nothing is said of the manner of appointment of the secretary, but the President's right to remove him is implied in the statement of duties of the chief clerk. While under the Confederation the officer was called secretary *at* war, under the new organization, in spite of the official title as here given, he has always been secretary of war. Maclay called the office and appointment of the secretary in time of peace a mad act.

TREASURY DEPARTMENT BILL

THE ESTABLISHING of the Treasury Department was evidently considered a more serious matter; but even so it was quickly provided. The bill came up on June 25 and at once debate flashed up on the duty of the secretary to "digest and report plans for the improvement and management of the revenue, and the support of the public credit." Ames wrote Minot that day: "A puerile debate arose, whether the Secretary of the Treasury should be allowed to exhibit his reports and statements to the legislature. The champions of liberty drew their swords, talked blank verse about treasury influence, a ministry, violation of the privileges of the House by giving him a hearing from time to time. They persevered so long and so furiously, that they lost all strength, and were left in a very small minority. The clause, permitting this liberty, passed." [22] The objections seemed to be that it was a violation of the constitutional privilege of the House to initiate money bills, and because the secretary might appear on the floor of the House for his purposes. Page insisted that "it would establish a precedent which might be extended, until we admitted all the ministers of the Government on the floor, to explain and support the plans they have digested and reported: thus laying a foundation for an aristocracy or a detestable monarchy." [23] To which Ames, Sedgwick, Madison, and others replied by inquiring whether there should be any such officer if the House were not to profit by his expert knowledge and suggestions. FitzSimons proposed as a

sop that the secretary be authorized merely to "prepare" but not to "report" plans, and this was carried.

This matter of the head of a department appearing on the floor in Congress came up later for decision. When Hamilton had his report on finances ready for the second session of Congress it was proposed to have him explain it orally, but because of the intricacy of it the decision was in favor of writing. At that time the fear of executive influence was not a feature of the debate. In the Second Congress, however, under Madison's leadership, he having by that time begun to develop his anti-administration opinions, the adverse decision was in part at least based upon this fear. On November 13, 1792, in this Second Congress a motion was also defeated in the House which called for the informing of the secretaries of treasury and war that the House was to consider St. Clair's defeat by the Indians, "to the end that they may attend the House, and furnish such information as may be conducive to the due investigation of the matters . . ." [23a]. The decision was final: the only appearance of a secretary on the floor of a house, otherwise than merely as a messenger in a few instances in the Senate in 1789, was that of Jay at an executive session of the Senate on July 22, 1789 (*see* p. 394), and Knox's appearance with Washington later in that session.

Madison called attention to the importance of the comptroller in the treasury bill, especially to the "judiciary quality" of his aid, and in order better to secure "his impartiality, with respect to the individual," proposed to have the appointment one for a limited period, subject meanwhile to removal by the President and impeachment, but privileged to reappointment. He withdrew this, however, and Burke proposed an additional clause, suggested earlier by Boudinot, prohibiting persons connected with the department from being concerned in commerce or speculating in public funds, which was carried on June 30; and on July 2 the bill went up to the Senate.

There it was considered, ahead of that establishing the War Department, on July 30, and returned to the House amended on July 31. These amendments provided for the appointment of the assistant secretary by the secretary, in harmony with the appointments in the other two departments, where, however, there were no other presidential officials like the comptroller, auditor, treasurer, and register of the Treasury Department. The House had provided for the appointment of the assistant secretary by the President. The Senate also struck out the clause about the assistant's having charge of the papers and records whenever the President removed the secretary or there was otherwise a vacancy, and made some changes

in the penalty provided for violation of the prohibition introduced by Burke in the House. The House acceded to all the changes, including the appointment of the assistant secretary; but insisted on August 4 upon the retention of the matter concerning the removal of a secretary and the power of the assistant thereupon. The Senate refused on August 5 to recede, and a committee of conference arrived at no agreement. The House, after it had disposed of the amendments to the Constitution, stuck on August 24, and the Senate on August 25 by the Vice President's vote finally yielded. Washington signed the bill on September 2, 1789.

The act provided for a "Department of Treasury," with a secretary of the treasury to be deemed head of the department, comptroller, auditor, treasurer, register, and assistant secretary, the last to be appointed by the secretary. The duties of the secretary were declared to be to make plans for the improvement and management of the revenue and to support the public credit, report estimates, superintend the collection of the revenue, regulate the bookkeeping and granting of warrants, public land sales, to make reports in writing or in person, as required by Congress, and to perform such other financial services as should be considered advisable. There is no mention of his working under the President, as is required by the other two acts, neither does the title of the act call the Treasury an executive department, as is done for those of foreign affairs and war. The reason for this lies, as shown in the House debate, in the right of Congress, and especially of the House, to control finances, and the more intimate association of the secretary in consequence with the legislative body. This fact makes interesting the statement by John Quincy Adams that Hamilton was the author of this bill; but the claim lacks the corroboration necessary to make it convincing. The duties of the other officials are also detailed, except those of the assistant secretary, the treasurer being bonded. Finally all were prohibited under a prescribed penalty to engage in commerce or public speculation.

SALARIES

NO MENTION is made in any of these acts respecting the manner of appointment of the officials, except the assistant secretary; but the omission left them within the class of those appointed by the President with the advice and consent of the Senate. No salaries are mentioned in the acts; they are prescribed in a separate one devoted to the "salaries of the executive officers of government, with their assistants and clerks," which became a law on September 11, 1789.

This separate act gave easier control over the salaries than would be the case if they were stated in the departmental acts. This law classes the Treasury with the others as an executive department. Two of the secretaries were given $3,500, but the head of the War Department received only $3,000. The salaries were payable quarterly. This act provided also for the salaries of the officials of the Northwestern Territory, and authorized the secretaries to employ necessary clerks at a rate not to exceed $500 a year.

POSTOFFICE REORGANIZATION

DURING the First Congress no attempt was made to reorganize the Postoffice. Temporary acts were passed on September 22, 1789, August 4, 1790, and March 3, 1791. The first of these provided for the appointment of a postmaster general, to be subject to the directions of the President, all matters of the department continuing "as they last were under the resolutions and ordinances of the late Congress." [24] The other acts merely continued this first temporary one. The first general enactment on the subject was that of February 20, 1793.

One other official helped to make up the executive family. This was the attorney general, but he was provided for in the judiciary act, which is considered below.

APPOINTMENTS

WASHINGTON gave careful study to the appointments he must make for the various executive departments, and there is no evidence in his writings that any one of the secretaryships was offered except to the man who filled it. The story that Robert Morris declined to take charge of the Treasury Department has no proper evidence in its favor; in fact, as he was a senator and the office was created during his period of service, he was constitutionally ineligible for it. That Washington sought his advice on this and many other subjects is entirely probable; but that Hamilton was appointed on his advice is not likely. Washington knew more about Hamilton's ability than did the former superintendent of finance, and was in close association and consultation with him during the time of the creation of the departments. Madison was also an intimate adviser; Jay likewise. It seems to have been generally supposed that Hamilton would enter the administration. On May 9, 1789, Lowther wrote from New York to Iredell: ". . . the popularity of Col. Hamilton has been hurt by his declining to represent this district in Congress; it is supposed that he looks to be Financier-General, for which he has been prepar-

ing himself, or to be appointed a foreign ambassador, for either of which he is extremely well qualified. He is said and believed to be a man of such extraordinary powers as to be able to render himself master of any subject in a week, . . ." [25] After the departments were authorized Christopher Gore wrote from Boston to Senator King on September 13, 1789: "We have been in expectation of hearing the appointments every post the week past, and such is the celebrity of Col. Hamilton's name in this part of the country that if he is appointed to the office of Secretary of the Treasury, it will afford great joy to all." [26]

Jefferson for secretary of state was the most logical choice, especially as Jay was to be the chief justice; and Madison's influence is probably most seen in his appointment. Madison was a great friend and admirer of Jefferson, with whom Washington had none of the intimacy which existed between the President and Hamilton, Knox, and even Randolph. Jefferson was still abroad, though scheduled to return on leave, and his acceptance was doubtful. Washington wrote Madison on August 9, 1789: "I have had some conversation with Mr. Jay respecting his views to Office, which I will communicate to you at our first interview; and this, if *perfectly* convenient and agreeable to you, may be this afternoon as I shall be at home, and *expect* no Compy." [27] On September 25, the day before the appointments mentioned were sent to the Senate, he sent Hamilton a list of thirty-five names, saying: "If Mr. Jay and you will take the further trouble of running them over to see if among them there can be found one, who under all *circumstances* is more eligable for the Post Office than Col. O, I shall be obliged to you both for your opinion thereon by Eleven Oclock. Another Paper which is enclosed, will shew how the appointments stand to this time. And, that you may have the matter *fully* before you, I shall add that, it is my *present* intention to nominate Mr. Jefferson for Secretary of State, and Mr. Edmd. Randolph as Attorney Genl; though their acceptance is problematical, especially the latter." [28] The "Col. O." was Osgood, slated to be the postmaster general.

To Madison, probably before September 24, the day on which he signed the judiciary act, Washington wrote respecting judiciary appointments, especially from Virginia:

> My solicitude for drawing the first characters of the Union into the Judiciary, is such that, my cogitations on this subject last night (after I parted with you) have almost determined me (as well for the reason just mentioned, as to silence the clamours, or more properly, *soften* the disappointment of smaller characters) to nominate Mr. Blair and Colo. Pendleton as Associate and

District Judges. And Mr. E. Randolph for the Attorney General trusting to their acceptance. Mr. Randolph, in this character, I would prefer to any person I am acquainted of not superior abilities, from habits of intimacy with him. . . . I am very troublesome, but you must excuse me. Ascribe it to friendship and confidence, and you will do justice to my motives. Remember the Attorney and Marshall for Kentucky, and forget not to give their Christian names.[29]

Knox's appointment as secretary of war was probably more or less automatic, as he had held an equivalent position acceptably for four years. Washington was no friend of rotation in office, and he wanted to have a New England member in the yet undeveloped Cabinet. Knox was already in New York, as was also Hamilton, and their candidacy does not figure in the President's correspondence.

Washington wrote Jefferson on October 13, 1789: "In the selection of characters to fill the important offices of Government in the United States I was naturally led to contemplate the talents and disposition which I knew you to possess and entertain for the Service of your Country. And without being able to consult your inclination, or to derive any knowledge of your intentions from your letters either to myself or to any other of your friends, I was determined, as well by motives of private regard as a conviction of public propriety, to nominate you for the Department of State, which, under its present organization, involves many of the most interesting objects of the Executive Authority."[30] This letter would have crossed Jefferson on the ocean, and so was not forwarded until his arrival at Norfolk on November 23, 1789. He wrote his acceptance on December 15, but private affairs prevented his taking office until March 22, 1790. His reluctance to accept was due to the domestic matters attached to the office by the act of September 15. Madison wrote Washington on January 4, 1790, after visiting Jefferson at Monticello:

The answer of Mr. Jefferson to the notification of his appointment will no doubt have explained the state of his mind on that subject, I was sorry to find him so little biased in favor of the domestic service allotted to him, but was glad that his difficulties seemed to result chiefly from what I take to be an erroneous view of the kind and quantity of business annexed to that which constituted the foreign department. He apprehends that it will far exceed the latter which has of itself no terrors to him. On the other hand it was supposed, & I believe truly that the domestic part will be very trifling, and for that reason improper to be made a distinct department. After all if the whole business can be executed by one man, Mr. Jefferson must be equal to it; if not he will be relieved by a necessary division of it. All whom I have heard speak on the subject are remarkably solicitous for his acceptance, and I flatter myself that they will not in the final event be disappointed.[31]

For the Treasury Washington made a clean sweep, though we are not made aware of his reasons, and such action was contrary to his usual policy in the case of worthy officers. Hillegas as treasurer and Arthur Lee and Walter Livingston as members of the Board were entirely passed over. Osgood, the other member of the Board, was transferred to the Postoffice. Dissatisfaction with the management may have been instrumental; Hamilton may have wished a new slate, and especially the elimination of Livingston; Lee's character and politics were against him; geographical distribution of the offices had to be considered, and was, indeed, a major problem. Fenno in his *Gazette of the United States* called attention on September 16, 1789, to this house-cleaning:

> The late appointments in the Treasury Department appear to have been predicated on different principles from those in the revenue. The reasons for this deviation are doubtless founded in propriety, as the nominations have been sanctioned by the Senate—and we have no reason to suppose that any motives which would be inconsistent with the public interest, could bias *their* independency: The future arrangements in the Treasury Department will in all probability be so different from what that department *has* been under, that it is supposed the object is to select those abilities which will give the most prompt and adequate operation to the New System: The result will determined how far a just judgment has been formed—certain it is, that the public anticipations are great, from the appointment of the gentleman at the head of the department.

The displacement of Ebenezer Hazard of Pennsylvania by Samuel Osgood of Massachusetts as head of the Postoffice was the only controversial chief appointment. Hazard had been postmaster general since January 28, 1782, and in the department since 1775. He had operated the office under many difficulties, but the complaints respecting the irregularity of the mail had been frequent, among them those of Washington himself. Also on July 3, 1789, Washington rather pointedly asked him to explain how the profit of $13,373 of 1785 had become a loss of $3,208 in 1789; and later asked other questions, such as that mentioned in Hazard's letter, which he wrote to Jeremy Belknap on September 27, 1789: "My *peculiar situation* can now be explained to you. I was busy *electioneering*. A friend in Congress intimated that I was in danger of losing my office, and advised me to bestir myself." Richard Bache, Franklin's son-in-law and Hazard's removed predecessor, Tench Coxe, "a Tory," and William Stephens Smith, Adams' son-in-law, were the competitors: "This employed me pretty fully, and some very respectable applications in my favour were made to the President." The President sent for a list of outstanding debts by

postmasters; Hazard, in sending it on September 21, wrote an exculpatory letter:

> From the time that letter was written to this day, I have received neither letter nor message from the President; and, after being kept in suspence till last Friday, was informed by a friend that Mr. *Osgood* was nominated for Postmaster General, . . . he was formerly one of the Board of Treasury. He was the most attentive to business of any of the Board, and I believe is a man of integrity. He is, in my opinion, the most suitable for the office of any of my competitors; but I think I may add, without vanity, that he neither is as well qualified for it as myself, nor has an equal claim to it. . . . I never heard Mr. O. mentioned as a competitor, . . . As I wish to have a good opinion of him, I hope he has not solicited for the office, and yet I think it hardly possible he could have got it without. If he has, the President's conduct must be very extraordinary. The three oldest officers (and *I* say three of the best) are now turned out of the service: Mr. Thomson, the late Secretary; Mr. Hillegas, the late Treasurer; and myself. This is the reward of 14 or 15 years' fidelity and fatigue, and of serving the public even with *halters round our necks!* for you will remember that civil officers were always excepted, when mercy was offered by the British proclamations. The reason of my removal, which is whispered abroad, is *lenity to postmasters*, . . . Upon review of my conduct in office, I find no reason to accuse myself.[32]

Osgood, who had been an Antifederalist, assured Hazard that he did not solicit the office, and there is no written request for an office in the Washington Papers. He had been an efficient official in the Treasury, but it is probable that Hazard's retention would have been better for the Postoffice, even though, in the light of Washington's known desire to give those "who had behaved well" in similar lines the preference in the service of the United States which they deserved, it is probable that his removal was in part at least for cause. Osgood resigned in 1791.

Washington sent in the nominations of Hamilton and Knox on September 11, 1789, with the minor appointments for the Treasury. Hamilton was confirmed at once, and Knox the next day. On September 26 the Senate received the nominations of Jefferson and Osgood, as well as that of Randolph as attorney general, all of which were immediately approved. There was no record vote even on the Osgood appointment. Hamilton took office on September 11 and Knox on the 12th.

The Judiciary

ADMIRALTY CASES UNDER CONTINENTAL CONGRESS

ALTHOUGH it is sometimes, perhaps usually, believed that the judiciary system of the United States was a new creation, this is not entirely correct. There were courts dependent upon the Continental Congress and authorized by the Articles of Confederation, though they formed no independent system of the type of the present national judiciary. There were colonial courts of admiralty that broke down when the Revolution began; while that contest caused a swarm of privateers to bring in prizes for adjudication. The states, even before independence, recognized this problem and all of them except New York formed prize courts during the contest. As all of the New York coast remained in the hands of the British, there was no need of an American court. These state courts, however, did not at first embrace captures made by vessels fitted out at Continental expense.

Washington, who as the commander-in-chief was as early as September 1775 sending out vessels to prey upon the British supply ships enroute to besieged Boston, was probably the first to recognize the necessity of a Continental jurisdiction. He wrote Congress on October 5, 1775: "I shall now beg leave to request the determination of Congress as to the Property and disposal of such Vessels and Cargoes as . . . may fall into our Hands. . . . reserving the Settlement of any Claims of Capture to the decision of the Congress." [1] He followed this on November 8 by saying: "These Accidents and Captures point out the necessity of establishing proper Courts without loss of time for the decision of Property and the legallity of Seizures: otherwise I may be involved in inextricable difficulties." [2] Calling attention to the law the Massachusetts Provincial Congress had enacted to handle prize cases, he wrote on November 11: "As the Armed Vessels fitted out at the Continental expence, do not come under this Law, . . . Should not a Court be established by Author-

ity of Congress, to take cognizance of the Prizes made by the Continental Vessels?" [3]

Congress, taking the need and this advice into consideration, on November 17 appointed a committee of seven to report on the subject. Franklin, who was a member of the committee, had been at headquarters before Boston in October as one of a congressional committee of visit. The report of the committee of seven was made on November 23 and on the 25th Congress resolved to recommend to all of the states to provide for the jurisdiction in cases concerning captures, with jury trial, and that the original trial in all such cases be in the state courts, but with appeal to Congress. Colonial admiralty cases had not been with jury, as the Declaration of Independence complained. This plan was evidently not entirely satisfactory to the General, who, after receiving the resolutions wrote that they only wanted "a Court Established for Trial to make them complete." [4]

The state governments were, especially later, rather grudging respecting the right of appeal to Congress, granting it usually only in cases where the captures had been by Continental vessels. Also they would refuse to respect a reversal in such appeal. Because of this action in a Pennsylvania instance, which led finally to the celebrated Olmstead case, Congress on March 6, 1779, "*Resolved,* That Congress, or such person or persons as they appoint to hear and determine appeals from the courts of admiralty, have necessarily the power to examine as well into decisions on facts as decisions on the law, and to decree finally thereon, and that no finding of a jury in any court of admiralty, or court for determining the legality of captures on the high seas can or ought to destroy the right of appeal and the re-examination of the facts reserved to Congress: That no act of any one State can or ought to destroy the right of appeals to Congress in the sense above declared: . . ." [5] But Congress had no power to compel the states to accept its judgment and this resolve was a *brutum fulmen.*

The first appeal came before Congress on August 5, 1776, and was referred to a special committee. This practice continued until on January 30, 1777, a standing committee of five on appeals in cases of capture was authorized, with a register, which, with changes of number, personnel, and number essential to the hearing of appeals, continued to serve until January 15, 1780, when a regular court, such as Washington had desired so long before, was finally erected, impelled partly by the complications of the Olmstead case.

COURT OF APPEALS IN CASES OF CAPTURE

THIS tribunal, called The Court of Appeals in Cases of Capture, consisted of three judges, appointed and commissioned by Congress, two to constitute a sufficient court, with a register appointed by the court. The court was to hear "all appeals from the courts of admiralty in these United States, in cases of capture, . . . according to the usage of nations and not by jury." [6] The court was to sit at Philadelphia and wherever else it deemed convenient, not farther east than Hartford or farther south than Williamsburg. The report for this court, significantly, is in the handwriting of Oliver Ellsworth. There was an attempt to require trial by jury, but it was rejected by 10 to 2. A week later George Wythe of Virginia, William Paca of Maryland, and Titus Hosmer of Connecticut were appointed judges. Wythe declined and was succeeded by Cyrus Griffin of Virginia. Hosmer died and no successor was appointed. Paca and Griffin conducted the court until the former became governor of Maryland at the end of 1782, when George Read of Delaware succeeded him, and John Lowell of Massachusetts was also appointed.

When the war terminated, cases naturally dwindled, and on December 23, 1784, the judges informed Congress that all cases before them had been determined. The court was not abolished, but salaries were cut off on July 1, 1785, and a per diem allowed in case of further business, of which there were several instances, the court not adjourning *sine die* until May 16, 1787. On July 24, 1789, President Washington wrote to Charles Thomson, secretary of the Old Congress, acknowledging the tender from him of the "Seal of the Admiralty," as well as the "Great Seal of the Federal Union." [6a] In all, some 118 cases of capture were heard on appeal by Continental tribunals; and these, especially the later ones by a formal court in banc, could not have been without considerable influence in accustoming the public mind to the idea of a national judiciary, a supreme court, and in bringing realization of the weakness that lay in the fact that the court had no power to enforce its decisions upon the states, from whose courts the appeals had come.

The Articles of Confederation were submitted by Congress to the states on November 17, 1777. Included in the sole and exclusive powers of the United States in Congress assembled was that of "appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of capture, provided that no member of congress shall be appointed a judge of any of the said courts." [7] As

the Articles did not go into effect until March 1, 1781, the institution of the Court of Appeals in Cases of Capture anticipated the formal power, but was long delayed after Congress had decided for that power, since the Articles were framed in 1777. Aside from this provision in the Articles, there was another which made Congress the "last resort on appeal in all disputes and differences . . . between two or more states concerning boundary, jurisdiction or any other cause whatever," [8] and also in disputes over land grants by different states, with a complicated detail of the method to be pursued (*see* p. 536). Under this power, only one case was adjudicated, that between Connecticut and Pennsylvania over the possession of Wyoming Valley; but two other cases, between Massachusetts and New York and South Carolina and Georgia, were started, though later settled outside.

JUDICIARY IN THE CONVENTION OF 1787

IN THE Convention of 1787 the judiciary department was framed upon a background of the above facts, as well as those of state experiences. The history of the formation in the convention of this very important element of our federal system is brief in comparison with many matters of less consequence. In the Virginia Plan, for which Madison was undoubtedly chiefly responsible, was included as the ninth resolution the following:

> Resd. that a National Judiciary be established to consist of one or more supreme tribunals, and of inferior tribunals to be chosen by the National Legislature, to hold their offices during good behaviour; and to receive punctually at stated times fixed compensation for their services, in which no increase or diminution shall be made so as to affect the persons actually in office at the time of such increase or diminution. that the jurisdiction of the inferior tribunals shall be to hear & determine in the first instance, and of the supreme tribunal to hear and determine in the dernier resort, all piracies & felonies on the high seas, captures from an enemy; cases in which foreigners or citizens of other States applying to such jurisdictions may be interested, or which respect the collection of the National revenue; impeachments of any National officers, and questions which may involve the national peace and harmony.[9]

It is to be noticed that the original as well as the appellate jurisdiction was to be in national courts, and that the jurisdiction was broader than under the Confederation, but less broad than as finally given, except as the last clause gave vaguely a wide discretion.

The resolution as reported to the convention by the committee of the whole on June 13, and as committed, further simplified, to the Committee of Detail on July 23 made the inferior tribunals optional with Congress, placed the appointments in the Senate, and reduced the

jurisdiction to a general clause of "Cases arising under the Laws passed by the general Legislature, and to such other Questions as involve the national Peace and Harmony."[10] The acceptance of the Virginia Plan involved the rejection of the New Jersey one, which would have limited the national judiciary to appellate jurisdiction.

The membership of the Committee of Detail included Ellsworth, James Wilson, and John Rutledge, all of whom were later members of the Supreme Court. The report of this committee on August 6 was so final that it was practically as now in the Constitution, except as respects the jurisdiction, which, while detailed, did not state that it extended to both law and equity, or the appellate jurisdiction of the Supreme Court to both law and fact. It did not include cases under the Constitution and treaties, but only under the national laws; or cases in which the United States was a party, or cases between states involving territory or jurisdiction or land grants, these last being then given to the Senate. It also included impeachment trials, which were later transferred. This article of the report of the Committee of Detail was taken up only on August 27 and was quickly voted as to the establishment in general, and with but little discussion as to the details of jurisdiction, the changes mentioned above being made.

JUDICIARY IN RATIFICATION CONVENTIONS

DURING the ratification discussion, objections were raised to the judiciary in various particulars both by members of the Convention of 1787 and by others. Mason in the convention had declared that the judiciary was "so constructed and extended, as to absorb and destroy the judiciaries of the several States; thereby . . . enabling the rich to oppress and ruin the poor"; [11] and later he continued his belief that it would lead to consolidation. Randolph wished the power limited and defined. Gerry hinted at a "star chamber." Luther Martin was vehement in his objection to the exclusive jurisdiction of the national court, although no exclusive jurisdiction is mentioned in the Constitution except where it is original with the Supreme Court in cases effecting foreign diplomats and consuls, and cases in which a state shall be party. He also noted the lack of a jury trial "not only in a great variety of questions between individual and individual, but in every case, whether civil or criminal, arising under the laws of the United States, or the execution of those laws." These and other evils, especially the lack of local trials, involved "almost a certain prospect of ruin, at least in those cases where the middle and common class of citizens are interested." He said all

this, although the Constitution particularly preserved a jury trial within the state in all criminal cases, because this was too large a field.[12] His and most of the other objections were by no means constructive ones, but intended, as Washington wrote, "to inflame the passions and alarm the fears by noisy declamation rather than to convince the understanding by sound arguments or fair and impartial statements." [13]

These men spoke from knowledge of what was done in the convention, but there were able replies by those with equal information, particularly in *The Federalist.* The general character of the opposition is indicated by the desired amendments affecting the department, which are outlined in a preceding chapter. In the main, the objections were most emphatic to there being an entirely separate national judiciary: and this was partially at least premised on a failure to realize that the government of the new Union was one that was to operate directly upon the people themselves and not through the medium of the states, or else as a phase of the more general opposition to this fundamental principle. It has been seen that while only one of the twelve amendments submitted to the states by Congress in the first session directly affected the procedure in the national courts, that which preserved the right to a jury trial in civil cases, many of the provisions in the Bill of Rights looked to the prevention of undemocratic acts by the national courts.

FRAMING THE JUDICIARY BILL

THE INITIATION of the judiciary bill was in the Senate, where supposedly the members were older and of greater wisdom and experience. The task was not a light one, for the Constitution had not gone far toward the writing out of a practical system, bestowing rather upon Congress the power to organize the courts and to regulate the procedure according to its own lights, within the not very strict prescriptions and limitations set down in the charter of government. Joseph Jones wrote Madison from Richmond on May 10, 1789: "The reorganization of the Judiciary which the Senate has undertaken will I apprehend be found a labour of great difficulty. One important object should be invariably pursued which is not to incurr more expence than is indispensably necessary for moving smoothly forward the great machine. Offices and emoluments when found necessary may be easily established, when established although found to be of little use they are not so easily abolished. A circuit plan seems to be essential to the extent of the Country for dispatch and accommoda-

tion, as well for civil as criminal prosecutions. The point is to make the judges ride such distances as may be conveniently executed without hazarding delay and disappointment in the business." [14] Of the eighty-one men in Congress who were to examine and evaluate this bill, some thirty-nine had at least made a study of the law, and thirteen had sat on the bench in state courts. There was therefore a large proportion of the members who realized the importance of the bill and had first-hand knowledge of its problems.

On April 7, 1789, the day after the Senate organized, a committee of eight men was appointed "to bring in a bill for organizing the Judiciary of the United States." The members of this were Ellsworth of Connecticut, Paterson of New Jersey, Maclay of Pennsylvania, Strong of Massachusetts, Lee of Virginia, Bassett of Delaware, Few of Georgia, and Wingate of New Hampshire. Ellsworth presumably was chairman. Ellsworth, Paterson, Maclay, Strong, Bassett, and Few were lawyers; Lee had a good knowledge of the law though he never practiced, and even Wingate, though bred to theology, was later a state judge. Few, Ellsworth, and Maclay had already sat on the bench, Paterson had been attorney general of New Jersey, and he and Ellsworth were later to be justices of the Supreme Court under the law they helped to frame. Bassett became a state judge and briefly a circuit court judge. Ellsworth, Paterson, Strong, Bassett, and Few had been members of the convention that drafted the Constitution. Strong wrote Robert Treat Paine on May 15, 1789: "Outlines of the System agreed on by the large Committee which consisted of a Member from each State [only eight states were represented on April 7], the Business was then committed to a sub Committee to carry it on to detail and prepare a Bill or Bills." [15]

This committee reported its bill on June 12. Ellsworth, Maclay, Lee, and Wingate have left records of the committee's work. It is evident that Ellsworth was the chief author, and he, as we have seen, had had a hand in framing the bill for the Court of Appeals in Cases of Capture, and had been a member of the Committee of Detail of the Convention of 1787 that was mainly responsible for the writing out of the article on the judiciary in the Constitution. Maclay says the bill was his "child"; Wingate that he was "leading projector." Madison's later statements confirm the impression, as does the fact that Ellsworth had virtual charge of the bill on the floor of the Senate and was its chief advocate and explainer there. Ames wrote in the first part of July: "The Judiciary is before the Senate, who make progress. Their committee labored upon it with vast perseverance, and have taken as full a view of their subject, as I ever knew a com-

mittee take. Mr. Strong, Mr. Ellsworth, and Mr. Paterson, in particular, have their full share of this merit." [16]

INDEPENDENT SYSTEM

THE GREAT question was whether the state courts should be depended upon for original jurisdiction, with ultimate appeal to the national Supreme Court, or a completely independent system erected. The latter was chosen. Ellsworth wrote to Richard Law on August 4: "I consider a proper arrangement of the Judiciary, however difficult to establish, among the best securities the Government will have, and question much if any will be found at once more economical, systematic, and efficient, than the one under consideration." [17] Hamilton had in No. 81 of *The Federalist* carefully laid down the reasons for not entrusting the original jurisdiction to the "instrumentality of the State courts." In his letter to Paine Strong spoke in justification of the choice: "The State of Virginia by a Law passed since their adoption of the Constitution, have prohibited their Officers from holding Office under the United States, and their Courts from having jurisdiction of Causes arising under the Laws of the Union; by such Laws every State would be able to defeat the Provisions of Congress if the Judiciary power of the Genl. Government were denoted to be exercised by the State Courts." Madison, in his criticism of the bill (*see* p. 360), acknowledged the reasonableness of this point of view.

Wingate, on the other hand, wrote on July 11 to Pickering: "I do not much like it. I think it will be a very expensive machine without deriving benefit to the public equal to the cost." [18] Maclay and Lee also opposed the measure. The former said that he could scarcely account for his dislike, though later he declared it would "swallow, by degrees, all the State judiciaries," [19] and voted against it. Lee's objections were those of state rights, in harmony with the main contention during the ratification contest; though he had written to Henry on May 28, while his committee was framing the bill; ". . . in the Senate, a plan is forming for establishing the judiciary system. So far as this has gone, I am satisfied to see a spirit prevailing that promises to send this system out free from those vexations and abuses that might have been warranted by the terms of the constitution." But he added, lifting a phrase from Samuel Adams' letter to himself: "It must never be forgotten, however, that the liberties of the people are not so safe under the gracious manner of government, as by the limitation of power." [20]

OUTSIDE ADVICE

THE BILL, though reported on June 12 and ordered printed, was not taken up until the 22d. Evidently the members of Congress availed themselves of the printing of the bill to forward it to those whose opinion they respected. Madison, for instance, sent a copy to Judge Edmund Pendleton. Morris and Maclay sent to President Mifflin on June 16, and also to various citizens of Philadelphia. It is probably one of these which appeared in the *Pennsylvania Packet* on June 29, 1789, occupying six columns of fine print, which was almost all of the issue of the paper not given over to advertisements. Other papers copied this or issued it from different sources.

In sending the bill to Mifflin the two senators wrote that it "will probably occasion much discussion & debate. Should your Excellency & the Supreme Executive Council honor us with any observations on this bill, they shall be treated with all possible attention and respect."[21] The senators had advice from various people who had seen the text, including Wilson, McKean, Francis Hopkinson, and Richard Peters. Maclay, a few days before he voted against the passage of the bill, confided to his diary that "their letters approved of the general outlines of the bill. Any amendments which they have offered have been of a lesser nature. I own [that] the appropriation of so many men of character for abilities has lessened my dislike of it, yet I can not think of the expense attending it, which I now consider as useless, without a kind of sickly qualm overshadowing me."[22]

Strong, in his letter to Paine a month before the bill was reported, gave a rather detailed outline of it, and added: "I have been obliged to abridge this plan but hope you will understand it, if you do be kind enough to mention it if you have an opportunity to the Judges or to any of our Brethren who will give themselves the Trouble to reflect on this Subject, if you or they would write me any Objections that occur to you I should be greatly obliged for it will be much easier to effect alterations now than at a future Stage of the Business."[23] Paine became a justice of the state supreme court in 1790.

CONTENTS AS REPORTED

THE BILL, as reported, consisted of thirty-one unnumbered sections. The first section declared for a Supreme Court of a chief justice and five associates, four to be a quorum, to hold two terms each year at the seat of government on the first Monday in February and in August. The second section created eleven district courts,

one for each state, but with the Maine portion of Massachusetts attached to the New Hampshire district. The judge of each district was required to hold four sessions a year, with special ones at discretion, at specified places. The sessions were staggered and the earliest courts were to be in November 1789. Three circuit courts were ordered by the third section of the bill, with two sessions in each district annually, the court to consist of two justices and the judge of the district in which the session was held. This meant that each justice must ride circuit to the extent of holding from 6 to 10 courts a year, besides the terms of the Supreme Court. The circuit courts were to begin in April 1790 and were to be held at named places.

After various sections concerning adjournment, clerks, oaths and affirmations, there were several respecting the original and appellate jurisdiction of the three courts, exclusive or concurrent, specifying not only jury trial in criminal cases but trial of facts in civil actions at law by jury. This was an answer to the complaint in the ratification conventions, and was made before Amendment VII was sent to the states for approval. In various other respects this bill anticipated the amendments. Section 15 declared that there should be no proceedings in equity where there was a remedy at law; while matters concerning new trials, contempt, costs, rehearing on petition of error, writs, right to books and papers, and judgments on reversal of decision took up various other sections.

Section 23, which became Section 25 of the enactment, brought up the supreme-law-of-the-land clause of the Constitution, and made it plain that the national judiciary was its guardian. The final judgment of the highest state court, "where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision is in favor of such their validity, or where is drawn in question the construction of any clause of the constitution, or of a treaty, or statute of, or commission held under the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either party, under such clause of the said Constitution, treaty, statute or commission, may be re-examined and reversed or affirmed in the Supreme Court of the United States upon a petition of error, . . ." [24]

Matters relating to the recovery of forfeitures, grand and petit

juries and the summons of them, uniform mode of proof and examination, death of parties, disregard of defects or want of form, arrest and commitment, and counsel came next, and finally the bill provided for district marshals and deputies and district attorneys. The attorneys were to be appointed by each district court, but the appointment of the marshals was left by inference to the President and Senate. The bill also provided for an attorney general appointed by the Supreme Court, who in addition to prosecuting all suits in that court in which the United States was concerned, should also "give his advice and opinion upon questions of law when required by the President of the United States, or when requested by the heads of any of the departments, touching any matters that may concern their departments, and shall receive such compensation for his services as shall by law be provided." [25]

BEFORE THE SENATE

MACLAY is our sole source of information on the debate in the Senate, which began on June 22, though the journal shows some of the efforts made to amend the bill. The Virginia senators began these on the first day by proposing to limit the jurisdiction of the national courts to cases of admiralty and marine, which would be about equivalent to the power of the Court of Appeals in Cases of Capture, except that there would also be original jurisdiction in these matters. Maclay informed them that this was contrary to the expressed terms of the Constitution, and the motion was defeated the next day, which was otherwise devoted to the number of associate justices. Maclay considered five too many if the circuit courts were not retained and too few if they were. Grayson and Ellsworth defended the number, which was voted. On June 24 the district courts were approved and evidently also the circuit courts, since the consideration seems to have progressed to the eighth section without debate. This section concerned oaths, and in the report the right to affirm had been limited to Quakers. Maclay correctly declared the restriction unconstitutional, as the Constitution recognized the general right to affirm. The restriction came out the next day.

A pointed debate took place over retaining the section limiting equity proceedings, but it remained in the bill at that time. According to Maclay the divergent virtues of chancery and law were prominent throughout the whole of the Senate discussion. During the third reading of the bill, the Senate voted on July 11 to strike out this section, but reversed itself two days later, adding that the

remedy at law must be "plain adequate and complete." Maclay wrote that both Ellsworth and Lee supported him in securing the reversal. After this, the discussion during the second reading seems to have continued mainly on the technicalities, Maclay declaring that the bill "was fabricated by a knot of lawyers [he was of the committee], who joined hue and cry to run down any person who will venture to say one word about it. . . . Be it so, however, this is no reason that I should be silent." [26]

The bill came up for a third reading on July 7. Maclay complained that the bill had never been given a second reading, as its consideration hitherto had been in committee of the whole, but, as stated in the chapter on the organization of Congress, it was never acknowledged that the Senate sat in such a committee. An amendment was voted on that day by which a district judge sitting in circuit court should not vote on any case of appeal or error from his own decision, but might assign the reasons of his decision; but a similar motion respecting justices and their circuit court decisions was rejected on July 11. On July 9 and 11 the Virginia senators endeavored unsuccessfully to require that in capital cases petit jurors should come from the body of the county where the fact was committed.

A few further changes made by the Senate in its consideration of the original report increased the number of districts to thirteen, adding Maine and Kentucky, and giving the Kentucky district court also the jurisdiction of a circuit court, except as to appeals and writs of error to a circuit court, and putting the Maine district within the Massachusetts circuit. A new section was added making the laws of the several states, except where the United States Constitution, treaties, or laws interposed, rules of decision in trials at common law, in cases where they applied. The appointment of the district attorneys and attorney general by the courts was dropped, leaving the appointment a power of the President with the advice and consent of the Senate. On July 17 the bill, practically unchanged, passed the Senate by 14 to 6, Lee, Maclay, and Wingate being joined by Butler, Grayson, and Langdon, of whom only Grayson was a lawyer. Butler and Langdon were signers of the Constitution; the basis of their opposition is not evident. Grayson followed his colleague, Lee. Gore's letter to King of August 22, 1789, shows that the text of the bill as it left the Senate was also known outside.[27]

parties may plead and manage their own causes personally or by the assistance of such Counsel or attornies at law as by the rules of the said Courts respectively shall be permitted to manage and conduct causes therein. And there shall be appointed in each district a meet person, learned in the law, to act as Attorney for the United States in such district, who shall be sworn or affirmed to the faithful execution of his office, whose duty it shall be to prosecute in such district all delinquents for crimes and offences, cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned, except before the Supreme Court in the district in which their Court shall be holden. And he shall receive as compensation for his services such fees as shall be taxed therefor in the respective Courts before which the suits or prosecutions shall lie. And there shall also be appointed a meet person, learned in the law, to act as Attorney General for the United States, who shall be sworn or affirmed, to a faithful execution of his office, whose duty it shall be to prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned, and to give his advice and opinion upon questions of law when required by the President of the United States, or when requested by the heads of any of the departments, touching any matters that may concern their departments, and shall receive such compensation for his services as shall by law be provided.

United States of America
In Senate July the 17th 1789
Read the third time and passed

Sam: A. Otis Secy

FINAL PAGE OF SENATE'S ENGROSSED JUDICIARY BILL

From the Senate Records in the National Archives. This copy contains marginal numbers and pencilings showing places of the House amendments.

CONSIDERATION IN THE HOUSE

IN THE House the bill, received on July 20, was sent to a committee of the whole, but not considered there until August 24. Meanwhile, the House had sent the resolve of constitutional amendments, intimately associated with the judicial proceedings, to the Senate. The bill was not reported to the House until September 14, but much of the time during these meetings was devoted to the question of the permanent seat of government; in fact the judiciary bill received consideration during only part of eight days. Benson evidently spoke for a majority of the House when he said on the first day of debate in committee that "the Senate had employed a great deal of time in perfecting this bill, and he believed had done it tolerably well; besides, the session was now drawing to a close; he therefore wished as few alterations as possible to be made in it, lest they should not get it through before the adjournment." [28]

Madison in the letter which he wrote Judge Pendleton on July 15, 1789, after receiving the latter's review of the bill as reported to the Senate, said: "In many points, even supposing the outline a good one, which I have always viewed as controvertable, defects and inaccuracies were striking." [29] Also on August 21 he wrote Randolph: "The Judiciary bill was put off in favr. of the [amendments] . . . It was evident that a longer delay of that wd. prevent any decision on it at this Session. A push was therefore made, which did not succeed without strenuous opposition. On Monday the bill will probably be taken up & be pursued to a final question as fast as the nature of the case will allow." [30] This may account for the fact that there is no evidence in the debates or proceedings as to what there was in the bill which he found objectionable. He made only one statement in the printed debates, and that was in favor of the district courts. He gave, however, in a letter to Governor Johnston of North Carolina on July 31 more idea of his attitude:

> The Senate have proceeded on the idea that the federal Gov't ought not to depend on the State Courts any more than on the State Legislatures, for the attainment of its ends and it must be confessed, that altho' the reasons do not equally hold in the two cases, yet not only theoretic propriety, but the vicious constitution and proceedings of the Courts in the same states, countenance the precautions in both. At the same time it seems scarcely practicable to carry federal justice home to the people on this plan without a number of offices & a degree of expense which are very serious objections to it. The plan of the Senate is perhaps disagreeable with encountering these objections without the benefits for which the sacrifice is to be made. In criminal matters it appears to be particularly defective, being irreconcilable as it stands with a *local* trial of offenses. The most that can be said in its favor is that it is the first essay,

and in practice will be surely an experiment. In this light, it is entitled to great indulgence, and if not [no?] material improvement, [?] should be made in the H. of Rep's, as is likely to be the case, will, I trust, remain that proof [of?] the public candor whenever it may make its appearance. [30a]

An effort to strike out the district courts was made, because they would tend to establish "a Government within a Government, and one must prevail upon the ruin of the other." [31] The retention of the Supreme Court to which appeals could be made from state courts, with state courts of admiralty, would make a useful and complete system. Much emphasis was placed on the argument that in the trial before a national court the offender would be "dragged from his house, friends and connexions, to a distant spot, where he is deprived of every advantage of former character, of relations and acquaintance; . . ." [32] The great expense was also dwelt upon. On the other side it was argued that the Constitution called for a separate system, and only such a system could be a harmonious whole, such as was essential for a government possessing within itself the power necessary to carry its laws into execution. The debate on this continued for three days, when the votes stood 31 to retain and 11 to reject the district courts.

The *Annals* reports no further debates on this bill, merely indicating that it was considered on five other occasions before it was reported on September 14. It is interesting to note that so far as the record shows there was no direct objection to Section 25 on appeals from the state courts, quoted above, which would seem to have been an admirable target for the protests of those who feared the power of the new government. In fact, the advocates of the dropping of the district courts, and with them the independent system, pointed out, with evident approval, this very section as a reason for doing so. In only one case, that of Jackson of Georgia, was there adverse reference to it, and he contented himself with saying, as supplementing his argument against the district courts:

> Sir, I am opposed in some degree to this clause. For the extent of its power, even supposing the District and Circuit courts abolished, swallows up every shadow of a State Judiciary. Gentlemen, therefore, have no reason to complain of the want of Federal Judiciary power, . . . Sir, in my opinion, and I am convinced experience will prove it, that there will not, neither can there be any suit or action brought in any of the State courts, but may, under this clause, be reversed or affirmed by being brought within the cognizance of the Supreme Court. But should there be some exceptions for the present, yet sir, the precedent is so forcible, for it goes so far as even to admit of constructions on some of the articles, that by some means or other those articles will in time be totally lost.[33]

HOUSE AMENDMENTS

ON THE 15th the bill was ordered engrossed, and it passed as amended on the 17th without a record vote. The House had made about sixty-three amendments, mostly verbal or concerned with the details of the technical sections. Wingate wrote that the bill came back "with a number of amendments, but they none of them materially alter the plan." [34] The House changed some of the dates of holding court, and some of the places, adding several; it gave the Maine court, like the Kentucky one, the status also of a circuit court except on writs of error, which were to be directed to the Massachusetts circuit court. The chief change was an addition intended to answer the charge that criminal trials would be oppressive because not held in the vicinage. The Senate clause had stated that grand and petit jurors who should be summoned to serve in the courts of the United States should have the same qualifications as requisite for state jurors. The House made an addition probably similar to that desired by the Virginia senators; but its contents or wording was not acceptable to a committee of the Senate, and a further suggestion was made, which the House accepted. This provided that "in cases punishable with death, the trial shall be had in the county where the offence was committed, or where that cannot be done without great inconvenience, twelve petit jurors at least be summoned from thence. And jurors in all cases to serve in the courts of the United States shall be designated by lot or otherwise in each State respectively according to the mode of forming juries therein now practised, so far as the laws of the same shall render such designation practicable by the courts or marshals of the United States; . . ." [35]

PASSAGE

WHEN the Senate received the amended bill from the House on September 17, it was referred to Ellsworth, Butler, and Paterson. They reported on September 19 in favor of accepting all of the House amendments except in four small matters, with the restatement mentioned above. The Senate approved the report at once and the House accepted on September 21. On September 22 the Vice President and Speaker signed the enrolled bill and the President approved it on September 24, 1789. Such is the history of an act which Chief Justice Hughes in his address before Congress at its sesquicentennial celebration on March 4, 1939, called "a statute which is a monument of wisdom, one of the most satisfactory acts in the long history of notable congressional legislation. It may be said to take rank in our

annals as next in importance to the Constitution itself."[36] And this has proven to be the case even though Ames expected its speedy passage "as an experimental law, without much debate or amendment, in the confidence that a short experience will make manifest the proper alterations."[37] John Brown, of the Kentucky district, expressed a similar sentiment in his letter of September 23, 1789, to Harry Innes: "In my opinion the System is . . . [torn] for the present time, & I fear in the administration of it great difficulties will arise from the concurrent Jurisdiction of the Federal with the State Courts which will unavoidably occasion great embarrassment & clashing. But it was probably necessary to pass a Judiciary Law at this Session & the one which passed is as good I believe as we at present could make it, experience may point out its defects."[38]

SALARIES

THE SALARIES of the justices, judges, and attorney general were fixed by a separate act. This was reported by a special committee in the House, where the other salary acts originated, on September 17, 1789. The report gave the chief justice $4,500 a year and the rest in proportion. After a day of debate in committee of the whole, on the 18th this was reduced to $4,000 and the other salaries made to agree. The House on September 19 further reduced it to $3,500, made "some other similar alterations," and sent the bill to the Senate. There it was amended, some salaries being advanced, partly at least by the Vice President's casting vote, and returned to the house on September 21. Agreement was reached that day, the House accepting the Senate's advances except as to the attorney general, and the bill became a law on September 23, a day before the judiciary act was signed. It allowed the chief justice $4,000, the other justices $3,500, the district judges from $800 to $1,800, and the attorney general $1,500. It made no mention of traveling expenses, which in the case of the justices on circuit would be heavy. The district attorneys were allowed by the judiciary act such fees as should be taxed therefore by the respective courts; while the other officials by a later act were assigned those allowed by the highest courts of the respective states. By an act of March 3, 1791, traveling expenses and per diems were allowed to officials.

STYLE OF WRITS

ON SEPTEMBER 29, 1789, an act was passed to regulate processes in the courts of the United States. It was short and considered temporary. It was framed by the same committee of the Senate as

constructed the judiciary bill, and was reported on September 17. It generally took over the forms, modes, and fees of the highest courts of the respective states. The houses disagreed on the style of the writs, the Senate desiring that it should be in the name of the President. Senator Lee's opposition to his house's decision may be surmised from his letter of September 27 to Henry (*see* p. 391). A conference committee was necessary on September 26, which could not agree. The Senate proposed a compromise, which passed the House by the Speaker's casting vote, by which no style was mentioned. According to Maclay, the contention of the Senate was that the President was above the law in the sense that the only process that could be laid against him was to impeach him, he was otherwise above the power of all courts. He added that "it shows clearly how amazingly fond of the old leaven many people are. I needed no index, however, of this kind with respect to John Adams." [39]

Stone in the House presented the contention there: "He thought substituting the name of the President, instead of the name of the United States, was a declaration that the sovereign authority was vested in the Executive. He did not believe this to be the case. The United States were sovereign; they acted by an agency, but could remove such agency without impairing their own capacity to act. He did not fear the loss of liberty by the single mark of power; but he apprehended that an aggregate, formed of one inconsiderable power, and another inconsiderable authority, might, in time, lay a foundation for pretentions it would be troublesome to dispute, and difficult to get rid of. A little prior caution was better than much future remedy." [40] Ames wrote Sedgwick on October 6: "The debate about the style of writs was ridiculous beyond conception. Madison cannot recover my confidence speedily in that regard. He was silent, but voted with the champions of liberty who are not willing to do anything but talk for it, who foretell events that never happen, and who see invisible things." [41]

APPOINTMENTS

IT WAS Washington's task to appoint the justices, judges, marshals, and district attorneys, forty-five in all. He gave earnest attention and consultations to the matter, and not a little correspondence; and there was evident advice, if not pressure, from various quarters. For instance, John Brown, the representative from the Kentucky district, wrote Harry Innes on September 23: ". . . you are appointed judge for the District of Kentucke. I was induced to take the liberty to recommend you to the President." [42] There is also the rather obscure statement of Vice President Adams in a letter to

George Walton on September 25, concerning the judicial appointment for the district of Georgia: "As I had the pleasure and advantage of a particular acquaintance with yourself, and the misfortune to know nothing at all, but by very distant and general reputation, of the gentleman nominated, I should have been ill qualified to make an impartial decision between the candidates." [43] Evidently he does not mean to state that he might have taken an active part in the Senate's consideration, so we are left to infer that he was explaining why he thought it unwise to attempt to influence the nomination or the Senate's consideration of it. This letter was written the day before the Senate acted on the nomination.

Gore's letter of August 6 to King, concerning the choice between Lowell and Cushing for the Supreme Court, said that it was understood Cushing was to have it. This shows how early the matter was on the tapis and how thoroughly it was being canvassed. Later, on August 22, when the appointment of the district attorneys had been changed to a presidential office, Gore offered himself to King as a candidate for the place in the Massachusetts district: "If this appointment can be given to me without injuring the just claims of others, and without giving pain except what may arise from envy, I should be gratified." [44] Gore indicated that he had expressed his desire to no one else, and there is no letter of application in the Washington Papers, though Washington wrote several times that an application was one of the bases of consideration of candidates. This letter and other correspondence of King show the popular belief in the importance of senators, or at least of particular ones, in the appointments. Gore got the office, though it was not within King's "patronage".

Washington stated his attitude in a letter to Randolph on September 28, 1789: "Impressed with a conviction that the due administration of justice is the firmest pillar of good Government, I have considered the first arrangement of the Judicial department as essential to the happiness of our Country, and to the stability of its political system; hence the selection of the fittest characters to expound the laws, and dispense justice, has been an invariable object of my anxious concern." [45] One of his letters on appointments to the judiciary has been quoted from above.[46] As a further evidence of his concern in judicial appointments a facsimile is given here of the letter with which he accompanied the commission of one of the marshals. It was a form letter evidently sent to all the newly appointed attorneys and marshals.

It was a wide-spread belief that James Wilson was slated for the Supreme Court; in fact as early as March 9, 1789, a Baltimore paper

I have the pleasure to inform you
that you are appointed Marshal of the
District of Maine, and your Commission
enclosed, accompanied with such laws as
have passed relative to the Judicial De-
partment of the United States.

The high importance of the
Judicial System in our national Govern-
ment, made it an indispensable duty to
select such characters to fill the several
Offices in it as would discharge their resp
tive trusts with honor to themselves and
advantage to their Country.

I am, Sir,

Your most Obedt. Ser

Henry Dearborn Esquire.

G. Washington

FORM LETTER SENT WITH COMMISSION TO MARSHALS AND DISTRICT ATTORNEYS

From the C. E. French Collection in the Massachusetts Historical Society

spoke of a general demand in Pennsylvania at least that he be made chief justice, and Wilson had written Washington on April 21 saying that his aim rose to that important office. But this office went to Jay. Besides Wilson, John Rutledge and Chancellor Livingston had been urged for the position, but Hamilton's antagonism was fatal to the hopes of the last. As early as August 9, 1789, Washington had sounded Jay respecting his wishes. Otis, the secretary of the Senate, wrote to Langdon in September that the "*Keeper of the Tower* is waiting to see which Salary is best, that of Lord Chief Justice or Secretary of State"; [47] but Jay probably made his choice before the salary bills became law, though not perhaps before their intention was sufficiently obvious, and, as until the final acceptance by the House of the Senate's increase of the compensation of the justices that of the chief justice and secretary of state were the same, Otis was perhaps merely being cynical. Wingate, writing on September 14, showed, however, that the idea was a current one, saying: "I conclude . . . that Mr. Jay is designed for Chief Justice when the berth is provided, if the emolument should be better than the place he now holds." [48] The judiciary act was signed on September 24 and Washington sent the nominations under it to the Senate that day for the Supreme Court and eleven of the district judges and officials, New York and New Jersey being the omitted ones. These and also Randolph as attorney general were presented on the 26th, on which day all the judicial appointments were confirmed.

Besides Jay for chief justice, the associates were Wilson; William Cushing, chief justice of the Massachusetts Supreme Court; Robert Hanson Harrison of Maryland, one of Washington's military aides and secretaries for more than five years of the war and very close in his confidence, and who had been, until recently made state chancellor, head of the law courts there; John Blair, judge of the court of chancery in Virginia; and John Rutledge, one of the chancellors of South Carolina, who, like Wilson and Blair, was a signer of the Constitution. Gunning Bedford, Jr., and David Brearly, among the district judges, were also signers, while Randolph, though he had refused to sign, had been a prominent member throughout the convention. George Wythe would probably have been the Virginia appointee had he not preferred his position as a state judge. John Lowell, judge of the former Court of Appeals in Cases of Capture, was strongly pressed as the Massachusetts choice. Lincoln wrote Knox on July 18: "The eyes of the people here are much fixed on Mr. Lowell for one of the judges of the Supreme Court." [49] Stephen Higginson (Laco) in his letter to Adams on August 10 spoke of

Cushing's appointment as probable. He stated to the Vice President "some of the Evils which are here thought inevitable" if this was done. These had nothing to do with Cushing's ability, but with the desire to prevent Hancock from appointing to the state bench a man (James Sullivan) "with whom some, if not all the others would refuse to sit." Lowell's appointment would prevent this.[50] Lowell was Higginson's brother-in-law. The letter suggests a belief in Adams' influence respecting the nomination. Sullivan did not fill the state chief justiceship, though evidently Hancock offered it to him. Lowell had to be content with the district judgeship. Thomas McKean, chief justice of Pennsylvania, was the chief rival to Wilson, and like Wilson, had put in an application.

Washington wrote to Jay on October 5, 1789:

> It is with singular pleasure that I address you as Chief Justice of the Supreme Court of the United States, for which Office your Commission is enclosed. In nominating you for the important station which you now fill, I not only acted in conformity to my best judgment; but I trust I did a grateful thing to the good Citizens of these United States; and I have a full confidence that the love which you bear to our Country, and a desire to promote the general happiness, will not suffer you to hesitate a moment to bring into action the talents, knowledge and integrity which are so necessary to be exercised at the head of that department which must be considered as the key-stone of our political fabric.[51]

Jay accepted on the next day, adding: "When distinguished discernment and patriotism unite in selecting men for stations of trust and dignity they derive honour not only from their offices, but from the hand which confers them."[52] In spite of Washington's personal solicitude, backed by the urging of Hamilton, Harrison declined, preferring his chancellorship, in which, indeed, he did not long survive, as he died in April 1790. James Iredell of North Carolina was appointed in his place as associate justice on February 9, 1790, and confirmed and commissioned the next day. Rutledge attended none of the terms of the Supreme Court as an associate justice, but he sat in the circuit court until he resigned in 1791, and the biographer of Iredell says that Rutledge was in New York for the second term of the highest court, August 1790, but was indisposed. Jay's commission bore the date of September 26; Cushing's, the 27th; Wilson's, the 29th; and Blair's, the 30th, their rank following the dates of their commissions.

FIRST DISTRICT COURT TERMS

ACCORDING to the judiciary act, the various district courts were to hold their first sessions in November or December 1789, and we

have newspaper evidence that in various cases the courts convened. In Philadelphia the first term of the district court began on November 10, 1789. The commissions of the judge, attorney, and marshal were read and then the judge gave a charge to the grand jury, which at its request was published. It fills some two and a half columns of the *Pennsylvania Packet* for November 21. "After the address several causes, civil, criminal, and maritime were instituted." Francis Hopkinson, the district judge, had been judge of admiralty in Pennsylvania and active so long as that court continued. His decisions in admiralty, or at least a selection of them, have been published, and two of the causes are assigned to this first term of the district court. A check-up on the arrival of the ship concerned in one of the suits makes it evident that this is correct for that case at least,[53] making the report undoubtedly the earliest one of a United States court under the Constitution.

In New York Judge James Duane opened his court in the Exchange on November 3, and immediately adjourned. In Boston Judge John Lowell on December 1 swore in the attorney, marshal, and clerk, and then the "Rev. Dr. Stillman addressed the Throne of Grace in a well adapted prayer," after which adjournment took place. At the second term in New York on February 2, 1790, Duane addressed a grand jury of twenty-three, including various important men of the city. His charge to the "first Grand Inquest convened for this District" was a lengthy statement of the character and purpose of the judicial system of the new Union, printed in full in a New York paper, where it filled four columns. The grand jury reported on February 5, but the report was merely an address to the court; there were no indictments and the jury was discharged. The conviction of a smuggler by the court of the district of Delaware, of which Gunning Bedford, Jr., was judge, in the May term 1790 is mentioned in the newspapers,[54] and there were various other cases in the first half of that year elsewhere.

FIRST TERM OF THE SUPREME COURT

WE ARE able to have a rather complete picture of the first term of the Supreme Court, based on the clerk's records, which are given in facsimile in 134 U. S. (*see* p. 718,), and unusually full newspaper reports. The term was to open on Monday, February 1, 1790, and the room in the Exchange on lower Broad Street was, according to the newspapers, uncommonly crowded, holding the members of the New York supreme court, district judge, mayor and recorder, sheriff, and "many other officers, and a great number of the gentlemen of the

bar." The clerk begins his record: "At the Supreme Judicial Court of the United States begun and held at New York, (being the Seat of the national Government) on the first Monday of February, and on the first day of said month Anno Domini 1790." [55] The clerk, John Tucker, who had held a similar position under the "Supreme Judicial Court of Massachusetts" automatically used the form of that court, thereby putting a mistake on the first page of his record, for "Judicial" is not a part of the title of the Supreme Court of the United States. There being no quorum the first day, when only Jay, Cushing, and Wilson were present, adjournment was had until Tuesday, when Blair and also Attorney General Randolph appeared. Proclamation was made and the court opened, the "letters patent" of the justices and the attorney general read; and a court crier appointed. The justices had evidently been sworn in earlier; at least we know this to be the case with Wilson, and Jay's first salary warrant is dated December 1, 1789, and those of Wilson and Rutledge January 15, 1790.

The session this day was graced by the presence of the district court grand jury and various members of Congress. On the third day the clerk was appointed, and he was ordered to reside and have his office at the seat of government, and was forbidden to practice before the court while holding the clerkship. The seals of the Supreme Court and circuit courts were decided upon and the clerk ordered to have them prepared. That of the Supreme Court was to be of steel, circular, and the size of a dollar, to bear the coat of arms of the Union, and have the name of the court on the margin. (*see* p. 719). Those for the circuit courts were to be of silver the size of half a dollar, with a similar design, and on the upper part of the margin "Seal of the Circuit Court" and on the lower half the name of the district. This order was in accordance with the act to regulate processes, which also required that the seals of the district courts should be provided by the respective judges.

On February 5 and later days counselors and attorneys to practice before the court were admitted and sworn in to the number of twenty-six, including nine congressmen and the attorney for the district of New York. It was ordered that counselors should not serve as attorneys, or *vice versa*, and that to qualify in either case the applicant must have practiced for three years before the highest court of a state, and "their private and professional character shall appear to be fair." On the 5th it was also ordered that writs and processes from the courts should be in the name of the President of the United States. Thus the justices, by taking advantage of the final wording of the matter in the act to regulate processes, which was

entirely noncommittal, followed the desire of the Senate to the neglect of the objections of the House. Writs still run in the name of the President. No business coming before the court, it adjourned on February 10. Not until its sixth term, in August 1792 at Philadelphia, did the court hear cases on their merits. Justice Cushing wrote from Boston to Jay on November 18, 1789: "As to the stile of writs & which seems to be left to the determination of the Judicial, I am informed your opinion is that it should be in the name of the President of the United States, to which our district Judges here will conform & which I think is right. . . . I observe the law has prescribed the form of an oath for us, but not said who shall administer it. I should be glad of your opinion relative to any of these matters, or any others respecting the business we [are] about to be engaged in, that you may think proper to mention." [56] The letter also refers to seals and clerk, but says nothing on gowns.

ROBES

IT IS not possible to say whether at this first term the justices appeared in robes, but it is doubtful. Blair and Cushing came directly from state benches, but Blair probably did not have a gown as a judge of chancery. Cushing as chief justice in Massachusetts had worn a black robe with white bands and probably a judicial wig. He is said traditionally to have appeared at New York with these, but to have discarded the professional wig at least. Jay had been many years before chief justice of New York, but there is no available evidence that he wore a gown which might have come down from that period. In 1794 Stuart painted Jay in a black robe with salmon (or pink) facings and sleeves edged with a lighter colored silk. It has been stated that he appeared at this first term in this costume (which is now in the National Museum), and that it was that of his LL. D. degree from Dublin. He had no such degree from Dublin, and his honorary titles from Harvard, Edinburgh, and Brown all came after this first term, and in the case of the Brown degree after he sat for the portrait. Nor does the robe correspond to any such from either Harvard or Edinburgh at that time. Another tradition is that he wore the robe depicted, borrowing it from the chancellor of New York, Robert R. Livingston. Whether or not the gown of the Stuart painting was worn by Jay at this first term, it is logical to suppose it was his official robe at the time the portrait was made early in 1794. Robes are not mentioned in any of the contemporary accounts of the early terms, while they are especially mentioned in the reports of the fifth term, which was held at Philadelphia in February 1792.[57] Also

Blair wrote to Wilson on February 2, 1792 (according to a copy made in 1913), that "by this time our gowns may be finished and the judges may appear in them this time." [58] Jay wrote his wife on April 24, 1792, apropos his gubernatorial candidacy: "My gown may become useless . . . ",[59] which in the light of the other statements is significant not only of its possession but also of its newness. Whether the robes of the associate justices were also particolored then has been a moot point; but the Sharples pastel of Justice Paterson shows a gown similar to Jay's (*see* p. 803), with bands in addition. Plain black, however, seems to have been the rule by 1802.

SOCIAL EVENTS

THE TERM was not without its social events. President Washington had the court to dinner on the 4th, together with the Vice President, Judge Duane, Randolph, Hamilton, Knox, the officers of the court, and two senators.[60] On the 8th the grand jury of the district court entertained the Supreme Court at Fraunces' Tavern, where thirteen toasts were drunk, the last being to the convention of Rhode Island, expressing a hope which was not at that time to be fulfilled. The French chargé also had a dinner in honor of the Franco-American alliance on February 6, which the justices attended.

FIRST CIRCUIT COURTS

THE SYSTEM of circuit courts was yet to be inaugurated. According to the law, the first of these were to begin at Trenton and New York City on the 2d and 4th of April 1790. Jay, with Cushing and Duane, started the New York sessions and he then proceeded eastward with Cushing through New England. Wilson and Blair sat in New Jersey, Pennsylvania, Delaware, Maryland, and Virginia with the respective district judges, and Iredell and Rutledge in South Carolina and Georgia. The district courts of Kentucky and Maine also sat as limited circuit courts, and these regions were not visited by the justices. The printed reports of cases determined in the circuit courts run back fragmentarily to 1791; [61] but the newspapers mention a trial at the first term in New York, when two sailors were convicted of conspiracy to destroy a ship and kill the captain, and were condemned to the pillory for one hour, six months' imprisonment, and whipping. The trial lasted four hours.[62] The charges were a prominent feature of these early circuit courts, the importance of which will be considered later (*see* p. 430).

Departmental and Interdepartmental Precedents

SOCIAL VESTIGES

THE IMPOSITION of an active government of separate powers and operating directly upon the people upon the existing political structure of the country called for adjustments in various respects, both as to the relations within and between the new departments and between the states and these departments or the national government as a whole. The chapter on the organization of Congress has treated of the relation between the two houses and the method of their intercourse; there remains for consideration their connections as separate houses and as Congress with the executive and the judiciary.

The preparations to receive Washington upon his arrival as President-elect and the ceremonies of the inauguration brought up the question of his title and caused a great to-do, which, after so many years of democratic thought and action, seems in the retrospect to have been a tempest in a teapot, but which was regarded seriously enough at the time. Almost all of the participants in it had been brought up in a colonial society, at the head of which in each colony was a governor considered usually as the British king's personal representative, and, as such, of a vice-regal position, surrounded by a corresponding ceremoniousness and titles. Society was political as well as social; and there was a considerable contrast between those who did not see the necessity of dropping the social customs of the old régime along with its political control, and those who saw in the retention of any of the "trappings of royalty" an evil that would destroy the republic and restore an aristocratic control, if not a monarchical one.

The Samuel Adamses and the Patrick Henrys of this period were prone to see such danger in any attempts to retain customs

and forms that had an association in men's minds with the imperialistic elements of the discarded colonial government. To them the motto on the unused reverse of the Great Seal, "*novus ordo seclorum,*" called for a clean sweep. Evidences of this fear are seen in the prohibition in the Constitution of any grants of nobility or of the official acceptance of titles without the permission of Congress, and the proposal by state ratification conventions of an amendment forbidding Congress ever to give such permission. Still later, on May 1, 1810, Congress proposed an amendment to the states providing that anyone who accepted a foreign title or honor should forfeit his citizenship thereby, but it has never been ratified. The radicals were not likely to be constructive in their statesmanship; and many of the conservatives, intent upon working out a practical system of steady government, were neglectful of those principles of popular rule which have become so closely associated with Jefferson's claim to fame and, as Maclay expressed it, were "fond of the old leaven."

CONGRESS AND PRESIDENTIAL TITLES

IT WAS natural enough, therefore, that the question of official title should have turned up in the early consideration of the relations of Congress with the President. On April 23, 1789, in the Senate a resolve was voted: "That a committee, consisting of three members, be appointed to consider and report, what . . . titles will be proper to annex to the offices of President and Vice President of the United States; if any other than those given in the Constitution." [1] This was a part of the resolution for a committee to prepare for the inauguration. Lee, Izard, and Dalton were appointed. The next day Lee proposed that the House be asked to appoint a committee to confer on the matter of the whole resolution. Maclay, who said that Vice President Adams was responsible for the "base business," moved to strike out all reference to titles. Carroll supported him, but the motion was lost, the words "style or" were added before "titles," and the resolution sent to the House. Maclay professed to doubt Lee's integrity in the business, and knew that the "giving of titles would hurt us." Evidently, too, Maclay was not unwilling to make an issue of it. The House appointed Benson, Ames, Madison, Carroll, and Sherman.

After the inauguration, the two houses appointed committees to prepare replies to the inaugural address. Adams called it "his most gracious speech," and when this phrase occurred in the minutes the next day Maclay objected and succeeded, over Adams' protest, in getting the words erased from the journal. On May 5 the House

committee reported the concurrent resolution on titles, which that body adopted: "That it is not proper to annex any style or title to the respective styles or titles of office expressed in the Constitution." [2] On that same day its reply to the President's address was reported by Madison and agreed to. It was headed: "The Address of the House of Representatives to George Washington, President of the United States. Sir:" [3] This address was presented on May 8 in a room in Federal Hall, Washington expressing a willingness to receive it wherever the House should decide. Maclay declared in his journal on May 1 that he would "through the Speaker and other friends, get the idea suggested of answering the President's address without a title, in contempt of our deliberations." [4] His instrumentality in the decision of the House may, however, be questioned; the committee that reported the matter was not one likely to be influenced by him.

On May 7 the Senate received the concurrent resolve and took it up the next day when, as stated by Maclay, it was the subject of a long debate in which he and Carroll alone seem to have supported the report. The Senate rejected it, and also a motion for "His Excellency," and finally appointed another committee to bring in a title for the President. On May 9 the Senate received the message from the House announcing that body's approval of the concurrent resolve; and the committee appointed the day before, Lee, Ellsworth, and Johnson, reported a title. There was further debate during which, according to Maclay, Adams haranged for forty minutes. Postponement was finally voted, and the reporting committee was ordered to confer with the House committee on the disagreement, being, by an amendment, to consider the proper title *in the future*. Evidently Maclay thought that the tide was turning in his favor. He "had a fine, slack, and easy time of it to-day." [5]

The House on May 11 took up the Senate's disagreement and desire for a conference. Parker of Virginia moved that the House "deem it improper to accede to the proposition made by the Senate, . . . " [6] Considerable debate ensued. Sherman and Clymer shared Parker's opinion, but Madison, while stating the attitude of the House, had a word to say respecting inter-house courtesy:

> I may be well disposed to concur in opinion with gentlemen that we ought not to recede from our former vote on this subject, yet at the same time I may wish to proceed with due respect to the Senate, and give dignity and weight to our own opinion, so far as it contradicts theirs, by the deliberate and decent manner in which we decide. For my part, Mr. Speaker, I do not conceive titles to be so pregnant with danger as some gentlemen apprehend. . . . I am not afraid of titles, because I fear the danger of any power they could confer, but I am against them because they are not very reconcilable with the nature of our

Government or the genius of the people. Even if they were proper in themselves, they are not so at this juncture of time. But my strongest objection is founded in principle; instead of increasing, they diminish the true dignity and importance of a republic, and would in particular, on this occasion, diminish the true dignity of the first magistrate himself.[7]

A motion for a conference committee was substituted and adopted, Page and Trumbull displacing Ames and Carroll of the earlier committee. It was of this debate that Ames wrote to Minot on May 14, 1789:

The House was soon in a ferment. The antispeakers edified all aristocratic hearts by their zeal against titles. They were not warranted by the Constitution; repugnant to republican principles; dangerous, vain, ridiculous, arrogant, and damnable. Not a soul said a word *for* titles. But the zeal of these folks could not have risen higher in case of contradiction. Whether the arguments were addressed to the galleries, or intended to hurry the House to a resolve censuring the Senate, so as to set the two Houses at odds, and to nettle the Senate to bestow a title in *their* address, is not clear. The latter was supposed, and a great majority agreed to appoint a committee of conference. The business will end here. Prudence will restrain the Senate from doing any thing at present, and they will call him President, &c., simply.[8]

On May 12 the Senate renewed its direction for a conference, and on the 14th received the committee's report of a further disagreement. After this, the reported title was taken up. It proposed "His Highness, the President of the United States of America, and Protector of their Liberties." After further debate, it was postponed and the following resolve adopted:

From a decent respect for the opinion and practice of civilized nations, whether under monarchical or republican forms of Government, whose custom is to annex titles of respectability to the office of their Chief Magistrate; and that, on intercourse with foreign nations, a due respect for the majesty of the people of the United States may not be hazarded by an appearance of singularity, the Senate have been induced to be of opinion, that it would be proper to annex a respectable title to the office of President of the United States; but, the Senate, desirous of preserving harmony with the House of Representatives, where the practice lately observed in presenting an address to the President was without the addition of titles, think it proper, for the present, to act in conformity with the practice of that House; therefore, *Resolved*, That the present address be "*To the President of the United States,*" without addition of title.[9]

An attempt was made to do away with the explanatory preamble of this resolve, as being merely an evidence of accommodation with ill grace, but it failed by a vote of 10 to 8.

This ended the effort to surround republican simplicity with the "pomp of royal etiquette." The Senate's reply to the President's

address was reported and adopted on May 7, and on May 18 the members went in carriages to the presidential mansion in a body, when the Vice President in their name presented the reply to the "President of the United States." There was an echo of this title matter on June 4, when, according to Maclay, there was debate whether senators should be "honorable" or "right honorable." The Vice President, supported by Lee, insisted upon the latter, but Lee's colleague, Grayson, was equally emphatic against all titles, having in this matter completely separated from Lee, though he was not in the Senate until after the May contest. In this he, rather than Lee, was a true Henryite. Fenno in his *Gazette* during the first session called senators "most honorable," representatives and department heads "honorable," and the Vice President and governors "excellency."

CORRESPONDENCE ON TITLES

THE FORMAL proceedings respecting titles was but a small part of the story. The amount of space which Maclay gave to it in his diary shows the importance of it in his mind. Evidently public opinion agreed with him, and the reverberations of the disturbance continued to be heard for several months both in correspondence and newspapers, Adams being held as chiefly responsible for the "aping of royalty." Senator Izard, according to Maclay, declared privately that if titles were used the Vice President should be known as "His Rotundity"; while Maclay himself wrote that in the chair he was not sedate and at ease, but guilty of "smudging." Adams' natural conservatism, his long association with European society, his lack of tact, and general irascibility made him a chosen victim of the antagonism to undemocratic evidences. It was undeserved; his republicism was of as sterling a quality as that of Washington, who was equally conservative but more far sighted and politically wise. A somewhat detailed review of the letters and articles on the subject will show how much it occupied the public mind.

Madison wrote Jefferson on May 9, 1789: "Titles to both the President & vice President were formally & unanimously condemned by a vote of the H of Repr. This I hope will shew to the friends of Republicanism that our new government was not meant to substitute either monarchy or aristocracy, and that the genius of the people is as yet adverse to both." [10] And to Randolph the next day: "The friends of titles in the other Branch are headed by the v-c-e-p-s-i-t, who is seconded with all the force & urgency of natural temper by R. H. L.!!!" [11] Lee's break with Henry and Grayson in this matter was due to the fact that his Antifederalism was essentially one of

state rights, and where these were not concerned he was more conservative; but no more inconsistent than Henry himself became. Jefferson replied to Madison in cipher on July 29, 1789: "The President's title as proposed by the Senate was the most superlatively ridiculous thing I ever heard of. It is a proof the more of the justice of the character given by Dr. Franklin of my friend—always an honest man, and often a great one, but sometimes absolutely mad." [12]

Lambert Cadwalader's letter of May 8, 1789, from New York to John Armstrong is illustrative of the interest and of one of the ways in which the news of the day was spread abroad. "There has been much altercation in all Companies relative to the Title to be given to the President—as is usual on such Occasions, some are for high & sounding Titles, some for Titles of great Mediocrity, and others for no Title at all—at least none beyond the naked one given in the Constitution—namely 'The President of the U: States'. The lovers of Fringe & Embroidery have, however been defeated, and a Taste for Simplicity has prevailed over Adulation." [13]

Joseph Jones and Edmund Pendleton among Madison's correspondents voiced the approval of the attitude of the House. The former, touching on the secrecy of the Senate's sessions, said on May 28:

> It appears to be equally proper and necessary for the information and satisfaction of the people that their conduct and proceedings in the [legislative] Character I have mentioned should be as public and well known as that of the other house and I am inclined to think had the public Ear listened to their proceedings on the above subjects of discussion [titles and Senate superiority] their propositions would have been more equal and their pretentions less lofty than they were. I am pleased with the plain manly stile of address 'G. W. President, &c' The present name wants no titles to grace it and should the office be filled by an unworthy person the stile will not dignify the man or cast a beam of light around his head.[14]

The latter agreed on June 9, 1789: "I hope the idea of titles is sent to eternal repose. I know nothing which in my judgment would more strengthen opposition than the adoption of such a measure, giving countenance to all the suspicions hitherto forged only, of a tendency in the Government to fav'r Aristocratic principles." [15] On the other hand, Henry Lee was more critical. He wrote Madison on June 10, 1789: "Much impatience & much self sufficiency . . . [torn] belong to your body. On the subject of title their [House] conduct receives as it merits pointed approprium. Not because they opposed adding to the constitutional title of the chief Magistrate, but because they treated the Senate with mark indecency. . . . that the two branches of Legislature should hold to each other the most marked respect is

necessary for their honor, their respectability & our good."[16] Grayson, after his late arrival, wrote Henry, June 12, 1789: "Is it not strange that monarchy should issue from the East. Is it not still stranger that John Adams, the son of a tinker, and the creature of the people, should be for titles & dignities of pre-eminence, & should despise the Herd and the ill born. It is said he was the *primum mobile* in the Senate for titles for the President, in hopes in the scramble he might get a slice for himself. The Commee. of the lower house have reported five thousand dollars for his salary, at which he is much offended, & I am in great hopes the house will still offend him more by reducing it."[17]

The interest among the correspondents of the New England congressmen is indicated by Thomas B. Wait's letter from Portland to Thacher on July 17, 1789, which he addressed to

George Thacher
Member of Congress
New York

and asked him: "Well, how does it look—sans Hon—sans Esquire." On August 9 he confessed: "I am in fidgets concerning titles. It is true the words Most honourable, illustrious, Terriffick, &c &c may be very harmless; but, in my opinion, when proceeding from the mouth of a Republican, they are extremely ridiculous."[18] David Stuart, who had married the widow of Mrs. Washington's son, wrote the President from Virginia on July 14, 1789, the impressions of his neighborhood:

> Nothing could equal the ferment and disquietude occasioned by the proposition respecting titles. As it is believed to have originated from Mr. Adams & Lee, they are not only unpopular to an extreme, but highly odious. Neither I am convinced, will ever get a vote from this State again. As I consider it very unfortunate for the Government, that a person in the second office should be so unpopular, I have been much concerned at the clamor and abuse against him. . . . Mr. Henry's description of it, that it squinted toward monarchy, is in every mouth, and has established him in the general opinion, as a true Prophet. It has given me much pleasure to hear every part of your conduct spoken of with high approbation, and particularly your dispensing with ceremony occasionally, and walking the streets; while Adams is never seen but in his carriage & six. . . . I find the Senate in general to be unpopular, and much censured for keeping their door shut.[19]

WASHINGTON'S ATTITUDE

THIS coach-and-six tale was pure slander. What Washington himself thought about the matter was not publicly known. There were rumors that he would have welcomed the title, and this was made

one parcel with the criticism of his own rules of ceremony and official functions, respecting which Stuart commented in this letter, and which will be considered later. The President, replying to Stuart on July 26, 1789, made privately a disclaimer:

> One of the Gentlemen, whose name is mentioned in your letter, though high toned has never, I believe, appeared with more than *two* horses in his carriage; but it is to be lamented that *he* and *some others* have stirred a question which has given rise to so much animadversion, and which I confess has given me much uneasiness lest it should be supposed by some (unacquainted with facts) that the object they had in view was not displeasing to me. The truth is the question was moved before I arrived, without any privity or knowledge of it on my part, and urged after I was apprized of it contrary to my opinion; for I foresaw and predicted the reception it has met with, and the use that would be made of it by the adversaries of the government. Happily the matter is now done with, I hope never to be revived.[20]

Edmund Randolph wrote Madison from Williamsburg on September 26, 1789: "The president is supposed to have written to Mr. Adams, while titles were in debate, that if any were given, he would resign. Whether it be true or not, it is a popular report. However I question if even this, added to his services will draw from the assembly an address of congratulation. I will endeavour to prevent any pain to him, or imputation on Virginia." [21] The Virginia Assembly did make an address of congratulations, and both Washington and Adams survived the criticism of their aristocratic conduct.

NEWSPAPER FERMENT

THE MATTER of titles was fought out in the newspapers valiantly. An Albany paper in June 1789 contained the following skit:

> I will borrow a little aid from anticipation, and venture to request you to insert the following paragraphs, which, I assure you, on the *honor* of a court parasite are copied From the Gazette of the United States, printed in the year 1800. 'New York, Jan. 2. Yesterday, being New-Year's day, the Most Serene the President of the United States, accompanied by her Serenity, went in the state coach to St. Paul's; where a most excellent discourse was delivered by the Right Rev. Father in God, Samuel Provost [sic.], Bishop of the State of New York. . . . Jan. 8. Her Serenity, who was much indisposed last week by a pain in the third joint of the fourth finger of her left hand, we are happy to announce is in a fair way of recovery. Drs. Bolus, Pilula, and Symptom, physicians in ordinary to his serenity, held a consultation in form yesterday, the result of which was the administration of a medicine which produced the happiest effect. . . . Feb. 12. Yesterday Admiral —— kissed his Serenity's hand, on being appointed to the command of the expedition against Algiers, soon to proceed. It is said that a treaty of marriage has been for some time on the tapis between Admiral —— and the Hon. Miss ——, one of her Serenity's Maids of Honor.' [22]

The *Massachusetts Centinel* of Boston was a stout Federalist supporter and its communications were generally, but not always, the views of those who favored titles. On June 20, 1789, there was a letter from "Indifference": "They must have very weak nerves indeed who apprehend *danger* from the bestowment of *titles* on Federal Rulers—as at best they are but *words*, and cannot alter either the *tempers* or *manners* of men. . . . as they are consistent with the wishes of the people, expressed in all their State Constitutions—as they must have weight among foreigners accustomed thereto—why, in the name of common sense, need there be so much noise respecting them?" A reply to this by "Argos" on July 1 declared: "I defy any Aristocrat to show me a country ever enslaved where there never were any *titles*? . . . This I call the pure unadulterated spirit of freedom." On July 8 "His Majesty the President of the United States" was proposed, because he represented the majesty of the People. On July 11 there was an editorial comment: "What must foreigners think of the citizens of the United States when they observe the inconsistency of our conduct with respect to titles? To see the President of the Union—The Vice President—Presidents and Governours of States—Foreign Ministers—jumbled together with the style of Excellency, must give them a contemptible idea of the genius and invention of our countrymen, &c." As late as August 19 a correspondent pointed out the inconsistency of the House, because from the gallery he had observed that "honourable gentleman" and "honourable colleague" were "constantly echoed and reechoed in the House every day."

Newspaper diatribes reached the extremity of savageness a few years later, but the way they were headed even in 1789 is indicated by some verses which, though spoken of as being circulated in manuscript "to the Southward," were also printed and for sale in New York book stores, and extensively copied in the papers. They were entitled "The dangerous VICE * * * * *":

Gods! how they'd stare! should fickle Fortune drop
These mushroom lordlings where she pick'd them up
In tinker's, cobler's or b—k b—r's shop. . . .
YE WOU'D-BE TITLED! whom, in evil hour
The rash, unthinking people cloth'd with pow'r,
Who, drunk with pride, of foreign baubles dream,
And rave of a COLUMBIAN DIADEM—
Be prudent, modest, mod'rate, grateful, wise,
Nor on your Country's ruin strive to rise,
Lest great COLUMBIA's AWFUL GOD shou'd frown,
And to your native dunghills hurl you down.

Ye faithful guardians of your Country's weal, . . .
Resist the VICE — and that contagious pride
To that o'erweening VICE — so near ally'd. . . .
O WASHINGTON! thy Country's hope and trust!
Alas! perhaps her last, as thou wert first;
Successors we can find—but tell us where
Of ALL thy virtues we shall find THE HEIR.[23]

These lines provoked replies equally sarcastic and vituperative. Knox is joined with Adams in the verses, and was informed by Henry Jackson from Boston on August 30 that the author was generally said to be "E— C— whose character is well known here."[24]

POWER OVER APPOINTMENTS AND REMOVALS

THE NEXT important question which Congress had to decide concerning the executive was that of removals. The Constitution regulates appointments, giving Congress the power "by Law" to "vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."[25] All other appointments, and by specific mention diplomatic officers, consuls, and justices, were to be by the President with the advice and consent of the Senate. This means that when there is no law to the contrary all appointments are by the President and must have the consent of the Senate. Such appointments are usually indicated by the term "presidential." The Constitution is silent respecting the power of removal, except by impeachment, and the life or good behavior tenure of judges.

HOUSE DEBATE ON REMOVALS

THE FIRST measures considered in Congress that involved tenure of office were those creating the executive departments, the history of which has been given in a preceding section. Madison's motion on May 19, 1789, to establish three departments whose heads should "be appointed by the President, by and with the advice and consent of the Senate; and to be removable by the President,"[26] precipitated the debate on the subject of removals, after it had been decided that it was superfluous to mention the method of appointment. Smith of South Carolina led off with the statement that he believed removal could only be through impeachment. Madison replied:

> What . . . would be the consequence of each construction? It would in effect establish every officer of the Government on the firm tenure of good behavior: and that to be judged of by one branch of the Legislature only on the impeachment of the other. If the constitution means this by its declarations to be the case, we must submit; but I should lament it as a fatal error interwoven in the

system, and one that would ultimately prove its destruction. I think the inference would not arise from a fair construction of the words of that instrument. . . . I think it absolutely necessary that the President should have the power of removing from office; it will make him, in a peculiar manner, responsible for their conduct, and subject him to impeachment himself, if he suffers them to perpetrate with impunity high crimes or misdemeanors against the United States, or neglects to superintend their conduct, so as to check their excesses. On the constitutionality of the declaration I have no manner of doubt.[27]

Boudinot of New Jersey pointed out "that the Judges are declared to hold their offices during good behavior; but if this is the tenure by which all offices are to be held, where is the necessity of this explicit declaration in favor of the Judges? Now, if any thing is to be drawn by construction from this part of the constitution, it is that the Judges alone are to hold their offices during good behavior; but all other officers during pleasure, unless otherwise provided in the constitution."[28] He also stressed the point that the Senate would not be an upright court in case of impeachment if it had the power to object to removal otherwise, and this would also lessen the control of the House over corrupt officials. Bland of Virginia "thought the power given by the constitution to the Senate, respecting the appointment to office, would be rendered almost nugatory if the President had the power of removal. . . . he agreed that the removal by impeachment was a supplementary aid favorable to the people; but he was clearly of opinion, that the same power that appointed had, or ought to have, the power of removal."[29] Sherman supported Bland, but Smith said that there were plenty of cases where the appointing power did not share in the removing power; the people could not remove congressmen, or the electors the President. Later however, he acknowledged that if there was a right of removal the Senate participated in it, for since the Constitution did not give the President the right to remove the obvious inference was that it was in the same power as the right to appoint. He quoted *The Federalist* in support of this (No. 77, by Hamilton); but continued to believe that there was no right to remove except through impeachment. To which Livermore of New Hampshire added that if the President had the right to remove without the consent of the Senate he had an equal right to abrogate treaties.

Madison supplemented his earlier statement, emphasizing the need of not lessening the President's responsibility. Moreover, it was not advisable to lessen the separation of powers any more than the strict construction of the Constitution required; and, as Clymer added, though over Gerry's denial, the power of removal was an exec-

utive one, and the Senate, being legislative, had no executive power beyond that expressly conferred by the Constitution. The Senate's participation would keep it in constant session.

Smith's idea of good-behavior tenure received little support; and there was a general agreement that Congress had the right to prescribe a limited term, and regulate the power of appointment of "inferior officers"; but there was little disposition to consider the head of a department an "inferior" officer, unless because the President alone was the executive power. Repeatedly, however, the changes were rung upon the right of the Senate to participate in the removal where it had shared in the appointment, the main points being those given above. The House voted several times upon the question in one form or another, but always with a good majority in favor of removal by the President alone.

GRANT OF POWER OF REMOVAL

HUNTINGTON of Connecticut brought in a new idea when he said: "The constitution, I think, must be the only rule to guide us on this occasion; as it is silent with respect to the removal, Congress ought to say nothing about it, because it implies that we have a right to bestow it, and I believe this power is not to be found among the enumerated powers delegated by the constitution to Congress." [30] Hartley of Pennsylvania thought that the implied powers would cover the right of Congress in the matter; but Huntington's idea seemed to many a good solution of the problem. Ames said: "I beg leave to observe . . . that there are three opinions entertained by gentlemen on this subject, one is, that the power of removal is prohibited by the constitution; the next is, that it requires it by the President; and the other is, that the constitution is totally silent. It therefore appears to me proper for the House to declare what is their sense of the constitution. If we declare justly on this point, it will serve for a rule of conduct to the Executive Magistrate; if we declare improperly, the judiciary will revise our decision; so that at all events I think we ought to make the declaration." [31] Madison warned: "I feel the importance of the question, and know that our decision will involve the decision of all similar cases. The decision that is at this time made, will become the permanent exposition of the constitution; and on a permanent exposition of the constitution will depend the genius and character of the whole Government." [32]

Benson proposed to get around the matter of congressional grant of power to the President to remove by a statement that would assume the constitutional rights to remove, or, as Silvester of New York said,

give the opinion of Congress by implication rather than declaration,[33] because, as Madison stated, "nothing has yet been offered to invalidate the doctrine that the meaning of the constitution may as well be ascertained by the legislative as by the judicial authority."[34] Gerry was here, as elsewhere, on the other side; he objected to any construction whatever on the Constitution:

> . . . we are not the expositors of the constitution; but if we were the expositors, we ought to give our exposition by a declaratory act, and not foist it in where no one would ever look for it. But if it were done by a declaratory act, I conceive it would be impossible to draw the line at which declaratory acts should stop. Hence we should alter the constitutional mode of amending the system of Government. Another difficulty would also arise; the judges are the expositors of the constitution and the acts of Congress. Our exposition, therefore, would be subject to their revisal. In this way the constitutional balance would be destroyed; the Legislature, with the Judiciary, might remove the head of the Executive branch. But a further reason why we are not the expositors is that the Judiciary may disagree with us, and undo what all our efforts have labored to accomplish. A law is a nullity, unless it can be carried into execution; in this case, our law will be suspended. Hence all construction of the meaning of the constitution is dangerous or unnatural, and therefore ought to be avoided. . . . Gentlemen tell us they are willing to consider this as a constitutional question, and yet the bill shows that they consider the constitution silent; for the clause [in the bill] grants the power in express terms. This also implies that the Legislature have a right to interfere with the executive power, contrary to their avowed principles. If the Legislature have not the power of removal, they cannot confer it upon others; if they have it, it is a legislative power, and they have no right to transfer the exercise of it to any other body. So, view this question in whatever point of light you please, it is clear the words ought to be struck out.[35]

A vote was finally reached on the subject in the committee of the whole on June 19, when the clause resting the power of removal in the President alone was retained in the bill for the Department of Foreign Affairs by 34 to 20; but when it came up in the House on June 22, Benson made his motion to insert a clause giving the chief clerk, "an inferior officer," certain authority "whenever the said principal officer shall be removed from office by the President," which was carried by yea and nay vote of 30 to 18. None who had voiced his objection to the original form was converted by the amendment; but when, as a phase of this change, the original expression of power to remove by the President was struck out by 31 to 19, all but three of the nineteen had voted yea on the previous call. Ames, Baldwin, Benson, Clymer, Madison, and Vining voted yea on striking out, perhaps because they held, as Madison expressed it, "that these words [of the new phrase] carry with them an implication that the

Legislature has the power of granting the power of removal." [36] Ames wrote on June 23 concerning this change in approach:

> The mover and supporters of the amendment supposed that a grant by the legislature might be resumed, and that as the Constitution had already given it to the President, it was putting it on better ground, and, if once gained by the declaration of both houses, would be a construction of the Constitution, and not liable to future encroachments. Others, who contended against the advisory power of the Senate in removals, supposed the first ground the most tenable, that it would include the latter, and operate as a declaration of the Constitution, and at the same [time] expressly dispose of the power. They further apprehended that any change of position would divide the victors, and endanger the final decision in both houses. There was certainly weight in this last opinion. Yet the amendment being actually proposed, it remained only to choose between the two clauses. I think the latter, which passed, and which seems to imply the legal (rather constitutional) power of the President, is the safest doctrine. This prevailed, and the first words were expunged. This has produced discontent, and possibly in the event it will be found disagreement, among those who voted with the majority. This is in fact a great question, and I feel perfectly satisfied with the President's right to exercise the power, either by the Constitution or the authority of an act. The arguments in favor of the former fall short of full proof, but in my mind they greatly preponderate.[37]

On June 24 the opponent secured a call for the yeas and nays on the passage of the bill; the vote was 29 to 22, three who had voted for Benson's first amendment, and one who had voted against it, shifted in this final test. The bills for the departments of war and treasury underwent the same change. Incidentally, the debate in the House is enlightening in regard to the right of the judiciary to declare acts void.

CONTEST IN THE SENATE

SENATOR Dalton, writing to Hodge on June 21, 1789, after the vote in the House committee of the whole, evidenced the uneasiness that must have been general among his colleagues: " . . . must therefore come before the Senate and is, with respect to that Body a very delicate question. Whichever way they turn the Question, Censure will follow because their power will be effected [sic] by the decision, or perhaps it may be said the Constitution." [38] Dalton seems to have been the only senator who changed his vote during the contest. Maclay led in the assault in the Senate against the clause on removal in the bill for the Department of Foreign Affairs on July 14: "The depriving power should be the same as the appointing power." Moreover, the text of the Constitution with its careful delineation of impeachments and mention of no other removal, left it plain that the "Constitution certainly never contemplated any

other mode of removing from office. . . . If the virtues of the present Chief Magistrate are brought forward as a reason for vesting him with extraordinary powers, no nation ever trod more dangerous ground. His virtues will depart with him, but the powers which you give him will remain, and if not properly guarded will be abused by future Presidents if they are men."[39]

Maclay's pronouncement received the support of Langdon, Butler, Izard, Johnson, Lee, Grayson, and Wingate; Ellsworth, Strong, Carroll, Paterson, Read, Morris, and Bassett favored the clause. Bancroft, quoting a report by Paterson, said that Ellsworth declared appointments an executive function: "The advice of the senate does not make the appointment; the president appoints; there are certain restrictions in certain cases, but the restriction is as to the appointment and not as to the removal."[40] Adams' rough notes of the debate support this.[40a] Maclay accused several of his colleagues of recanting, and "that John Adams was the great converter." The vote on July 16, according to Maclay, stood at 10 to 10. Adams gave the casting vote for retaining the clause. The journal records no vote on this second reading, but gives on the third reading, that on July 18, a 9 to 9 vote on the removing clause, with the Vice President deciding for its retention, and a 10 to 9 vote on the passage of the bill, without Adams voting. Butler, against the clause on July 16, did not vote on the 18th; and Ellsworth abstained on the first call on July 18, because of Butler's absence, but did vote on the second call. This made the Vice President's vote unnecessary.

The Treasury Department bill came up in the Senate on July 30 and 31, and the opponents were able to have the removal clause struck out from the bill without a record vote. How it was done is not evident; for the two New York senators were now in attendance and they favored the clause, while Maclay was absent and the journal does not indicate other absences. The crucial vote in the Senate on the War Department bill came on August 4, when the supporters of the President's power were able to retain the clause by a 10 to 9 vote once more, but without the Vice President's vote, although Bassett and Paterson did not vote, while Maclay's absence was offset by Butler's vote, leaving the success of the opponents to the power on July 31 still unexplained.

Meanwhile the House had refused to accept the Senate's amendment to the Treasury Department bill; and after a futile committee of conference, the Senate on August 25 finally receded, again by a tie vote of 10 to 10, which the Vice President broke. This occurred although Maclay had returned and Dalton went over to his side,

while the failure of Grayson and Strong to vote neutralized each other; so that the vote which finally decided this important question, while it harmonizes with those of July 18 and August 4, still leaves uncertain the reason for the July 31 one. The only possible explanation seems to be that it was taken during the temporary absence from the chamber of some of the supporters of the presidential power.

LATER HISTORY OF TENURE OF OFFICE

IT IS not within the field of the present study to follow the question of tenure of office beyond the establishment, by such a close vote, of the precedent that was never successfully contested until the period of the Civil War, and then but temporarily. Restriction on the President's power of removal was declared unconstitutional in 1926. It may be said, however, that it was the precedent and its following through so many years that established the constitutionality of the sole power within those offices which are called "presidential," i. e. those in which the appointment must be with the advice and consent of the Senate; and the above review of the debate in the House shows that in the mind of Madison and others the clause was an act of legislation and the indirect expression did not do away with the fact that it was considered a grant of power by Congress. Congress has repeatedly throughout the century and a half of its existence asserted its control over the origin and limitation of offices, including removals. Anyone who cares to follow up the history of the matter will find, beside various excellent studies by Fish, Salmon, Hart, and others, a most thorough discussion of both sides of the question in Myers *v.* U. S., 272 U. S. 52, the case in which Chief Justice Taft, speaking for the court, declared the restraints upon the President's power of removal unconstitutional, and Justices McReynolds and Brandeis made elaborate dissents, with which Justice Holmes agreed.

ADAMS AND THE PRESIDENCY

THIS contest occurred before the public mind had quit being concerned over the question of titles, and in a measure the two matters were considered together, especially in regard to Vice President Adams' share in both. James Lovell wrote Adams on July 26, 1789, that he was accused of "deciding in favor of the power of the prime, because you look up to that goal." [41] Adams replied on September 1:

> That I look to that goal sometime, is very probable, because it is not far above me, only one step, and it is directly before my eyes, and that I must be blind not to see it. I am forced to look up to it, and bound by duty to do so,

because there is only the breath of one mortal between me and it. There was lately cause enough to look up to it, as I did with horror, when that breath was in some danger of expiring [Washington had been dangerously ill]. But deciding for the supreme was not certainly the way to render that goal more desirable or less terrible, nor was it the way to obtain votes for continuing in it, or an advancement to it. The way to have insured votes would have been to have given up that power. There is not, however, to be serious, the smallest prospect that I shall ever reach that goal. Our beloved chief is very little older than his second, has recovered his health, and is a much stronger man than I am. A new Vice-President must be chosen before a new President. The reflection gives me no pain, but, on the contrary, great pleasure; for I know very well that I am not possessed of the confidence and affection of my fellow-citizens to the degree that he is. I am not of Caesar's mind. The second place in Rome is high enough for me, although I have a spirit that will not give up its rights or relinquish its place. Whatever the world, or even my friends. . . . may think of me, I am not an ambitious man. . . . I am quite contented in my present condition, and should not be discontented to leave it.[42]

This indicates, among other things, a belief that Washington would be President the rest of his life; an opinion shared with Jefferson and Mrs. Warren (*see* pp. 205, 411, 499) and many others.

It was during this time, in July, that Adams and Sherman had a prolix correspondence upon the presidency. Sherman as we have seen, was for limiting the powers of the President, which he feared. Adams desired an increase of powers, with an absolute veto. He considered the President as being a republican monarch, as having during his term more power than any constitutional king:

But it is equally certain, I think, that they ought to have been still greater, or much less. The limitations upon them, in the cases of war, treaties, and appointments to office, and especially the limitation on the president's independence as a branch of the legislative, will be the destruction of this constitution, and involve us in anarchy, if not amended. . . . In our constitution the sovereignity,—that is, the legislative power,—is divided into three branches. The house and senate are equal, but the third branch, though essential, is not equal. . . . The legislative power, in our constitution, is greater than the executive; it will, therefore, encroach, because both aristocratical [Senate] and democratical [House] passions are insatiable. The legislative power will increase, the executive [the monarchical phase of the government] will diminish.

He deplored the participation of the Senate in the appointing power, because it lessened the responsibility of the executive, turned the minds of the people to the Senate in executive matters, excited ambition in the Senate, while involving that body "in reproach, obloquy, censure, and suspicion without doing any good," and it wasted the Senate's time.[43] With such belief, it was natural that the Vice President welcomed the opportunity to check the Senate's participation in the removal of officers. Madison, too, failed to share in

Sherman's fear. He wrote Randolph on May 31, 1789: "The danger of undue power in the President from such a regulation is not to me formidable. I see, and *politically feel* that that will be the weak branch of the Government." [44] The Madison of the Jay Treaty debate might not, however, have been willing to repeat this sentiment.

PUBLIC OPINION ON THE POWER

MADISON'S recognition of the importance of the decision is shown by the extent of his correspondence upon it. His correspondents supported him. Joseph Jones wrote on July 3, 1789: "I conceive no constructive powers should be admitted that serve more closely to unite the first Magistrate as the Executive with the Senate than are expressly prescribed by the constitution. If this is not guarded against uniformly in the progress of the government the Senate will become all powerfull." [45] Stuart wrote Washington on September 12, 1789: "It is perhaps somewhat singular, but the Opponents to the Government, appear more generally pleased with the construction of the Constitution, which rests the power of removal in the President, than the friends to it. The satisfaction however entirely reconciles the latter to it. Mr. Henry is the only one of the party, I have heard of, who disapproves of it." [46]

Henry and Samuel Adams in their correspondence with Senator Lee were the chief leaders to raise objection to the decision. Henry wrote on August 28, 1789, in the familiar strain: "While Impediments are cast in the way of those who wished to retrench the exorbitancy of power granted away by the constitution from the people, a fresh grant from them is made in the first moments of opportunity, & of a nature and extent too which full success in the Business of amendments could scarcely compensate. I mean the uncontrolled power of the President over the officers. See how rapidly power grows, How slowly the means of curbing it. That the president is to be accountable for the general success of government is precisely the principle of every Despotism." [47] Adams on August 29 considered it "natural to conclude that an Officer holding during Pleasure is removeable by the Power, whether vested in a single Person or a joint Number, which appointed him." [48]

Lee's letter to these men indicated, with a logic which is difficult to follow, his own constitutional objection to the power. Speaking of the right of the President to require information from the heads of departments, he added: "How ridiculous this, if it intended him the power to remove them from office at pleasure? What! vest a right to give political death, and say that the person so vested may

demand a paper from him over whom he can exercise destruction. The next attempt, and which will probably succeed, is to send forth all process in the name of the P. instead of the U. S. only." [49] It is notable that the objectors, without exception, disclaimed any fear of abuse of the power by Washington; but, alas! that noble man would not live forever, and it was not possible to expect successors equally upright. It is probable that the public view was influenced mainly by Washington's well established integrity, and not inclined to peer too far beyond.

The newspapers in general supported the power. The statement in the *Massachusetts Centinel* of July 1, 1789, is fairly typical; and that, after saying that "the decision of our national House of Representatives on a late important constitutional question, must establish their character as consistent Republicans," repeated the favorable arguments in the House debates, concluding that it "therefore appears plain, that it is more constitutional and safe, that the power of removing from office, should be vested in THE PRESIDENT, than in the Senate." Fenno's *Gazette of the United States*, listing the customs appointments in its issue of August 5, 1789, said that the President "has been pleased to nominate, and by, and with the advice consent of the Senate, to appoint . . . *To hold their commission during the pleasure of the President.*" The italics are mine, and that portion of the statement does not appear in other newspapers. This was only nine days after the enactment of the Department of Foreign Affairs, and Fenno was quick to voice the conviction of the general application of the power of removal which that act authorized.

WASHINGTON'S ATTITUDE

WASHINGTON'S own opinion is not shown in his surviving writings, but Sedgwick claimed that he was gratified by the outcome. Sedgwick wrote his wife on August 8, 1789: ". . . the information that the determination of the Legislature that executive officers should be removable by him is pleasing to him, . . . Indeed had that important question been lost I have reason to think he would almost have dispaired of the government. Yesterday I dined with him." [50]

COMMUNICATIONS BETWEEN PRESIDENT AND CONGRESS

IN AN earlier part the methods of inter-house communication have been mentioned (*see* p. 242). There was also the matter of the intercourse between the Congress and the executive. On May 7, 1789, the House resolved for a joint committee "on the mode of presenting addresses, bills, votes, or resolutions to the President of the United

States." [51] The Senate agreed the same day, and the committee made its report on May 14 in the Senate and the next day in the House. The report still lay for consideration when, on May 18, the Senate appointed Lee to join with a committee from the House to take to the President the first bill to be passed, that on oaths. The House on May 19 appointed two members, and on May 22 they presented the bill to Washington. On June 1 a message was received from the President by the House, informing of the signing of the act and returning it to the House, "from whence it originated." The clerk of the House then informed the Senate. Meanwhile, on May 18, the House went into committee of the whole on the mode of intercourse with the President; but further consideration was postponed from time to time until July 27, when it was resolved, in connection with the report on enrolling and signing bills, that the bills or resolutions should be laid before the President by the standing joint enrolment committee. The resolve also included the rule of making joint addresses to the President in the audience chamber in the presence of both Houses; but this audience chamber in Federal Hall was never used, and no joint addresses were made to Washington. It was this same resolve which prepared the way for the change from Department of Foreign Affairs to Department of State, with the custody of the laws. On July 31 both houses appointed members of the standing joint committee called for above; before which time a separate committee had been appointed for each bill.

On May 25 the House appointed a committee to consider the proper method of receiving bills or messages from the President. The Senate added its members the next day. On May 29 the committee reported, and it was resolved by both houses "That until the public offices are established, and the respective officers are appointed, any returns of bills and resolutions, or other communications from the President, may be received by either House, under cover, directed to the President of the Senate, or Speaker of the House of Representatives, as the case may be, and transmitted by such person as the President may think proper." [52] The President sometimes sent messages or acts by Lear, or by Jay or Knox. An entry in the executive journal of the Senate of August 3, says that "agreeably to order, Mr. Lear was admitted to the bar, and delivered a message from the President"; but Maclay wrote under date of August 20:

> Mr. Lear has for two days past been introduced quite up to the Vice-President's table to deliver messages. Mr. Izard rose to know the reason of this. Our Vice-President said he had directed it to be so, and alleged, in a silly kind of manner, that he understood the House so. There was some talk

about it a few days ago; but I understood the sense of the Senate to be that the 'head of a department,' if he came to deliver a message from the President, should be admitted to the table; but a private secretary received at the bar. It is not one farthing matter; but the Clerk of the Representatives is received at the bar, and I think him a more respectable character than any domestic of the President. Our Vice-President, however, never seems pleased but when he is concerned in some trifling affair of etiquette or ceremony. Trifles seem his favorite object, and his whole desire to be *totas in illis*.[53]

Evidently Lear continued to get up to the Vice-President's table, for the executive journal for several years says, on and off, that the President's secretary delivered communications "to the Vice-President"; but before the end of Washington's administration, the statement was uniformly merely of a message from the President by his secretary, so it seems probable that before Adams became President, the present custom of receiving messengers at the bar became the rule. There is nothing in the House journals to indicate that it was ever otherwise there, where a message was either "received," or "delivered in"; in the latter case, the messenger "withdrew," there being nothing in the character of the communications suggesting that the use of one of these phrases rather than the other had any significance as to the manner of receiving the messenger.

The decision respecting the right or duty of heads of departments to attend on the floor of the House has been shown in an earlier portion of this work (*see* p. 340).

THE SENATE AND EXECUTIVE COMMUNICATIONS

THE PARTICULAR relations between the President and the Senate made of special importance the establishment of the intercourse between them when the Senate was acting executively. The Constitution provides that both in the making of treaties and in the appointment of officers the President shall act with the advice and consent of the Senate. There is nothing in the debates of the Convention of 1787 that indicates that "advice and consent" had any meaning other than that usually attached to the words; but the power of nomination being in the President only, the advice and consent of the Senate did not relate to this, but was confined to the one act of approval or rejection. As respects treaties, the advice and consent might well mean separate actions. It is evident that Washington attempted to carry out the relationship along these lines.

The Senate sat for the first time in executive session on May 25, 1789, when Washington sent in a message respecting certain Indian treaties made during the last days of the Confederation: "These treaties, with sundry papers respecting them, I now lay before you,

for your consideration and advice, by the hands of General Knox under whose official superintendence the Business was transacted; and who will be ready to communicate to you information upon such points as may appear to require it."[54] According to Maclay, the Senate was in "committee," but "Knox advanced and lay the papers—being very bulky—on the table."[55] Knox's report to the President was read and tabled. The executive journal says that he delivered the papers "into the hands of the Vice-President and withdrew." Evidently no attempt was made to question him, and not until June 12 did the Senate appoint a committee to consider the communication.

Jay in his turn, as *ad interim* secretary for foreign affairs appeared on June 11 with a message about consuls under the French treaty. Jay was "to communicate to you whatever official papers and information on the subject he may possess and you may require."[56] Again the message and papers were presented and the secretary withdrew, and the communication was laid on the table. However, at the request of the Senate, Jay attended on July 22 with the papers necessary for full information respecting the consuls, and "made the necessary explanations,"[57] whereupon the Senate entered into a resolution on the subject. This seems to be a case of a department head being questioned on the floor of the Senate; if so, it is probably the only instance, unless Knox was questioned when he appeared with the President in August, for which there is no direct evidence. Maclay was absent at this time and we have no information respecting the character of the "necessary explanations."

THE SENATE AND APPOINTMENTS TO OFFICE

JAY CAME again on June 16 with the nomination of William Short "to take charge" of affairs at Paris during Jefferson's absence. Washington wrote: "I nominate William Short, Esquire, and request your advice on the propriety of appointing him."[58] On the 18th the Senate "*Resolved,* That the consent of the Senate to the President's nomination of officers be given by ballot; the negative being shown by a blank ballot, and the affirmative by the word 'aye.'"[59] Maclay says that the motion for voting by ballot came from him. He defended the idea because open voting might bring presidential displeasure to those who opposed and the antagonism of the nominee. Adams favored the *viva voce* mode, and seemed to think the Senate must also decide on Short's rank; but in the end the advice and consent given merely echoed Washington's words of "to take charge." Maclay noticed that the Senate was not asked to pass on Jefferson's desire to leave: "Granting this power to be solely with the President,

the power of dismissing ambassadors seems to follow, and some of the courtiers in the Senate fairly admit it. I chose to give the matter a different turn, and delivered my opinion; That our concurring in the appointment of Mr. Short fully implied the consent of the return of Mr. Jefferson; that if we chose to prevent the return of Mr. Jefferson, it was only to negative the nomination of Mr. Short or any other one to fill his place." [60]

This was before the question of the power of removal came formally before the Senate. This balloting was resented elsewhere as a part of the Senate's secrecy and senators' unwillingness to be personally responsible for their actions. Vining in the House on June 19 in arguing against the Senate's participation in the power of removal said: "And this they could do under an impenetrable veil; they could do it without being in the least degree responsible. Let not gentlemen talk of their responsibility, and compare it with the President's. We do not predict shadowy and chimerical evils. What we fear has actually happened; the mischief of precedent is already established; the Senate declare their concurrence in appointments, by ballot. In this secret mode, through cabals, through intrigue, they will be able to defeat every salutary agency of the Executive, in seeing his instruments perform their duty." [61] After the ballot on Short the Senate resolved that it did "advise and consent" to the appointment, and transmitted an authenticated copy of the consent to Jay to communicate to the President.

On August 3 a list of 102 customs nominations was sent in by Lear, being of the first officials authorized by a law of Congress; and thereafter this method of communicating nominations was always used, the intermediary of a department head being dropped, and the confirmation was also laid directly before the President by the secretary of the Senate. When these nominations came up that same day a motion to reconsider the rule on approval of nominations by ballot was rejected; but it was "agreed to proceed by ballot, a caveat being assented to, that it should not be considered as a precedent." [62]

REJECTIONS

ON THIS same day it was moved to appoint a committee to wait on the President and confer on the "mode of communication, proper to be pursued between him and the Senate, in the formation of treaties, and making appointments to offices." [63] It was postponed, but on the 6th a committee was appointed for this purpose. Izard, King, and Carroll were its members. Among the nominations on the 3rd had been that as naval officer at Savannah of Benjamin

Fishbourn, a veteran who was originally from Pennsylvania and had gone to Georgia as Wayne's aide. The Senate rejected him on August 4. On the 5th a motion was made that the advice and consent to the appointment of officers "should be given in the presence of the President." This was postponed and never voted on. On August 7, by a message written the day before, a substitute nomination was made; but also the President in evident displeasure criticized the rejection: "Whatever may have been the reasons which induced your dissent, I am persuaded they were such as you deemed sufficient. Permit me to submit to your consideration, whether on occasions, where the propriety of nominations appear questionable to you, it would not be expedient to communicate that circumstance to me, and thereby avail yourselves of the information which led me to make them, and which I would with pleasure lay before you. Probably my reasons for nominating Mr. Fishbourn may tend to shew that such a mode of proceeding in such cases might be useful. I will therefore detail them." [64] The consent to the second nomination was made at once, and on August 10 a motion to commit the message on Fishbourn was postponed to await the report of the committee appointed on the 6th.

It is probable that the committee to confer with the President, and the proposal to have him present during the consideration of candidates, are connected with the opposition with which voting by ballot on nominees had been met, the problems of decision on so long a list of nominations, and especially the rejection of Fishbourn. Washington had received an anonymous letter on April 24: "It is true the senate have the power of negativing your appointments; but your Excellency may be assured, and a little enquiry will convince you, that the most respectable of that body have already received such proofs of undue influence and even bargains among their own members, to support each others friends as to be fully impressed with the belief, that it is not best for that body to have much agency in the business. As their fame is not at all interested in the appointments and the good or ill consequences of them will be considered as proceeding entirely from your Excellency, it is thought they will not often take it upon them to interpose their negative." [65] This, though only an undoubtedly prejudiced opinion, is indicative of a belief present in the public minds, like the similarly anonymous communications then so prevalent in the newspapers, in which some of the most important characters of the time participated.

Unfortunately, Maclay being absent, we have no first-hand knowledge of what happened in the Senate. Professor Salmon states

that the Georgia senators objected to Fishbourn because they preferred another man, and that this was the first case of senatorial courtesy. She does not give her authority for the statement. Fishbourn complained to Washington, producing evidence in defense of his record, and he may also have had it printed in some newspaper, though no paper has been found which contained it. It is possible that Jackson's use of the term "published" in the letter given below may not have meant more than the presentation of it to the President. Fishbourn wrote on September 25: "I beg leave to request the favor of your Excellency to signify to me, your approbation of my having sufficiently done away any prejudices, you may have imbibed in consequence of representations having been made against me in the Senate." [65a] In reply on the same day Washington directed William Jackson of his staff to "inform you that when he nominated you for Naval Officer of the Port of Savannah he was ignorant of any charge existing against you, and, not having, since that time, had any other exhibit of the facts which were alleged in the Senate than what is stated in the certificates which have been published by you, he does not consider himself competent to give any opinion on the subject." [66] These letters indicate that the rejection was based on charges against Fishbourn, rather than as a matter of senatorial courtesy.

The Senate on August 5, 1790, rejected the nomination of a vice consul for Tenerife; but no others until John Rutledge was given a recess appointment as chief justice in 1795. There were rumors of mental unsoundness, but it is noticeable that of the ten men who voted to confirm him, eight had been of the ten who voted to reject the Jay Treaty. Rutledge had spoken against the treaty. In 1794, when Washington advanced Richard Harrison from district attorney to judge at New York, the Senate kept postponing the vote until, some three weeks later, Washington withdrew the name at Harrison's "request," and the new nominee was confirmed the next day. Harrison was a friend of Hamilton, and it is possible that Senator Burr's antagonism may have been instrumental here. In the last days of Washington's presidency another Savannah nominee was rejected.

WASHINGTON'S SENTIMENTS ON SENATE INTERCOURSE

IN THE *Washington Writings* there is a paper of "Sentiments expressed to the Senate Committee on the mode of communications on treaties and nominations," dated August 8, 1789. In it Washington decided:

> In all matters respecting Treaties, oral communications seem indispensably necessary; . . . Oral communications may be proper also for discussing the

propriety of sending Representatives to foreign Courts, and ascertaining the Grade or character in which they are to appear and may be so in other cases. But it may be asked *where* are these oral communications to be made? If in the Senate Chamber, how are the President and Vice President to be arranged? The latter by the Constitution being ex-officio President of the Senate. Would the Vice President be disposed to give up the Chair? if not Ought the President of the United States to be placed in an awkward situation when there? . . . With respect to Nominations My present Ideas are that as they point to a single object unconnected in its nature with any other object, they had best be made by written messages. In this case the Acts of the President, and the Acts of the Senate will stand upon clear, distinct and responsible ground. Independent of this consideration, it could be no pleasing thing I conceive, for the President, on the one hand to be present and hear the propriety of his nominations questioned; nor for the Senate on the other hand to be under the smallest restraint from his presence from the fullest and freest inquiry into the Character of the Person nominated. The President in a situation like this would be reduced to one of two things; either to be a silent witness of the decision by Ballot, if there are objections to the nomination; or in justification thereof (if he should think it right) to support it by argument. Neither of which might be agreeable; and the latter improper; for as the President has a right to nominate without assigning his reasons, so has the Senate a right to dissent without giving theirs.[67]

These sentiments do not entirely agree with the position taken in the message on Fishbourn's rejection. Washington sent a copy of this opinion to Madison the next day:

I was assured by the Committee, that the only object the Senate had in view was to be informed of the mode of communication which would be most agreeable to the President, and that a perfect acquiescence would be yielded thereto. But I could plainly perceive notwithstanding, that oral communications was the point they aimed at. Indeed one of the Gentlemen candidly declared that a great object with him, for wishing this, was, to effect a viva voce vote in that body (he added however that he was not without hopes of accomplishing this without). To this I replied, finding all three were opposed to the ballotting system, that nothing would sooner induce me to relinquish my mode of nominating, by written messages, than to accomplish this end. Thus the matter stands for my further consideration. What do you think I had best do? I am willing to pursue that line of conduct which shall appear to be most conducive to the public good, without regard to the indulgence of my own inclination which (I confess, and for other reasons in addition to those which are enumerated, although they are secondary) would not be gratified by personal nominations.[68]

On August 10 there was a second conference with the committee and his sentiments were further expressed upon the place of conference and the manner of consultation. Both of these should vary with the conditions: "If these remarks be just, it would seem not amiss, that the Senate should accommodate their rules to the uncer-

tainty of the particular mode and place that may be preferred; providing for the reception of either oral [or] written propositions, and for giving their consent and advice in either the *presence* or *absence* of the President, leaving him free to use the mode and place that may be found most eligible and accordant with other business which may be before him at the time." [69]

SENATE RESOLVE ON INTERCOURSE

THE COMMITTEE made its report to the Senate on August 20, the Senate considering and adopting it the next day:

Resolved, That when nominations shall be made in writing by the President of the United States to the Senate, a future day shall be assigned, unless the Senate unanimously direct otherwise, for taking them into consideration. That when the President of the United States shall meet the Senate in the Senate Chamber, the President of the Senate shall have a chair on the floor, be considered as at the head of the Senate, and his chair shall be assigned to the President of the United States. That when the Senate shall be convened by the President of the United States to any other place, the President of the Senate and Senators shall attend at the place appointed. The Secretary of the Senate shall also attend to take the minutes of the Senate. That all questions shall be put by the President of the Senate, either in the presence or absence of the President of the United States; and the Senators shall signify their assent or dissent by answering, viva voce, ay or no.[70]

This last decision did away with the voting by ballot.

THE SENATE AND DIPLOMATIC SERVICE

SO FAR as the Constitution touches upon foreign relations, it places them in the care of the President except as to the Senate's participations in appointments and in the making of treaties; and this care is emphasized in the provisions of the act to establish the Department of Foreign Affairs, which later became the Department of State. A corollary of this was the power of the President to nominate officers for diplomatic positions,though the positions had not been established by law, as was required for domestic ones. In the appointment of Short, Vice President Adams is said by Maclay to nave raised the question of the appointee's rank; and later in Washington's first administration the question of the Senate's power over the character of the diplomatic service as well as over the men to fill it came up for decision.

It will be noticed that in his sentiments to the Senate committee on the relations between the President and the Senate Washington spoke of the oral communications that might be proper "for discussing the propriety of sending Representatives to foreign Courts, and ascer-

tain the Grade or character in which they are to appear." It is evident, however, that if this was Washington's original idea of the Senate's power in the matter, he later changed it. Anticipating some such drive on the part of the Senate, the President required of Jefferson, probably verbally, at least no written request is now available, an opinion on the subject. The secretary of state replied on April 24, 1790:

> I think the Senate has no right to negative the *grade*. . . . The transaction of business with foreign nations is Executive altogether. It belongs then to the head of that department, except as to such portions of it as are specially submitted to the Senate. *Exceptions* are to be construed strictly. . . . the Senate is not supposed by the Constitution to be acquainted with the concerns of the Executive department. It was not intended that these should be communicated to them; nor can they therefore be qualified to judge of the necessity which calls for a mission to any particular place, or of the particular grade, more or less marked, which special and secret circumstances may call for. All this is left to the President. They are only to see that no unfit person be employed. It may be objected that the Senate may by continual negatives on the *person*, do what amounts to a negative on the *grade*, & so indirectly defeat this right of the President. But this would be a breach of trust; . . . If the Constitution had meant to give the Senate a negative on the grade or destination, as well as the person, it would have said so in direct terms, & not left it to be effected by a sidewind. It could never mean to give them the *use* of one power thru the *abuse* of another.[71]

The method here condemned was the one which Maclay considered as being within the power of the Senate to prevent the absence of Jefferson from his post at Paris (*see* p. 395).

Some time after this, on February 18, 1791, Washington informed the Senate that he had intended to appoint David Humphreys, who was in Spain on a private mission, chargé at Lisbon; but the Portuguese government objected to the low grade, and consequently he nominated him as minister resident. Maclay grumbled that the "President sends first, and asks our advice and consent afterward";[72] but confirmation was given without question on February 21. This was the first minister for permanent residence that was appointed under the new government. Probably the significance of it escaped the Senate at the time; at any rate, when on December 2, 1791, in the Second Congress, Washington sent to the Senate the nominations of Thomas Pinckney, Gouverneur Morris, and William Short as ministers at London, Paris, and The Hague respectively, consideration was postponed from day to day until the 29th, when it was moved "That, in the opinion of the Senate, it will not be for the interest of the United States to appoint Ministers Plenipotentiary to reside permanently at foreign Courts."[73]

On December 30 the proposition was modified to "That the Senate do not possess evidence sufficient to convince them that it will be for the interest of the United States to appoint Ministers Plenipotentiary to reside permanently at foreign Courts." [74] This was referred to a committee of five, which reported on Jan. 6, 1792, that there was "now a special occasion for appointing a minister to the Court of London," and also submitted the information received relative to The Hague. On motion, the committee proceeded to state all the "information communicated to them relative to the propriety of appointing" ministers to reside abroad.[75] The motion that such appointments would not be for the interest of the United States was renewed and negatived without a record vote. Although the committee seems to have made no recommendation respecting the French mission, a vote was now taken on this, which passed by 19 to 7. On January 12 a vote was taken on confirming Morris for this position. Consent was given by 16 to 11. Pinckney was then confirmed without a record vote. On January 16 the advisability of appointing a minister to The Hague was decided 14 to 13 by the Vice President's casting vote. Short was then confirmed by 15 to 11.

Jefferson wrote an explanation of the affair to Pinckney and Short. To the former on January 17, 1792, he said: "Some members of the Senate, apprehending they had a right of determining on the *expediency* of foreign missions, as well as the *persons* named, took that occasion of bringing forward the discussion of that question, by which the nominations were delayed two or three weeks." [76] To Short on January 28: "Those whose personal objections to Mr. Morris overweighed their deference to the President finding themselves a minority, joined with another small party who are against all foreign appointments, & endeavored with them to put down the whole system rather than let this article pass." [77] Jefferson's statement to Short however is not entirely supported by the votes. There is no doubt that certain senators objected to Morris because of his character; Sherman, Strong, and probably Wingate at least. In the King Papers there is a report of Sherman's denunciation of him; and these three senators are recorded in the negative in all the votes. The other consistent negatives are Burr of New York, Few of Georgia, and Robinson of Vermont; while Cabot of Massachusetts, Lee, Monroe, Gunn of Georgia, and Stanton of Rhode Island, who had voted for a French mission, did not favor Morris for it, and Bradley of Vermont, who disapproved of a mission, gave Morris his vote. Objections to Morris, however, do not explain the only tie vote, which was on the mission to The Hague; here Foster, Izard, and Ruth-

erford, who had approved of the other missions and also of Morris, claimed the right to pass judgment on the advisability of the less important position of minister resident in The Netherlands, also Lee, Monroe, and Stanton, who had approved of the French mission though not of Morris.

Burr was evidently the head of the affair, whether animated by a political antagonism to Morris (there could be no question of morals involved here) or to a general desire to cause trouble. It is not likely that he had any real interest in the senatorial rights. Jay wrote Washington on January 27, 1792: "Mr. Burr's motion gave me much Concern, and the Issue of it much Satisfaction. I regret that the Senate were not more unanimous. Similar attempts in future may be encouraged by their having divided so equally on the Question. It is in my opinion a Question very important in its Consequences, so much so, that if the Senate should make and *retain* that Encroachment on the Executive, I should despair of seeing the Government well administered afterwards." [78] Washington replied on March 6: "Mr. B—'s motion, alluded to in your letter of the 27th. of January, is only the prelude, I conceive, to what is intended to follow, as occasions shall present themselves." [79]

LATER QUESTIONING OF DIPLOMATIC POSITIONS

THE PRESIDENT was perhaps unnecessarily concerned, though the Senate did not through this vote establish a firm precedent, as was the case in the removal affair. When Jay was nominated on April 16, 1794, to negotiate with Great Britain, a motion was made in the Senate on April 19 that the appointment was inexpedient and unnecessary, since the regular minister at London was sufficient for the purpose; also that "to permit Judges of the Supreme Court to hold at the same time any other office or employment, emanating from and holden at the pleasure of the Executive, is contrary to the spirit of the Constitution, and, as tending to expose them to the influence of the Executive, is mischievous and impolitic." [80] This was defeated by 17 to 10; Burr and Monroe voted for it. Jay was then confirmed by 18 to 8. On May 30, 1797, after Adams became President, the advisability of appointing a minister to Prussia was challenged, but the vote for it was 18 to 11.

On February 25, 1809, when Short was nominated to the Russian mission by Jefferson, Bradley of Vermont, who had supported Burr in 1792, moved that it was inexpedient and unnecessary. This motion was withdrawn, but Short was unanimously rejected. On March 6, 1809, Madison nominated J. Q. Adams as minister to Russia,

when the mission was voted inexpedient by 17 to 15; but the nomination was renewed on June 26, 1809, and confirmed by 19 to 7, the question of expediency not being raised. On April 18, 1810, Bradley was supported in a motion against a consul at Tunis, and at the end of that Congress a nomination for one at Tripoli was not acted upon. On November 18, 1811, the Senate declared the appointment of a consul at Buenos Aires inexpedient and refused to consent to an appointment. On March 7, 1816, the Senate objected to the appointment of William Pinkney for a special mission to The Two Sicilies by a vote of 14 to 16; but on April 20 Madison sent it in again, presuming "that further information may have changed the views of the Senate" on the importance and expediency of the mission. Pinkney was then confirmed by 18 to 15. On the other hand, on King's motion, the Senate unanimously resolved on March 3, 1821, that in its opinion the present interest and future welfare of the United States called for the appointment of "an able and diligent minister" at Rio Janeiro; and Monroe's nominations in 1823 of ministers to various new Spanish-American states were confirmed.

PANAMA CONGRESS

THE MATTER culminated in the contest over the Panama Congress, though the question then was so tied up with slavery that it cannot be considered as a clean-cut matter of senatorial rights. President Adams sent in a message on December 26, 1825, in which he declared that the President possessed the constitutional right to accept an invitation to the Congress, but he had deferred the appointments until Congress met in order to get the Senate's approbation and an appropriation. On December 28 Branch of North Carolina moved that the President possessed no power to appoint ambassadors or other public ministers but with the advice and consent of the Senate, except where vacancies may happen during a recess. This never came to a vote. Macon from the committee of foreign relations reported on January 16, 1826: "Very different, however, is the case, when it is proposed to create new offices by nomination, or to despatch Ministers to foreign States for the first time, or to accomplish by such missions objects not specially disclosed, or under circumstances new, peculiar, and highly important. In all these cases, instead of confining their inquiries to the mere fitness of the persons nominated to fill such offices, it is not only the right, but the duty of the Senate, to determine, previously, as to the necessity and propriety of creating the offices themselves; . . ." [81] The committee proposed a resolve that it was not expedient to send

ministers to the Panama Congress. On March 14, after much debate, various proposed substitutes, and attempts to make public papers submitted by the President in confidence, this resolve was rejected by 24 to 19, and the three nominees confirmed by 27 to 17, 28 to 18, and 28 to 16. The matter came up again on February 12, 1827, on the nomination of the successor of one of the delegates to the congress. Benton renewed the motion of nonexpediency, which was rejected at once by 25 to 22, and the nominee confirmed by 30 to 17. This review of subsequent history of the question shows that though the Senate might continue to question, it ended usually by yielding to the President, just as it did in the first instance.

THE SENATE AND NEGOTIATION OF TREATIES

WASHINGTON on August 21, 1789, sent word by Lear that he would meet the Senate the next day in its chamber to advise about the treaty *to be* negotiated with the southern Indians. He came attended by Secretary Knox and, according to the executive journal, laid before the Senate "a state of facts, with the questions thereto annexed, for their advice and consent. . . . Whereupon the Senate proceeded to give their advice and consent." The session was resumed on August 24, and the Senate having answered yes or no to the questions, the President withdrew. The withdrawal was final, for never again did Washington or any of his successors meet with the Senate for those oral communications which so recently before Washington had considered "indispensably necessary." There is no comment in his surviving papers or in those of Knox upon the meeting. The acerbities of Maclay are our main source of information upon the historic occasion which became so important in establishing a precedent in reverse.

Maclay wrote that the papers the President brought were read by the Vice President, but had to be reread. He also considered that the heads to which the advice and consent were asked were "so framed that this could not be done by aye or no." Adams put the first question:

> There was a dead pause. . . . I rose reluctantly, indeed, and, from the length of the pause, . . . and the proceeding of our Vice-President, it appeared to me that if I did not no other one would, and we should have these advices and consents ravished, in a degree, from us. Mr. President: . . . The business is new to the Senate. It is of importance. It is our duty to inform ourselves as well as possible on the subject. I therefore call for the reading of the treaties and other documents alluded to in the paper before us. I cast an eye at the President of the United States. I saw he wore an aspect of stern displeasure. . . . The business labored with the Senate. There appeared an evident reluctance to proceed.

Several of the questions were postponed. Debate arose on the merits of the business:

I had at an early stage of the business whispered Mr. Morris that I thought the best way to conduct the business was to have all the papers committed. My reasons were, that I saw no chance of a fair investigation of subjects while the President of the United States sat there, with his Secretary of War, to support his opinions and overawe the timid and neutral part of the Senate. Mr. Morris hastily rose and moved that the papers communicated to the Senate by the President of the United States should be referred to a committee of five, to report as soon as might be on them. . . . I rose and supported the mode of doing business by committee; . . . I spoke through the whole in a low tone of voice. Peevishness itself, I think, could not have taken offense at anything I said.

As I sat down, the President of the United States started up in a violent fret. "*This defeats every purpose of my coming here!*" were the first words that he said, He then went on that he had brought his Secretary of War with him to give every necessary information; that the Secretary knew all about the business, and yet he was delayed and could not go on with the matter. He cooled, however, by degrees. Said he had no objection to putting off this matter until Monday [this first conference was on Saturday], but declared he did not understand the matter of commitment. He might be delayed; he could not tell how long. He rose a second time, and said he had no objection to postponement until Monday at ten o'clcok. By the looks of the Senate this seemed agreed to. A pause for some time ensued. We waited for him to withdraw. He did so with a discontented air. Had it been any other man than the man whom I wish to regard as the first character in the world, I would have said, with sullen dignity.

I can not now be mistaken. The President wishes to tread on the necks of the Senate. Commitment will bring the matter to discussion, at least in the committee, where he is not present. He wishes us to see with the eyes and hear with the ears of his Secretary only. The Secretary to advance the premises, the President to draw the conclusions, and to bear down our deliberations with his personal authority and presence. Form only will be left to us. This will not do with Americans. But let the matter work; it will soon cure itself.

August 24th, Monday. . . . The President wore a different aspect from what he did Saturday. He was placid and serene, and manifested a spirit of accommodation; declared his consent that his questions should be amended. . . . The fourth article consisted of sundry questions. I moved pointedly for a division. Got it. Voted for the first and opposed the second part. A long debate ensued, which was likely to end only in words. I moved . . . yet I was not seconded. . . . The arguments I used on this subject were so plain I need not set them down. Yet a shamefacedness, or I know not what, flowing from the presence of the President, kept everybody silent.[82]

Maclay's state of mind as bearing on this account may be inferred from his final entry in the diary of that day:

Just as the Senate had fairly entered on business, I was called out by the

doorkeeper to speak to Colonel Humphreys. It was to invite me to dinner with the President, on Thursday next, at four o'clock. I really was surprised at the invitation. It will be my duty to go; however, I will make no inferences whatever, I am convinced all the dinners he can now give or ever could will make no difference in my conduct. Perhaps he knew not of my being in town; perhaps he has changed his mind of me. I was long enough in town, however, before my going home. It is a thing of course, and of no consequence; nor shall it have any with me.[83]

None the less, Maclay was right in his attitude; and it is probable that the President recognized this and that it was not only more compatible with his own dignity, but also with the rights of the Senate, that it should consider treaties as a separate body and under conditions commensurate with this independence.

SENATE CONSIDERATION OF TREATIES

BEFORE the session adjourned, the Senate considered some Indian treaties framed before the new government began, and gave advice and consent respecting their ratification and execution, making use of committees in the consideration, thus establishing the precedent of considering Indian treaties like foreign ones, and also the committee system. The evident lack of success of the conference with the President did not put a stop at once to preliminary advice from the Senate as to treaties, but the advice was sought by message. On February 9, 1790, Washington referred to the northeastern boundary, saying ". . . *in this instance* [my italics] I think it adviseable to postpone any negotiations on the subject, until I shall be informed of the result of your deliberations, and receive your advice as to the propositions most proper to be offered on the part of the United States." [84] The Senate advised. On August 4, 1790, a message relating to the advice of the year before on Creek negotiations, stated that the negotiations were in train, but it was desired to add a secret article; and consent was given to the draft submitted.

This Creek treaty, the first framed under Washington's administration, was laid before the Senate on August 7. A motion to refer it to a select committee was defeated, as was also a motion to permit dissentients on the final vote on a treaty to record their reasons. The treaty was then confirmed. This is the first time that a vote of the Senate in connection with the advice on treaties is stated to be by a two-thirds vote, though in the case of the consent, on July 28, 1789, of the ratification of a French consular convention negotiated by Jefferson in 1788, the vote was said to be unanimous. There is nothing to indicate that the approval of the earlier Indian treaties, or the advice given on the Creek treaty in August 1789, or on the

secret article later, or that concerning negotiations on the northeastern boundary was by other than a majority vote. Whether the Senate was thus differentiating between the preliminary advice and final consent is merely a matter of interesting speculation, especially as the action was not always consistent.

At about the same time, Washington asked the Senate's advice about enforcing the treaty of Hopewell (1785) with the Cherokees, or entering upon new negotiations for a cession of the land upon which the whites had settled and an annuity as compensation. The Senate advised, without a two-thirds vote being stated, that the latter be done at the President's "discretion," limiting the amount of the annuity to $1,000, and advising that the new boundary be solemnly guaranteed. Later, by a two-thirds vote, the Senate approved of the treaty itself, a committee reporting that the terms harmonized with the President's instructions, which in turn were founded upon the advice and consent of the Senate. On January 19, 1791, Washington laid a French protest against the tonnage act before the Senate, with Jefferson's report thereon, adding: "I recommend the same to your consideration, that I may be enabled to give it such answer as may best comport with the justice and interest of the United States."[85] The Senate gave its advice on February 26, without mention of a two-thirds vote.

On January 11, 1792, Washington sent to the Senate the nomination of Carmichael and Short to negotiate with Spain on the navigation of the Mississippi, asking no advice but merely announcing the purpose of the commission. The Senate ratified the nomination; then on March 7 Washington announced the desire to include the negotiation of a commercial treaty in the instructions, and asked the Senate whether it would advise to the extension of the powers of the commission, and would consent "to the ratification of a treaty which shall conform" to the submitted instructions, should such a one be entered upon.[86] On March 16 the Senate, by a two-thirds vote, gave its consent and promise accordingly. Finally, on May 8, 1792, the President asked if the Senate would approve of a convention with Algeria for $40,000 to ransom thirteen Americans and an annual bribe of $25,000. "Or is there any and what greater or lesser sum which they would fix on as the limit beyond which they would not approve the ransom" and the annuity.[87] The Senate voted $40,000 for ransom, $40,000 to conclude peace, and an annual sum of $25,000.

This was evidently the last time that Washington asked the advice and consent of the Senate upon the negotiation of treaties. Thereafter he merely submitted treaties already concluded; what-

ever share the Senate had in the preliminaries was confined to passing upon the nomination of men who were to negotiate, and not even this in the case of some Indian agreements. The precedent was established, and the instances since to the contrary have been very rare. Wright in 1922 placed them at ten.[87a] This has not precluded the advice of individual senators or committee contacts. The Senate established with the Jay Treaty its right to alter completed treaties.

ADDRESSES IN STATE

WASHINGTON went in state to deliver orally his messages at the opening of each session of Congress. His diary describes the event on January 8, 1790:

> According to appointment, at 11 o'clock, I set out for the City Hall in my coach, preceded by Colonal Humphreys and Majr. Jackson in uniform (on my two white horses), and followed by Messrs. Lear and Nelson, in my chariot, and Mr. Lewis, on horseback, following them. In their rear was the Chief Justice of the United States [as acting secretary of state] and Secretary of the Treasury and War Departments, in their respective carriages, and in the order they are named. At the outer door of the hall I was met by the door-keepers of the Senate and House, and conducted to the door of the Senate Chamber; and passing from thence to the Chair through the Senate on the right, and House of Representatives on the left, I took my seat. The gentlemen who attended me followed and took their stand behind the Senators; the whole rising as I entered. After being seated, at which time the members of both Houses also sat, I rose (as they also did), and made my speech; delivering one copy to the President of the Senate, and another to the Speaker of the House of Representatives—after which, and being a few moments seated, I retired, bowing on each side to the assembly (who stood) as I passed, and descending to the lower hall, attended as before, I returned with them to my house.[88]

To these addresses the houses made replies, following the British custom, which, with increasing political acrimony, became matters of contest, but were continued year by year until Jefferson became President. The reply of each house was read to the President by the head of the house in the presence of the members, usually in the presidential mansion, and there was a brief response. Jefferson, in the interest of democratic simplicity, discarded the custom entirely, sending in written messages only and receiving no replies. Wilson revived the custom of oral messages, but no replies are made.

CONFEDERATION SURVIVALS

BOTH Congress and the executive were heirs of the Confederation and of its sole organ, the Continental Congress, but the estate was a small one. The Constitution merely said that the financial obligations of the Confederation should remain as valid under the new

government as they had been under the old one. The surviving elements of the first attempt at Union were the commissions to settle the state accounts with the general government, the Northwest Territory, the land ordinance, and the executive bureaus. The First Congress on August 5, 1789, took over the board of commissioners for the settlement of accounts; and on August 7, 1789, adapted the Northwest Ordinance to the new Constitution, but this consisted merely in provisions for the appointment of the officials and for the governor to communicate with the President. In both these acts there was no attempt to reënact the earlier ordinances, the continued validity of which was taken for granted. That this was considered to be the case is evident from the fact that there was no general legislation on the public land or change made in the ordinance of 1785 until 1796, the control over the public land passing to the Department of the Treasury under the act creating it.

The executive bureaus of the Confederation have been described in an earlier section. After March 4, 1789, the officials continued to serve until replaced by those authorized under the laws creating the new departments. Thus, Jay remained at the head of the Office for Foreign Affairs, and was referred to as secretary for foreign affairs in the executive journal of the Senate; while Knox as secretary at war addressed the Senate from the War Office. The organization of the finances continued also, the three members of the Board of Treasury, secretary of the board, treasurer, comptroller, and auditor serving on throughout the early months of the new government. They had few or no funds to handle, and though the collection of revenue from imposts commenced a month before the new Treasury Department began to function, it is not likely that funds were available out of this revenue; but from March 3 to August 3, 1789, the Board of Treasury issued over twenty warrants to the amount of $27,742.56. No payments were made on these, however, and new warrants were issued by the new department later under the act of September 29, 1789, which included an appropriation to discharge "the warrants issued by the late board of treasury, and remaining unsatisfied." Also, the first report of revenue and expenditures by the department lists an additional total of $37,311.20 paid for expenditures in relation to the late government, a portion of which expenses accrued after March 4, 1789.[89] On the other hand, there are two accounts in the Knox Manuscripts which credit Hillegas with payments to the staff of the old War Office for the April–June salaries in 1789, one of these including part of Knox's own salary. The accounts are dated July 20 and August 4, 1789. Knox may have

advanced the money to the clerks on the warrants, but the accounts leave the impression of cash payment.[90] It is possible, therefore, that some warrants, besides those mentioned in the report of the new department, were issued and also discharged out of available funds before national revenue was at hand.

The service thus rendered was probably extra-legal; no law was passed continuing the officials after March 4, 1789, though the above act of September 29 recognizes their existence; nor is there any extant executive order on the subject. The Postoffice also remained in function, and for that there was on September 22, 1789, an act for its temporary *establishment*, the term used indicating, unlike the expressions respecting the Northwest Ordinance, that there was a substitution for the old organization rather than a continuance of it.

PRESIDENT OF THE OLD CONGRESS

VARIOUS attempts have been made to show that George Washington was not the first President of the United States, but that the presidents of the "United States in Congress assembled" under the Articles of Confederation have a right to be considered his predecessors. Without discussing here the futility of any such claim, it may be considered that so far as any one person was head of the earlier Union it was the president of Congress. Especially, his social position as such was recognized. He had a residence at the expense of Congress; no extra salary, but an allowance for the support of his "household," which, under the resolve of March 23, 1787, should not exceed $8,000 a year. This amount, which was a reduction of the previous average, was to include house rent and salaries of steward, private secretary, and servants. The president of Congress was dubbed "His Excellency." Aside from his official duties, his chief services seem to have been to give dinners and perform similar functions, such as having a levee on the Fourth of July, "to receive the Ordinary Congratulations."

THE REPUBLICAN COURT

AS STATED above, officialdom in those days meant, almost necessarily, a certain amount of ceremony. Mercy Warren, who shared her husband's democratic point of view, gave evidence of this, while indicating her displeasure. She wrote Knox on March 9, 1789, almost two months before the beginning of the "reign":

> I think I should like to look into the Federal City in the course of my peregrinations, though not that I sigh for the splendour of courts, or the indulgence of curiosity that might be fed with variety of observation on the dawn

of infant empire or the Regalia of Monarchy—but I have still the antiquated feelings about me which seldom approaches the pallaces of kings. I love my old friends, many of whom are collected at New York. I am fond of the society of the truly worthy, & at the head of the Respectable list I revere and esteem the Illustrious Washington & lady, of them both I have too high an opinion to suppose they will ever forget their friends & correspondents at Plimouth, who most sincerely wish he may pass through his elevated situation ('till nature summons him to the grave) with the same Eclat that has accompanied his Name through a considerable part of the habitable Globe.[91]

Senator Johnston, newly come from North Carolina, wrote Iredell on January 30, 1790: "I have not yet had time to look much about me, my time being very much engaged in getting myself settled, and in paying and receiving visits of *ceremony*, which begin in my opinion to be carried to a ridiculous height, but those who are better informed think otherwise." [92]

The obligations imposed on him in this respect as titular head of the nation, both *per se* and in social succession to the president of Congress, were recognized by Washington, but they gave him much concern. There was on the one side a consideration of the dignity of the office, which he had no intention to ignore, and on the other side an inherent dislike of mere display, the necessity of economy, and the inroad upon his time. The progress to New York and the enthusiasm and pageantry of the inauguration must have brought realization that he was marked for ceremony and required to act accordingly. We have seen that during the week before the inauguration he received and returned, formally, many official visits.

THE FIRST LADIES

BOTH Mrs. Adams and Mrs. Washington arrived later than their husbands. We know that Mrs. Adams left Braintree on June 17 and traveled by packet from Newport. At Providence she was received "with every mark of attention" and dined "with a large company" at John Brown's. The character of her reception at New York on June 25 is not disclosed. She and the Vice President gave dinners and also were entertained. At diplomatic and other official or semi-official affairs he was in demand as the head guest. What is evidently a dinner list of sixteen for June 30, 1789, is in the Knox Manuscripts. It is headed by the "V P & Lady." [93]

Mrs. Washington left Mount Vernon on May 19 with her two grandchildren, was escorted into Baltimore that night, serenaded, and greeted with a display of fireworks. She received a military and civic welcome on approaching Philadelphia on May 22, with a collation at the Ferry, a procession into the city, which included a com-

pany of ladies in carriages, salutes, and bell ringing. She stayed in the city with Mrs. Morris until May 25 and had an escort on departure. Washington met her at Elizabethtown Point in the presidential barge on May 27, the Battery gave the homage of a salute, and from Peck Slip they drove in the presidential carriage the short distance to their mansion. A military escort was intended, but the barge was too early in arriving for that or any official reception.

WASHINGTON'S SOCIAL REGULATIONS

ON MAY 2, immediately after the inauguration, the following item appeared in Fenno's *Gazette of the United States:* "We are informed that the PRESIDENT has assigned every Tuesday and Friday, between the hours of two and three, for receiving visits; and that visits of compliment on other days, and particularly on Sundays, would not be agreeable to him. It seems to be a prevailing opinion, that so much of the PRESIDENT's time will be engaged by the various and important business, imposed upon him by the Constitution, that he will find himself constrained to omit returning visits, or accepting invitations to Entertainments." This notice was inspired by a statement in the handwriting of Humphreys and therefore directly from the presidential mansion. Humphreys' note is given here in facsimile.[94]

Soon after this, Washington submitted to Adams, Hamilton, Jay, and Madison at least "queries on a line of conduct to be pursued by the President." Recognizing the dilemma of a position in which he was both a servant of the sovereign people and representative of their sovereignty, he asked:

1st. Whether a line of conduct, equally distant from an association with all kinds of company on the one hand and from a total seclusion from Society on the other, ought to be adopted by him? and, in that case, how is it to be done?

2d. What will be the least exceptionable method of bringing any system, which may be adopted on this subject, before the public and into use?

3d. Whether, after a little time, one day in every week will not be sufficient for receiving visits of Compliment?

4th. Whether it would tend to prompt impertinent applications and involve disagreeable consequences to have it known, that the President will, every Morning at eight Oclock, be at leisure to give Audience to persons who may have business with him?

5th. Whether, when it shall have been understood that the President is not to give *general entertainments* in the manner the Presidents of Congress have formerly done, it will be practicable to draw such a line of discrimination in regard to persons, as that Six, eight or ten official characters (including in the rotation the members of both Houses of Congress) may be invited informally

We learn, from good authority, that the President of the United States will see no Company on Sundays.

We are also informed that the President, after his inauguration, will assign one or two days in every week for receiving such Foreigners & Citizens of the Union as may have occasion to wait upon him... The former to be presented through the Medium of the Ministers or other official Characters of their own Nation resident in America... We have not yet heard by whom Citizens are to be introduced.

It seems to be a point conceded on all hands, that the Chief Magistrate of confederated America should not be subjected to the necessity of making formal visits, even to personages in the most eminent Stations. It is likewise supposed that he will not give or accept invitations to entertainments.

STATEMENT FROM THE PRESIDENTIAL MANSION

In the handwriting of David Humphreys. From the Knox MSS., 24.120, in the Massachusetts Historical Society

or otherwise to dine with him on the days fixed for receiving Company, without exciting clamours in the rest of the Community?

6th. Whether it would be satisfactory to the Public for the President to make about four great entertainmts. in a year on such great occasions as . . . the Anniversary of the Declaration of Independence . . . the Alliance with France . . . the Peace with Great Britain . . . the Organization of the general Government; and whether arrangements of these two last kinds could be in danger of diverting too much of the Presidents time from business, or of producing the evils which it was intended to avoid by his living more recluse than the Presidts. of Congress have heretofore lived.

7th. Whether there would be any impropriety in the Presidents making informal visits; that is to say, in his calling upon his Acquaintances or public Characters for the purposes of sociability or civility: and what (as to the form of doing it) might evince these visits to have been made in his private character, so as that they may not be construed into visits from the President of the United States? and in what light would his appearance *rarely at Tea* parties be considered?

8th. Whether, during the recess of Congress, it would not be advantageous to the interests of the Union for the President to make the tour of the United States, in order to become better acquainted with their principal Characters and internal Circumstances, as well as to be more accessible to numbers of well-informed persons, who might give him useful information and advices on political subjects?

9th. If there is a probability, that either of the arrangements may take place, which will eventually cause additional expences, whether it would not be proper that those ideas should come into contemplation, at the time when Congress shall make a permanent provision for the support of the Executive? . . . Many things which appear of little importance in themselves and at the beginning, may have great and durable consequences from their having been established at the commencement of a new general government. It will be much easier to commence the administration, upon a well adjusted system, built on tenable grounds, than to correct errors or alter inconveniences after they shall have been confirmed by habit. The President in all matters of business and etiquette, can have no object but to demean himself in his public character, in such a manner as to maintain the dignity of Office, without subjecting himself to the imputation of superciliousness or unnecessary reserve.[95]

In sending these queries to Madison he added:

To draw such a line for the conduct of the President as will please *every* body, I know is impossible, but to mark out and follow one (which by being consonent with reason) will meet general approbation, may be as practicable as it is desireable. The true medium I conceive must lye in pursuing such a course, as will allow him time for all the official duties of his station. This should be the primary object. The next, to avoid as much as may be, the charge of superciliousness, and seclusion from information by too much reserve and too great a withdraw of himself from company on the one hand, and the inconveniences, as well as reduction of respectability by too free an intercourse, and too much familiarity on the other.[96]

The replies of Adams and Hamilton are extant. The queries are in the *Writings of Washington* given the date May 10, 1789; but Hamilton's replies are dated May 5, and in the *Works of John Adams* the date of the queries is given as May 17, which is also the date of Adams' reply, while the set for Madison accompanied the above letter on May 11. It is possible that the queries in the form in which we now have them were written out after Hamilton's reply had been studied. He advised: "The public good requires as a primary object that the dignity of the office be supported . . . though at the risk of partial or momentary dissatisfaction. But care will be necessary to avoid extensive disgust or discontent. Men's minds are prepared for a pretty high tone in the demeanor of the Executive, but I doubt whether for so high a one as in the abstract might be desirable. The notions of equality are yet, in my opinion, too general and too strong to admit of such a distance being placed between the President and other branches of the government as might even be consistent with a due proportion."

He suggested a levee once a week for receiving visits; "an hour to be fixed at which it shall be understood that he will appear, and consequently that the visitors are to be previously assembled." The President should remain for half an hour, during which "he may converse cursorily on indifferent subjects, with such persons as shall invite his attention, and at the end of that half hour disappear. Some regulation will be hereafter necessary to designate those who visit. A mode of introduction through particular officers will be indispensable. No visits to be returned. The President should not accept invitations and should give formal entertainments only twice or four times a year on important anniversaries, those he named being the same as in the queries. These entertainments should be limited to diplomats, members of Congress, principal officers of government, and distinguished strangers. There might be family dinners, of not more than six or eight at a time, "confined essentially to members of the Legislature and other official characters. . . . I believe it will be necessary to remove the idea of too immense an inequality, which I fear would excite dissatisfaction and cabal. The thing may be so managed as neither to occasion much waste of time nor to infringe on dignity." He suggested also special privileges of access on matters of public administration to senators, believing that they could be separated from the representatives in this respect because of their executive functions.[97]

Adams' reply numbers the statements in harmony with those of the queries: 1. Total seclusion and association with all kinds of com-

pany were extremes to be avoided "in the actual circumstances of this country, and under our form of government." 2. The system would develop itself in practice without any formal communication. 3. Two days a week might be indispensable for visits of compliment, but a little experience will decide that. 4. Adams advised an intermediary with respect to the 8 o'clock business audiences, a minister of state, "Chamberlain," or "Gentleman in waiting" to judge whom to admit. 5. He approved of informal dinners in small parties of officials, congressmen, strangers, or citizens of distinction. 6. He disapproved of the formal public entertainments. These could be better done by a minister of state or the Vice President, "whom, upon such occasions the President in his private Character might honour with his Presence." 7. There would be no impropriety in making or receiving informal visits among friends or acquaintances at pleasure. "But in no case whatever should a Visit be made or returned in form by the President; . . . The Presidents private Life, should be at his own discretion, and the World should respectfully acquiesce; but, as President he should have no intercourse with Society, but upon public Business, or at his Levees. This distinction it is with submission apprehended ought to govern the whole Conduct." 8. A tour might be made, "with great Advantage to the Public." He observed that the civil list ought to provide for the President's household distinct from the allowance for his service, "for such Chamberlains, Aids-de-Camp, Secretaries, Masters of Ceremonies, &c.," as would become necessary. He concluded:

> In all Events the Provision for the President and his Household ought to be large and ample. The Office, by its legal Authority, defined in the Constitution, has no equal in the World, except those only which are held by crowned Heads; nor is the Royal Authority in all Cases to be compared to it. . . . If the State and Pomp, essential to this great Department, are not, in a good degree preserved, it will be in vain for America to hope for consideration, with foreign Powers. These observations are submitted, after all, with diffidence; conscious that my long Residence abroad, may have impressed me with Views of Things, incompatible with the present Temper and Feelings of our Fellow Citizens.[98]

Out of his own ideas and those of his advisers, Washington established his official code. Of a social disposition, used to stately and ceremonious conduct, realizing the social demands of his position but also that his official duties, which he recognized would be onerous, had first claim on his time, and wishing as much freedom as possible for his family life and private intercourse and movements, he steered a middle way that was based on a rather elaborate function and hospitality but avoided the greater pomposity that Adams and probably

Hamilton would have preferred. It did not, however, succeed in preventing criticism from the more democratic minded. The special hour in the morning for business calls was not carried out, such persons were received at need, and congressmen, officials, and strangers with letters of introduction, or otherwise deemed worthy of special favor, were received socially at odd hours. Sedgwick spoke of spending a hour with the President during the morning of July 21, 1789;[99] and there are records of various informal occasions, such as the call of the English traveler, Thomas Twining, at one o'clock on May 13, 1796.[100]

LEVEES, DINNERS, AND RECEPTIONS

AT FIRST there was a formal reception on each Tuesday and Friday, which Washington himself called a "levee," to which any man of "proper standing" could come at will. After his illness in June 1789, the Friday one was dropped, and on May 26 the hour was changed from two to three, the better to accommodate officials. At the first reception after the death of Washington's mother was known in New York, some of the gentlemen attended in "American mourning." The levee lasted an hour, the President greeting each person as he came up, with introduction if necessary, but not shaking hands. Later there was a circle, or he mingled with the guests. Sedgwick described in a letter to his wife on July 10, 1789, his own first attendance at one: "He did me the honor particularly to distinguish me, with great cordiality took me by the hand and expressed much satisfaction to see me here. He is very peculiarly qualified to shine in his exalted station, he has a personal dignity I have not seen in any other man, while the unaffected simplicity of his manners make one easy in his presence, a recollection of his meritorious virtues and the obligations they have laid one under, excite a pleasing sensation of gratitude difficult to be described." [101]

Mrs. Washington had an evening reception each Friday, the first announcement of it being for July 29, 1789. This the President attended, but only privately. Thursday was usually though not always the day of the weekly dinner, what was evidently the first being held the day after Mrs. Washington arrived. To this as many guests as could be conveniently seated were invited, of both sexes, but the men were usually within the classes suggested by the queries and replies.

Unfortunately, most of the diaries covering the presidency are lost or were not kept; but in those which survive, Washington carefully entered each week a comment on the attendance at the levee and the

evening reception, and also mentioned the guests at the dinner. His chief comment was the degree of "respectability" of those attending the gatherings. In the first presidential mansion the average number of dining guests was about a dozen, besides the host and hostess and members of the President's staff. In the second mansion on Broadway the guests numbered about sixteen. Sometimes only men were invited, usually in that case members of Congress. Members seem to have been attended by wives at times and again invited alone. These dinners were somewhat sumptuous affairs with servants in livery, but not inclined to liveliness. Maclay called one he attended "a great dinner, and the best of the kind I was ever at"; but also it "was the most solemn dinner ever I sat at."[102] An invitation to a presidential dinner was a royal command. Maclay wrote: "It will be my duty to go." There is a later interesting illustration of this. On February 2, 1791, J. Q. Adams wrote Lear to excuse his non-attendance at one of the dinners. The Vice President had issued invitations for a dinner for the same night, before he received a summons to the presidential one; and since he would be absent from his own table, his son had to remain to play host in father's place.[103]

On New Year's, 1790, there was a special reception attended not only by officials but by "all the respectable citizens." This was the nearest approach to a really popular affair that Washington undertook; and, with increasing popularity until it became a mass movement, the custom continued until recent times. In 1789 Washington was still recovering from his illness, but, clothed in regimentals, he appeared at the door of his residence when the militia marched past on the Fourth of July. In 1790 there was on the Fourth a reception of more official character than the New Year's one. The presidential family also went to church regularly and attended dances and the theater. The General exercised on horseback and also took walks, being wont on such occasions to make informal calls on friends, to drink tea, of which he was very fond, or to make business calls at the departments. He and Mrs. Washington drove out in the carriage often with the grandchildren, which Washington also called in his diary "exercise." In at least one instance he dined out also, with Governor Clinton on December 16, 1789.

CRITICISM

ALL THIS in the retrospect seems right and proper enough for the head of a republican state; but none the less there was an exclusiveness about it that makes apt the title of Griswold's work, *The Republican Court*. It was an association of officials and "gentlemen," of which

latter class the President was himself typical; and the state and circumstance of it lost nothing in the tales that were broadcasted respecting it. Much of the newspaper comment evoked by the titles controversy applied also to the question of ceremonies, especially the satire from Albany (*see* p. 380).

Moustier wrote Jefferson, who was still in Paris, on June 24, 1789, deprecating the ideas of grandeur of public persons and of formalities in all classes, adding that the President was running a risk of being a victim of devotion to public good.[104] This was, however, after the incident to be mentioned below, and Moustier was still somewhat raw over it. Randolph warned Madison from Virginia on July 23, 1789: "The tincture, with which he [Washington] has coloured some subjects, has nauseated some of the best federalists here. And the form of the levee, with the prest's. total alienation (in point of dinners,) from the representatives, has awakened a degree of jealousy. In short he [Parker, a Virginia congressman] represents everything, as marching with furious rapidity, towards monarchy; as far as manners can work such an effect." [105] Representatives were regularly invited to the dinners, at least so far as the diaries mention the guests; possibly in the first session of Congress the suggested preference of senators may have been more in evidence, but this does not seem likely. It is an instance of the spread of false impressions. We have seen that Senator Maclay's first invitation did not come until the end of August.

WASHINGTON'S DEFENSE

BUT THE criticism that Randolph repeated, especially in connection with the controversy over titles, secrecy in the Senate, and objections to the scale of salaries that were proposed, was sufficiently general to get under Washington's skin. In the letter of July 26, 1789, to Stuart, already mentioned, he wrote:

> At a distance from the theatre of action truth is not always related without embellishment, and sometimes is entirely perverted from a misconception of the causes which produce the effects that are the subjects of censure. 1. This leads me to think that a system which I found it indispensably necessary to adopt upon my first coming to this city, might have undergone severe strictures and have had motives very foreign from those that govern me assigned as causes therefor; I mean, returning *no* visits; 2. Appointing certain days to receive them generally (not to the exclusion however of visits on any other days under particular circumstances) and 3. at first entertaining no company, and afterwards until I was unable to entertain any at all confining it to official characters. A few days evinced the necessity of the two first in so clear a point of view that, had I not adopted it, I should have been unable to have attended to *any* sort of business unless I had applied the hours allotted to rest and

refreshment to this purpose for by the time I had done breakfast, and thence till dinner, and afterwards till bed time I could not get relieved from the ceremony of one visit before I had to attend to another; in a word, I had no leisure to read or to answer the dispatches that were pouring in upon me from all quarters; and with respect to the third matter I early received information through very respectable channels that the adoption thereof was not less essential [than] that of the other two if the President was to preserve the dignity and respect that was due to the first Magistrate, for that a contrary conduct had involved the late Presidents of Congress in insuperable difficulties, and the office (in this respect) in perfect contempt, for the table was considered as a public one, and every person, who could get introduced, conceived that he had a *right* to be invited to it. This, although the Table was always crowded (and with mixed company, and the President considered in no better light than as a Maitre d'Hôtel) was in its nature impracticable and as many offences given as if no table had been kept.

The citizens of this place were well knowing to this fact, and the principal Members of Congress in both Houses were so well convinced of the impropriety and degrading situation of their President, that it was the general opinion that the President of the United States should neither give or receive invitations. Some from a belief, (independent of the circumstances I have mentioned) that this was fundamentally right in order to acquire respect. But to this I had two objections, both powerful in my mind; first, the novelty of it I knew would be considered as an ostentatious shew of mimicry of sovereignty; and secondly that so great a seclusion would have stopped the avenues to useful information from the many, and make me more dependent on that of the few; but to hit on a discriminating medium was found more difficult than it appeared to be at first view, for if the Citizens at large were begun upon no line could be drawn, all of decent appearance would expect to be invited, and I should have been plunged at once into the evil I was endeavoring to avoid. Upon the whole, it was thought best to confine *my* invitations to official characters and strangers of distinction. This line I have hitherto pursued; whether it may be found best to adhere to or depart from it in some measure must be the result of experience and information.[106]

It is to be noted here that since the announcement of the restriction of visits to two levee days came within three days of the inauguration, the embarrassment of which Washington speaks must have occurred mainly before he was sworn in. Also the diaries show that the invitations to dinner covered a wider range than is disclosed by this early letter.

A year later the matter was still an irritation. Stuart wrote him on June 2, 1790, when Virginia was aroused over the proposed assumption of state debts and had in other respects begun the hostility that continued during the rest of Washington's terms. Having referred of assumption, Stuart added:

A member of the Council who wrote privately to Mr. Henry, to know if he would accept of the office of Senator in Congress, if appointed, shewed me

his answer, in which he declines it, and says he was too old to fall into those awkward imitations which were now become fashionable. From this expression, I suspect the old Patriot has heard some extraordinary representations of the Etiquette established at your Levees. Those of his party no doubt think they promote themselves in his good opinion by such high colouring. It may not be amiss therefore to inform you, that [Theodorick?] Bland is among the dissatisfyed on this score. I am informed on good authority that he represented, that there was more pomp used there, than at St. James's, where he had been, and that your bows were more distant & stiff. This happened at the Governor's table in Richmond [Beverley Randolph]. By such accounts, I have no doubt the party thinks to keep alive the opposition and aversion to the Government, & probably too, to make proselytes to their opinions.[107]

Washington replied on June 15:

In a letter of last year to the best of my recollection, I informed you of the motives, which *compelled* me to allot a day for the reception of idle and ceremonious visits (for it never has prevented those of sociability and friendship in the afternoon, or at any other time) but if I am mistaken in this, the history of this business is simply and shortly as follows. . . . To please everybody was impossible; I therefore adopted that line of conduct which combined public advantage with private convenience, and which in my judgment was unexceptionable in itself. That I have not been able to make bows to the taste of poor Colonel Bland (who, by the by, I believe never saw one of them) is to be regretted especially too as (upon those occasions) they were indiscriminately bestowed, and the best I was master of; would it not have been better to throw the veil of charity over them, ascribing their stiffness to the effects of age, or to the unskillfulness of my teacher, than to pride and dignity of office, which God knows has no charms for me? for I can truly say I had rather be at Mount Vernon with a friend or two about me, than to be attended at the Seat of Government by the Officers of State and the Representatives of every Power in Europe.

These visits are optional. They are made without invitation. Between the hours of three and four every Tuesday I am prepared to receive them. Gentlemen, often in great numbers, come and go, chat with each other, and act as they please. A Porter shews them into the room, and they retire from it when they please, and without ceremony. At their *first* entrance they salute me, and I them, and as many as I can talk to I do. What pomp there is in all this, I am unable to discover. Perhaps it consists in not sitting. To this two reasons are opposed, first it is unusual; secondly, (which is a more substantial one) because I have no room large enough to contain a third of the chairs, which would be sufficient to admit it. If it is supposed that ostentation, or the fashions of courts (which by the by I believe originates oftener in convenience, not to say necessity than is generally imagined) gave rise to this custom, I will boldly affirm that *no* supposition was ever more erroneous; for, if I was to give indulgence to my inclinations, every moment that I could withdraw from the fatigues of my station should be spent in retirement. That they are not proceeds from the sense I entertain of the propriety of giving to every one as free access, as consists with that respect which is due to the Chair of government; and that respect I conceive is neither to be acquired or preserved but by

observing a just medium between much state and too great familiarity.

Similar to the above, but of a more sociable kind are the visits every Friday afternoon to Mrs. Washington where I always am. These public meetings and a dinner once a week to as many as my table will hold, with the references *to* and *from* the different Departments of State, and *other* Communications with *all* parts of the Union is as much, if not more, than I am able to undergo; for I have already had within less than a year, two *severe* attacks; the last worse than the first; a third more than probable, will put me to sleep with my fathers; at what distance this may be I know not. Within the last twelve months I have undergone more, and severer sickness than thirty preceding years afflicted me with, put it all together.[108]

The physical strain of the presidency dates from its institution. Washington's desire for relaxation from the burden is shown by his proposal in 1790 to buy a farm near Philadelphia, to which he might more easily and more often retire for recreation than he could to Mount Vernon.[108a] These evidences of Washington's social attitude being a part of his sense of duty, even though probably not contrary to his disposition, are emphasized by his letter to Mrs. Macaulay-Graham on January 9, 1790:

Few who are not philosophical spectators can realize the difficult and delicate part which a man in my situation had to act. All see, and most admire, the glare which hovers round the external trappings of elevated office. To me there is nothing in it, beyond the lustre which may be reflected from its connection with a power of promoting human felicity. In our progress towards political happiness my station is new; and, if I may use the expression, I walk on untrodden ground. There is scarcely any part of my conduct wch. may not hereafter be drawn into precedent. . . . Mrs. Washington is well and desires her compliments may be presented to you. We wish the happiness of your fireside, as we also long to enjoy that of our own at Mount Vernon. Our wishes, you know, were limited; and I think that our plans of living will now be deemed reasonable by the considerate part of our species. Her wishes coincide with my own as to simplicity of dress, and everything which can tend to support propriety of character without partaking of the follies of luxury and ostentation.[109]

TOURS

WHATEVER the criticism, the social system of the presidency remained practically unchanged during Washington's rule, and the precedent then established continued to give the tone, in spite of Jefferson's "pell-mell," to official society until the advent of Jacksonian Democracy. Whenever possible, Washington left the capital for Mount Vernon, remaining away as long as official affairs permitted; a custom which was followed by his successors. He made the tours which he included in his queries on ceremonies, three of them; the first in 1789 to Connecticut, Massachusetts, and New

Hampshire, the second in 1790 to Rhode Island after that state had ratified, and the third to the South. He considered these journeys as fruitful, giving him knowledge of conditions and the attitude of the people, which was valuable in the formation of his policies. To the regions visited, however, the tours were important, not because they were those of a President, but because Washington made them. No general custom of presidential tours resulted. Monroe was the first of his successors to follow suit.

THE CABINET

THE CABINET has no constitutional basis and was not, indeed, mentioned in an act of Congress until 1907. Its establishment is another outcome of the precedents of the first administration. Throughout his career Washington welcomed and sought advice—from his generals, from his friends, and from his political associates. The formation of the departments introduced no new element in this, until Jefferson's arrival. He had not been previously among the President's advisers.

Early in the administration Washington sought to become acquainted with the facts he would have to take into account in forming his policies, especially as they related to foreign affairs; and he wrote to Jay on June 8, 1789: "I am desirous of employing myself in obtaining an acquaintance with the real situation of the several great Departments, at the period of my acceding to the administration of the general Government. For this purpose I wish to receive in writing such a clear account of the Department, at the head of which you have been for some years past, as may be sufficient (without overburdening or confusing the mind which has very many objects to claim its attention at the same instant) to impress me with a full, precise, and distinct *general idea* of the affairs of the United States, so far as they are comprehended in, or connected with that Department."[116] The same letter was sent to Knox and to the old Board of Treasury; and in the Washington Papers are briefings which he evidently made from papers sent him in reply.

Throughout 1789 there was much consultation with Jay, Hamilton, Knox, and also Madison as an unofficial adviser, sometimes orally, sometimes by written report; but there is no evidence at that time of any formal gathering of the executive officers, indeed neither Randolph nor Jefferson was at hand until later. On August 27, 1790, Washington sought the opinions of the heads of the departments and also Chief Justice Jay and Vice President Adams respecting the Nootka Sound crisis, asking for replies in writing; and by 1791 the

recognition of the secretaries as a council for advice is well evidenced in the President's letters. When he started on the southern tour, he wrote them jointly from Mount Vernon on April 4, 1791:

> I have to express my wish, if any serious and important cases should arise during my absence (of which the probability is but too strong), that the Secretaries for the Departments of State, Treasury, and War may hold consultations thereon, to determine whether they are of such a nature as to require my personal attendance at the seat of government; and, if they should be so considered, I will return immediately from any place at which the information may reach me. Or should they determine that measures, relevant to the case, may be legally and properly pursued without the immediate agency of the President, I will approve and ratify the measures, which may be conformed to such determination. Presuming that the Vice-President will have left the seat of government for Boston, I have not requested his opinion to be taken on the supposed emergency; should it be otherwise I wish him also to be consulted.[111]

Under these instructions, a meeting was held on April 11, which Adams attended.

The attorney general was not included in this request, but he was soon recognized as a member of the body, though the postmaster general was not. Washington wrote Jefferson on November 25, 1791: "As the meeting, proposed to be held (at nine o'clock tomorrow morning) with the heads of the Great Departments, is to consider important Subjects belonging (more immediately) to the Department of State, The President desires Mr. Jefferson would commit the several points on which opinions will be asked to Paper, and in the order they ought to be taken up." [112] By 1792 the body was in general operation. On March 14, 1792, Jefferson and Knox, together with the postmaster general, met the President to consider postoffice affairs; and on March 31, and again on April 2, Hamilton, Knox, Jefferson, and Randolph conferred with the President over the congressional investigation of St. Clair's defeat, and possibly there was another meeting on April 6. Other meetings are noticed for January 12, 1792, February 25, March 2, March 25, and so on; and it was about this time that the term itself came into use.

To what extent the realization on the part of the President, after the experience in August 1789, that the Senate was not practical as a council of advice had in the development of the Cabinet is a matter of conjecture; but the connection is sufficiently obvious, especially as a council of his own secretaries would assist in the separation of powers. It was Washington's desire to keep politics in the factional sense out of his administration, and he deplored its existence even as late as the Farewell Address; but the realization of the need of harmony on general principles among his advisers had been forced

on him by circumstances before 1796. When he offered Charles Cotesworth Pinckney the war portfolio on January 22, 1795, he wrote: "Will you, . . . allow me to endulge a hope that you would fill his place? It is not for the mere detail duties of the Office I am in pursuit of a character. These might be well executed by a less important one than yours but as the Officer who is at the head of that department is a branch of the Executive, and called to its Councils upon interesting questions of National importance he ought to be a man, not only of competent skill in the science of War, but possessing a general knowledge of political subjects, of known attachment to the Government we have chosen, and of proved integrity." [113] To Secretary Pickering on September 27, 1795, he was more emphatic: "I shall not, whilst I have the honor to Administer the government, bring a man into any office, of consequence knowingly whose political tenets are adverse to the measures which the *general* government are pursuing; for this, in my opinion, would be a sort of political Suicide; that it wd. embarrass its movements is most certain." [114]

RELATION WITH DIPLOMATS

WASHINGTON also established the custom that diplomatic officers should hold their intercourse with the head of the department to which foreign affairs belonged, and not directly with the President. Moustier, the French minister, presuming on the alliance as authorizing special favors, sought an audience and was refused. Moustier wrote on May 19, 1789: "You are, Sir, too much enlightened and too much attached to the true interests of your Country, not to think that the most immediate intercourse between those two Characters is the most proper. . . . I fondly hope, Sir, that nobody has yet presumed to insinuate that it would be beneath the dignity of a President of the United States occasionally to transact business with a foreign Minister." [115] The unofficial reply was dated May 25:

> What circumstances there may be existing between our two nations, to which you allude on account of their peculiarity, I know not. . . . Every one who has any knowledge of my manner of acting in public life, will be persuaded that I am not accustomed to impede the despatch or frustrate the success of business, by a ceremonious attention to idle forms. Any person, of that description, will also be satisfied that I should not readily consent to lose one of the most important functions of my office, for the sake of preserving an imaginary dignity. . . . I have, however, been taught to believe, that there is, in most polished nations, a system established, with regard to the foreign as well as the other great Departments, which, from the utility, the necessity, and the reason of the thing, provides that business should be digested and prepared by the Heads of those departments. . . . Nor has anybody insinu-

ated that it would be beneath the dignity of a President of the United States occasionally to transact business with a foreign Minister. But in what light the public might view the establishment of a precedent for negotiating the business of a Department, without any agency of the Head of the Department who was appointed for that very purpose, I do not at present pretend to determine: Nor whether a similar practice, in that case, must not of right be extended hereafter to all Diplomatic characters of the same rank. . . . And I hope you will consider this Confidential letter as an evidence of the extreme regret which I should feel, in being obliged to decline any propositions, as to the mode of doing business, from a person who has so many titles to my esteem as the Count de Moustiers. I will only add, that, under my present impressions, I cannot persuade myself, that I should be justifiable in deviating essentially from established forms.[116]

DIRECT ACTION

THE VERY valuable solution of the federal problem which was reached by the principle of the supreme law of the land, as described in the "Story of the Constitution," involved coercive power operating directly upon the people. What the Congress of the nation constitutionally authorized it was the duty of the national executive to enforce, for he was to "take Care that the Laws be faithfully executed,"[117] and he possessed the right to use as required both the civil and military arms of his power. It fell to Washington to establish this in the public mind, through the events of the Whiskey Insurrection; to prove that the nation would not countenance armed disobedience to its laws, and in the ultimate would put down with righteous force what subversive force had caused to rise. To some of the Federalist leaders the opportunity to show the fitness and might of the new government was probably not unwelcome; whether or not Washington shared in that gratification, he was prompt in the measures he deemed necessary to secure a return of popular obedience. What concerned the nation it was the nation's duty to secure directly and not through the instrumentality of the states; and "by firm exertions to maintain the Constitution and the laws."[118] The lesson was invaluable, its influence upon unionism important, and the wise example set by Washington in this respect, as in many others, became an element of national progress.

JUDGES AND EXECUTIVE AFFAIRS

THERE is nothing in the Constitution that refers to any relationship between the judiciary and the other two departments. The legislative sphere includes the regulation of the courts and the executive makes the appointments to them, and the judges are subject to legislative trial through impeachment though the executive can not

remove them, while to review the acts of both is a province of the judges; but no common action is indicated, such as the presidential share in legislation or the Senate's participation in executive functions. The sole example to the contrary is the presiding of the chief justice at the impeachment trial of the President.

There was, however, British, colonial, and state precedent for the right of the legislature and executive to require opinions from the judges on matters submitted to them; that is, for a general preliminary judgment on the problem at hand, rather than a later decision when the law or executive action was involved in some particular case. Jay as secretary for foreign affairs had been one of Washington's chief advisers, and even after he became chief justice his private aid was sought. When Hamilton in November 1790 asked whether the judiciary should not combine with the other branches of the government to check official state opposition to the assumption of state debts, Jay advised against any action, although he did not make at that time a dictum against judicial participation in such an affair. That same month Jay wrote to Hamilton from Boston suggestions as to the coast-trade act and a revenue officer on the Canadian border, and to Washington on March 13, 1791, respecting a candidate for the marshalship in the District of New York; even though on February 27, 1790, he had in reply to an office-seeker who asked his influence said: "As to offices in the gift of other departments, I think it my duty not to interfere, nor to ask favours, it being improper for a judge to put himself under such obligations." [119] Iredell, too, declared in 1794 that since he had sat on the bench he had rigidly refrained from seeking to influence appointments.[120] On September 8, 1792, Jay, in reply to a request, made suggestions to Hamilton about the handling of the earlier excise disturbances, and on April 11, 1793, sent the secretary a draft for the proclamation on neutrality.

When the justices started out on circuit, Washington wrote them a letter on April 3, 1790, saying: "As you are about to commence your first Circuit, and many things may occur in such an unexplored field, which it would be useful should be known; I think it proper to acquaint you, that it will be agreeable to me to receive such Information and Remarks on this Subject, as you shall from time to time judge expedient to communicate." [121] Iredell wrote on January 23, 1792, about judicial procedure, premising that because of the President's letter of April 3, 1790, he was taking "the liberty to state some circumstances of great moment that occurred in the last Southern Circuit, . . . I have been thus particular in stating this interesting

subject, because it appears to me of the highest moment, although I believe it would be difficult to devise an unexceptionable remedy. But the discussion of questions wherein are involved the most sacred and awful principles of public justice, under a system, without precedent in the history of mankind, necessarily must occasion many embarrassments which can be more readily suggested than removed." [122]

Washington also wrote Jay on November 19, 1790, apropos the annual message: "If any thing in the Judiciary line, if any thing of a more general nature, proper for me to communicate to that Body at the opening of the session, has occured to you, you would oblige me by submitting them with the freedom and frankness of friendship." [123] Jay's suggestions to Hamilton from Boston were indirect responses to this desire. Such things were considered as the private actions of men interested in public affairs and with the knowledge and ability that made their suggestions valuable, and whose ermine was not considered as depriving them of the rights of citizenship. Jay also set the precedent of employing judges on other affairs, when in 1794 he accepted the special mission to Great Britain, retaining his seat on the bench while on this alien service. The criticism of it was inspired by political factionalism.

REFUSAL OF JUDICIAL OPINION

THUS the judges in those earlier days, even as now, continued to have interest in public affairs as citizens, but the limitation upon their actions as judges was sharply defined by the justices themselves in Washington's first administration. The event that established the custom of the national courts' avoidance of any expression of judicial opinion, except in cases before them in due judicial course, came in 1793 during the controversary over the violation of American neutrality by the French. And what is meant by due judicial course, or judicial power, was described by Justice Miller as the "power of a court to decide and pronounce a judgment and carry it into effect between persons and parties who bring a case before it for decision." [123a]

At a Cabinet meeting on July 12 it was agreed that "letters be addressed to the Judges of the Supreme court of the U. S. requesting their attendance at this place on Thursday the 18th. instant to give their advice on certain matters of public concern which will be referred to them by the President." [124] On July 18 a series of twenty-nine questions to be submitted to the Justices was drawn up by Hamilton. These were sent to the justices by Jefferson with a letter in which he said: "These questions depend for their solution

on the construction of our treaties, on the laws of nature & nations, and on the law of the land, and are often presented under circumstances which do not give a cognizance of them to the tribunals of the country. Yet their decision is so little analogous to the ordinary functions of the Executive, as to occasion much embarrasment and difficulty to them. The President would therefore be much relieved if he found himself free to refer questions of this description to the opinions of the Judges of the supreme court of the US., whose knolege of the subject would secure us against errors dangerous to the peace of the US., and their authority ensure the respect of all parties." [125]

The justices then in Philadelphia, Jay, Wilson, Iredell, and Paterson, replied on July 20, 1793, to Washington: "The question whether the public may, with propriety, be availed of the advice of the Judges on the questions alluded to, appears to us to be of much difficulty as well as importance. As it affects the judicial department, we feel a reluctance to decide it without the advice and participation of our absent brethren." [126] Washington on July 23 politely renewed the question of consideration: "The circumstances which had induced me to ask your counsel on certain legal questions interesting to the public, exist now as they did then; but I by no means press a decision whereon you wish the advice and participation of your absent brethren. Whenever, therefore, their presence shall enable you to give it with more satisfaction to yourselves, I shall accept it with pleasure." [127] On August 8 the justices, presumably reinforced by Cushing and Blair, made their definite refusal: "We have considered the previous question . . . [regarding] the lines of separation drawn by the Constitution between the three departments of government. These being in certain respects checks upon each other, and our being judges of a court in the last resort, are considerations which afford strong argument against the propriety of our extra-judically deciding the questions alluded to, especially as the power given by the Constitution to the President, of calling on the heads of departments for opinions, seems to have been *purposely* as well as expressly united to the *executive* departments." [128]

REFUSAL OF NONJUDICIAL DUTIES

AT ABOUT this same time the judges first placed on record their decision that just as they could not respond to requests beyond their "judicial power," so also they could not be compelled by law to exercise nonjudicial functions. The attempt by Congress to assign to circuit courts duties under a pension law in 1792 led to the Hayburn,

Chandler, and Yale Todd cases, which challenged the constitutionality of the law. At that time Jay, Cushing, and Duane, sitting in circuit court in New York in April 1792, declared: "That neither the *Legislature* nor the *executive* branches, can constitutionally assign to the *judicial* any duties but such as are properly judicial, and to be performed in a judicial manner."[129] The decision then reached has been repeatedly reaffirmed. No objection seems to have been made to the employment of the district marshals in taking the first census, for which work extra compensation was granted; and the judges have always been available for outside services performed as citizens and not officially, such as Jay's mission and Justice Harlan's share in the Bering Sea arbitration.

The judges did not, however, find it necessary to stand aloof respecting their own organization. A letter dated February 18, 1794, to Washington enclosed a representation to Congress signed by the justices, which the President sent on to Congress on February 19, saying that it pointed out "certain defects in the judiciary system."[130]

CHARGES TO GRAND JURIES

THE COURTS had their not unimportant share of influence upon the popular adjustments made necessary by the new government. The justices traveled on circuit and, changing from one circuit to another, had an excellent opportunity of studying conditions throughout the land at first hand. That they kept their eyes open is evident from Jay's correspondence, and more especially from Iredell's. The repeated journeys of such prominent men from other sections must be placed with Washington's tours as formative events, influences promotive of unionism; indeed, they were probably more influential upon the attitude of the regions than were his swift visits of enthusiasm. The give and take of the legal and social intercourse of the justices was important, but even more so was the advice, instruction, and constitutional principles expounded in the semi-annual charges delivered by them in the circuit courts. These were often printed in full in the local papers, and copied elsewhere. Iredell's charge to the grand jury at Boston on October 12, 1792, he and Wilson coming up from North Carolina and Pennsylvania to hold the court, contained the following:

> Perhaps in no country in the world have been within so few years exemplified such awful and important lessons. We have been taught, not only the value of Liberty, but what it was much more difficult to learn, that liberty itself, in order to be truly enjoyed, must submit to reasonable and considerate restraints. . . . The peculiar object of the government of the United States is to

cement by an effective, not a nominal authority, that union to which, under divine Providence, we unquestionably owe all the blessings we now enjoy, and without a preservation of which we should too probably become a prey to intestine discord, and find ourselves the miserable victims of local and conflicting pursuits. . . . The very favorable accounts I have every where heard, since I have had the pleasure of being on this circuit, of the good order and respectful submission to the laws which universally prevail in it, have given me the utmost satisfaction. In addition to my own personal observations, they have impressed me with the highest respect for a people who have had the good sense so happily to combine an invincible spirit of freedom, with an enlightened regard for such a government and such laws as can alone be adequate to secure it.[131]

The charges of the district judges were of less importance; they were local men who presumably shared merely in the general life of the region; none the less, they were men of importance within their sphere and their charges were also of value in supplementing the more general ones of the circuit courts, and were, especially at first, also published.

THE JUSTICES AND UNIONISM

AFTER the first circuit court at Boston Gore wrote King on May 15, 1790: "The Chief Justice hath delighted the people of Massachusetts. They regret that Boston was not the place of his nativity. And his manners, they consider, so perfect as to believe that New York stole him from New England." [132] Iredell professed himself much pleased by his reception in New England. He wrote his wife from Boston on October 21, 1792: "I have constantly received the utmost distinction and courtesy here, and like Boston more and more. . . . It is scarcely possible to meet with a gentleman who is not a man of education. Such are the advantages of schools by public authority!" [133] To his brother he added on November 30, 1793: ". . . even Rhode Island itself, which State I am told has been principally brought over to a degree of content by the decisions and manner of doing business of the Courts of the United States, is in every respect infinitely better than it was." [134]

It certainly was of political as well as of social importance as an antidote to isolation when the people of one section and a leader from another discovered their mutuality. In this respect the justices may be looked upon as martyrs of a just cause, for the burden placed upon them by the circuit riding was a very heavy and sometimes intolerable one.

State Readjustments

PROBLEMS

THE TEXT of the Constitution made it evident that any state which came into the Union under it would have to subject itself to changes in its laws and practices or be subject to such changes by Congress. Not only were there express prohibitions placed upon the states, as there had been also by the Articles of Confederation, but while some of the powers granted to Congress might be concurrent, others were necessarily exclusive, powers which hitherto the states had exercised without restraint. Matters of such wide adjustment could not be arranged at once; many problems became apparent only with time and national development, questions of powers and prohibitions became not only matters of litigation and ultimately of epoch-making decisions by the Supreme Court, but also great matters of political division were not decided until the final appeal to arms was made. There were, however, certain interrelations that called for quick action, as they concerned the successful operation of the new government.

STATE ACTION ON THE OATH

THE supreme-law-of-the-land principle was supplemented in the Constitution by the requirement that all state legislators and officials should take an oath to support the United States Constitution. The question arose as to the practical initiation of this requirement; should the states proceed at once in the administration of it or wait for action by Congress. The matter involved not only the new oath but questions of alteration in old ones. There was in some quarters, especially in Virginia, an objection to the oath as an infringement on state sovereignty, and one of the proposed amendments by the ratification convention of New York was that national legislators and officials should be under oath not to violate or infringe the constitutions and rights of the respective states.

There were several movements in the states to anticipate the actual operation of the new general government by the oath of obedi-

ence to it; but in no case does this seem to have been brought to a head except in Connecticut. In the Pennsylvania General Assembly it was moved on November 1, 1788, that the members take an oath to support the Constitution of the United States. This was postponed and not taken up again. In Maryland the House of Delegates in December 1788 had a resolve for this purpose before it two or three times, but there is no record of consideration on the days assigned for it. In New Hampshire the Senate on December 30, 1788, passed a resolve that, because an alteration in oaths prescribed by the constitution of the state was necessitated by the adoption of the Constitution of the United States, such parts of the oaths inconsistent "with the nature of the Federal Government & the Oaths therein directed to be taken . . . shall be omitted" after March 4. This was a matter of alteration of the state oath rather than an oath to support the general Constitution; but the necessity of such an oath is implied in the resolve. The House nonconcurred on January 1, 1789; but concurred on February 3 in a resolve from the Senate for a joint committee to report the necessary alteration in the state oath; but nothing seems to have materialized at that session, which was the last before March 4.[1] In Massachusetts on February 12, 1789, the House rejected a motion to consider the necessary measures respecting the taking by state officials of the oath to support the Constitution of the United States; but the next day a Senate resolve for a joint committee was agreed to. No further action is indicated.

In Connecticut the January session of the legislature in 1789 passed a bill that all members of the legislature and all executive and judicial officers of the state should take an oath to "support the Constitution agreed upon by the Convention of the United States and ratified by the Convention of this State." [2] In October 1789 this was repealed, doubtless because of the passage of the oath act in Congress. The grand jury of the frontier Washington District of Virginia on May 2, 1789, presented as a grievance the failure of the legislature at its 1788 session to pass a law "prescribing the oath of fidelity & office under the federal government." [2a] Arthur Campbell was foreman of this jury.

COMPLIANCE WITH THE OATH ACT

As we have seen, the first act passed by Congress, June 1, 1789, prescribed an oath: "I, A. B. do solemnly swear or affirm (as the case may be) that I will support the Constitution of the United States." This act prescribed that all state legislators at their next session, and all executive and judicial officers of the states hitherto chosen or to

be chosen before August 1, 1789, should take this oath within one month thereafter; and the oath should be required of all legislators and officers later chosen "before they proceed to execute the duties of their respective offices." There are various records of state compliance with this and of questions raised by it. In Pennsylvania on June 16, 1789, the president, vice president, six members of the council, secretary, and assistant secretary took the oath, and two more councilors affirmed. Councilors Smilie and Baird, both Antifederalists, "required a little more time to consider, and did not take the oath." [3] They left the council on June 27 and were not in attendance again until August 24, when they gulped the bitter pill. Meanwhile, the oath had been given to five other councilors, not present on June 16. The justices of the state supreme court, attorney general, and prothonotary appeared before the council on July 20 and took the oath. Mayor Samuel Powel of Philadelphia was sworn on July 31. On July 23 a proclamation was issued reciting the oath act, "in order that no one may pretend ignorance of the premises, and that all persons whom it may concern may have knowledge thereof and govern themselves conformably to the said Constitution and recited act." [4] On August 24, 1789, on the reconvening of the General Assembly President Mifflin administered the oath to the Speaker, and the members were also sworn.

In New York on July 7, 1789, Lieutenant Governor Pierre Van Cortlandt attended the Assembly and administered to its members the oath required by the act of Congress. In Connecticut on October 28, 1789, Samuel Bishop was appointed judge "in room of James Wadsworth Esq. as he declined taking the Oath to the Constitution of the United States." [5] This Wadsworth was one of the few known Antifederalists in the Connecticut ratification convention. The act appointing Bishop says that Wadsworth "resigned." In Massachusetts, Governor Hancock having sent the oath act to the General Court on June 25, 1789, resolves were passed to publish the act and for the taking of the oath by the legislators. In the House Abraham Fuller was appointed to administer the oath to the other members, and then Fuller was sworn in by Benjamin Lincoln. In New Hampshire on January 22, 1790, the change in the state oath attempted a year before was carried out, it being ordered by the legislature that "the words Sovereign and Independent shall be Omitted from the state oath, and confederated be substituted in lieu thereof." [6]

From Virginia, while there were evidently some recalcitrants, it was reported that there was a general compliance with the taking of the new constitutional oath; and the attorney general of the state,

James Innes, gave his opinion on March 20, 1790, that all magistrates chosen before August 1, 1789, must take the oath as well as those later chosen, "regardless of the laws and Constitutions of the several individual states." [7] Some of the state legislatures went through the supererogatory action of reenacting the congressional oath act, for instance, New Hampshire on June 17, 1789; perhaps, as Stephens states, because of the persistance of the theory of their intermediation between the general government and the people.

North Carolina did not ratify until after the oath act became law; and on December 9, 1790, the lower house refused by a vote of 55 to 26 to adopt a resolution for the taking of the oath prescribed by Congress on the part of the members of the General Assembly and the governor. However, there was a complete change of sentiment before the next legislature met on December 5, 1791. Then the members of the House of Commons went, before assembling, into an informal committee on the oath question and decided to modify the state oath they should take to "I, A. B. . . . swear that I will be faithful and bear due allegiance to the state of North-Carolina, and to the powers and authority which are or may be established for the government thereof, not inconsistent with the constitution of the United States and this state." [8] On December 6, after organizing and taking the above oath, the House "*Resolved,* That the Speaker and members of this house take the oath, prescribed by the act of the Congress of the United States . . . previous to entering on business." [9] The Senate did not follow suit at that time, so far as the record shows, though later in the session there is reference to such action by the "General Assembly" on convening; but on December 7 the higher house suggested a committee to bring in a bill on the oaths. This, after the usual swings from house to house then prescribed, was finally passed on December 16. It required a state oath very similar to that taken by the House at the beginning of the session, and section 2 ordered that all members of the General Assembly and all officials take the oath prescribed by Congress. The Rhode Island head officials and legislators took the oath at the beginning of the June 1790 session, immediately after ratification, and the General Assembly requested the governor to issue a proclamation for all other executives and judicial officers to do likewise.

NATIONAL AND STATE OFFICE HOLDING

IT WAS not unusual for prominent men in the states to be pluralists, and holding of state offices simultaneously with membership in

the Continental Congress had been common. With the adoption of the Constitution, however, a new spirit arose; sometimes, as amongst Henry's followers in Virginia, through antagonism, and in other cases through an early, though vague, realization of the directness of the general government and its action as an entity that functions through its own agents. A member of the Old Congress was still a state official; a member of the new one was a national official, though it is true that this fact was not at first, or for many years in some cases, accepted, especially by those most insistent on state rights.

Various members of the First Congress when elected were also in their state legislatures or held state offices, while a similar case existed among those appointed to national offices. There was nothing in the Constitution to prevent national legislators or officials from holding state positions; before the new government began to operate, however, several of the states took measures to prevent state officers from also holding national positions. Under the spur of Henry's antagonism, the Virginia legislature began this movement, it being one of his "musts" for the session which began on October 20, 1788. The bill, which became a law on December 8, 1788, made all members of Congress and national officers incapable of being state legislators or officers, except in the militia. The design, according to Henry's opponents, was to create discontent against the general government from the number of additional officers which must be employed among the people; but, according to these Federalists, its ultimate effect would be to abridge the importance of the states, since it would debar the United States from conferring power on state officers.

The question could be raised whether there might be a distinction between holding a national office and performing national functions. The Virginia act did not expressly prohibit the latter, yet Madison evidently considered it as included. The nation organized an entirely separate judiciary, which seemed to avoid the question; yet the naturalization act of March 26, 1790, gave state judges jurisdiction over its operations, though the citizenship conferred was national. Later, in some states the state courts were forbidden to act in the matter and the courts decided that the prohibition was within the power of the state legislatures. The national use of state jails was a phase of this "function" matter (*see* p. 453).

Joseph Jones wrote Madison on November 21, 1788, that the Virginia "exclusion bill" would undoubtedly pass: " . . . the policy as to some offices I think well founded, but as it stands . . . it is perhaps too general, as it manifestly tends to multiply officers

and expence."[10] Madison in writing to Pendleton about the impost bill on April 19, 1789, said that the difficulties of the bill were increased "by the law of Virginia disqualifying State officers, Judiciary as well as others, from executing federal functions. The latter circumstances seems to threaten additional delay, since it may require some special provision of a Judiciary nature for cases of seizure, &c, until the Judiciary department can be systematically arranged, and may even then oblige the fedl. Legislature to extend its provisions farther than might otherwise be necessary."[11] Edward Carrington in his letter of December 20, 1788, to Knox said, concerning this qualification act: "This Act is indeed the most striking evidence of Phrenzy that Madmen could have given, because it discovers the most wicked design to embarrass the New Govt. while it can have no effect in fact, for the New Constitution binds every State officer to observe & Execute the Federal Laws—for instance the State Courts must decide all cases of a Federal Nature according to the Laws which the Federal Govt. shall pass concerning them. But even could it be in the power of a State to prevent their Officers from Executing the Federal Laws a Multiplication of Offices amongst the people should be the consequence. I apprehend the odium of such a circumstance would naturally turn upon the authors of the [illegible] measure."[12]

As a result of this law Josiah Parker, elected to Congress, wrote Governor Beverley Randolph on February 9, 1789, that he should "be obliged to relinquish the naval office of Elizabeth River, it is not my wish, however, to resign it untill I take my seat in Congress, a disputed election may deprieve me of that honor, and if I resign untill the matter is determined, I may neither be member of Congress or naval officer."[13] However, he resigned on February 23. Samuel Griffin, another representative, wrote: "I shall be disqualified as Sheriff of James City County";[14] while, when Cyrus Griffin was appointed a commissioner to treat with the southern Indians, a temporary position, the Virginia General Assembly in November 1789 decided that he ought not to retain his seat in the state Privy Council."[15]

One of Maryland's United States senators, Charles Carroll, was also a state senator, and gave that service preference. His attendance at the national capital seemed to depend upon whether or not the state legislature was in session. On December 30, 1789, the Maryland General Assembly passed an act as a constitutional amendment by which no member of Congress or national office holder should be a member of the state legislature, elector of the Senate, or state office-holder. This had to be confirmed by the General

Assembly after the next election of delegates to it. It became a part of the state constitution in 1792 and Carroll resigned as United States senator on November 30, continuing to prefer his position as state senator. This action by Maryland was not however the earliest constitutional prohibition. Georgia changed her constitution in 1788–89, and the revision provided that no one holding a United States office of profit should be a member of the state legislature. Undoubtedly, congressmen were considered as holders of offices of profit, but this provision did not prohibit a state officer from being a congressman or holder of a national office.

In Pennsylvania, although there was no law on the subject, the Supreme Council on March 28, 1789, resolved, that as Thomas Scott was on his way to Congress, he was incapable of discharging the duties of prothonotary of his county, and his son was appointed in his place.[16] This may have been not a question of legality but of practicality; but the Pennsylvania constitution of 1790 provided that no state legislator or official should be a member of Congress or hold a national office, except in the militia. Delaware framed a new constitution in 1792, in which was the provision that no member of Congress or national officer should be also a member of the General Assembly. In New Jersey it was not until March 17, 1795, that an act was passed prohibiting a congressman from being a state officer, and if a legislator became a congressman, his state seat was vacated. Not until January 27, 1817, did a law in this state declare that the governor or justices of the state supreme court should not also hold a national office. The constitution of 1844 widened the earlier acts by saying that governorship and national office or membership in Congress were incompatible, as were also national position and a seat in the state legislature. The constitution said nothing respecting the state justices.

The General Assembly of South Carolina on March 27, 1787, enacted that "no officer heretofore elected or hereafter to be elected to any pecuniary office in this state above £50 shall hold any other office of emolument in this or the United States." Probably this law would have applied equally as well after the national Constitution went into effect; but it was not necessary to rely on its somewhat limited provisions, for the constitution adopted in 1790 declared that no governor, legislator, or judge of a superior court could hold other office, either state or national, except in the militia.

In New York the question turned upon the United States senators King and Schuyler and representatives Hathorn and Laurance, all of whom were members of the legislature and did not resign,

and upon Duane, who was a state senator and district judge. On February 6, 1790, L'Hommedieu, who had been defeated for the United States Senate, offered in the state Senate a resolution for a joint committee to consider the prohibition of the double service. This proposal was not carried through, but a resolve which originated in the House on March 16, and which involved both the incompatibility and the "vacancy," passed both houses by March 22. King did not vote on the subject, Duane was absent, but Schuyler opposed it. The Senate then resolved that the seats of Duane, Schuyler, Hathorn, and Laurance were vacant, and the lower house on March 25 took the same action respecting King, whose seat was in that house. On March 26, a law for election to these seats passed the two houses, which was to apply also to any later similar vacancies. On April 5 Governor Clinton sent in a message with a minute of the Council of Appointment concerning Schuyler's right to continue in that body, he having been elected to it as a senator. The House considered a motion that legal or constitutional disabilities were matters cognizable at law, and therefore it was improper for the House to express an opinion except by law, if necessary to remove doubt; but the previous question on this was voted down and finally adjournment took place without action. The New York constitution of 1821 declared membership in Congress or holding of a national office to be incompatible with a seat in the state legislature.

In North Carolina the legislature took up the matter in its session in November 1790. A bill was put through to prevent anyone holding a national office from being eligible to a seat in the General Assembly or to a state office. In the Senate on November 18 a motion was made to exclude members of Congress from the ineligibility to state offices, but it was defeated by 11 to 21. The motion was based on the theory that members of Congress were state officers. A later law allowed members of Congress to be justices of the peace. The preamble of the exclusion act stated that "sound policy dictates the measure of keeping separate and distinct the Officers acting under the authority of the United States, from acting in any legislative, executive, judiciary, or other situation under the authority of this State." [17] The prohibition was made constitutional in 1835.

DISQUALIFICATION IN NEW ENGLAND

It was in New England that the question attracted most attention. Respecting Connecticut, Tench Coxe wrote Madison on January 27, 1789, that the state intended to remove all their national senators and representatives from state offices. Ellsworth and

Sherman were judges. The House on January 8, 1789, passed a bill disqualifying the governor, lieutenant governor, members of the legislature and judges from being members of Congress at the same time. This bill in its entirety evidently did not pass the Senate, but among the enactments of the session is one which extended to members of Congress the prohibition of an act which forbade a judge of the superior court to be also governor, lieutenant governor or legislator. This compelled Ellsworth and Sherman to relinquish their judgeships. In the October session of 1789 a bill was passed ousting Jedidiah Huntington from the office of treasury because he had been appointed collector of the port of New London, "the Duties of which office will render it impracticable for him to pay that personal Attention to the Treasury which the public Good requires." [18] As originally passed by the House on October 20 the bill declared "said office . . . to be vacated by . . . acceptance of the Office of Collector." [19] No general law of prohibition was passed however. In the May session of 1790 the House passed a bill to exclude officers of the United States from holding offices under the state or members of the Congress also being state legislators; but again the Senate evidently did not agree, nor to a bill from the House at the October session to make members of Congress ineligible to seats in the legislature. A bill was finally enacted in the May session of 1791 by which no person holding a national office which prevented him from being a member of Congress could be eligible for membership in the state legislature. Sherman, who was first a representative and then a senator, remained mayor of New Haven until his death in 1793. All that the Connecticut constitution of 1818 did was to prohibit national officers or members of Congress from being members of the General Assembly; it did not forbid pluralism of state and national offices, or members of Congress from being state officers.

In Massachusetts the controversy was over the holding of a national office by a state legislator or of a state office by a member of Congress. One member of Congress was a sheriff and another a judge of probate; and several members of the General Court were given national offices, but no legislators were congressmen. There seemed in this state to be some reluctance to meet the problem.

The state constitution prevented holders of various named officers from being legislators, among these officers were sheriffs and judges of probate. On February 13, 1789, the House received from Governor Hancock a message in which he mentioned the two congressmen-elect who held state offices and desired the intervention of the legislature in the matter. A joint committee was appointed

and a reply based on its report was made to the governor on February 16. Of the judge of probate it said that "if he should continue to hold that office, and, at the same time, discharge the duties of a Representative in Congress, any future Legislature will make such an address to the Governor, as will authorize him, with the advice of the Council to appoint and commission some other person, to execute that office in the County of Bristol." As to the sheriff, since he held office during the pleasure of the governor and is removable by the governor with the advice of the council and not otherwise, save by impeachment, "the two houses do not conceive the intervention of the Legislature upon that subject, either necessary or proper." [20] Leonard ceased to be a probate judge in 1790. He continued as a judge of common plea, but this was not forbidden by the state constitution to members of the General Court, so there was not the analogy that existed respecting the probate position. Partridge continued as sheriff until 1812, but he resigned from Congress on August 14, 1790.

The other phase of the disqualification did not come up until 1790. Christopher Gore, the new attorney for the District of Massachusetts, was a member of the House, and Jonathan Jackson, the new marshal, of the Senate. On January 14 a joint committee was moved to consider whether a person who was holding a national office could be a member of the General Court. The report of the committee, January 20, to declare Jackson's seat in the Senate vacant, was rejected in that body by 13 to 11, although the analogy between his position and that of sheriff was pointed out. He continued to serve during the sessions of this legislature, but was not reelected. He seems to have been a candidate but was snowed under.

In the House it was voted on January 21 by 137 to 24 that seats of holders of national offices similar to those state ones which the state constitution declared incompatible should be vacated; but a vote on the direct question of vacating Gore's seat was avoided, in spite of efforts of his supporters to get a clean-cut decision on the matter. He resigned on January 29, declaring that he had stated on the floor of the House that he did not consider his national office as a sufficient reason for vacating his seat. He continued to believe this, because his office was not one mentioned in the disqualifications of the state constitution, and any attempt to limit a citizen's right to hold office merely on the plea of the resemblance of the national district attorneyship to the state office of attorney general was purely arbitrary, especially as the House or General Court had no power to add to the prohibitions. In spite of his belief, he preferred to resign for the

sake of harmony, since there was opposition. The House voted to accept the resignation, and a town meeting was called in Boston to consider the election of a successor. There was rather acrimonious discussion of the pro and con of the matter by the local papers. At the town meeting on February 13, 1790, a letter of explanation from Gore was read. There is no direct statement of his desire to be reinstated, but that seems to have been the case. The town meeting, however, also avoided the issue by deciding not to elect a successor, while thanking Gore for his service.

A year later a more important case came up in the House. David Sewall, judge for the District of Maine, was elected to represent his town in the Massachusetts House, Maine being then a part of that state. The General Court convened on January 26, 1791, and two days later the question of the judge's eligibility came up. This time the rejection was specific and by a vote of 113 to 5. He was permitted to plead his case on the floor, though not sworn in; and the debate evidently attracted much attention. The *Columbian Centinel* of Boston devoted thirteen columns to it, the major news part of two issues, February 2, 5, and the papers elsewhere copied this.

Sewall's own argument and that of his supporters, were like that of the year before voiced by Gore; also he considered his court an inferior one and not analogous to the superior ones to which the constitutional prohibition was restricted. The opponents denied the inferiority, declared that the bill of rights of the state constitution called for the strict separation of powers, and that not only did the spirit of this require his exclusion, but had the framers had any idea that such a court as his would later be called into existence, it would have been in accordance with the demands of the bill of rights specifically excluded, especially as it would be part of his duty to pass on state laws as well as national ones, laws which he himself might have helped to frame. In addition, it was "highly improper, that any man who held an office of profit and emolument under a foreign government, should be permitted to take a seat among them. . . . such person could not be impartial—that the impulse of gratitude would sway them powerfully, perhaps without their knowing it, in any determination where the interests of the government which they served, were involved or affected." This might easily lead to corruption.

In rebuttal it was held that there was no reason to consider the interests of state and nation dissimilar or antagonistic, or that corruption would be introduced. It was also not legitimate to call the national government a foreign one. This vote evidently fully estab-

lished the precedent in Massachusetts. The amendments of 1821, the first added to the original constitution, included one stating that a national office holder, except a postmaster, could not also be governor, lieutenant governor, councilor, or legislator, and no state officers were to continue as such if elected to Congress.

NEW HAMPSHIRE: SOVEREIGNTY

At the time of the Gore case in Massachusetts, interest was enhanced by a coincidence in New Hampshire. There the president of the state, John Sullivan, had been appointed district judge by Washington. When the General Court met next after this, the House on December 26, 1789, asked the Senate to join in a conference on the subject whether Sullivan "can constitutionally continue in the chair of Government, while he holds the Office of District Judge." The Senate declined; ". . . it is improper . . . because the Honorable house of representatives are by the Constitution, the grand inquest of the State, and all impeachments made by them must be heard and tried by the Senate."[21] The House on January 8, 1790, by a vote of 35 to 25, postponed to the next session, which would be after his term had expired, a motion that he could not act constitutionally. Five members registered their dissent, declaring that it would be more honorable to meet the question rather than to avoid it. He had created a condition "where as Judge, he may explain and interpret laws, which as legislator [the president had a vote in the Senate] he assisted to make, and as an executive officer was to carry into effect;—which mixed authority we conceive, tends directly to the consolidation of both governments; to blend powers that should be separate, to create diffidence and distrust in the minds of the people, when unanimity and confidence in the government are absolutely necessary."[22]

Sullivan had sent in a message on December 20, 1789, saying: "I confess that I have never been able to discover any incompatibility in the two offices." Also, his retirement before the end of his term would cause confusion and would be a betrayal of trust: "I concluded delicacy would have prevented some persons from pursuing the methods they have adopted, for gratifying a spirit which ought never to lodge itself in a branch of the Legislature. . . . I know the candour and justice of the members of both branches; and have too high an opinion of their integrity and uprightness to suppose, that they will suffer themselves to be influenced by the efforts of one or more, who cannot avoid, at every opportunity, discovering the spirit that actuates them in their conduct." Had this been all, the mes-

sage might not have created much interest outside the state, but he added:

> But as some have attempted to prove this by urging the words of a Constitution framed for the purpose of establishing over the people of New-Hampshire a free, sovereign and independent government—I must observe, that this government has since been changed by the voice of the people who have agreed that their safety depended on their relinquishing many of the powers retained by the people in that Constitution, to a General Government established for the people of each and every State who should adopt it; which to them was to become the general law of the land. The people of this State did, in the most solemn manner, adopt and ratify that Constitution; and from that event, this ceased to be a free, sovereign, and independent state; and upon my being elected to the office of President, I was only sworn to perform and fulfil the duties incumbent on me as President of a free and confederate State; and I was at or near the same time sworn to support the Constitution of the United States, by virtue of a law enacted by yourself.[23]

This statement, emphasized by italics and small capitals in the newspapers, attracted much attention. The *Massachusetts Centinel* on February 6, 1790, remarked editorially: "The principles he advances in his Message to the Legislature, are *candid, open,* and *true*—and it is their *truth, openess and candour* which have occasioned the virulence aimed at his character; For it is shown, that the doctrine of President Sullivan has a tendency to destroy every remains of the reign of the MONSTER WITH THIRTEEN HEADS . . . It is the fear of the annihilation of this Monster, that actuates the enemies of The President of New Hampshire." But here was a new phase of consolidation to those who professed fear of it. The Boston *Independent Chronicle* of February 4, 1790, had a long argument on state sovereignty, apropos Sullivan's message. It questioned the meaning of "free and confederate," because a state could not be free if it had parted with its sovereignty, nor could it confederate unless sovereign; and declared that the states did remain free, sovereign, and independent in all matters and things not expressly ceded to the United States. A correspondent, "Brutus", added:

> . . . provided this is the case, to what a deplorable situation have we reduced ourselves by the adoption of the Federal Constitution. No man, however, has been hardy enough to come forward with so FLAGRANT an *assertion;* the most violent partizans have been cautious how far they ventured on this ground, knowing that it was too early a period, to broach such *treasonable* sentiments. By this declaration, the *alarm* had gone forth, and it has now become the duty of the several States, in their Legislative capacities, to REMONSTRATE against such a bold attack upon their *Freedom, Sovereignty,* and *Independence;* and though the State of *New Hampshire* should suffer *their* PRESIDENT to proceed in his career with *impunity,* yet it is not doubted, but

those States *which still mean to support their Freedom Sovereignty and Independence,* will bear public Testimony against the declaration, and early check the wicked designs of men, however *elevated* may be their station".

Jeremy Belknap wrote Sullivan from Boston on March 6, 1790:

I was exceedingly gratified by the issue of the attempt to displace you, & by your consequent Message to the assembly—it confirmed the ideas which I threw out in my Election sermon . . . and I have advocated the sentiment with peculiar pleasure in several Companies. Genl. Lincoln I have heard express himself to the same purpose, & several others of our *good* men but it was a most *bitter pill* to some of our *great* men, the sticklers for state sovereignty. However the sentiment must prevail & in proportion as it prevails we shall be truly respectable as a *Nation*—this is a word too which some of our Gentry cannot bear. To pray for the *national Government* is even deemed offensive in the Clergy—but thanks to heaven we are not bound to receive for Doctrines the Commandments of men.

He added that "national Government" needed explanation; "I only mean that the word *national* is offensive—if we say the *federal,* or the *general* Government, it is tolerable." [24]

For once, the opponents probably had public opinion supporting them; at least the New Hampshire constitution of 1792 provided that no member of Congress or national officer should be governor, or member of the council or legislature. Rhode Island reentered the Union after the flury over this double service had subsided, except for the Sewall case. It was probably not until February 1814 that a law was enacted in that state that no man appointed to a national office should be a member of the General Court, and the constitution of 1842 merely added to this that a national officer should not be a general state officer.

ELEMENTS OF THE QUESTION

There were two main elements in this question of holding positions under both national and state governments—that of the separation of powers and that of the protection of the state governments; but in general the second element seems to have been more important. There is no general agreement on the extent of the restriction, and preventing congressmen from being state legislators is sometimes not included, though here there is doubt as to whether the term "office" is not intended at times to include membership in the national legislature. It may at least be said that the action of the states, upon whom the business involved, showed an intention to keep separate the personnel of the general and constituent governments. It is probable that the judiciary act of 1789, in making the national judiciary entirely independent of that of the states, was both a reaction to the disposition in Virginia and elsewhere to keep the

personnel separate, and a promoter of the further development of that movement.

STATE IMPOSTS

UNDER the Confederation the states, except New Jersey and Delaware, laid imposts and tonnage, and there was discriminating commercial legislation. The resulting interstate bitterness and reluctance to permit the general government to share in this easy revenue were among the causes which led to the Philadelphia Convention of 1787. In that body there was general assent to the idea both of freedom of interstate trade and national monopoly of import and tonnage duties; so that the Constitution provided not only for the power of Congress to "lay and collect Taxes, Duties, Imposts, and Excises," but forbade interstate duties and the levy by the states of duties on imports and exports without the consent of Congress, except such as were "absolutely necessary" for executing inspection laws, and net revenue from such cases should belong to the national treasury. This being the fundamental law, the question was not as to the cessation of the state duty, but merely as to the when and how.

CESSATION IN NEW ENGLAND

Connecticut, as likewise in the case of the oath, was prompt about the matter. In January 1789 the General Assembly passed an act terminating state import duties on February 1, 1789. This state however, like New Jersey, had suffered from the duty laid by New York and undoubtedly was glad to make a gesture which would show as early as possible its pleasure in the coming relief. In Massachusetts the Senate on February 16, 1789, passed an order directing the treasurer to issue no further orders on collectors of imposts and excises; but the House the next day referred the matter to the next session. On January 30 the Senate directed the justices of the supreme court to give an opinion when "state's imposts would cease in consequence of adoption of the Federal Government." Unfortunately, this opinion has not been found, or evidence that it was made; but a letter from the comptroller general's office at Boston dated April 27, 1789, to the collector of imposts and excises for Berkshire declared: "I am decidedly of opinion that our Revenue Laws must continue to operate until repealed by an Act of the United States or an Act of this State—you will therefore continue to discharge the duties of your office." [25] The act of June 25, 1789, some days before the first national tariff became a law, was in harmony with this, declaring that the state imposts "shall be repealed at the time the Act or law, that is, or shall

be made by the Congress of the United States of America for the purpose of raising a publick Revenue by Impost shall begin to operate in this State." Here, as elsewhere, the importers were ready to seize upon the legal doubt in order to have an interregnum of free trade. An item dated March 9, 1789, from Boston in a Philadelphia paper said: "We are told from good authority, that Mr. Pars-ns, the lawyer of Newbury-Port, has industriously circulated . . . that the impost cannot be recoverable after the 5th of March—whether for the *laudible* purpose of multiplying lawsuits, or from a real conviction of the fact—is uncertain." [26] Theophilus Parsons, later a renowned chief justice of the state, was then active in politics as well as in the practice of his profession, and was a member of the lower house.

In New Hampshire the action of the general government was awaited. On January 16, 1790, the House passed an order based on the fact that "by the operation of the federal government, the collection of duties and tonnage at the impost and naval office have ceased." [27] The Senate nonconcurred in the order but did not question the fact, and by an order of January 26, 1790, the revenue from the imposts went into the state treasury until August 11, 1789, which was the date of the beginning there of the collection of the national duties.

IN THE MIDDLE STATES

In New York no special action was taken. The national act declared it was to operate from August 1, 1789, and at New York City the duties were first enforced on August 5. As late as July 20 there was a condemnation sale ordered at the suit of John Lamb, the state collector. As he was also appointed national collector, the change from state to national operation was evidently made without much notice. The newspapers ignored it.

Pennsylvania merely acknowledged the fact of the cessation of its imposts. On September 29, 1789, an act declared that "the duties and imposts laid by the several acts of assembly of this state ceased to be due and payable from and after the first day of August last past." [28] The national customs began to operate at Philadelphia on August 10. Before this date however, the state collector referred to the Supreme Council of the state the question of the limitation of the state acts and also of the right of merchants to the drawback on duties paid to the state before August 1. The council took this up on August 4, appointed a committee and directed it to consult the attorney general and supreme court. The committee reported on August 8 that all state acts to require imposts had ceased

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to have any legal operation, and the powers of the collector and naval officer had ceased as respects any future act to be done by them, and therefore there could be no drawbacks on future exports. To this report the council agreed; [29] but the merchants appealed to the General Assembly, which in the above mentioned law continued the state collector on all goods imported before August 1 and accountable for drawbacks due on their reexport.

IN THE SOUTH

Again, it was in Virginia that there was most interest and action over the question, an interest which began early especially on the part of the merchants. The naval officer at Accomack wrote Governor Edmund Randolph on August 6, 1788, that certain Antifederalists objected to paying duties on interstate trade, such laws being totally abrogated or superseded by the new Constitution.[30] Monroe wrote Madison on November 22, 1788: "Whether the impost system of the State shall cease then [March], or continue untill contrary provisions are made, seems to be a doubtful question. An apprehension that other States may lay theirs aside and open their ports free from duty in the interval, has weight on the minds of some and disposes them for a similar measure, especially as they suppose the amt. will belong to the US, but I rather believe ours will be continued untill Congress direct otherwise, let the revenue accrue to whom it may." [31]

The session of the General Assembly at the time Monroe wrote passed on December 30, 1788, its solution of the question: "That so soon as it shall be notified to the executive by congress, that measures have been by them taken concerning duties or imposts, all laws concerning naval officers, collectors of duties and searchers, and their salaries, and concerning duties and imposts of every denomination whatsoever, shall cease and determine; except the duty of six shillings per hogshead on tobacco exported, reserved for inspection duties." [32]

Madison, while the tariff bill was before the House of Representatives, received advice from his Virginia correspondents. Randolph wrote on April 23: "I confess, it strikes me, as expedient that a temporary arrangement of impost should be made. The merchants . . . give their bonds at Norfolk as usual; but subjoin a caveat against payment, until the federal claims, which came into existence on the first Wednesday in March, shall be adjusted. Delay is therefore ruinous to the state and general government." [33] Joseph Jones also mentioned on May 10 the merchants' giving their bonds under protest: "I am inclined to think the decision will be in favour of the State as the particular regulations must be presumed to exist under

the authority of the State untill the general regulations under the laws of the new government operate their repeal—besides it wod. perhaps be impolitic in the general Government to agitate the question as it wod. generally disgust the commercial states tho' it may not improbably be deemed an object with those not commercial or but so in a small degree."[34]

It is evident that the merchants did not consider the law of December 30, 1788, as finally settling the question; but Governor Beverley Randolph on July 21, 1789, issued his proclamation as required by the law, making the date August 1.[35] The national law went into operation in Virginia on August 17. The day before, the state customs boats, *Liberty* and *Patriot*, and minor craft were put up at auction in accordance with the law. What the outcome was of the merchants' protest is not known; but on June 15, 1790, the state court, with the approval of the attorney general, declared that on bonds taken on and after July 21, 1789, there could be no recovery, the court unanimously determining that the state laws on the subject ceased as early as that date, which was the date of the governor's proclamation, although that proclamation itself made August 1 the date. The council on July 6, 1790, directed "that all such bonds be delivered to the obligors." On March 11, 1791, John Brockenbrough petitioned for the return of his payment on goods imported on July 24, 1789.[36]

The statutes of South Carolina give no legislation concerning the cessation of her imposts. Georgia amended her revenue law on February 1, 1789, adding a provision that the acts should be in force until Congress ordered otherwise, and no longer. It was necessary, after the ratification of the Constitution by North Carolina, to extend the operations of the tariff law to that state by special act. This was not done until February 8, 1790, the act to take effect in thirty days, during which time the proper appointments were made. Meanwhile the session of the legislature held immediately after the ratification directed that collectors of customs should continue and turn receipts into the state treasury until Congress should make provision for the national collections. Also, the Senate on December 15, 1790, passed a bill to return all duties paid or secured to collectors of the state on goods imported from other states after North Carolina had ratified and before the national government took over the customs; but the House rejected this on the same day. Rhode Island in September 1790 ordered the collection of customs bonds given subsequent to ratification until further orders of the assembly; but the tariff act was extended to Rhode Island sixteen days after

ratification, to be in force five days later, and the officers were confirmed on the same day, so that the change was carried out speedily and the amount affected by the legislature's order small.

Although the national act was in force from August 1, 1789, actual collections did not begin at the various ports until later in that month. Hamilton, as secretary of the treasury, considered however, that payments on importations after August 1 should be collected and took legal measures accordingly; but he suggested that Congress relinquish the claims as they were scarcely ethical, even though legal. Congress took no action, but Hamilton evidently dropped the proceedings. It is evident that the merchants enjoyed free entry for a greater or less period in some states but not in others.

OTHER TAX MATTERS

THERE were some minor matters involved in this question of state imposts. Doubt was raised respecting the right of the state to continue their excises; but the essential difference between these intrastate levies and imposts was soon established, and the concurrency of the power recognized; though the later assumption of state debts was made the excuse for demands for the abolition of state levies. As stated above, various of the states had courts of admiralty. These were discontinued because of the change to national jurisdiction. Virginia, for instance, by the act of December 30, 1788, discontinued the salaries of the admiralty judges from that date, and ordered that cases be considered by other state courts until the general government took over the responsibility. This same Virginia act continued the state export tax on tobacco for payment of inspection; and at first Massachusetts evidently intended at least to continue the fees for permission to pass the Castle, appropriating the same for the expenses of the lighthouses. Various of the states entered upon harbor improvements, Rhode Island, Maryland, Georgia, and later Massachusetts laying tonnage taxes for the funds, and getting the consent of Congress on August 11, 1790. The congressional act was temporary, but later acts extended the permission. The Rhode Island act became a law in January 1790, before ratification and was not made dependent upon permission of Congress, and the responsibility for adding it to the Georgia and Maryland acts is not evident. The company was authorized to collect for twenty years but the consent of Congress was to 1796 only. North Carolina in 1790 levied a tax on officers and seamen of arriving ships for the support of sick seamen. The further history has not been traced, but its constitutionality is doubtful. It did not

appear in the compiled statutes. On July 16, 1798, Congress enacted a similar law taxing officers and crews; and when in 1817 North Carolina, declaring the amount from the national ordinance insufficient there, passed a law for a further tax, the act was made dependent upon the permission of Congress, which was given on April 4, 1818, for a period of five years.

LIGHTHOUSES: JURISDICTION

CONGRESS on August 1, 1789, as its ninth act, took over, as of August 15, the "necessary support, maintenance, and repairs of all lighthouses, beacons, buoys and public piers . . . at the entrance of, or within any bay, inlet, harbor, or port of the United States"; but provided that this should continue for one year only unless meanwhile these aids to navigation were ceded to the United States, "together with the lands and tenements thereunto belonging, and together with the jurisdiction of the same." [37] The act also provided for the erection of a lighthouse at the entrance of Chesapeake Bay at such place as the President should select, a proper cession of land being made.

There was a general response by the state legislatures to this proposal, though it was necessary to extend, by the act of July 22, 1790, the period of service pending that response. Pennsylvania led in the matter, and by her act of September 28, 1789, ceded the lighthouse at Cape Henlopen (which was within the Delaware jurisdiction), and the beacon, buoys, piers, and other things in the bay and river of Delaware for the improvement and safety of navigation, except Mud Island and its wharves. Virginia and Maryland had been preparing to build a lighthouse at Cape Henry; and on November 13, 1789, the Virginia General Assembly conveyed two acres of land at the cape. The light was to be erected within seven years, and if not, or allowed to decay, the land was to revert to the commonwealth. The fishing rights were to continue, and the material collected for the lighthouse was not included in the cession but was subject to sale to the general government. Nothing was said in the act about jurisdiction or the reservation of any right to serve processes. In December 1790 the Maryland authorities were directed to concert with the Virginia authority in the sale of the material.

The South Carolina act, January 20, 1790, was more cautious. It ceded the light on Middle Bay Island in Charleston Harbor, "with the lands and tenements thereunto belonging or appertaining, together with the jurisdiction of the same, as far as the same shall be incident and essential for the erection of forts . . . and other needful

buildings, and the appointment of officers, and general regulation of the said light house, forts," etc., on condition that the United States "shall sufficiently support, maintain, and keep in good repair, and rebuild when necessary, the said light house, from time to time and at all times hereafter"; and all expenses since August 15 were to come out of the United States Treasury.[38] A later act respecting a similar grant stated that these restrictions were "improper," and "the jurisdiction" was unlimited; but service of state processes within the area was reserved.[39]

The light for New York Harbor was on Sandy Hook, which was within New Jersey. However, in 1762 certain persons purchased the land and built a lighthouse for New York's use. On February 3, 1790, these trustees, their heirs or assigns, were directed by the New York legislature to convey all their rights to the United States: "In confidence, That in case the said United States shall make any compensation to other states . . . for the like grants and cessions, that compensation will also be made to this state . . ."[40] In the House an attempt had been made to require a payment by the United States, but this was on January 25 defeated by a vote of 51 to 2. New Jersey on November 11, 1790, ceded the land at the Hook.

About June 3, 1790, Connecticut ceded the buoys and lighthouse at New London. The Massachusetts cession came on June 10, 1790, when the act granting the several public lighthouses in the state provided that the grant should be void if the United States failed to keep them in repair and operation, civil and criminal processes should still be executed on the lands or buildings, and if the United States gave any compensation, then Massachusetts should have her share. Samuel Adams saw in this movement, as in many others, a danger to the state. He wrote Gerry in September 1789: "It is presumed not to be intended that the Legislature shall be told at the End of the Year you must cede your lighthouse to Congress, with the Territory in which it stands, or it shall be of no use to your State. . . . it was said to be very wholesome advice given by the Bishop of St. Asaph . . . 'Not to govern too much.'" This he held to be the true art of governing. "And is there not Danger that such will be the Common Opinion if Congress after having taken from a State the Means of supporting its Lights [tariff duties] shall lay it under a kind of necessity of ceding the Jurisdiction with the Property or lose the Benefit of them."[41] Lincoln, in spite of his Federalism, was dubious respecting the cession of the jurisdiction. He inquired of Sedgwick on March 14, 1790: ". . . 'together with the jurisdiction of the same.'

What is meant by the jurisdiction of the same? Our people are afraid of these words. I wish to know the understanding of Congress in this business." On April 6 he added: "It has been supposed by some that the word 'jurisdiction' in the light house law would make the ground compleatly a City of Refuge and a security against all processes saving those under the union." [42]

In December 1790 North Carolina made her cession of land for a lighthouse and the jurisdiction; but in New Hampshire the matter came up several times before there was a final decision. It was finally made on February 14, 1791, with the usual legal reservation and right to apprehend escaped prisoners, while it was also voted to ascertain the amount expended on the lights from August 1789 and call on the collector of the port for the amount. Georgia's cession of the light on Tybee Island and five acres of land was not made until December 15, 1791. Rhode Island in September 1790 repealed an act for regulating lighthouses, but did not cede to the United States until May 1793.

Thus, at the very beginning of the national government the system of acquisition of property and jurisdiction over areas within the states, with state consent, came into operation, with general acceptance by the state legislatures. This has continued to be the policy, but these early actions were state cessions rather than purchases by the general government with state consent, which became later the common practice. By the law of March 20, 1794, the acquirement of harbor defenses was authorized, by cessions from state or purchase from private owners; but neither here nor in the act of July 5, 1790, to purchase land at West Point, was anything said of jurisdiction or state consent to the purchase.

JAILS

HAVING no places of detention herself, the United States was compelled to rely upon the facilities of the states. Accordingly, on September 23, 1789, Congress passed a joint resolution recommending to the states the passage of laws making it the duty of jailkeepers to receive and keep safe all prisoners committed under the authority of the United States, the national government to pay 50¢ a month for each prisoner, and also support the prisoners. To this, also, there was general state response, though Congress saw fit to resolve on March 3, 1791, that if necessary the district judges might hire convenient places as temporary jails. In New York an earlier attempt to authorize the sheriffs and other state officers to serve and execute the processes of the national courts as well as keep the prisoners was rejected, and the enactment of the judiciary act made state service

of processes unnecessary, but New York consented to receive national prisoners. Though the national resolution promised to support prisoners, in Rhode Island, with true Yankee caution, the legislature provided that the consent was given "in full Confidence that Congress will make Provision for the Support of poor Prisoners committed for Debt, as otherwise Humanity will call upon the Inhabitants of the County Towns to support their Necessities, which will prove unreasonably expensive and burthensome." [43]

STATE CONSTITUTIONS AND LAWS

THERE were various other phases of the adjustment of state laws and actions, made essential or advisable by the organization of the national government and its activities. Some of these were of a general character, not based on any particular enactment by Congress. Thus, it was recognized that the fundamental laws of the states might need overhauling. In September 1789 there were petitions presented to the General Assembly of Pennsylvania by many freemen asking for a convention "for accommodating the constitution of this state to the government of the United States." The movement was not new, for there had been dissatisfaction over the state constitution for years; but there was now a new argument for changes. A committee of the whole house reported such a resolution on September 14; and by 37 to 19 a motion to postpone in order to have "positive instructions of a majority of the good people of the State" was defeated, but an adjournment of the proposed convention after the framing of the new constitution in order to give proper time for consideration by the people was carried by 55 to 1, the single objector declaring that the convention had a right to complete independence and the legislature should not direct its proceedings. The resolution for calling a convention was then agreed to by 39 to 17.[44] The result was the constitution of 1790. On November 3, 1789, the Supreme Council sent to the General Assembly a message submitting "to the Legislature the propriety of a revision of all laws of this state, which interfere with the acts or resolves of the Congress of the United States." This was committed, but no report made.[45]

In Georgia a new constitution was adopted in 1789, in South Carolina one in 1790, and in Delaware in 1792. In New Hampshire President Sullivan's message on December 24, 1789, spoke of the advisability of seeing whether any of the state laws "militate with or are repugnant to the Laws of the United States or the Constitution of the federal Government"; [46] and on December 30 a joint committee was appointed on this, but no report was made. New Hampshire

had a new constitution in 1792. The Connecticut House on January 2, 1789, voted to appoint a committee to join with one from the Senate "to consider what Laws ought to be passed by the Assembly in Conformity with the new Constitution lately adopted and report by Bill or otherwise." [47] At the October session the House appointed another committee to consider that part of the governor's speech which related to the repeal of laws that interfere with the laws of the United States. Later there was a conference on this, but no final action.

It is possible to ascribe too much influence to the national Constitution in the main changes in the new state constitutions, because the new features were also found in other state constitutions; but the synchronism is important, and there is much in the wording of the new constitutions, aside from specific alterations, which is suggestive. In Pennsylvania the single house of legislature and an executive council of which the president was merely head, became a legislature of two houses and a governor with veto power. The council was entirely abolished. In New Hampshire a second constitution in 1784 had shown the influence of the Massachusetts one, but the president presided over the upper house and had a vote in it, while his council was chosen from the two houses. In 1792 the president became a governor with a veto and the council a separate elected body. The Georgia unicameral legislature became bicameral and the governor was given the veto power. In Delaware the General Assembly had been a House and a Council, with a president and privy council elected by the legislature; there was now a Senate instead of a Council, and a popularly elected governor with appointive powers. In South Carolina the influence of the national Constitution is much less noticeable, being mainly in the phraseology.

STATE FINANCES

ASIDE from these constitutional changes, the general influence of the Constitution of the United States may have extended to some remodelment of the more basic laws of the state, but little direct evidence of this has been noticed. The financial legislation of the First Congress, not only the tariff, already considered, but also the laws to carry out Hamilton's financial policy, raised many questions in the state legislatures. It is not possible in the present study to show in detail how the states adjusted themselves to this, but only to indicate some of the points. Under the Old Congress and the Confederation the revenue and its machinery had been in the hands of the states, and their laws had provided, or failed to provide, for

the payment of pensions and their own war debts, and to meet the requisitions of Congress for current expenses and the foreign and domestic debt of the general government. The old system was disrupted by the provisions of the new Constitution.

Governor Clinton, in addressing his legislature on December 11, 1788, said: "When I reflect upon the great change which is soon to take place in the General Government, and the influence it may have on the police and revenues of the State, I am sensible it will be a difficult task to determine on the measures most proper to be pursued at this time; . . ." [48] Hancock, too, voiced the uncertainty on January 8, 1789: "Our present situation with regard to the commencement and operation of the general government renders it very difficult to determine upon any particular & permanent system of Finance for the Commonwealth; . . ." [49] The North Carolina House on November 6, 1790, proposed a joint committee to consider the internal powers of the state and "its present interests as connected with the general government of the United States." [50] Here, the matter had perhaps more special reference to the state's dissatisfaction over assumption. The Senate nonconcurred.

Congress on September 29, 1789, enacted that all military pensions granted by the states in pursuance of acts of the Continental Congress should be continued and paid by the United States for one year from March 4, 1789. This act was renewed in 1790 and a general power act passed in 1792. This caused the legislature of Connecticut, for instance, in its session of October 1789 to resolve that the state's liability for such pensions ceased on March 4.

STATE COINAGE

THE CONSTITUTION prohibited the states from coining money or emitting bills of credit. State paper money was a general feature as a result of wartime expenses and the following depression; and also some of them supplemented their paper with copper coinage. This was the case in Massachusetts and Connecticut. In the latter state an act of October 1785 granted license to coin coppers. In May 1789 it was resolved that further proceedings be suspended until October, when the coiner was to appear and show cause why the grant should not cease. A resolve in May 1791 directed the disposal to the best advantage of coppers now in the treasury. In Massachusetts Governor Hancock reported on January 23, 1789, that in compliance with the resolve of the previous session all the copper suitable for cents had "been worked," all employees of the mint discharged until

further orders of the General Court; the building and tools, built and procured at the expense of the commonwealth, remained: "You will give such directions concerning them, and the remaining stock unsuitable for the business, as shall best promote the interest of the state." [51] The Senate proposed to continue the contract up to $70,000 worth of cents, included those already coined; but in the end the matter went over to the next session and evidently was not taken up again. Georgia on February 1, 1789, passed an act to the effect that if Congress passed the tariff act, the power of the state act that provided for the payment of imposts in the paper money of the state should cease; and on December 23, 1789, declared that the paper money was no longer a legal tender.

There was some comment in the newspapers during the summer and fall of 1789 about the superabundance of coppers. In North Carolina it was complained that the coins were all being sent there because they had ceased to circulate in the North; while the *Providence Gazette* of September 12, quoting from a New York paper, said that the New Jersey coppers were two for a penny, and it was "to be hoped that the mint-masters will be so moderate as not to glut the market." The congressional act of May 8, 1792, doomed the state pennies.

STATE TROOPS

SEVERAL of the states had troops on their payroll. Governor Beverley Randolph of Virginia issued an order on June 1, 1789, to the frontier counties: ". . . a letter from the President of the United States renders it unnecessary that this State should any longer at her own particular charge, support the troop called into service for the defence of the western frontier. You will immediately discharge all the Scouts and Rangers employed in your County." With the cessation of the Virginia customs, the force maintained at Point of Forks in Fluvanna County was ordered discontinued. Hancock in the message of January 8, 1789, previously mentioned, called attention to the fact that the states could not keep "troops in time of peace," and the necessity of measures respecting the force at Castle Island.[52] On January 26, 1790, the New Hampshire General Court voted that it was not necessary to keep up a military force at the entrance of the harbor, Fort William and Mary, and ordered a committee to see about some suitable person to take care of the ordnance stores. The militia law of May 8, 1792, called for changes in the state ordinances; thus, Georgia ordered her law to correspond on December 14, 1792.

NATIONAL FUNDING AND ASSUMPTION

IT WAS through the funding of the national debt and the assumption of state debts that the states found it most advisable to reform their financial regulations. On June 24, 1790, the Massachusetts General Court ordered the recent excise act repealed if the United States should assume the consolidated debt of the state. In New York by the act of February 23, 1791, it was decreed that it was essential to the interest of the state that its creditors should subscribe to the loans proposed by Congress; and justice required that a full compensation be made by the state to the said creditors for any injury they might sustain thereby; therefore, the state would receive deferred interest stock and give in exchange immediate interest stock of 6 per cent. To get a fund for these payments the treasurer of the state was to subscribe for the federal fund all the continental paper now in the treasury of the state; and was further ordered to exchange stock for certificates that might not be received on loan by the United States or those of a greater sum subscribed by creditors of the state than the amount of debt assumed.

In New Jersey payment of interest on continental certificates was directed to cease after February 1, 1791. Pennsylvania had on March 16, 1785, passed an act stating that as the attempt of Congress to secure the right to raise means to meet its debt obligations had been frustrated, and as a considerable part of the continental debt was due to citizens of Pennsylvania, therefore a portion of the money from the state import duties and taxes was to be used to pay the state's quota of the annual interest of the United States debt to citizens of the state or soldiers and officers of the Pennsylvania line. A year later, the treasurer was ordered to receive on loan certain debts of the United States to citizens of Pennsylvania and fund the same, paying interest.

Having thus done her part in time of need, the state prepared for the new dispensation by ordering a restoration of earlier conditions. The act of March 27, 1789, declared that whereas Congress had the power to lay taxes and duty and no state could levy an impost without the consent of Congress, and whereas "the said congress having full power to provide for the payment of the debts of the United States no doubt can be entertained but they will with all convenient speed make due provision for the same and as that part of the said aggregate sum created by the said act . . . which arises from duties and imposts on importation . . . will shortly cease to come into the treasury of this state, it is reasonable and just that the temporary relief which by [certain acts] . . . was granted . . .

should also cease and that payment of public debts due to the said creditors should be provided for out of the treasury of the United States . . . " No more interest was to be paid after April 1, 1789, on the United States debt received on loan, and those who wished could reexchange the state's certificates for the United States ones.[53] This act was anticipatory. After the enactment of the national funding law, the legislature on April 9, 1791, followed the example of other states in promoting the success of the funding. The credit of the state was pledged to pay the 6 percent on the deferred loan and 3 percent additional on the 3 percent loan to induce the creditors of Pennsylvania to subscribe. In Maryland similarly on December 22, 1790, the faith of the state was pledged to Maryland holders to receive all 3 percent and deferred 6 percent certificates and pay in national stock bearing 6 percent immediately.

STATE INSTRUCTIONS AND PROTESTS

VIRGINIA

IT IS well known that the assumption law was unfavorably received in the South especially; and it and the secret sessions of the Senate were responsible for the origin of the phase of state rights covered by legislative instructions to members of Congress, especially to senators, although the matter was to some extent involved in the constitutional amendment question. Virginia and North Carolina were the chief seats of the early movement, and the Old Dominion remained down to the period of the Civil War a leader in the claim of her legislature to control the action of the state's senators.

The General Assembly of Virginia in its session of 1789 resolved on December 17: "The General Assembly of Virginia, considering it as one of the important privileges of the people, that they should have free admission to hear the debates of the Senate as well as of the House of Representatives, whenever they are exercising their legislative function; Resolved therefore, That the Senators of this state . . . be instructed to use their utmost endeavours to procure the admission of the citizens . . ." [54] The instructions were not obeyed until April 29, 1790, because Grayson's illness had prevented his attendance and he died on March 12, and Lee did not attend until this period. The motion was voted down the next day. Maclay made no comment at that time. The Virginia legislature renewed the instructions at the next session, and the resolve was sent to other states also. The Connecticut House on December 30, 1790, mentions a communication upon the subject, which on January 1, 1791, was unanimously

referred to the next session of the legislature, and ordered printed in the newspapers. Evidently the upper house favored action, because a few days later the lower house appointed a committee of conference on the matter.

These second instructions were obeyed on February 23, 1791, by Senator Monroe, who had succeeded to Grayson's seat. There was debate on the subject on February 24 and 25, and the motion was again negatived, this time by 9 to 17. The debate, according to Maclay, was chiefly on the right to instruct, Monroe having mentioned his acting under orders. Ellsworth called it a mere wish, not to be regarded; Izard denied the right, while Morris held that senators "owed their existence to the Constitution; the Legislatures were only the machines to choose them." Maclay, as mentioned in an earlier chapter, supported the motion, and he also upheld the right to instruct. Earlier he had written: "The doctrine of instruction may certainly be carried so far as to be in effect the tribunitial veto of the Romans, and reduce us to the state of a Polish Diet. But it is introduced. Perhaps the best way is for all the States to use it, and the general evil, if it really should be one, will call for a remedy. But here is a subject worthy of inquiry; Is it to be expected that a Federal law passed directly against the sense of a whole State will ever be executed in that State? If the answer is in the negative, it is clearly better to give the State an early legislative negative than finally let her use a practical one which would go to the dissolution of the Union." [55] Now he added:

> I declared I knew but two lines of conduct for legislators to move in—the one absolute volition, the other responsibility. The first was tyranny, the other inseparable from the idea of representation. Were we chosen with dictatorial powers, or were we sent forward as servants of the public, to do their business? The latter, clearly, in my opinion. The first question, then, which presented itself was, were my constituents here, what would they do? The answer, if known, was the rule of the Representative. Our governments were avowedly republican. The question now before us had no respect to what was the best kind of government; but this I considered as genuine republicanism.[56]

This line of reasoning pointed to the senators as having the legislatures as their constituents. Later, other states joined in Virginia's protest. The Georgia legislature for instance, on December 22, 1791, resolved to that effect and had the governor send the information to the other executives.

Virginia's objection to the assumption of state's debts took another form, that of denunciatory resolutions by the legislature and a memorial, or rather a protest, to Congress. In the House of Delegates the resolves were passed on November 8, 1790. They declared

the act repugnant to the Constitution because it went "to the exercise of a power not expressly granted to the General Government," and also dangerous and injurious to those states who had already gone ahead in meeting their obligations. The Senate took its time, but finally agreed on December 21. Monroe presented the resolutions and memorial in the Senate on January 13, 1791, and Madison in the House the next day. In both cases the papers were laid on the table and not disturbed later.

NORTH CAROLINA

In North Carolina there was early evidence of backsliding from the conversion that caused ratification. Exasperated by the secrecy of the Senate and the assumption of state debts, the lower house adopted in committee of the whole on November 24, 1790, a set of resolutions: "Whereas . . . With regret do we add that our Constituents and ourselves too sensibly experience the evils arising from a want of that exertion in them [the senators of the state], which if duly made, could not have failed of being highly beneficial, to this State, and might have rendered a Government adopted under many doubts and with some difficulty, better adapted to the dispositions of free men." The report "directed" the senators "to use their constant & unremitted exertions until they effect to have the doors of the Senate of the United States kept open"; to correspond regularly and constantly with the legislature and with the state executive when the legislature was not in session; to exert themselves for the publication of the Senate's journals and transmission at least once a month. They were to make their "utmost endeavours to effect œconomy in the expenditures of the public monies, and to decrease the monstrous salaries (and douceurs,) given to the public officers and others; who, however much they may be deserving of the public gratitude or liberality for the eminence of past or present services, ought only to be compensated agreeable to republican œconomy, not enriched with the bounty of regal splendour." (The funding of the states debts "by a bare majority and without the consent of the States themselves and their approbation especially had, is a new system of Legislation altogether unprecedented dangerous & unconstitutional.") Finally, they were strenuously to oppose every excise and direct tax bill.[57]

The printed record is evidently not exact as to the resolutions as they left the House. The parts given above in parentheses are added from the manuscript of the report, which apparently was sent up unchanged to the Senate. There it was rather radically pruned.

All the preamble was deleted, "monstrous salaries" became "enormous salaries" and "and douceurs" was cut out, as was "not enriched with the bounty of regal splendour," and all the next clause on the funding of the state debts. The House in turn referred the amended resolution to a subcommittee, which reported on December 10 a new preamble: "Whereas the secrecy of the Senate of the United States, the alarming measures of the late Session of Congress and the uniform silence observed by the Senators from this State strongly impress this General Assembly with the necessity of declaring their sentiments thereon." Otherwise the report, which the House accepted, followed the Senate changes, adding a demand for an additional mail route and for holding district and circuit courts in an additional place in the state.[58] The resolutions were to be sent to the legislatures of all the states. The houses fought for several days over the changes, including a sectional one to limit the sending of the resolution to the legislatures of Virginia, South Carolina, and Georgia; but in the end, reached an agreement on December 14, based on the essentials of the subcommittee's report.

These being instructions to the senators, did not call for any presentation to Congress, as did the Virginia protest on assumption; but on December 15, 1790, the House passed resolutions condemning assumption, which "without their particular consent, is an infringement on the sovereignty of this State, and may prove eventually injurious and oppressive to the same." The legislature "did solemnly protest," and "directed" senators and representatives to exert themselves against the evil effects of the act and against any further assumption until the state accounts had been fully adjusted, "and the consent of this State shall have been first had and obtained." However, in the Senate on the same day, the resolutions "were severally rejected," just as that body had cut out a similar protest from the other instructions.[59]

Maclaine, writing Iredell from Wilmington on November 18, 1790, said: "Our Assembly are again running riot. A great majority of them are highly exasperated with Congress for the assumption of the State debts, and they are now actually laying their heads together to defeat that measure, so far as it regards this State. . . . Mr. Hawkins, I am informed, is wholly out of favor with the Assembly. They have not the least confidence in him. How he comes to be in a worse plight than Mr. Johnston, I do not know, unless more pliancy was expected from him, than from the integrity of the other."[60] Another correspondent said that "a set of resolutions have gone forward which would disgrace a pettish school-boy of thirteen."[61] It

was at this time that Iredell published anonymously in a Philadelphia paper a letter defending the action of Congress. He also in a private letter of April 14, 1791, called the correspondence demand ridiculous, as it would answer no purpose but to transmit the public acts, journals as printed, etc., while this was the business of others. The legislature was also failing to remember that under the Constitution Congress executed its own acts and did not leave this to the states as under the old government. The whole movement was one to get the senators to violate Senate secrecy.[62] Hawkins voted in 1791 for a motion to open the doors, but Johnston did not, though he favored the motion when Monroe renewed it on March 26, 1792, in the Second Congress.

Coinciding with this incident was another in North Carolina. The superior court of the state refused a writ of certiorari from the circuit court for North Carolina, respecting a suit begun before the Constitution was in force. The refusal was made because the court was "not amenable to the authority of any other judiciatory . . . did not conceive that the suits and proceedings depending before them . . . were subject to be called or taken from the said court of equity by the *mandatory writ* of any other court or jurisdiction whatever, much less by that of a court of inferior and limited jurisdiction." The legislature on December 15, 1790, resolved that "the General Assembly do commend and approve of the conduct of the Judges." Five members of the House registered a protest, because the action of the legislature, the matter being judicial, was irregular, the information ex parte, and "we are apprehensive any misunderstanding between the judiciary of our own state and that of the United States may disturb that harmony which ought to prevail between the members of the same family."[63]

Wilson, Blair, and Rutledge issued the certiorari; Iredell avoided being included. The case was one involving British subjects; Robert Morris, who was concerned, intimated to the circuit court that he preferred, out of delicacy because of his senatorial position, to leave the cause in the state court. Evidently nothing was done about the refusal, though Iredell wrote Jay on January 17, 1792, refuting the dropping of it, and adding: "To be sure the honor of the United States is deeply concerned in their courts deciding solemnly whether the write issued erroneously, or ought to be enforced. It is of more importance that it should not go off by an act of defiance of the State Court, because the General Assembly of North Carolina . . . thanked the State Judges for their conduct in disobeying the Writ." [64]

MASSACHUSETTS

In Massachusetts instruction of the senators was also given by the General Court, but in favor instead of against assumption. Hancock in his address of June 1, 1790, to the General Court said: "I am not convinced of the propriety of the General Government's assuming to pay the debts of this Commonwealth without the request or consent of this Government: but as it will be more congenial to any system of Finance which the Congress may adopt, for this class of the creditors of this State, to transfer the demands to the General Government, on the idea of the standing credit of our Government, and to have them involved in the funded debt of the United States, than to have a claim open in favour of the Commonwealth, I recommend it to your serious deliberation, whether instructions may not be given to our Senators and Representatives on this point." [65] The answer of the General Court to this was on June 4 to instruct the senators to use every means in their power to effect the assumption, as shown in the adjoining facsimile of the resolve (*see* p. 466). The theory of senators representing the states while members of the lower house represented the people is marked here, as always in such instructions.

Samuel Henshaw, who was a member of the General Court, wrote Sedgwick on June 13 an explanation of the resolve:

> The Instructions of this Govt. to their Senators in Congress to enforce the assumption of the State Debts, would never have passed, had they not believed from the observations of Madison & some others, that such instructions from so important a State, might influence a few doubting Members at least, to vote in favour of the proposition. Besides it was thought that such instructions would give new strength & courage to our Members, and justify them in perpetually urging the Measure. I reprobate that part of the Govr's Speech to which you allude: and thought at the time it was delivered, that if State Instructions were requisite to sanctify the assumption, it would be urged, that then Congress ought to wait untill they receive such instructions from each individual State. For if according to the Speech, Congress ought not to assume the Debt of this State without their consent, they ought not to assume the debt of any other State without their consent also. And Bacon made great use of this Idea in his opposition; and extolled the Speech as the best ever made. But it was said in Reply, that Congress ought & would, take it for granted, that no State was against the Assumption unless they instructed their Members to oppose it. And on supposition that some of the States did so instruct their Members, yet unless a Majority did it, it ought to take place. And if it does not, I would not give Six pence for either federal or State Government.[66]

INCOMPLETENESS OF STATE ADJUSTMENT

EVIDENTLY the adjustment within the states to the principles of an over-government exercising, within its sphere, the supreme law of the land, especially in accordance with the theories of the Federalists, was not to be complete; and it is significant in the light of later history that from the first it was in the South that there was the greater lack of adaptability. Symptoms of misunderstanding and of protest or oversight are not, however, lacking elsewhere. There was a motion before the Connecticut House on January 16, 1789, to require the senior senator from the state to transmit annually an account of national officers and their salaries. Federalism in practice would meet with many problems, not the least of which would be the duality of the obligations of the national legislators.

Commonwealth of
Massachusetts

Resolves as the opinion of this legislature, that it will not only be just & reasonable, but highly expedient that the Government of the United States should assume & provide for the payment of those debts, which the several States contracted during the late war, for the following reasons

viz: – Because those debts were contracted for the same purpose, with the debts, for which the securities of the United States were given; to wit, the common defence;

2 This measure will lay a broad basis for lasting good will and harmony among the several States, & the numerous individuals who compose them; as it will shew an equal regard to the different descriptions of public creditors, who have made advances for the same general purpose, & are entitled to equal notice;

3 Because a revenue by excise being necessary for the payment of these debts, such a revenue will be far more productive under the conduct of the general government, than under that of the seperate States; without encreasing the burthen upon the people, & at the same time, those interferences & evasions, emulations and jealousies which must be the unavoidable consequence of partial State regulations, will be prevented;

And beside many other important consequences which would ensue, this measure will tend most effectually to secure to the United States the due collection of all their revenues, to equalize the burthens of the several States, & to prevent the too frequent operation of large direct taxation.

And it is further Resolved, that his excellency the Governor be requested as soon as may be, to write to the Senators & Representatives of this Commonwealth in the Congress of the United States giving them notice, that they are instructed by this Legislature to apply to Congress to assume the public debt of this State & make provision for the payment of the same as part of the debt of the Union, and at the same time to communicate to the Representatives of the people of this Commonwealth in Congress the sentiments of this Court on the foregoing subject.

MASSACHUSETTS GENERAL COURT'S INSTRUCTIONS TO THE STATE'S SENATORS ON ASSUMPTION

From the Massachusetts Archives; Resolves of 1790, ch. 13

The Wayward Sisters

STATUS

When the new government started its legal existence on March 4, 1789, North Carolina and Rhode Island had not yet ratified. Their legal status became anomalous. Were they foreign nations or were they still states of *a* Union, otherwise defunct, under the Articles of Confederation; were they enclaves or were they political mavericks? Would it be possible for the new government merely to ignore them, irritations but not infections, left to the healing operation of time; or should they be considered rebels to be coerced into obedience or absorbed by other states? Could they continue to exist apart from the rest of the original thirteen states? Rhode Island had been recalcitrant from the beginning of the movement for reform in the national government. She had negatived a continental impost, had declined to send delegates to the Convention of 1787, and later refused even to call a convention to consider the question of ratification. She was an outcast. The conditions in and toward North Carolina were much more favorable. Her convention had not refused to ratify, but had postponed the operation until she should see how the new Union, which would organize maugre her conduct, regarded the amendments she considered necessary. Moreover, reaction had set in almost immediately that made it fairly evident that, given time, and perhaps a bit of soothing or a bit of prodding, she would return to the fold. The soothing might take the form of desired but innocuous amendments; the prodding, enactments or threats involving economic pressure.

NORTH CAROLINA CAMPAIGN FOR ANOTHER CONVENTION

An election to the legislature followed within a month of the adjournment of the convention, and the calling of another convention was a main issue in the struggle. The Federalists pointed out the

need of correcting the mistake of the convention as early as possible. In a newsletter "Citizen of North Carolina" stated:

> If we can derive pride from the consideration, our independence is increased. We are now not only independent of all other nations in the world, but entirely independent of the other states, except for our share of the debt hitherto incurred, which we now are utterly unable to pay. We may form alliances at our leisure with Great Britain, France, Spain, Turkey, the Dey of Algiers, or Rhode Island. . . . All the states ought certainly to start upon equal terms. But it is to be hoped they [the other states] would judge with liberality; and that if we early should agree by means of another convention, we might immediately be admitted on equal terms with the other states. We have reasons to fear, however, that the earliest step of this kind that could be taken, might be too late for us to have a share in the first formation of laws. What an opportunity we have lost! Should North Carolina have no votes in the first Congress, the first system of laws, which will be the most important of any for many years, may be formed much more injuriously for the southern states than otherwise might have been the case, and the supporters of amendments may be deprived of powerful assistance. Whether or not we can possibly be early enough for this no man can say. But let us go into the union as soon as we can.[1]

The hostile attitude of the southern Indians was also a factor for ratification, especially in the western part of the state, soon to be ceded to the United States. There was a likelihood of complications due to defensive or offensive measures by separate governments, and even the fear that the nation might refuse to assist in the protection of inhabitants in territory not under its organization.

The Antifederalists were accused of invidious motives behind the professed one of desiring amendments: continuance of stay laws and paper money (both forbidden by the new Constitution); avoidance of the state's share in the war debt, and of the payment of British debts as required by the treaty of peace. The state convention before adjourning recommended to the legislature "effectual measures for the redemption of the paper currency, as speedily as may be, consistent with the situation and circumstances of the people of this State."[2] It also suggested that any imposts laid by Congress should be duplicated by the state and the returns appropriated to the use of Congress.[3] This, it was hoped, would free the state from being joined with Rhode Island on the currency question, and also from the accusation of shirking its share of the general debt. The Federalists were skeptical of the sincerity of these requests. Maclaine wrote Iredell on November 17, 1788: "I should have told you, that a scale of depreciation is much talked of, and that Wilie Jones has promised to bring it forward; and it is said that T. Person concurs in this, and even says, that he intends the paper-money not to be any longer a tender; but, with this condition, that £70,000 more be emitted. I

have as small an opinion of one of these gentlemen as I have of the other; and therefore would not trust either of them." [4] Davie assured Iredell on September 8: "Persons and Mr. Jones are both holding out the doctrine of opposition for five or six years at least. Mr. Jones says we must have that time at least, before the Judiciary are let in on us; he is continually haranguing the people on the terrors of the Judicial power, and the certainty of their ruin if they are *obliged now* to pay their debts; we are almost led to believe there is something more than a mere mistake in point of principle in his conduct." [5] Even as late as May 24, 1789, Williamson had the same opinion, telling Madison: "I verily believe that the desire of eluding all Taxes and defrauding the Nation leaving the Burden on other Shoulders is the great Object of our Antifeds." [6] In October 1789 Ambrose Jocelin in a letter to Jeremiah Wadsworth considered that paper money and the obligations and contracts connected with it "was a motive with many, perhaps the most." [7]

Jocelin referred also to the influence of the idea of "absolute sovereignty" of the state. Antifederalists were especially numerous in some of the counties bordering on Virginia, and in the Old Dominion the leadership of Patrick Henry had made the southern counties there a similar stronghold. Henry in his letter to Richard Henry Lee on November 15, 1788, after hinting at the possibility of secession by the true Whigs (*see* p. 193), added: "I mean not to take any part in Deliberations held out of this State, unless in Carolina from which I am not very distant & to whose politics I wish to be attentive. If Congress do not give us substantial Amendmts. I will turn my Eyes to that Country a Connection with which may become necessary to me as an Individual." [8] Williamson, in his above letter to Madison, reported from Edenton: "It is generally understood here that unless the People bordering on Virga. in the Northern and Western Parts of the State shall agree to confederate we must of necessity adhere to the other States and divide this State leaving the guilty who care nothing for Congress to shift for themselves." [9] Evidently there was a feeling on both sides of the possibility of failure of the plan for a complete new Union.

Federalist leaders within the state in their public utterances were likely to speak rather quietly. Citizens of Tarboro, where Antifederalist leaders were burned in effigy, addressed Governor Samuel Johnston, who had been the president of the ratification convention, on August 30, 1788:

> We . . . beg leave to . . . express our sincere approbation of the zeal you have displayed to connect the state of North Carolina to the general union, . . .

It is a duty . . . to publish every testimony of reprobation of the unhappy issue of that public measure which claimed the attention of our late Convention . . . and to record also our unequivocal applause of the virtue, patriotism and exertions of the *Eighty-two* [83] *Statesmen*, whose wisdom and character we trust will yet preserve all that we conceive precious in this life, to ourselves and future generations. . . . this small, but wise and firm band, struggling against a torrent of popular phrenzy, excited evidently to extinguish whatever hope remained to restore public faith, revive commerce and promote agriculture, . . . supplicating your Excellency to employ all constitutional means and influence in your power, to convince the adopting states, . . . that a considerable part of her most respectable citizens are still attached to a federal system, from persuasion, that from it alone they can expect exemption from domestic insurrection, defence from foreign invasion, and continuance of the blessings of peace & general prosperity.[10]

Governor Johnston answered this on September 3: "I am well assured that the citizens of this state, were at no time averse to a federal government, but the professed system appearing to many not so perfect as they could wish, and believing that amendments might more certainly be obtained by postponing the ratification till the proposed amendments were considered by a general convention, they adopted the measures which you so highly disapproved: These measures were opposed by the minority, who offered reasons in support of their opinions, which I flatter myself, on a cool and deliberate investigation, will have the weight and influence, which it is to be lamented they had not at an earlier period." [11] Outside Federalists were more outspoken; even the charitable, or at least just, Washington on August 17 considered the result of the first convention "unaccountable";[12] but on October 22 he told Lincoln: "The constant report is, that North Carolina will soon accede to the new Union." [13] The election for the legislature showed gains for the Federalists; and the publication of the debates in the convention also assisted in public enlightenment, Iredell's arguments being especially effective.

CALLING OF THE SECOND CONVENTION

THE NEW General Assembly met on November 3, 1788. Governor Johnston's address made plain the dilemma in which the state was likely to be placed: "The first object which calls for your serious attention is the proceeding of the late Convention . . . and the situation into which the State will be cast on the meeting of the Congress . . . as this State will not be represented . . . and her interest may be eventually affected by their proceedings; you will consider of the best method to obviate any inconvenience which

may arise from the particular circumstances of the situation, and direct such mode of communication as may appear most eligible until the new Constitution is altered, so as to meet the approbation of the people of this State, and they become united with the other States."[14]

He did not speak directly upon the question of a second ratification convention, but the matter came up quickly. The House on November 15, after refusing a conference on the subject, defeated a call by 55 to 47; but the Senate voted one by 30 to 15 on the 17th, and the convention was so inevitable that the real fight was over its date. The Antifederalists, under Willie Jones, strove to put it off as far as possible. Evidently they had hopes that the initial operations of the new Union might not be such as to insure its success. At that time, too, the complete failure of the efforts for a second national convention was not so evident as it became by the first of the new year; and the state was pledged by its first convention to wait and see what Congress might do about the proposed amendments. On the other hand, there were the advantages, already pointed out, of assisting in the first legislation, and also in the consideration of amendments by Congress. There were, however, as explained by a letter from Edenton on January 28, 1789, other reasons than the wait-and-see one for the delay. The legislature did not adjourn until the middle of December, and laws in the state then did not become active until the end of the session, so that the earliest possible date of the election would be about February 10, and March 20 that for the meeting of the convention. If ratification resulted, then the legislature would have to meet in special session to provide for the elections, and such session could not gather before May 1: ". . . it chances to be an agreed point in this State, that a special meeting of the Assembly is not to be effected at any time between the middle of April and the first of October," the climate and nature of the crops explaining this. This letter gave as a reason why Federalists might welcome the delay the expectation that the new Congress "will soon evince that we have much to hope and nothing to fear from the operations of the new government," producing a reaction favorable to ratification.[15]

In this contest the Antifederalists won, the date being fixed at November 21, 1789. The legislature appointed five delegates, all Antifederalists, to attend a second national convention, if one was held. The legislature also refused to repeal the stay and tender law. Southerners from other states continued to regret the postponement of the convention and to point out the sectional need of the presence

of the state's members in Congress. Senator Butler's letter to Iredell on August 11, 1789, is a sample of this (*see* p. 234). J. F. Grimké wrote to General Harrington from Charleston on January 16, 1789: "I . . . am sorry to find confirmed the disagreeable News relative to your not calling a Convention before November next, a long & distant period before you can even begin to give Us (the Southern States) your Interest in Congress; before which I make no doubt the Middle States will have laid the ground-work of a strong opposition to these States, for they will be found more similar in Interest than the Eastern States to Us & therefore there will arise more competition & consequently more Jealousy. . . ."[16]

THE FIRST SESSION OF CONGRESS AND THE OUTSIDE STATES

THE CONDITIONS due to the failure of Rhode Island and North Carolina to ratify were often in the minds of the national legislators and administrators. In the previous portions of this study are various evidences of this. There were considerations involving the influence of acts upon the attitude of these states as well as the question of their legal relations under the acts. The hope that the proposed amendments would induce ratification was openly expressed. Their connection with the continued efforts to settle the accounts between the states and the nation was involved; as well as whether they were still under the general postoffice. Belknap queried of Postmaster General Hazard on April 20, 1789: "What will become of North Carolina and Rhode Island? Do they not owe money to the Continental treasury? and, if so, how is it to be paid? How will you manage your post-office matters with them, if they still continue to excommunicate themselves?"[17] Hazard replied on May 2: "I shall go on in the old way with them till I receive new orders."[18] Evidently no new orders were given, and Lear for the President on October 12 wrote the postmaster at Providence, Rhode Island, that the President "never interferes in the appointment of any Officers whose appointment does not by Law come under his immediate cognizance. Mr. Osgood must act as he pleases in the appointment of his deputies."[19] In the matter of accounts, North Carolina appointed two men, of whom Williamson was one, to act as the state's commissioners. The consideration of Rhode Island accounts also proceeded, and the payment of invalid pensioners in that state was taken over by the general government.

In all the laws, such as the judicial and revenue ones, that called for local operations the extent was carefully limited to the states already in the Union. Although neither the tariff nor the tonnage law made any exception in favor of the outside states, the act to regulate the collection of duties, after specifying the districts and ports in the eleven states, declared:

And whereas, The States of Rhode Island and Providence Plantations and North Carolina, have not as yet ratified the present Constitution of the United States, by reason whereof this act doth not extend to the collecting of duties within either of the said two States, and it is thereby become necessary that the following provision with respect to goods, wares or merchandise imported from either of the said two States should for the present take place:

Sec. 39. *Be it therefore further enacted*. That all goods, wares and merchandise not of their own growth or manufacture, which shall be imported from either of the said two States of Rhode Island and Providence Plantations, or North Carolina, into any other port or place within the limits of the United States, as settled by the late treaty of peace, shall be subject to the like duties, seizures and forfeitures, as goods, wares or merchandise imported from any State or country without the said limits.[20]

This was a concession, and a similar one was made as respects tonnage on September 16, but limited in time: ". . . all the privileges and advantages to which ships and vessels owned by citizens of the United States, are by law entitled, shall be, until the fifteenth day of January next, extended to ships and vessels wholly owned by citizens of the States of North Carolina, and Rhode Island and Providence Plantations. . . . all rum, loaf sugar, and chocolate, manufactured or made in the states of North Carolina, or Rhode Island and Providence Plantations, and imported or brought into the United States, shall be deemed and taken to be, subject to the like duties, as goods of the like kinds, imported from any foreign state, kingdom or country, are made subject to." [21]

This would seem also to have given for the time to ships belonging within the two states that were outside the Union the right of registration and coasting trade, except that they could not have belonged to any of the custom districts wherein the licenses had to be granted. Vessels owned within the two states continued to trade to and from them and the rest of the United States; but this was probably not considered as coasting trade, and no instances have been noticed where vessels so owned attempted to trade between two other states. The time limitation was probably considered as a spur, or even as a threat; but it was possible to view it as an expression of belief that the need would pass before then.

Unfortunately the status of the two states does not figure in

the tariff and tonnage discussions; and no debates are given on the liberalizations except that on Benson's resolution to desire Rhode Island to call a convention, which will be considered later. The act to regulate the collection of duties was first reported by a committee in the House on May 8, taken up ten days later, considered entirely unsatisfactory, was recommitted or dropped, and an entirely new bill introduced on June 29. The provisions respecting duties on goods from North Carolina and Rhode Island seem to have been essentially the same in both bills.

The history of the tonnage-exception bill is less evident. On August 28 a bill was reported in the House, seemingly having to do only with the regulation of Potomac River trade and possibly some ports in Maine. This came up for a third reading on August 31, at which time a petition from Williamson in behalf of tonnage freedom for North Carolina vessels was read, and the bill with this petition, and also one from the masters of Sound packets plying between New York and Rhode Island, was referred to another committee. This committee reported on September 2 no changes in the bill, which was then sent to the Senate on September 3. There on September 10 it was postponed.

On September 8 petitions from Providence, Newport, and three other Rhode Island towns were presented in the House. That from Providence was adopted in town meeting on August 27. It pointed out the probability of early reunion and asked exemption from foreign tonnage and impost "for such Time, and under such Regulations and Restrictions, as Congress in their Wisdom shall think proper." [22] James Manning and Benjamin Bourne were appointed to take the petition to New York. Manning had been a member of the Old Congress and was president of what was then Rhode Island College and is now Brown University. Bourne was to be Rhode Island's first representative. On their return they made a hopeful report. On the receipt of these petitions, the House referred them to the same committee that had reported, unmodified, the earlier bill. They reported a second bill "for suspending the operation of part of the Tonnage bill" the next day and it was sent to the Senate on September 11. There it and the earlier bill were referred to a committee headed by Morris, which reported an amendment on September 12, by which the tonnage freedom was granted until January 15, 1790, rum, sugar, and chocolate exempted from the free trade, and Rehoboth in Massachusetts made a port until January 15. That town, or the part of it that is now Seekonk, was just over the state line from Providence, and convenient for handling

the anomalous trade between the two regions. The journal indicates that these provisions were an addition to the second bill and not a substitute, though they may have been lifted from the first bill, which first bill the Senate now rejected. The text of the two bills as they left the House is not available. After the petitions from North Carolina and Rhode Island were read, the Senate adopted the amended second bill, and on September 14 the House agreed to the amendments.

In spite of the lack of debates, the outside correspondence and articles make fairly evident the expected results of independent trade by the two states. Joseph Jones wrote Madison on May 10, 1789: ". . . upon the whole it appears [the impost debate] to have been conducted with temper and moderation and such middle ground generally taken as will proably in the outset prevent clamour and submit to time and the conviction of experience such changes as shall be found for the common welfare. R. Island not being subject to the regulation & so convenient a place to the eastern and N. York States may interpose difficulties to the faithfull collection of the revenues and North Carolina in this quarter wod. do the same but for the obstacles of navigation. These interruptions will be only temporary as I presume they cannot long remain out of the Union." [23]

The exceptions made in favor of the two states and the limitations of the exceptions aided their agricultural rather than their commercial classes, and therefore helped the interest that supported the Antifederalist principles—the people who cared "nothing for Commerce," as Williamson stated it, and not the Federalist merchants and manufacturers. Rhode Island was far more concerned with the restriction on rum, sugar, and chocolate than was North Carolina. This restriction was made because the materials from which the articles were fabricated could not possibly be of the growth of the states; and before this act was passed Rhode Island papers reported that the custom house at New York had ruled that the freedom of trade did not extend to other articles made from material not the growth of the state.[24]

The lightening of the tonnage duty would at first glance seem to be primarily in the interest of the traders and shippers, and therefore more important to Rhode Island: but the cost of sending the products of North Carolina by sea to other states would be lessened. The North Carolina trade was not unimportant. Wilmington exported in the year 1788 lumber, shingles, staves, tobacco, naval stores, pork, rice, hides, and deerskins. During June–December 1789 184 vessels arrived at Edenton and 170 cleared: of these 354 instances, 249

were from or to ports in the United States. There were other active ports of the state, that of Wilmington probably being of more importance. During this same period the Providence movement of ships was reported as 209 arrived and 140 cleared, 239 being from or to other states. Providence and Newport were the main ports of the state. At Edenton the vessels were usually sloops and schooners, only occasionally a brig; at Rhode Island they were larger. In both cases the bulk of the shipping by number was to and from other states; but it is not possible to say what proportion of the vessels were owned in North Carolina or Rhode Island, and the larger vessels were those in the foreign trade or in whaling.

Since the act to regulate the collection of duties gave Rhode Island and North Carolina free trade of domestic products and the impost could not be made operative until this act was passed, there is no reason to suppose that the domestic articles from these states ever paid the national duty, unless by Rhode Island after January 15, 1790. The tonnage act was in force about a month before the other concession was made, from the middle of August to the middle of September. The Providence *United States Chronicle* reported on August 27, 1789, that Rhode Island ships were made to pay foreign tonnage at New York after August 15 and not permitted to go up the Connecticut River, New London being the port for foreign trade. In June and July 76 ships cleared at Edenton, of these 48, or 63 percent, were for United States ports; in August and September 45 cleared, the 35 in interstate trade being 78 per cent. At Providence during the same periods the figures were 44 and 47 cleared, the 34 and 27 in interstate voyages being 77 and 57 per cent. If these figures have any significance, it is that the Rhode Island shipping may have decreased during the restriction, while that of North Carolina did not.

The limitation on the period of small tonnage duties would be a spur to the southern agriculturists, and to the ship owners of Rhode Island. It was considered usually as of more concern to the latter, but they needed no such warning and it was neither important to, nor likely to influence, the rural Antifederalists of the New England state. Shipments by land or in vessels of less than thirty tons seems possible, except of the rum, sugar, and chocolate; for even though the goods were "foreign," they were no longer within the regulation that "dutiable" goods of foreign growth should arrive only by sea and in certain ships, which presumably would be required of those manufactures of the two states that were not freed from the duties. Smuggling, which Jones and others feared, was by no means the only commercial complication that might arise through the

abnormal position of the two outside states; and the concessions tended to increase the complexities, while they tried to ameliorate the conditions.

AWAITING THE CONVENTION IN NORTH CAROLINA

THE NORTH CAROLINIANS followed the proceedings of Congress carefully. The newspapers gave precedence to the debates in the House and to the text of important bills and acts. A letter from Edenton, May 4, which was printed in a northern paper and reprinted at Edenton, showed the interest and the early fear:

> Though we are not in the union, we are not the less attentive to all the proceedings of Congress. Some of the regulations proposed in the new revenue bill might be of use to the commerce of this state if we formed a part of the union; as matters are circumstance they must injure us greatly. We are doubtless to be considered as foreigners with whom there is not any commercial treaty, and in this case our vessels must pay the duty of half a dollar the ton in every port of the United States; but the small profits of our coasting trade are not equal to this charge, hence it must follow that our coasting vessels must be laid up, and many valuable citizens be ruined.[25]

The people were kept informed of Madison's proposed constitutional amendments and the stages of development toward the final resolution. The result was as little satisfactory to the extreme state rights people as it was to Patrick Henry; but just as the North Carolina refusal to ratify promoted the passage of the amendments in Congress, the congressional proposal undoubtedly strengthened the Federalist sentiment in the state, as did the calming trade concessions. Indeed, a letter from Fayetteville, September 12, showed the hopeful spirit: "I think there is not a doubt that the Convention . . . will adopt the Constitution—the amendments will do the business."[26]

Meanwhile, the governor and council of the state, chiefly Federalists, added on May 10 their congratulations to the many sent Washington on his assuming the presidency, taking the occasion of the address to assure him and the country of North Carolina's good intentions, to excuse her attitude, and to hope for patience toward her:

> Though this State be not yet a Member of the Union under the new Form of Government, we look forward with the pleasing hope of its shortly becoming such, and in the meantime consider ourselves bound in a common interest and affection with the other States, waiting only for the happy event of such alterations being proposed as will remove the apprehensions of many of the good Citizens of this State for those liberties for which they have fought and suffered in common with others. This happy event we doubt not will be accelerated by your Excellency's appointment to the first office in the Union, since we are

well assured that the same greatness of mind which in all scenes has so eminently characterized your Excellency, will induce you to advise every measure calculated to compose Party-Divisions, and to abate any animosity which may be excited by a mere difference of opinion. Your Excellency will consider (however others may forget) how extremely difficult it is to unite all the People of a great Country in one common sentiment upon almost any political subject, much less upon a new form of Government materially different from one they have been accustomed to, and will therefore either be disposed to rejoice that so much has been done than regret that more could not all at once be accomplished. We sincerely believe that America is the only country in the World where such a deliberate change of Government could take place under any circumstances whatever. . . . We cannot help considering you, Sir, in some measure, as the Father of it [the country], and hope to experience the good effects of that confidence you so justly have acquired, in an abatement of the Party Spirit which so much endangers a Union, in which the safety and happiness of America can alone be founded.[27]

Washington in his reply on June 19 (or 15) was cordial and soothing, but rather pointed in his expectation of the result of the new convention:

[Your address] I consider . . . indicative of the good dispositions of the Citizens of your State towards their Sister-States, and of the probability of their speedily acceding to the new General-Government. . . . I entertain a well-founded expectation that nothing will be wanting on the part of the different branches of the general-government to render the union as perfect, and more safe than ever it has been. A difference of opinion on political points is not to be imputed to Freemen as a fault; since it is to be presumed that they are all actuated by an equally laudable and sacred regard for the liberties of their Country. If the mind is so formed in different persons as to consider the same object to be somewhat different in it's nature and consequences as it happens to be placed in different points of view; and if the oldest, the ablest, and the most virtuous Statesmen have often differed in judgment as to the best forms of Government, we ought, indeed rather to rejoice that so much has been effected, than to regret that more could not all at once be accomplished. Gratified by the favorable sentiments which are evinced in your address to me, and impressed with an idea that the Citizens of your State are sincerely attached to the Interest, the Prosperity, and the Glory of America, I most earnestly implore the divine benediction and guidance in the Counsels, which are shortly to be taken by their Delegates on the subject of the most momentous consequence, I mean the political relation which is to subsist hereafter between the State of North Carolina and the States now in union under the new general government.[28]

RATIFICATION

MANY of the delegates to the convention were also at the same time elected to the legislature, both bodies to meet at Fayetteville in November. The result of the campaign in August showed a further increase in Federalist sentiment. The legislature met on November 2

but stood virtually adjourned during the few days, November 16–23, of the convention. The debates of this second convention have not been preserved. Governor Samuel Johnston presided, as he did over the earlier meeting. For three days the Constitution and the amendments sent out by Congress were considered in committee of the whole, which reported in favor of ratification. Five of the state's earlier proposed amendments were moved as a condition of ratification: ". . . and although union with our sister States is our most earnest wish and desire, yet as some of the great and most exceptional parts of said proposed Constitution have not undergone the alterations which were thought necessary by the last Convention: Therefore, Resolved, That previous to the ratification . . . the following amendments be proposed and laid before Congress, that they may be adopted and made part of the said Constitution, . . ."[29] This motion was rejected by 187 to 82, and on November 21 unconditional ratification voted by 194 to 77, which was a greater majority than the 184 to 83 by which approval was refused the year before.

As a sop, a committee appointed for that purpose proposed eight amendments which the representatives of the state in Congress should endeavor to get enacted. These included some of the earlier five, and all were among those of the first convention. The Edenton *State Gazette of North Carolina* headed its announcement on December 3 of the ratification with "LAUS DEO." Governor Alexander Martin, who had been a delegate to the Convention of 1787 but not a signer, said in his message of December 22:

> That this event must be the subject of great joy to our sister States, as well as to our friends and allies in Europe, on hearing that one important link late broken in the American Union, is again restored; . . . Perhaps it was all for the best, that this State hesitated and was not precipitate in Ratifying a form of Government intended to last for ages, without maturely deliberating how far the lives, liberties and properties of her Citizens were to be protected and secured by it. . . . Let our citizens be led to embrace again their Northern and Southern brethren, with former affection and cordiality in the adoption of this new system of Government, that be the same perfect or imperfect, tho' at present the most perfect to be obtained, the same they are determined to stand or fall together in its support. . . . and with united efforts maintain and defend it against all its enemies and opposers whereever to be found.[29a]

ELECTIONS

THE GENERAL ASSEMBLY moved quickly as soon as ratification was achieved. The approval of the twelve amendments proposed by Congress passed the House the first time on November 23, and the final passage in the Senate was on December 8. The House proposed

on November 24 a joint ballot for senators, and nominated twelve men. The Senate agreed but added no nominations. On November 27, after two of the names were withdrawn, including that of Spaight, who was a signer of the Constitution, Governor Samuel Johnston was elected a senator. The Senate then added three names to the nominations, including William Blount, a signer, and Benjamin Hawkins. Hawkins was elected on the fifth ballot on December 9.

The bill to elect representatives was delivered in at the House on December 1, and proceeded through to enactment with equal swiftness, though not signed until December 22 at the end of the session. It provided for five districts, one of which was present Tennessee, each to elect by plurality vote a representative who should be a resident of the district. If there was an equal vote, the returning officers of the district were to choose or decide by lot. The election except for the western district was to be in early February, in that district in March. Williamson, who probably was already in the North, was the first of the five successful candidates to take his seat, on March 19, 1790. John Sevier from the Tennessee district did not attend until June 16. Senator Hawkins was on hand on January 13, Johnston on January 22. The legislature also directed the continuance of the state impost until Congress acted to take over the customs.

This same session of the legislature ceded its western claim (later Tennessee) to the Union, yet for the Second Congress five representatives were again elected from within the state proper, the state being redistricted. No objection was made in Congress to this, though the original assignment in the Convention of 1787 of five members to the state evidently took into consideration the population of the severed territory.

THE LAWS EXTENDED

THE FINAL action for the reincorporation of North Carolina took place in Congress. By the first act to the second session, February 8, 1790, the tariff, tonnage, collection, and coasting trade laws were extended over the state. On June 4 she was brought under the judiciary act. The delay in that bill was due to its being a section in a more general one over which the houses could not agree. A Senate committee headed by Ellsworth was appointed on January 15, but it did not report a bill to extend the judiciary act over North Carolina and also to amend that act until April 29. This bill, after being in conference, failed on May 20 through a disagreement over the New Hampshire district court. Immediately, the House named a com-

mittee to bring in a bill limited to North Carolina, and this went quickly to its final passage.

RHODE ISLAND'S ECONOMIC DIVISIONS

SAMUEL HODGDON writing to Timothy Pickering on December 17, 1788, referred to Rhode Island as "drowned in Sin and Misery." [30] Even more direct was the statement in the *Pennsylvania Packet* of September 2, originating apparently in Boston: "Part of the *arms* of Rhode-Island is a *rope pendant*. If this figure represents a *Halter*, the honest part of the world must confess, that *the majority* of that state richly deserve *such* an *achievement*. Their motto, '*In God we hope*' might have been omitted, unless they mean, indeed, that condemned *Rogues* have no other *hope* than in him." When March 4, 1789, saw the inauguration of the new government, and the state still hopelessly intransigent, the *Massachusetts Centinel* under the heading "Advertisement Extra" on March 7 made its compliments in turn: "The Copartnership of ANARCHY and ANTIFEDERALISM, being on the 4th inst. dissolved, by the death of the concern, the firm ceases to be. The stock in trade consisting of '*Subterfuges, Scarecrows, Calumny*,' &c., will be disposed of at Public Auction to *Arnold, Galloway, Deane*, or their agents; and any thing will be received in payment, except Rhode-Island paper money. No one but the above geniusses will be allowed to be purchasers, and the person to whom the lot is knocked off, shall have the Region of R— Island, except the towns of Newport and Providence, thrown into the bargain. THE PEOPLE, Auctioneers."

The attitude of the state which led to many such statements as the above was the result of a sharp economic division therein. The extensive sheltered waterfront made the region ideal for trade and developed in the ports an active shipping interest; but the state was small and productive itself of little to export even in the way of manufacturers, and those not engaged in the carrying trade and its attending activities were antagonistic to it. The merchants had the wealth and the credits, the farmers the debts and the votes; which latter they used to cement on the state a system of paper money and stay and tender laws that made them decidedly opposed to the reforms and restrictions of the national Constitution. Like the plaint of certain southern leaders some generations later, all they wanted was to be let alone; and they stubbornly refused to accept the very evident fact that this was in the long run, and probably in the short one, quite impossible. The merchants, Federalists to a man, were loud in their complaints and persistent in their attempts to

reason with the governing class; which, in turn, merely sat tight.

Rhode Island's relation with her immediate neighbors was anything but cordial. While paper money at par was a legal payment of debts in the state, a law in 1787 prohibited the benefit of this tender to outside debtors; and Connecticut in retaliation in January 1789 considered a bill to make Rhode Island paper a legal tender in payment of debts due to the inhabitants of that state, and passed an act to suspend "all suits or actions in favour of any Citizen of the State of Rhode Island."[30a] This law was repealed in October 1790, after Rhode Island ratified. Massachusetts had recently destroyed by force of arms an evil within her own borders similar to that in Rhode Island, and was equally intolerant of the unreformed one.

FIRST EFFORTS FOR A CONVENTION

IN COMMON with the other states, Rhode Island, though not represented in the Convention of 1787, received from the Continental Congress an official notice of the requirement of ratification and the text of the drafted Constitution. The legislature began at once a policy of avoidance. In its October session of 1787, instead of calling a convention, it sent copies of the document to all the towns to give the freemen "an opportunity of forming their sentiments," though probably all the voters were well aware of its contents earlier. In the February 1788 meeting the Constitution was by a vote of 43 to 15 submitted to the direct determination of the town meetings, although this was not, according to the Constitution itself, a method of legal decision. The advocates of ratification generally refused to vote on the question, with the result of 237 in favor and 2,708 against, the total being less than half the body of the franchised. Immediately after this, the legislature by a majority of 27 declined to call a convention.

Before the next attempt, approvals elsewhere had assured the organization of the new government, leaving only Rhode Island and North Carolina still in doubt. This condition of isolation was probably not displeasing to the Antifederalists; and no change was made in the policy of avoiding direct action, while professing a desire to continue the union glorified by the common sacrifice, providing it could be done without an even greater sacrifice of liberty. In the October 1788 session the call of the convention was again turned down, this time by a majority of 26; but, inconsistently, the legislature of this session submitted to the towns the call of a second national convention suggested by the circular letter from New York. After Rhode Island's delegates in the Continental Congress had

played their uncertain part in the plan to organize the new United States, Peleg Arnold, one of the delegates, had the temerity to advise his Antifederalist governor on October 20:

As it will be but a short time befor a New form of government will take place in the United States, and as the State which I have the Honour to represent have not thought proper to adopt that Form of Government; I submit whether it is not Expedient for the State to take the Proposed Constitution under Consideration and make their objections to the particular parts that are Incompatible to a good System of Government, and make Known to the States in the Union on what terms the State would Join them. This is a Subject on which I have Contemplated for a Considerable Time and it appears of such Importance as to require United wisdom and mature Deliberation to inable the State to pursue Prudent Measures.[31]

Colonel Jeremiah Olney, late of the Continental army, wrote feelingly on the attitude of the legislature to Hamilton on November 3, and also to Knox two days later. To the latter he said: "This State have again Refused to appoint a Convention for Considering the New Constitution in the Legal mode. . . . after which Mr. Hazzard (an Implacable & potent Enimy of the New System & the Leading Character in all the Vile Politicks Carrying on in this *Devoted* State) brought forward a motion for Distributing Copies of the Circular Letter from the New York Convention, throughout this State; & Submitting to the People at large the Propriety of Choosing Delegates to meet a proposed Convention for Considering amendments, agreeable to the Recommendation of the above Circular Letter; which being put after Considerable Debate it obtained three to one in favr. of the Motion."[32] The mercantile towns joined the rural ones, however, in rejecting the idea, whereupon the legislature in December once more refused to call a convention to pass on ratification, this time by a majority of 22.

AFTER MARCH 4, 1789

THEN began the third phase of the question, that of relations to a general government in active control of all the rest of the country except North Carolina, which latter state, according to Hugh Williamson, had no desire to be associated with the parricidal attitude of the other holdout. Before the legislature met in March, the Providence town meeting instructed its delegates on March 10 to work for a convention. The instructions depicted the probable status of Rhode Island:

. . . we stand perfectly alone, unconnected with any State or sovereignty on earth. As we can claim no right to the flag of the United States, our commerce and navigation are deprived of national protection. The benefits of

commercial treaties, formed by European nations with the United States, will no longer be extended to the citizens of Rhode-Island. All trade with the new confederated States will probably soon be interdicted to the citizens of this State, except on the footing of foreigners, and of course on the payment of exorbitant duties. . . . It is well known that the Legislatures of Massachusetts and Connecticut have placed the citizens of this State, in respect to the collection of debts due from the inhabitants of those States, nearly in the condition of out-laws.[33]

Trade conditions at Providence were shown in an item in the *Gazette* of that town on June 20. The count of vessels belonging to Providence showed 8 ships, 33 brigs, 40 sloops, 20 schooners—101 in all of 9,914 tons, exclusive of river packets and boats; and more than three-fourths of this tonnage was employed in distant voyages and whaling: "it is out of the Power of our Merchants to fit one of the above Vessels (with a suitable Cargo) either for Europe, the East or West–Indies, or even on a whaling Voyage, without the Assistance of the United States; our own Produce and Manufacturers being insufficient for the Purpose." The response of the legislature to these and similar expositions was in this March session the fifth rejection of a convention call by a majority of 18, and in June once more, though then only by a majority of 10.

ATTITUDE OF CONGRESS

MEANWHILE, the House of Representatives was busily discussing the first tariff bill, and the various Rhode Island papers kept the citizens of the state informed of the debates. There was much anxiety as to the treatment to be dealt out to her by Congress, and the legislature, pending the outcome, ordered an embargo on the export of grain and its products. During the House discussion of the collection bill Benson of New York on June 5 offered a resolution expressing the desire of Congress that the legislature of Rhode Island call a convention on ratification. His proposal was merely for a committee of the whole and he did not argue the main question. Other members did however. Page of Virginia doubted the propriety of the measure: "He feared they would make themselves a party in the business, if they interfered; and he wished to avoid having any thing to do with their bickerings and disputes; it was enough for us to do the business we were sent upon, and not to attempt works of supererogation."[34] Ames and Sherman expressed the opinion of New England. The former held that if the situation was delicate, it was also dangerous:

It is not possible to conceive that this question can be long evaded. Then what advantage is proposed from procrastination? . . . I should be glad to know if any gentleman contemplates the State of Rhode Island dissevered from the

Union; a maritime State, situated in the most convenient manner for the purpose of smuggling, and defrauding our revenue. Surely, a moment's reflection will induce the House to take measures to secure this object. Do gentlemen imagine that State will join the Union? If they do, what is the injury arising from the adoption of the resolution intended to be submitted to the committee? Is there any impropriety in desiring them to consider a question which they have not yet decided? It has been suggested, by an honorable gentleman, that this desire will operate as a demand. If a wish of Congress can bring them into the Union, why should we decline to express such a wish? [35]

Madison demanded the previous question, because it was best to evade debate, wrong to expose Congress to a refusal, and improper to "express a desire on an occasion where a free agency ought to be employed, which would carry with it all the force of a command." [36] Benson's motion for a committee of the whole to consider his resolution was then rejected. It was, as we have seen, in the collection act that free trade for domestic products was granted to Rhode Island; but this was no answer to the danger of smuggling of foreign goods. The fear was also present, though less often expressed, that Rhode Island might make an agreement with some foreign nation, particularly Great Britain, whereby the newly acquired independence of the United States might be endangered.

The attitude of Congress was further indicated by a member in a letter dated June 13: "Most Persons here will not believe that your People will be long held in Error with Respect to their best Interests, . . . With that Idea, the Duty on Lime and Barley was stricken out of the Impost Bill [they were not put on the free list]. It was thought unnecessary to take any Measures to effect a Purpose which of itself was so nearly accomplished." [37] After the tonnage exception was made, a New York paper on September 19 was hopeful of a proper response from the two affected states: "The conciliatory temper discovered by the Federal Legislature, in their attention to the embarrassed situation of the trade of Rhode-Island and North-Carolina, . . . must make the most favourable impressions on the minds of the citizens of those States; they must be struck with the enlarged, liberal, and generous policy, which governs the Congress of the United States." [38] And a "very distinguished member of Congress," possibly the one who had written earlier was, on September 15 also hopeful, but, as regards Rhode Island at least, mindful of the alternative:

We are all very sanguine in our Hopes, that you will send us Members of both Houses, before the 15th of January, . . . But if unhappily Rhode-Island should not call a Convention, or calling one, not adopt the Constitution, something much more serious than has ever yet been done, or talked of, will

most probably be undertaken. We have very often been irritated with Rumours of Correspondence between the Anti's in your State and those [elsewhere] . . . and even with Insinuations of Intrigues with British Emissaries. These are very serious Reports: . . . If the Citizens of Rhode-Island place themselves in the Light of Correspondents with criminal Citizens of the Union, or in that of Enemies to the United States, their good Sense will suggest to them, that the Consequences will be very speedy, and very bitter. . . . Enemies they must be, or Fellow-Citizens, and that in a very short Time.[39]

RHODE ISLAND IMPORT DUTIES

MEANWHILE, the state legislature had striven to do its part in regulating the state's trade with the nation. In May it enacted that whatever imposts the United States should collect should also be imposed in Rhode Island, and that all such duties "shall be paid in the same Kind of Monies, or other Things, in which the said Duties . . . in the said Eleven States, shall be payable." [40] This measure made it possible to collect duties on goods from other states if the goods from Rhode Island were required to pay. Also, it was in part an answer to the statement that the state would become an entrepôt for goods to be smuggled into the United States; for though there were no direct precautions made against it, the bill, by providing that the goods intending for smuggling should pay an equal duty on importation to or through Rhode Island, at least did away with the incentive, by making it unprofitable.

In September the State put a copy, *mutatis mutandis*, of both the tariff and collecting acts in its own statutes. Its equivalent for the section freeing the products of the state from duties was the declaration that the duties were levied on goods "other than those of the Thirteen States of North America, heretofore united under one Confederation." [41] At this same session the national tax on rum, sugar, and chocolate from Rhode Island was neutralized by a state drawback on such manufacturers on exportation, if the material had paid a duty to the state. The tariff act, following that of the nation, had allowed a general drawback on goods, except spirits, which had paid duties and were later exported outside the limits of the United States "as settled by the late treaty of peace"; but in October this drawback was extended to such goods sent to other states also. This would help the coastwise trade of the state, but it might also restore the encouragement of smuggling.

Before this state drawback was provided and also before the tonnage exemption was granted by the nation, a letter from Rhode Island dated September 4, spoke of what might happen if the trade element was driven to desperation: "As our staple is inconsiderable

we must have recourse to a circuitous kind of traffic. It is evident we must find employment. . . . if Congress shut us out from a participation of the advantages resulting from the new government, we shall be compelled into a line of business that will injure the interests of the United States. Nothing of this kind is at present dreamed of. But I will not be answerable what turn the imagination of people will take. It is well known that our merchants were formerly celebrated for their skill in smuggling. They have not totally forgotten the sweets of their former practice."[42] Rhode Island passed no special tonnage act at this time.

The May statement of intention as to customs was viewed askance by some at least of the merchants. A correspondent in the *Providence Gazette* of May 16 declared that it would spell ruin to the carrying trade, since the goods would have to pay double duty. The drawback was the answer to this. In another news letter it is said: ". . . the late Act . . . must be considered as a Burlesque on Federalism, . . . only done with a View to embarrass the Merchants of this State, . . . The Assembly by the late act resolve, that the Impost shall be paid in the same Monies as Congress shall direct, and yet continue their favorite Tender-Law, which subjects the very Persons who must pay the Impost to the sad Necessity of receiving all their Debts in the nominal Sum of a Paper Currency, which is now depreciated to 18 for 1."[43]

Notice has already been called to the collection of foreign tonnage at New York on Rhode Island vessels before the exemption act; and there is record of at least one case of land smuggling. In 1790 a merchant of Medway, Massachusetts, was caught with a chest of tea purchased at Providence. The tea, wagon, and team were all confiscated and sent to Boston. This, commented a paper, was the "Blessed Effect of our being out of the Union!"[44] The paper does not say whether the merchant had received a drawback.

The paper money thread ran through the whole fabric. George Benson wrote Sedgwick from Providence on June 27: ". . . the tender Law remains in force tho' the Money is reduced to the low ebb of 20 paper for one silver dollar, yet the Judges of the Court and other Publick Officers in receiving their Pay are allowed for depreciation, while Publick and Private Creditors are Compel'd to receive it at Par or forfeit their Claims."[45] This statement has not been verified; but at least the officials were for the most part in agreement with the legislature and supported the "Know Ye" measures, even though they had been dealt a serious blow by Trevett *v.* Weeden, when the enforced acceptance of paper money at par was declared

illegal. This case was one of the first landmarks of constitutionalism. At the time of the struggle over ratification the paper money craze had passed its zenith. The first real yielding by the rural majority came in the September session of 1789 when the legal tender of paper money was suspended until the next session; and then, a month later, tender at par was repealed and the legal rate made 15 to 1.

EXCUSES

THERE were further evidences at this time of the foreshadowing of necessary events. North Carolina had not yet ratified, but that she would was already taken for granted. The Rhode Island session of September 1789 sent a memorial to Congress. The desire for mutual harmony was expressed; the sacrifices in a common cause were recalled; and a promise made to pay her share of the war debt:

> That we have not seen our way clear to do it [ratify] consistent with our idea of the principles upon which we all embarked together, has also given *pain* to us; we have not doubted but we might thereby avoid present difficulties, but we have apprehended future mischief. . . . They have viewed in the new constitution an approach, though perhaps but small, towards that form of government from which we have lately dissolved our connection . . . they have seen with pleasure the administration . . . committed to men who have highly merited . . . *unbounded confidence*. Yet, even on this circumstance, . . . they have apprehended danger by way of precedent. . . . [Amendments were awaited; the proposed ones] have already afforded some relief and satisfaction to the minds of the people of this state. . . . We are sensible of the extremes to which democratical government is sometimes liable: something of which we have lately experienced, but we esteem them temporary and partial evils, compared with the loss of liberty and the rights of a free people. Neither do we apprehend they will be marked with severity by our sister states, when it is considered that during the late trouble, the whole United States notwithstanding their joint wisdom and efforts fell into the like misfortune. . . . especially when it is considered that upon some abatement of that fermentation in the minds of the people which is so common in the collision of sentiments and of parties, a disposition appears to provide a remedy for the difficulties we have labored under on that account. We are induced to hope that we shall not be altogether considered as foreigners, having no particular affinity or connection with the United States. But that trade and commerce, upon which the prosperity of this state much depends, will be preserved as free and open between this and the *United* States as our different situations at present can possibly admit.[46]

At the same time the legislature declared itself impotent to act for ratification:

> . . . this Assembly, on the most careful examination of the powers vested in them by the freemen of this state, are of opinion, that the same are limited to the administration of the existing constitution of the state, and do not extend

to devising or adopting alterations therein: And . . . notwithstanding this General Assembly, convinced that the freemen of this state retain in their own hand the entire power of adopting or rejecting the said Constitution, . . . passed an act . . . giving the freemen an opportunity of adopting or rejecting said Constitution, grievous Complaints are still made, by some [Providence town meeting for instance], that said Constitution hath not been adopted by this state, nor a Convention called for that purpose.[47]

After saying all this, it directed the town meetings in October to instruct their delegates on the question of a convention, though this was directly contrary to its complaint of lack of power. It was primarily an excuse for continuing to temporize and put off the evil day. Before the town meetings were held they were supplied with copies of the amendments proposed by Congress. Evidently the instructions were for the most part unfavorable, for in the October session the Assembly by a vote of 39 to 17, which was an increased majority, for the seventh time voted down a convention call.

The Providence *United States Chronicle* was accused of straddling. In its issue of December 17, 1789, it recalled the warning of the distinguished congressman (*see* p. 486), and commented:

What can be the Meaning of this indecent, imprudent, dictatorial Language? Is it possible that a Member of Congress could mean that irritating Expressions like these, should be published, as conveying the Sentiments and Intentions of that respectable Body towards the People of this State, without so much as having written to them a single Letter signifying they wished them to join the national Confederacy? . . . That this State will of herself soon accede to the general Government of the Union, unless violent and inflammatory Measures are adopted to retard it, is an Event as certain as the Revolution of another Year. . . . But there must be a little Patience exercised. Changes in the Principles and Ways of Thinking of a whole Body of People, who have strengthened each other in a political Creed, though it be erroneous, and arising in some Degree perhaps from Party-Spirit, cannot at once be effected. He must have but a little Knowledge of the human Heart who will not acknowledge that Violence is by no Means proper for the Purpose. . . . A free People want nothing but Information and the cool Exercise of their Reason to put them right; and that they may have an Opportunity therefor it is hoped that the same Candour, good Sense, and Moderation which have hitherto marked the Councils of the United States . . . during the late Revolution in Favour of the new national Constitution, will still be continued for a few Months, . . .

To this it might be replied that patience sometimes ceased to be a virtue; and that it was news that the state was awaiting a request from Congress to accede to the Union. The *Chronicle* weakened its own protest by printing on the last day of the year a letter on "The Prospect before Us," containing the statement: "There are Numbers of our Citizens that are yet opposed to the Constitution . . . be-

cause they know it will compel Men to pay their just Debts (some perhaps oppose it for better motives, but I believe their Number is small)." To this might be added the one in the *Gazette* on August 1: "Are the Inhabitants of this small State the only Lovers of Liberty? Can it be supposed that here, and here only, Wisdom, Virtue and Patriotism, have taken up their favourite Abode? Let us rather confess that the State is shamefully rent by Party and Faction, and that too many of us are fondly attached to a depreciating, destructive *Paper Money Bubble!*"

WASHINGTON'S ATTITUDE

NATURALLY the influence of Washington's opinion and support was sought. The Rhode Island Cincinnati congratulated the President on September 3, 1789, adding: ". . . although we are not admitted to a participation in the good effects of the government over which you so deservedly preside, yet we fondly flatter ourselves that the period is not far distant, when the mistaken zeal, which has lately prevailed in this State, will give way to a more enlightened policy." [48] Washington replied on September 14 in their own words: "I am much pleased, gentlemen, with the hope which you entertain, that mistaken zeal will give way to enlightened policy." [49]

During Washington's New England tour, Jabez Bowen, deputy governor during the Revolution and an influential Federalist, of whom Washington had a high regard, wrote the President on October 25, just before the above October session, expressing hope for a favorable issue: "If we can agree to Call a Convention all will end well, if not our situation will be truly miserable. I shall be at Home on Sunday next and shall think my self highly Honoured if your Excellency will take Providence in your way on your Return, and spend a little time with us. I should hope that your thus kindly noticing of us will not be of any disadvantage towards Establishing the great Cause that we have been so long engaged in promoting." [50] Neither Providence nor any part of the state was included in the tour of 1789.

Later, Bowen appealed again, saying that the call of a convention had been prevented by the instructions of the towns: "I have no Idea that the Antis will or can be induced to come in without the arm of Power is Exerted . . . will Congress *protect* us if we seperate from the State Government; and appoint us Officers to Collect the Revenues, . . . be pleased Sir to give me an answer to this proposition as soon as Convenient." [51] Washington's reply is dated December 27: "As it is possible the conduct of Rhode Island (if persevered in) may involve questions in Congress which will call for my Official

decisions, it is not fit that I should express more than a wish, . . . that the Legislature of the coming Session would consider *well* before it again rejects the proposition for calling a Convention . . . The adoption of it by No Carolina has left them *entirely* alone." [52] To Sir Edward Newenham he was more expressive in his opinion: ". . . the recent accession of the State of North Carolina . . . leaves the little State of Rhode Island by herself, how long she will be able to stand in that forlorn condition must depend upon the duration of that infatuation and evil policy of which she appears to have been guided." [53]

THE CONVENTION CALLED

THE GENERAL ASSEMBLY met again in January 1790 with the same membership as in the October session. The crisis impended, and the result would depend upon the willingness of the delegates to disregard instructions, brave the wrath of their constituents, and act according to their conviction of the necessity. Bowen had said in October that there might have been a majority in favor of a convention, but for the instructions. The representatives, with a better opportunity to understand the real situation, would naturally be able to overcome their prejudices more easily than the bulk of the rural freemen. There were, however, rumors of less honorable reasons for the change of sentiment that now took place. Whatever the cause, the House on Friday, January 15, voted a convention by 34 to 29. The Senate on Saturday rejected this by 5 to 4, and proposed another delaying direction to the towns to instruct. The House nonconcurred. It was now Sunday, and though such a proceeding had probably never before happened in Rhode Island, the importance of the occasion demanded a meeting on that day. The House passed a second bill for a convention by 32 to 11; the Senate a second one for instructions. One of the Antifederalist assistants had gone home, being, it was reported, a minister and believing his flock needed him more in the pulpit than his constituents did in the legislature. This caused a tie vote in the Senate on the second House bill, which Governor John Collins broke in favor of the call, thereby alienating his political support but receiving the praise of the Federalists. The delegates were to be elected in February and the gathering was to take place at South Kingstown in March. The legislature also directed the governor to send Washington a copy of the call and also an application for further exemption from foreign tonnage duties: ". . . the operation of the federal government, according to the existing laws of Congress, will prove greatly injurious to the commercial interests of this state, unless a further suspension of the same can be obtained." [54] Bowen

also wrote to Washington, and in reply the President had Lear inform him: ". . . it is to be hoped that the adoption of the Constitution by the State of Rhode Island will, after this instance, render similar applications unnecessary from that State." [55] Congress in the act of February 8, 1790, extending the laws over North Carolina, continued the tonnage exemption to Rhode Island "until the first day of April next, and no longer."

FIRST SESSION OF THE CONVENTION

THE CONVENTION of seventy delegates met on March 1, 1790. The Antifederalists had a sufficient majority and effected the organization with Deputy Governor Daniel Owen as president. Their other leaders were Joseph Stanton, Job Comstock, and Jonathan Hazard; while the Federalists were under Henry Marchant, Benjamin Bourne, and William Bradford. Fearful of direct rejection, especially with the amendments proposed by Congress, a week was spent in discussion and procrastination, during which an additional long bill of rights and a string of alterations were adopted as necessary to the proposed Constitution; then on March 6 adjournment was carried by 41 to 28, and the date and place of the second meeting set for May 24 at Newport. Colonel Sherburne of Newport wrote Knox on March 7: "The grand Aim of our Anti party by postponing this Business is to secure themselves in the State Government (which Choice will be the Middle of April next) whereby they expect to have sufficient strength in the Legislature to make Choice of their own kind of Creatures to represent this State in the Senate of the United States, and thereby have sufficient Influence to establish such of their friends in Office as will best serve their purpose; . . ." [56]

COERCION

WHETHER or not this was the purpose of the Antifederalist leaders, it is evident that their followers were answering, in avoiding straight ratification, the wishes of the freemen who had sent them there, and this showed moral courage at least. Jefferson might write on April 2: "The little vaut-rien, Rhode-island will come over with a little more time";[57] but both within and without the state a rising indignation over the continued paltering was evident. In the April election there was an attempt at coalition by the Federalists, but the opposition ticket once more triumphed. The proposed extended bill of rights and the required amendments of the convention were considered at the town meetings of this annual election, and the delegates returned with more instructions than for the first session.

On the national side, the Senate inaugurated a threat of complete isolation. On April 28 Carroll procured a committee of five, of which he was head, "to consider what provisions will be proper for Congress to make, in the present session, respecting the State of Rhode Island."[58] Maclay called Carroll "only a tool" in the business, manipulated by the executive heads, and added that Gunn of Georgia declared it was only a pretext to raise more troops.[59] The report was taken up on May 10, and the next day the committee was authorized to bring in a bill according to the following resolve: "That all commercial intercourse between the United States and the State of Rhode Island, from and after the first day of July next, be prohibited, under suitable penalties; and that the President of the United States be authorized to demand of the State of Rhode Island —— dollars, to be paid into the Treasury of the United States by the —— day of —— next; which shall be credited to the said State, in account with the United States; and that a bill or bills be brought in for those purposes."[60]

Ellsworth, of the committee, was the chief supporter of the resolve. Maclay opposed it, calling it premature: "By the present resolutions the attack comes visibly from us. She is furnished with an apology, and will stand justified to all the world if we [she?] should enter into any foreign engagements. . . . They admitted on all hands that Rhode Island was independent, and did not deny that the measures now taken were meant to force her into an adoption of the Constitution of the United States; and founded their arguments on our strength and her weakness. I could not help telling them plainly that this was playing the tyrant to all intents and purposes."[61] The resulting bill placed the amount to be paid at $27,000, and was passed on May 18 by 13 to 8. Maclay held that the sole purpose of the coercion was to increase the northern votes in the controversy over the location of the capital: "Mr. Morris was one of the warmest men for it, although he knows well that the only views of the Yorkers are to get two Senators more into the House on whose votes they can reckon on the question of residence."[62] An analysis of the vote scarcely justifies the statement; for five of the yeas were from New England, five from the middle states, and three from the South, while the nays were one from New England, two from the middle states, and five from the South. The New England vote at least can be readily accounted for without reference to the capital question.

The bill came up in the House on May 26, when Page of Virginia, renewing his earlier objection, moved to discharge the committee of the whole:

I say it becomes this House to take care . . . that their sister State, now about to consider of the propriety of adopting the Constitution, shall be as free to judge for herself as was any other State in the Union. Should this bill pass, and should Rhode Island adopt the Constitution, she will come with so bad a grace into the Union, that she must be ashamed when she enters it, and the independent States must blush when they receive her. . . . if we are more solicitous to restrict smuggling than to extend the benign influence of our new Constitution through the State of Rhode Island, as well as through the twelve other States, what can that State expect from a Union with States thus disposed? [63]

No action was taken at that time and on June 1, on information of ratification, the discharge took place, and a committee was appointed to report a bill or bills to give effect to the laws in Rhode Island.

The *Providence Gazette* of May 22 gave the text of the Senate bill and printed extracts from the letters of three members of Congress, warning of the probable effect of rejection by the adjourned convention. On May 24 a town meeting there voted: "That it is our opinion, that, on the rejection of the said Constitution or further delay of a decision thereon, the respective towns of the State have a right to make application to the Congress of the United States, for the same privileges and protection which are afforded to the towns under their jurisdiction; . . ." [64] This was rebellion against the state. Resolves justifying it, though not presented at the meeting, were later printed. They stated the principle, still upheld by some historians, that the Union is older than the states, which therefore have had no existence apart from it, and that the town owed no allegience except to the state as one of the thirteen United States of America.[65] Ames' exclamation in a letter on July 23, 1789, is apposite: "I wish most earnestly to see Rhode Island federal, to finish the circle of union, and to dig for the foundations of the government below the frost. If I did not check this emotion, I should tire you with rant. I am displeased to hear people speak of a State out of the union. I wish it was a part of the catechism to teach youth that it cannot be.[66]

RATIFICATION

THE CONVENTION reassembled under this impending storm. For another week the discussion went on. On Friday, May 28, a delegate from Portsmouth requested an adjournment until the next afternoon that he might return to his town and "state to his constituents the situation of affairs." As this "situation" was apparently the opposition of one of the town's delegates to the instructed vote for ratification, the Antifederalists objected; but the adjournment was carried by a majority of eight, indicative of the loyalty to town govern-

ment rather than of an increased Federalist strength. During this adjournment another town, Middletown, changed its instructions. It had approved of ratification only if the amendments submitted by the first session of the convention became a part of the Constitution, with an additional amendment proposed by the town. Now it directed unconditional ratification. The town's two delegates had voted for the recess at the first meeting of the convention, but now followed the new instructions. The convention assembled on Saturday afternoon, May 29, and ratification was carried at 5:20 by 34 to 32. The Portsmouth delegate had remained obdurate, but, besides the change from Middletown, two others who had favored the recess now voted to ratify, and three did not vote, one of whom was from Portsmouth. The general opinion was that many others would have voted favorably but for their instructions, and that in time there would have been considerable change in these instructions; but time was precious and the majority sufficed. As the vote was so close, it was probably figured before the test was made; because rejection would have been more perilous than further delay.

The formal ratification begins with the many itemed bill of rights, and proceeds: "Under these impressions, and declaring, that the rights aforesaid cannot be abridged or violated, and that the explanations aforesaid, are consistant with the said constitution, and in confidence that the amendments hereafter mentioned, will receive an early and mature consideration, and conformably to the fifth article of said constitution, speedily become a part thereof; We . . . do by these presents, assent to, and ratify the said Constitution." [67] This they did "in full confidence nevertheless" that until the desired amendments had become a part of the Constitution, various things respecting the militia, elections, and taxes would not be attempted by Congress.

The great event was not without its augury. At precisely the time (as later ascertained) that the president of the convention announced the vote, a salmon weighing exactly thirteen pounds leaped from the Pawtuxet River into a fishing boat.[68] Providence had the news of the ratification at 11:00 o'clock Saturday night and began its celebration at once. The Boston *Independent Chronicle*, printing the famous cartoon of the "pillars of the New Roof" brought down to date, invoked the muse, so often employed as an outlet of feeling during the formative period:

> 'Tis done! 'tis finished! guardian UNION binds,
> In *voluntary* bands, a Nation's minds:
> Behold the DOME compleat, the PILLARS rise—

Rhode Island,

Newport June 9th 1790

Sir,

I had on the 29th Ult. the Satisfaction of addressing you after the Ratification of the Constitution of the United States of America by the Convention of this State. I have now the Honor of Enclosing the Ratification as then agreed upon by the Convention of the People of this State; the Legislature is now in Session in this Town, an Appointment of Senators will undoubtedly take place in the present Week, and from what appears to be the Sense of the Legislature, it may be expected that the Gentlemen who may be appointed will Immediately proceed to take their seats in the Senate of the United States.

I have the Honor to be with great Respect,

Sir, Your obedt. humble Servant

Daniel Owen Junr.

President of the United States.

NOTIFICATION TO WASHINGTON OF RHODE ISLAND'S RATIFICATION OF THE CONSTITUTION

From the Washington Papers in the Library of Congress

Earth for the BASIS, for the ARCH the skies!
Now the *new* world shall mighty scenes unfold;
Shall rise th' imperial Rival of the *old;*—
And *Roman Freedom* tread the Western Soil,
And a *new Athens* in the *Desert* smile.
O happy land!—O ever sacred Dome
Where PEACE and INDEPENDENCE own their Home:
COMMERCE and TILLAGE, hail the Queen of *Marts*
Th' *Asylum* of the world, the residence of ARTS.[69]

The measures necessary to give practical effect to the ratification were put through at once. On June 7 all the state officers and legislators took the national oath, and all the amendments proposed by Congress, except the second, were approved. The legislators in grand committee "agreeably to the usage in the choice of state officers" elected the two senators. One, Theodore Foster, was a Federalist, or Law and Order man, the other, Joseph Stanton, an Antifederalist, but of known integrity and trusted throughout the state. They took their seats on June 25. The election of the state's representative was to be at town meeting on the last Tuesday in August. If no one had a majority, at the second election "the votes of the freemen shall be given only for such of the persons voted for at the first election as had the greatest number of votes, and the whole number of which votes make a majority of all the votes given in by the freemen at the first election."[70] The third trial if necessary was to be between the two highest. Only one election was needed; Benjamin Bourne had a majority. He took his seat at the third session. Meanwhile, on June 14 and 23, Congress passed the acts to bring the state under the national laws.

* * *

The Wayward Sisters had returned in peace. After March 4, 1789, the proclamations and sessional laws of Rhode Island had no longer ended with "God save the United States." "God save the State" became the plea, except that Governor Collins' thanksgiving proclamation (for the same date as that by Washington) rang with "God save this State and the other States of America lately united under the same confederation." Now, however, the old appeal was restored; and "God save the United State" was echoed in Washington's heart as he replied to Governor Fenner's announcement of the ratification by Rhode Island: "Since the bond of Union is now complete, and we once more consider ourselves as one family, it is

much to be hoped that reproaches will cease and prejudices be done away; for we should all remember that we are members of that community upon whose general success depends our particular and individual welfare; and, therefore, if we mean to support the Liberty and Independence which it has cost us so much blood and treasure to establish, we must drive far away the dæmon of party spirit and local reproach." [71]

The Thirteen Links were once more in circle; the new Union complete, organized, and in successful operation. The future was bright. As Jefferson wrote Lafayette: "The opposition to our new constitution has almost totally disappeared. . . . if the President can be preserved a few years till habits of authority & obedience can be established, generally, we have nothing to fear." [72] John Brown, representative from the Kentucky district of Virginia, as a legislator was equally optimistic: "Indeed our public affairs in every department go on so smoothly & with such propriety that I entertain sanguine hope that the present Government will answer all the reasonable expectations of its friends. Judgment impartiality & decision are conspicuous in every transaction of the President & from the Appointments which he has made there is every reason to expect that the different Departments will be conducted with Justice & Ability." [73]

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[71] *Works*, **1.** 64.
[72] *Annals*, **1.** 734.
[73] Ibid, 734, 735.
[74] Ibid, 735.
[75] Ibid, 737.
[76] Ibid.
[77] Ibid, 744.
[78] Ibid, 746.
[79] Ibid, 755.
[80] Ibid, 756.
[81] Ibid, 757.
[82] Ibid.
[83] Ibid, 758.
[84] Ibid, 764.
[85] Ibid, 766.
[86] Ibid, 768.
[87] Ibid, 774.
[88] Ibid, 776.
[89] Ibid, 778.
[90] Ibid, 789.
[91] Ibid, 790.
[92] McRee, *Iredell*, **2.** 265.
[93] Madison Papers, **12.** fol. 10.
[94] *Annals*, **1.** 800.
[95] *Mass. Centinel*, Aug. 29, 1789.
[96] *Letters*, **2.** 499.
[97] Ibid, 500.
[98] Madison Papers, **12.** fol. 16.
[99] Dept. of State, *Constitution*, 24.
[100] Patrick Henry Papers.
[101] *Letters*, **2.** 502.
[102] Ibid, 505.
[103] Patrick Henry Papers.
[104] R. H. Lee, *Letters*, **2.** 507.
[105] Madison Papers, **12.** fol. 46.
[106] Washington Papers, **244.**
[107] Ibid.
[108] Ibid.
[109] Ibid.
[110] Ibid.
[111] Va. House, *Journal*, Oct. 1789 (1828 ed.), 90.
[112] Washington Papers, **245.**
[113] Va. Senate, *Journal*, Oct. 1789 (1828 ed.), 51.
[114] Ibid, 62–64.
[115] Ibid, 66.
[116] Washington Papers, **245.**
[117] Jefferson Papers, **53.** fol. 8957.
[118] Madison Papers, **12.** fol. 56.
[119] Washington Papers, **245.**
[120] *Letters*, **2.** 524.
[121] Jefferson Papers, **55.** fol. 9390.
[122] Ibid, **58.** fol. 9987.
[123] Monroe Papers, **7.** fol. 882.
[124] *Senate Doc.* 181, 74 Cong. 2 sess., p. 10.
[125] Ibid.
[126] Ibid, 11.
[127] Knox MSS., **25.** 162.
[128] *Senate Doc.*, loc. cit., p. 27.
[129] Bland, *Ga. and the Constitution*, 13.

THE EXECUTIVE DEPARTMENTS

[1] *Journals*, **19.** 44.
[2] *Life and Letters*, **2.** 331.
[3] Burnett, *Letters*, **1.** 471.
[4] Art. IX. par. 4.
[5] Art. II. §2. cl. 1.
[6] Art. I. §8. cl. 18.
[6a] Farrand, *Records*, **2.** 53.
[7] Ibid, 136.
[8] Ibid, 367.
[9] *Annals*, **I.** 383.
[10] Ibid, 385.
[11] Ibid, 400, 403.
[12] Ibid, 599.
[13] Ibid.
[14] *Journal* (1927 ed.), 80.
[15] *Annals*, **1.** 599.
[16] Ibid, 600.
[17] Ibid.
[18] *Journal*, 107.
[19] Ibid, 117.

[20] Ibid, 80.
[21] *Statutes at Large*, **1.** 69.
[22] *Works*, **I.** 56.
[23] *Annals*, **1.** 616.
[23a] Ibid., **2.** 679.
[24] *Statutes at Large*, 1. 70.
[25] McRee, *Iredell*, **2.** 259.
[26] King, *Life and Corresp.*, **1.** 368.
[27] *Writings*, **30.** 375.
[28] Ibid, 413.
[29] Ibid, 414.
[30] Ibid, 446.
[31] Washington Papers, **245.**
[32] *Belknap Papers*, **2.** 190.

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[1] *Writings*, **4.** 11.
[2] Ibid, 73.
[3] Ibid, 82.
[4] Ibid, 160.
[5] *Journals*, **13.** 283.
[6] Ibid, **16.** 61.
[6a] *Writings*, **30.** 359.
[7] Art. IX. par. 1.
[8] Art. IX. par 2.
[9] Farrand, *Records*, 1. 21.
[10] Ibid, **2.** 132.
[11] Ibid, 638.
[12] Ibid, **3.** 222.
[13] *Writings*, **29.** 466.
[14] Madison Papers, **11.** fol. 59a.
[15] Mass. Hist. Soc., MSS. 151. 31. 44.
[16] *Works*, **1.** 64.
[17] Brown, *Ellsworth*, 190.
[18] *Life and Letters*, **2.** 318.
[19] *Journal* (1927 ed.), 99, 114.
[20] *Letters*, **2.** 487.
[21] *Pa. Archives*, 1st ser., **11.** 591.
[22] *Journal*, 100.
[23] Mass. Hist. Soc., MSS. 151. 31. 44.
[24] *Statutes at Large*, **1.** 85; the wording is identical in the report and final act.
[25] Ibid, 93.
[26] *Journal*, 95.
[27] King, *Life and Corresp.*, **1.** 367.
[28] *Annals*, 1. 812.
[29] Madison Papers, **11.** fol. 107.
[30] Ibid, **12.** fol. 10.
[30a] *N. C. State Records*, **22.** 635; the last sentence is obviously a misreading of the lost original.
[31] *Annals*, **1.** 813.
[32] Ibid, 834.
[33] Ibid, 846.
[34] *Life and Letters*, **2.** 334.
[35] *Statutes at Large*, 1. 88.
[36] *House Doc.* 212, 76 Cong. 1 sess., p. **32.**
[37] *Works*, **1.** 71.
[38] Harry Innes Papers, **19.** fol. 18.
[39] *Journal*, 164.
[40] *Annals*, **1.** 951.
[41] Mass. Hist. Soc., Sedgwick Papers.
[42] Harry Innes Papers, **19.** fol. 18.
[43] *Works*, **8.** 495.
[44] King, *Life and Corresp.*, **1.** 368.
[45] *Writings*, **30.** 418.
[46] See p. 343.
[47] *Letters to Langdon*, 94.
[48] *Life and Letters*, **2.** 333.
[49] Mass. Hist. Soc., Knox MSS., **24.** 101.
[50] Am. Hist. Assoc., *Report*, 1896, **1.** 767.
[51] *Writings*, **30.** 428.
[52] *Corresp. and Papers*, **3.** 378.
[53] *Dixon* v. *The Cyrus*, 2 Pet Adm. **407.**
[54] *Am. Mercury*, **8.** App. 4. p. 4.
[55] 134 U. S. **713.**
[56] Mass. Hist. Soc., MSS.
[57] *Gazette of the U. S.*, Feb. 11, 1792.
[58] Reeder, "First Homes of Supreme Court" (Am. Philos. Soc., *Proceedings*, **76**), 591n.
[59] *Corresp. and Papers*, **3.** 420.
[60] *Diaries*, **4.** 85.
[61] *Guion* v. *M'Cullough*, N. C., June 1791; Brunner Col. Cases, 1.
[62] *Providence Gazette*, Apr. 24, 1790.

DEPARTMENTAL AND INTERDEPARTMENTAL PRECEDENTS

[1] *Annals*, **1.** 24; both Annals and Journal include "style or" in the original resolve, obviously an error.
[2] Ibid, 257.
[3] Ibid.
[4] *Journal* (1927 ed.), 12.
[5] Ibid, 25.
[6] *Annals*, **1.** 331.
[7] Ibid, 333.
[8] *Works*, **1.** 37.
[9] *Annals*, **1.** 36.
[10] Madison Papers, **11.** fol. 58.
[11] Ibid, fol. 59.
[12] Ibid, fol. 117.
[13] Washington Papers, **243** (photostat).
[14] Madison Papers, **11.** fol. 72.
[15] *Washington-Madison Papers*, 96.
[16] Madison Papers, **11.** fol. 79.
[17] Henry, *Life, Corresp. and Speeches*, **3.** 394.
[18] Mass. Hist. Soc., Wait Letters to Thacher.

[19] Washington Papers, **243.**
[20] *Writings*, **30.** 362.
[21] Madison Papers, **12.** fol. 35.
[22] N. Y. *Daily Advertiser*, June 15, 1789.
[23] *Mass. Centinel*, Aug. 22, 1789.
[24] Mass. Hist. Soc., Knox MSS., **24.** 150.
[25] Art. II. §2. cl. 2.
[26] *Annals*, **1.** 385.
[27] Ibid, 387.
[28] Ibid, 390.
[29] Ibid, 388, 389.
[30] Ibid, 477.
[31] Ibid, 496.
[32] Ibid, 514.
[33] Ibid, 583.
[34] Ibid, 568.
[35] Ibid, 596, 598.
[36] Ibid, 604.
[37] *Works*, **1.** 55.
[38] Mass. Hist. Soc., C. E. French Col.
[39] *Journal*, 108, 109.
[40] *History of the Constitution*, **2.** 192.
[40a] Adams, *Works*, **3.** 409.
[41] Ibid, **8.** 494.
[42] Ibid.
[43] Ibid, **6.** 430, 431.
[44] Madison Papers, **11.** fol. 73.
[45] Ibid, fol. 101.
[46] Washington Papers, **244.**
[47] Henry, loc. cit., 397.
[48] S. Adams Papers (photostat), **18.**
[49] *Letters*, **2.** 505.
[50] Mass. Hist. Soc., Sedgwick Papers, **5.**
[51] *Annals*, **1.** 293.
[52] Ibid, 432.
[53] *Journal*, 123.
[54] *Exec. Journal*, **1.** 3.
[55] *Journal*, 48.
[56] *Exec. Journal*, **1.** 5.
[57] Ibid, 7.
[58] Ibid, 6.
[59] Ibid, 7.
[60] *Journal*, 80.
[61] *Annals*, **1.** 594.
[62] *Exec. Journal*, **1.** 12.
[63] Ibid.
[64] *Writings*, **30.** 370.
[65] Washington Papers, **243.**
[65a] Papers of Cont. Cong., **78.** IX. 645.
[66] *Writings*, **30.** 412.
[67] Ibid, 373.
[68] Ibid, 374.
[69] Ibid, 378.
[70] *Exec. Journal*, **1.** 19.
[71] Jefferson Papers, **54.** fol. 9247–9249.
[72] *Journal*, 385.
[73] *Exec. Journal*, **1.** 93.
[74] Ibid.
[75] Ibid, 93, 94.
[76] *Works* (Memorial ed.), **8.** 285.
[77] Jefferson Papers, **70.** fol. 12158.
[78] Washington Papers, **253.**
[79] *Writings*, **31.** 500.
[80] *Exec. Journal*, **1.** 152.
[81] Ibid, **3.** 474.
[82] *Journal*, 125–129.
[83] Ibid, 129.
[84] *Exec. Journal*, **1.** 37.
[85] Ibid, 66.
[86] Ibid, 106.
[87] Ibid, 122.
[87a] *Control of Am. For. Relations*, 250.
[88] *Washington Diaries*, **4.** 67.
[89] *Account of the Receipts and Expenditures 1789–90.*
[90] Knox MSS., **24.** 74, 106.
[91] Ibid, **23.** 127.
[92] McRee, *Iredell*, **2.** 279.
[93] Knox MSS., **24.** 72.
[94] Ibid, 120.
[95] *Writings*, **30.** 319.
[96] Ibid, 321.
[97] *Works* (Lodge ed.), **7.** 43.
[98] Washington Papers, **247**; also Adams, *Works*, **8.** 491.
[99] Sedgwick Papers, **5.**
[100] *Travels in America*, 128.
[101] Sedgwick Papers, **5.**
[102] *Journal*, 134, 135.
[103] Henley Smith Papers, **1.**
[104] Jefferson Papers, **50.** fol. 8461.
[105] Madison Papers, **11.** fol. 114.
[106] Writings, **30.** 360–362.
[107] Washington Papers, **246.**
[108] *Writings*, **31.** 53–55.
[108a] Ibid, 71.
[109] Ibid, **30.** 496, 498.
[110] Ibid, 344.
[111] Ibid, **31.** 272.
[112] Ibid, 428.
[113] Ibid, **33.** 249.
[114] Ibid, **34.** 315.
[115] Washington Papers, **243.**
[116] *Writings*, **30.** 333–335.
[117] Art. II. §3.
[118] Washington, *Writings*, **33.** 509.
[119] *Corresp. and Papers*, **3.** 385.
[120] McRee, *Iredell*, **2.** 426.
[121] *Writings*, **31.** 31.
[122] McRee, *Iredell*, **2.** 339, 341.
[123] *Writings*, **31.** 155.
[123a] *Lectures on the Constitution*, 314.
[124] Ibid, **33.** 5n.
[125] Jefferson Papers, **90.** fol. 15541.
[126] Jay, *Corresp. and Papers*, **3.** 486
[127] *Writings*, **33.** 28.

[128] Jay, loc. cit., 488.
[129] Washington Letter Books, **18.** 101 (Papers, **322**).
[130] *Writings*, **33.** 272.
[131] McRee, *Iredell*, **2.** 365, 366, 370.
[132] King, *Life and Corresp.*, **1.** 387.
[133] McRee, *Iredell*, **2.** 371.
[134] Ibid, 374.

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[1] *N. H. State Papers*, **21.** 367.
[2] Conn. State Library, Records of Conn., **4.** (Jan. 1789) 6.
[2a] Papers of Cont. Cong., **78.** VI. 373.
[3] *Pa. Colon. Records*, **16.** 96.
[4] Ibid, 117.
[5] Conn. Archives, House Journal, Oct. 1789.
[6] *N. H. Laws*, **5.** 506.
[7] *Calendar of Va. State Papers*, **5.** 128.
[8] N. C. House, *Journal*, 1791, 1.
[9] Ibid, 2.
[10] Madison Papers, **10.** fol. 25.
[11] Ibid, fol. 47.
[12] Mass. Hist. Soc., Knox MSS., **23.** 41.
[13] *Calendar of Va. State Papers*, **4.** 561.
[14] Ibid, 568.
[15] Va. House, *Journal*, Oct. 1789 (1828 ed.), 25.
[16] *Pa. Colon. Records*, **16.** 40.
[17] *N. C. State Records*, **25.** 69.
[18] Records of Conn., **4.** (Oct. 1789) 8.
[19] Conn. House Journal, Oct. 1789.
[20] Mass. Archives, Court Records, 1787–89, 460.
[21] *N. H. State Papers*, **21.** 634, 672.
[22] Ibid, 695.
[23] *Mass. Centinel*, Jan. 30, 1790.
[24] N. H. Miscellaneous, 1782–1809.
[25] Mass. Hist. Soc., Sedgwick Papers.
[26] *Pa. Packet*, March 21, 1789.
[27] *N. H. State Papers*, **21.** 711.
[28] *Pa. Statutes at Large*, **13.** 373.
[29] *Pa. Colon. Records*, **16.** 124, 127–129.
[30] *Calendar of Va. State Papers*, **4.** 470.
[31] Madison Papers, **10.** fol. 52.
[32] Hening, *Va. Statutes at Large*, **12.** 779.
[33] Madison Papers, **11.** fol. 53.
[34] Ibid, fol. 59a.
[35] *Calendar of Va. State Papers*, **5.** 6.
[36] Ibid, 182, 273.
[37] *Statutes at Large*, **1.** 54.
[38] *S. C. Statutes at Large*, **5.** 147.
[39] Ibid, 309.
[40] *Laws of N. Y.* (1792 ed.). **2.** 292.
[41] S. Adams Papers (photostat), **18.**
[42] Sedgwick Papers.
[43] *R. I. Acts and Resolves*, Sept. 1790.
[44] Pa. Gen. Assembly, *Minutes*, Aug. 1789, 224, 254–258.
[45] Ibid, Nov. 1789, 10.
[46] *N. H. State Papers*, **21.** 670.
[47] Conn. House Journal, Jan. 1789.
[48] N. Y. Senate, *Journal*, Dec. 1788, 4.
[49] Mass. Archives, House Journal, Jan. 1789, 277.
[50] *N. C. State Records*, **21.** 891.
[51] Mass House Journal, Jan. 1789, 328.
[52] Ibid, 277.
[53] *Pa. Statutes at Large*, **13.** 265.
[54] Hening, *Va. Statutes at Large*, **13.** 109.
[55] *Journal* (1927 ed.), 215.
[56] Ibid, 388.
[57] N. C. Hist. Com., Legislative Papers; also, in part, *N. C. State Records*, **21.** 961.
[58] Ibid.
[59] *N. C. State Records*, **21.** 867, 1055.
[60] McRee, *Iredell*, **2.** 301.
[61] Ibid, 303.
[62] Ibid, 326.
[63] *N. C. State Records*, **21.** 865, 1054, 1080–1082.
[64] McRee, *Iredell*, **2.** 338.
[65] *Mass. Centinel*. June 2, 1790.
[66] Sedgwick Papers.

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[1] Trinity Col. Hist. Soc., *Papers*, **14.** 82, 94.
[2] *N. C. State Records*, **22.** 32.
[3] Ibid, 31.
[4] McRee, *Iredell*, **2.** 246.
[5] Ibid, 239.
[6] Madison Papers, **11.** fol. 69a.
[7] Conn. Hist. Soc., Wadsworth Papers.
[8] Patrick Henry Papers.
[9] Madison Papers, **11.** fol. 69a.
[10] Edenton *State Gazette of N. C.*, Sept. 8, 1788.
[11] Ibid, Oct. 20, 1788.
[12] *Writings*, **30.** 52.
[13] Ibid, 118.
[14] *N. C. State Records*, **21.** 10.
[15] *Providence Gazette*, March 21, 1789.
[16] *N. C. State Records*, **21.** 521.
[17] *Belknap Papers*, **2.** 117.
[18] Ibid, 121.
[19] *Writings*, **30.** 436n.
[20] *Statutes at Large*, **1.** 48.
[21] Ibid, 69.

[22] *Providence Gazette*, Aug. 29, 1789.
[23] Madison Papers, **11.** fol. 59a.
[24] Providence *U. S. Chronicle*, Aug. 27, 1789.
[25] *State Gazette of N. C.*, June 4, 1789.
[26] Ibid, Nov. 5, 1789.
[27] Washington Letter Books (Papers, **334**).
[28] Ibid; in part in *Writings*, **30.** 347n.
[29] *N. C. State Records*, **22.** 45.
[29a] Ibid, **21.** 427.
[30] Mass. Hist. Soc., Pickering Papers, **58.** 158.
[30a] Conn. State Library, Records of Conn., **4.** (Jan., 1789).
[31] Burnett, *Letters*, **8.** 808.
[32] Mass. Hist. Soc., Knox MSS., **23.** 11.
[33] *Providence Gazette*, March 4, 1789.
[34] *Annals*, **1.** 439.
[35] Ibid, 439, 440.
[36] Ibid, 439.
[37] *Providence Gazette*, June 20, 1789.
[38] Ibid, Sept. 26, 1789.
[39] Ibid, Oct. 3, 1789.
[40] *Rhode Island Acts and Resolves*, May 1789.
[41] Ibid, Sept. 1789.
[42] *State Gazette of N. C.*, Oct. 8, 1789.
[43] *U. S. Chronicle*, May 28, 1789.
[44] *Providence Gazette*, Apr. 3, 1790.
[45] Mass. Hist. Soc., Sedgwick Papers.
[46] *R. I. Records*, **10.** 356.
[47] Ibid, 338.
[48] Washington Letter Books (Papers **334**).
[49] Ibid.
[50] Washington Papers, **244.**
[51] Papers of Cont. Cong., **78.** X. 614.
[52] *Writings*, **30.** 485.
[53] Ibid, 504.
[54] *R. I. Records*, **10.** 373.
[55] *Writings*, **31.** 5n.
[56] Knox MSS., **25.** 160.
[57] Jefferson Papers, **54.** fol. 9168.
[58] *Annals*, **1.** 1003.
[59] *Journal* (1927 ed.), 244.
[60] *Annals*, **1.** 1009.
[61] *Journal*, 253.
[62] Ibid, 257.
[63] *Annals*, **2.** 1616, 1617.
[64] Staples, *R. I. and the Constitution*, 666.
[65] *U. S. Chronicle*, May 27, 1790.
[66] *Works*, **1.** 65.
[67] Tansill, *Docs.*, 1055.
[68] *Providence Gazette*, June 12, 1790.
[69] June 3, 1790.
[70] *R. I. Records*, **10.** 386.
[71] *Writings*, **31.** 48.
[72] Jefferson Papers, **54.** fol. 9168.
[73] Harry Innes Papers, **19.** fol. 18.

III

LIBERTY DOCUMENTS

Magna Carta

1215

NOTE

THE IMPORTANCE of Magna Carta is in the influence of its being granted, rather than of what was granted by it. It was essentially a document of feudal law, rights, and obligations, with little bearing on modern democratic matters. It was, on June 15, 1215, forced on King John by the barons, whose chief interest was in their own claims; but it was not confined to these, and in its administrative reforms did undoubtedly, especially through the chain of confirmations, give strength to the demand for civil rights in later times. It was not the first royal charter, and it did not grant new liberties; but besides confirming existing claims, it proposed means of sustaining them. The procuring of Magna Carta was a dramatic affair, and the name by which it has come down from the earlier ages set it apart from the other medieval documents which helped to found the English polity; so that, when the struggle between autocratic power and popular rights began under the Stuart monarchs, it was natural that the Great Charter should be brought forward as proof of the early existence of sacred rights later denied. Certain striking clauses in general terms gave substance to this. These, with the tradition and later influence, continue to make Magna Carta a Liberty Document of first importance.

Four copies of Magna Carta survive which are considered as originals; two are in the British Museum, and the others in Lincoln and Salisbury cathedrals. The translation from the Latin here used is from the Lincoln copy, and was made by William Basevi Sanders. It was this copy that was on exhibit in Magna Carta Hall at the New York Fair in 1939 and 1940, and later placed temporarily in the Library of Congress in connection with the great American state papers treasured there.

TEXT

JOHN, by the grace of God, King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Earl of Anjou: To the Archbishops, Bishops, Abbots, Earls, Barons, Justiciaries, Foresters, Sheriffs, Reves, Ministers, and all Bailiffs and others, his faithful subjects, Greeting. Know ye that We, in the presence of God, and for the health of Our soul, and the souls of Our ancestors and heirs, to the honour of God, and the exaltation of Holy Church, and amendment of Our kingdom, by the advice of Our reverend Fathers, Stephen, Archbishop of Canterbury, Primate of all England and Cardinal of the Holy Roman Church; Henry, Archbishop of Dublin: William of London:

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Peter of Winchester, Jocelin of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry, Benedict of Rochester, Bishops; and Master Pandulph, the Pope's subdeacon and familar; Brother Aymeric, Master of the Knights of the Temple in England; and the noble persons, William Marshal, Earl of Pembroke; William, Earl of Salisbury; William, Earl of Warren; William, Earl of Arundel; Alan de Galloway, Constable of Scotland; Warin Fitz-Gerald, Hubert de Burgh, Seneschal of Poictou, Peter Fitz-Herbert, Hugo de Neville, Matthew Fitz-Herbert, Thomas Basset, Alan Basset, Philip Daubeney, Robert de Roppelay, John Marshal, John Fitz-Hugh, and others, our liegemen, have, in the first place, granted to God, and by this Our present Charter confirmed for Us and Our heirs for ever—That the English Church shall be free and enjoy all her rights in their integrity and her liberties untouched. And that We will this so to be observed appears from the fact that We of Our mere and free will, before the outbreak of the dissensions between Us and Our Barons, granted, confirmed, and procured to be confirmed by Pope Innocent III., the freedom of elections which is considered most important and necessary to the English Church, which Charter We will both keep Ourself and will it to be so kept by Our heirs for ever. We have also granted to all the free men of Our Kingdom, for Us and Our heirs for ever, all the liberties underwritten, to have and to hold to them and their heirs of Us and Our heirs. If any of Our Earls, Barons, or others who hold of Us in chief by Knight's service, shall die, and at the time of his death his heir shall be of full age and owe a relief, he shall have his inheritance by ancient relief; to wit, the heir or heirs of an Earl of an entire Earl's Barony, £100; the heir or heirs of a Baron of an entire Barony, £100; the heir or heirs of a Knight of an entire Knight's fee, 100s. at the most; and he that oweth less shall give less, according to the ancient custom of fees. If, however, the heir of any such shall be under age and in ward, he shall, when he comes of age, have his inheritance without relief or fine. The guardian of the land of any such heir so under age shall take therefrom reasonable issues, customs, and services only, and that without destruction and waste of men or property; and if We shall have committed the custody of any such land to the Sheriff or any other person who ought to be answerable to Us for the issues thereof, and he commit destruction or waste upon the ward-lands, We will take an emend from him, and the land shall be committed to two lawful and discreet men of that fee, who shall be answerable for the issues to Us or to whomsoever We shall have assigned them. And if We shall give or sell the wardship of any such land to any one, and he commit destruction or waste upon it, he shall lose the wardship, which shall be committed to two lawful and discreet men of that fee, who shall, in like manner, be answerable unto Us as hath been aforesaid. But the guardian, so long as he shall have the custody of the land, shall keep up and maintain the houses, parks, fish ponds, pools, mills, and other things pertaining thereto, out of the issues of the same, and shall restore the whole to the heir when he comes of age, stocked with ploughs and wainage according as the season may require and the issues of the land can reasonably bear. Heirs shall be married without disparagement, to which end the marriage shall be made known to the heir's nearest of kin before it be contracted. A widow, after the death of her husband, shall immediately and without difficulty have her marriage portion and inheritance, nor shall she give anything for her marriage portion, dower, or

inheritance which her husband and herself held on the day of his death; and she may remain in her husband's house for forty days after his death, within which time her dower shall be assigned to her. No widow shall be distrained to marry so long as she has a mind to live without a husband; provided, however, that she give security that she will not marry without Our assent if she holds of Us, or that of the Lord of whom she holds, if she hold of another. Neither We nor Our bailiffs shall seize any land or rent for any debt so long as the debtor's chattels are sufficient to discharge the same; nor shall the debtor's sureties be distrained so long as the chief debtor hath sufficient to pay the debt, and if he fail in the payment thereof, not having wherewithal to discharge it, then the sureties shall answer it, and, if they will, shall hold the debtor's lands and rents until satisfaction of the debt which they have paid for him be made them, unless the chief debtor can show himself to be quit thereof against them. If any one shall have borrowed money from the Jews, more or less, and die before the debt be satisfied, no interest shall be taken upon such debt so long as the heir be under age, of whomsoever he may hold; and if the debt shall fall into Our hands We will only take the chattel mentioned in the Charter. And if any one die indebted to the Jews his wife shall have her dower and pay nothing of that debt; and if the children of the said deceased be left under age they shall have necessaries provided for them according to the condition of the deceased, and the debt shall be paid out of the residue, saving the Lord's service; and so shall it be done with regard to debts owed to other persons than Jews. No scutage or aid shall be imposed in Our kingdom unless by common council thereof, except to ransom Our person, make Our eldest son a knight, and once to marry Our eldest daughter, and for this a reasonable aid only shall be paid. So shall it be with regard to aids from the City of London, and the City of London shall have all her ancient liberties and free customs, both by land and water. Moreover We will and grant that all other cities, boroughs, towns, and ports shall have all their liberties and free customs. And for obtaining the common council of the kingdom concerning the assessment of aids other than in the three cases aforesaid or of scutage, We will cause to be summoned, severally by our letters, the Archbishops, Bishops, Abbots, Earls and great Barons; and in addition We will also cause to be summoned, generally, by Our sheriffs and bailiffs, all those who hold of Us in chief, to meet at a certain day, to wit, at the end of forty days at least, and at a certain place; and in all letters of such summons We will explain the cause thereof, and the summons being thus made the business shall proceed on the day appointed, according to the advice of those who shall be present, notwithstanding that the whole number of persons summoned shall not have come. We will not, for the future, grant permission to any man to levy an aid upon his freemen, except to ransom his person, make his eldest son a knight, and once to marry his eldest daughter, for which a reasonable aid only shall be levied. No man shall be distrained to perform more service for a knight's fee or other free tenement than is due therefrom. Common pleas shall not follow our Court, but be holden in some certain place. Recognisances of Novel Disseisin, Mort d'Ancestor, and Darrein Presentment shall be taken in their proper counties only, and in this wise;—We Ourself, or, if We be absent from the realm, Our Chief Justiciary, shall send two justiciaries through each county four times a year, who, together with four knights elected out of each shire by the people

thereof, shall hold the said assizes on the day and in the place aforesaid. And if the said assizes cannot be held on the day appointed, so many of the knights and freeholders as shall have been present thereat on that day shall remain as will be sufficient for the administration of justice, according as the business to be done be greater or less. A free man shall not be amerced for a small fault, but according to the measure thereof, and for a great crime according to its magnitude, in proportion to his degree; and in like manner a merchant in proportion to his merchandise, and a villein in proportion to his wainage if he should fall under Our mercy; and none of the said amercements shall be imposed unless by the oath of honest men of the venue. Earls and Barons shall only be amerced by their peers in proportion to the measure of the offence. No clerk shall be amerced for his lay tenement, except after the manner of the other persons aforesaid, and not according to the value of his ecclesiastical benefice. Neither shall any vill or person be distrained to make bridges over rivers, but they who are bound to do so by ancient custom and law. No sheriff, constable, coroners, or other Our bailiffs shall hold pleas of Our Crown. All counties, hundreds, tithings, and wapentakes shall stand at the old farms, without any increased rent, except Our demesne manors. If any one die holding a lay fee of Us, and the sheriff or Our bailiff show Our letters patent of summons touching the debt due to Us from the deceased, it shall be lawful to such sheriff or bailiff to attach and register the chattels of the deceased found in the lay fee to the value of that debt, by view of lawful men, so that nothing be removed therefrom until Our whole debt be paid; and the residue shall be given up to the executors to carry out the will of the deceased. And if there be nothing due from him to Us, all his chattels shall remain to the deceased, saving to his wife and children their reasonable shares. If any free man shall die intestate his chattels shall be distributed by the hands of his nearest kinsfolk and friends by view of the Church, saving to every one the debts due to him from the deceased. No constable or other Our bailiff shall take corn or other chattels of any man without immediate payment for the same, unless he hath a voluntary respite of payment from the seller. No constable shall distrain any knight to give money for castle-guard, if he will perform it either in his proper person or by some other fit man, if he himself be prevented from so doing by reasonable cause; and, if We lead or send him into the army, he shall be quit of castle-guard for the time he shall remain in the army by Our command. No sheriff or other Our bailiff, or any other man, shall take the horses or carts of any free man for carriage except with his consent. Neither shall We or Our bailiffs take another man's timber for Our castles or other uses, unless with the consent of the owner thereof. We will only retain the lands of persons convicted of felony for a year and a day, after which they shall be restored to the Lords of the fees. From henceforth all weirs shall be entirely removed from the Thames and Medway, and throughout England, except upon the sea coast. The writ called "Praecipe" shall not for the future issue to any one of any tenement whereby a freeman may lose his court. There shall be one measure of wine throughout Our kingdom, and one of ale, and one measure of corn, to wit, the London quarter, and one breadth of dyed cloth, russetts, and haberjects, to wit, two ells within the lists. And as with measures so shall it be also with weights. From henceforth nothing shall be given for a writ of inquisition

upon life or limbs, but it shall be granted gratis, and shall not be denied. If any one hold of Us by fee-farm, socage or burgage, and hold land of another by knight's service, We will not have the wardship of his heir, or the land which belongs to another man's fee, by reason of that fee-farm, socage or burgage; nor will We have the wardship of such fee-farm, socage, or burgage, unless such fee-farm owe knight's service. We will not have the wardship of any man's heir, or the land which he holds of another by knight's service, by reason of any petty serjeanty which he holds of Us by service of rendering Us daggers, arrows, or the like. No bailiff shall for the future put any man to trial upon his simple accusation without producing credible witnesses to the truth thereof. No freeman shall be taken, imprisoned, disseised, outlawed, banished, or in any way destroyed, nor will We proceed against or prosecute him except by lawful judgment of his peers or the law of the land. To no one will We sell, to none will We deny or defer, right or justice. All merchants shall have safe conduct to go and come out of and into England, and to stay in and travel through England by land and water for purchase or sale, without maltolt, by ancient and just customs, except in time of war, or if they belong to a country at war with Us. And if any such be found in Our dominion at the outbreak of war, they shall be attached, without injury to their persons or goods, until it be known to Us or Our Chief Justiciary, after what sort Our merchants are treated who shall be found to be at that time in the country at war with Us, and if they be safe there then these shall be so also with Us. It shall be lawful in future, unless in time of war, for any one to leave and return to Our kingdom safely and securely by land and water, saving his fealty to Us, for any short period, for the common benefit of the realm, except prisoners and outlaws according to the law of the land, people of the country at war with Us, and merchants who shall be dealt with as is aforesaid. If any one die holding of any escheat, as of the honour of Wallingford, Nottingham, Boulogne, Lancaster, or other escheats which are in Our hands and are baronies, his heir shall not give any relief or do any service to Us other than he would owe to the baron if such barony should have been in the hands of a baron, and We will hold it in the same manner in which the baron held it. Persons dwelling without the forest shall not for the future come before Our justiciaries of the forest by common summons, unless they be impleaded or are bail for any person or persons attached for breach of forest-laws. We will only appoint such men to be justiciaries, constables, sheriffs, or bailiffs as know the law of the land and will keep it well. All barons, founders of abbies by charters of English kings or ancient tenure, shall have the custody of the same during vacancy as is due. All forests which have been afforested in Our time shall be forthwith disafforested, and so shall it be done with regard to rivers which have been placed in fence in Our time. All evil customs concerning forests and warrens, foresters, warreners, sheriffs, and their officers, rivers and their conservators, shall be immediately inquired into in each county by twelve sworn knights of such shire, who must be elected by honest men thereof, and within forty days after making the inquisition they shall be altogether and irrevocably abolished, the matter having been previously brought to Our knowledge or that of Our Chief Justiciary if We Ourself shall not be in England. We will immediately give up all hostages and charters delivered to Us by the English for the security of peace and the performance of loyal service. We

will entirely remove from their bailiwicks the kinsmen of Gerard de Atyes, so that henceforth they shall hold no bailiwick in England, Engelard de Cygoyney, Andrew, Peter, and Gyon de Cancelles, Gyon de Cygoyney, Ralph de Martiny and his brothers, Philip Marc [el] and his brothers, and Ralph his grandson, and all their followers, and directly after the restoration of peace We will dismiss out of our kingdom all foreign soldiers, bowmen, serving men, and mercenaries, who come with horses and arms to the nuisance thereof. If any one shall have been disseised or deprived by Us, without the legal judgment of his peers, of lands, castles, liberties, or rights, We will instantly restore the same, and if any dispute shall arise thereupon, the matter shall be decided by judgment of the twenty-five barons mentioned below for the security of peace. With regard to all those things, however, whereof any person shall have been disseised or deprived, without the legal judgment of his peers, by King Henry Our Father, or Our Brother King Richard, and which remain in Our hands or are held by others under Our warranty, We will have respite thereof till the term commonly allowed to the crusaders, except as to those matters on which a plea shall have arisen, or an inquisition have been taken by Our command prior to Our assumption of the Cross, and immediately after Our return from Our pilgrimage, or if by chance We should remain behind from it We will do full justice therein. We will likewise have the same respite and in like manner shall justice be done with respect to forests to be disafforested or let alone, which Henry Our Father or Richard Our Brother afforested, and to wardships of lands belonging to another's fee, which We have hitherto held by reason of the fee which some person has held of Us by knight's service, and to abbies founded in another's fee than Our own, whereto the lord of that fee asserts his right. And when We return from Our pilgrimage, or if We remain behind therefrom, We will forthwith do full justice to the complainants in these matters. No one shall be taken or imprisoned upon a woman's appeal for the death of any other person than her husband. All fines unjustly and unlawfully made with Us, and all amercements levied unjustly and against the law of the land, shall be entirely condoned or the matter settled by judgment of the twenty-five barons of whom mention is made below, for the security of peace, or the majority of them, together with the aforesaid Stephen, Archbishop of Canterbury, if he himself can be present, and any others whom he may wish to summon for the purpose, and if he cannot be present the business shall nevertheless proceed without him. Provided that if any one or more of the said twenty-five barons be interested in a plaint of this kind, he or they shall be set aside, as to this particular judgment, and another or others elected and sworn by the rest of the said barons for this purpose only, be substituted in his or their stead. If We have disseised or deprived the Welsh of lands, liberties or other things, without legal judgment of their peers, in England or Wales, they shall instantly be restored to them, and if a dispute shall arise thereon the question shall be determined on the Marches by judgment of their peers according to the law of England with regard to English tenements, the law of Wales respecting Welsh tenements, and the law of the Marches as to tenements in the Marches. The same shall the Welsh do to Us and Ours. But with regard to all those things whereof any Welshman shall have been disseised or deprived, without legal judgment of his peers, by King Henry Our Father or Our Brother King Richard, and which We hold in Our

hands or others hold under Our warranty, We will have respite thereof till the term commonly allowed to the crusaders, except as to those matters whereon a plea shall have arisen or an inquisition have been taken by Our command prior to Our assumption of the Cross, and immediately after Our return from Our pilgrimage, or if by chance We should remain behind from it We will do full justice therein, according to the laws of the Welsh and the parts aforesaid. We will immediately give up the son of Lewellyn and all the Welsh hostages, and the charters which were delivered to Us for the security of peace. We will do the same with regard to Alexander, King of the Scots, in the matter of giving up his sisters and hostages, and of his liberties and rights, as We would with regard to Our other barons of England, unless it should appear by the charters which We hold of William his father, late King of the Scots, that it ought to be otherwise, and this shall be done by judgment of his peers in Our Court. All which customs and liberties aforesaid, which We have granted to be enjoyed, as far as in Us lies, by Our people throughout our kingdom, let all Our subjects, clerks and laymen, observe, as far as in them lies, towards their dependants. And whereas We, for the honour of God and the amendment of Our realm, and in order the better to allay the discord arisen between Us and Our barons, have granted all these things aforesaid, We, willing that they be for ever enjoyed wholly and in lasting strength, do give and grant to Our subjects the following security, to wit, that the barons shall elect any twenty-five barons of the kingdom at will, who shall, with their utmost power, keep, hold, and cause to be holden the peace and liberties which We have granted unto them, and by this Our present Charter confirmed, so that, for instance, if We, Our Justiciary, bailiffs, or any of Our ministers, offend in any respect against any man, or shall transgress any of these articles of peace or security, and the offence be brought before four of the said five and twenty barons, those four barons shall come before Us, or Our Chief Justiciary if We are out of the kingdom, declaring the offence, and shall demand speedy amends for the same. And if We or in case of Our being out of the kingdom, Our Chief Justiciary, fail to afford redress within the space of forty days from the time the case was brought before Us or Our Chief Justiciary, the aforesaid four barons shall refer the matter to the rest of the twenty-five barons, who, together with the commonalty of the whole county, shall distrain and distress Us to the utmost of their power, to wit, by capture of Our castles, lands, possessions, and all other possible means, until compensation be made according to their decision, saving Our person and that of Our Queen and children, and as soon as that be done they shall return to their former allegiance. Any one whatsoever in the kingdom may take oath that, for the accomplishment of the aforesaid matters, he will obey the orders of the said twenty-five barons, and distress Us to the utmost of his power; and We give public and free leave to every one wishing to take such oath to do so, and to none will We deny the same. Moreover We will compel all such of Our subjects who shall decline to swear to, and together with the said twenty-five barons to distrain and distress Us of their own free will and accord, to do so by Our command as is aforesaid. And if any one of the twenty-five barons shall die or leave the country, or be in any way hindered from executing the said office, the rest of the said twenty-five barons shall choose another in his stead, at their discretion, who shall be sworn in like manner as the others. And in all

cases which are referred to the said twenty-five barons to execute, and in which a difference shall arise among them, supposing them all to be present, or that all who have been summoned are unwilling or unable to appear, the verdict of the majority shall be considered as firm and binding as if the whole number should have been of one mind. And the aforesaid twenty-five shall swear to keep faithfully all the aforesaid articles, and, to the best of their power, cause them to be kept by others. And we will not procure, either by Ourself or any other, anything from any man whereby any of the said concessions or liberties may be revoked or abated; and if any such procurement be made let it be null and void; it shall never be made use of either by Us or any other. We have also wholly remitted and condoned all ill-will, wrath, and malice which have arisen between Us and Our subjects, clerks and laymen, during the disputes, to and with all men; and We have moreover fully remitted, and as far as in Us lies, wholly condoned to and with all clerks and laymen all trespasses made in consequence of the said disputes from Easter in the sixteenth year of Our reign till the restoration of peace; and, over and above this, We have caused to be made in their behalf letters patent by testimony of Stephen, Archbishop of Canterbury, Henry, Archbishop of Dublin, the Bishops above mentioned, and Master Pandulph, upon the security and concession aforesaid. Wherefore We will, and firmly charge, that the English Church be free, and that all men in Our Kingdom have and hold all the aforesaid liberties, rights, and concessions, well and peaceably, freely, quietly, fully, and wholly, to them and their heirs, of Us and Our heirs, in all things and places for ever, as is aforesaid. It is moreover sworn, as well on Our part as on the part of the Barons, that all these matters aforesaid shall be kept in good faith and without malengine. Witness the above-mentioned Prelates and Nobles and many others. Given by Our hand in the meadow which is called Runnymede between Windsor and Staines, on the Fifteenth day of June in the Seventeenth year of Our reign.

Petition of Right
1628

NOTE

THE STRUGGLE in England between the monarchy and the Parliament as representative of the people began at about the time the colonists were first settling in America, holding themselves possessed of "all the rights of Englishmen." This struggle occupied most of the seventeenth century and produced, among other things, a series of great state papers that are the immediate predecessors of the American ones. The first of these was the Petition of Right. This was a statement of grievances in the form of a petition by Parliament, to which the House of Commons demanded the assent of Charles I previous to any grant of supplies. It will be noticed that here, as in Magna Carta, the petition is essentially a demand for the recognition of rights previously established and now disregarded. The king was finally forced to assent on June 7, 1628, but with no intention of acting in accordance with its principles. The text is from *Statutes at Large* (1811), **2.** 727 (3 Car. I. c. 1).

TEXT

TO THE King's Most Excellent Majesty.

HUMBLY shew unto our Sovereign Lord the King, the Lords Spiritual and Temporal, and Commons, in Parliament assembled, That whereas it is declared and enacted by a Statute made in the time of the Reign of King *Edward* the First, commonly called *Statutum de Tallagio non concedendo*, that no Tallage or Aid shall be laid or levied by the King or his Heirs in this Realm, without the good Will and Assent of the Archbishops, Bishops, Earls, Barons, Knights, Burgesses and other the Freemen of the Commonalty of this Realm; and by the Authority of Parliament holden in the Five and twentieth Year of the Reign of King *Edward* the Third, it is declared and enacted, that from thenceforth no Person should be compelled to make any Loans to the King against his Will, because such Loans were against Reason and the Franchise of the Land; and by other Laws of this Realm it is provided, that none should be charged by any Charge or Imposition, called a Benevolence, nor by such like Charge; by which the Statutes before mentioned, and other the good Laws and Statutes of this Realm, Your Subjects have inherited this Freedom, that they should not be compelled to contribute to any Tax, Tallage, Aid, or other like Charge not set by Common Consent in Parliament.

II. Yet nevertheless, of late divers Commissions directed to sundry Commissioners in several Counties, with Instructions, have issued; by means

whereof Your People have been in divers Places assembled, and required to lend certain Sums of Money unto Your Majesty, and many of them, upon their Refusal so to do, have had an Oath administered unto them not warrantable by the Laws or Statutes of this Realm; and have been constrained to become bound to make Appearance and give Attendance before Your Privy Council and in other Places; and others of them have been therefore imprisoned, confined, and sundry other Ways molested and disquieted; and divers other Charges have been laid and levied upon Your People in several Counties by Lord Lieutenants, Deputy Lieutenants, Commissioners for Musters, Justices of Peace and others, by Command or Direction from Your Majesty, or Your Privy Council, against the Laws and Free Customs of this Realm.

III. And where also by the Statute called *The Great Charter of the Liberties of England*, it is declared and enacted, That no Freeman may be taken or imprisoned, or be disseised of his Freehold or Liberties, or his Free Customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful Judgment of his Peers, or by the Law of the Land.

IV. And in the Eight and twentieth Year of the Reign of King *Edward* the Third, it was declared and enacted by Authority of Parliament, that no Man of what Estate or Condition that he be, should be put out of his Land or Tenements, nor taken, nor imprisoned, nor disherited, nor put to Death, without being brought to answer by due Process of Law:

V. Nevertheless against the Tenor of the said Statutes, and other the good Laws and Statutes of Your Realm to that End provided, divers of Your Subjects have of late been imprisoned without any Cause shewed; and when for their Deliverence they were brought before your Justices by your Majesty's Writs of *Habeas Corpus*, there to undergo and receive as the Court should order, and their Keepers commanded to certify the Causes of their Detainer, no Cause was certified, but that they were detained by Your Majesty's special Command, signified by the Lords of Your Privy Council, and yet were returned back to several Prisons, without being charged with any Thing to which they might make Answer according to the Law.

VI. And whereas of late great Companies of Soldiers and Mariners have been dispersed into divers Counties of the Realm, and the Inhabitants against their Wills have been compelled to receive them into their Houses, and there to suffer them to sojourn, against the Laws and Customs of this Realm, and to the great Grievance and Vexation of the People:

VII. And whereas also by Authority of Parliament, in the Five and twentieth Year of the Reign of King *Edward* the Third, it is declared and enacted, that no Man shall be forejudged of Life or Limb against the Form of the Great Charter and the Law of the Land; and by the said Great Charter and other the Laws and Statutes of this Your Realm, no Man ought to be adjudged to Death but by the Laws established in this Your Realm, either by the Customs of the same Realm, or by Acts of Parliament: And whereas no Offender of what Kind soever is exempted from the Proceedings to be used, and Punishments to be inflicted by the Laws and Statutes of this Your Realm: Nevertheless of late times divers Commissions under Your Majesty's Great Seal have issued forth, by which certain Persons have been assigned and appointed Commissioners, with Powers and Authority to proceed within the Land, according to the Justice of Martial Law, against such Soldiers and

Mariners, or other dissolute Persons joining with them, as should commit any Murther, Robbery, Felony, Mutiny, or other Outrage or Misdemeanour whatsoever, and by such summary Course and Order as is agreeable to Martial Law, and as is used in Armies in Time of War, to proceed to the Trial and Condemnation of such Offenders, and them to cause to be executed and put to Death according to the Law Martial:

VIII. By Pretext whereof some of Your Majesty's Subjects have been by some of the said Commissioners put to Death, when and where, if by the Laws and Statutes of the Land they had deserved Death, by the same Laws and Statutes also they might, and by no other ought to have been adjudged and executed:

IX. And also sundry grievous Offenders, by colour thereof claiming an Exemption, have escaped the Punishments due to them by the Laws and Statutes of this Your Realm, by reason that divers of your Officers and Ministers of Justice have unjustly refused or forborn to proceed against such Offenders according to the same Laws and Statutes, upon Pretence that the said Offenders were punishable only by Martial Law, and by Authority of Such Commissions as aforesaid: which Commissions, and all other of like Nature, are wholly and directly contrary to the said Laws and Statutes of this Your Realm.

X. They do therefore humbly pray Your most excellent Majesty, that no Man hereafter be compelled to make or yield any Gift, Loan, Benevolence, Tax or such like Charge, without Common Consent by Act of Parliament; and that none be called to make Answer, or take such Oath, or to give Attendance, or be confined, or otherwise molested or disquieted concerning the same, or for Refusal thereof; and that no Freeman, in any such Manner as is before mentioned, be imprisoned or detained; and that Your Majesty would be pleased to remove the said Soldiers and Mariners; and that Your People may not be so burthened in time to come; and that the aforesaid Commissions for proceeding by Martial Law, may be revoked and annulled; and that hereafter no Commissions of like Nature may issue forth to any Person or Persons whatsoever to be executed as aforesaid, lest by Colour of them any of Your Majesty's Subjects be destroyed, or put to Death contrary to the Laws and Franchise of the Land.

XI. All which they most humbly pray of Your most excellent Majesty as their Rights and Liberties, according to the Laws and Statutes of this Realm; and that Your Majesty would also vouchsafe to declare, that the Awards, Doings and Proceedings, to the Prejudice of Your People in any of the Premises shall not be drawn hereafter into Consequence or Example; and that Your Majesty would be also graciously pleased, for the further Comfort and Safety of Your People, to declare your Royal Will and Pleasure, that in the Things aforesaid all your Officers and Ministers shall serve You according to the Laws and Statutes of this Realm, as they tender the Honour of Your Majesty, and the Prosperity of this Kingdom.

Habeas Corpus Act
1679

NOTE

THE SAFEGUARD against violations of personal liberty known as the writ of habeas corpus goes back many centuries, and an early form of it is recognized in Magna Carta. The refusal to permit its exercise was one of the weapons used to suppress popular rights. Complaints of this are among the grievances mentioned in the Petition of Right. Under Charles II the writ was finally made secure by a legislative act on May 26, 1679, which is primarily a statement of procedure rather than of the right itself, enforcing the duty on the judges and making the application of it practical.

The text is from the *Statutes at Large*, **3.** 232 (31 Car. II. c. 2). Portions not essential to an understanding of the principles of the act are omitted.

TEXT

WHEREAS great Delays have been used by Sheriffs, Gaolers and other Officers, to whose Custody any of the King's Subjects have been committed for criminal or supposed criminal Matters, in making Returns of Writs of *Habeas Corpus* to them directed, by standing out an *Alias* and *Pluries Habeas Corpus*, and sometimes more, and by other Shifts to avoid their yielding Obedience to such Writs, contrary to their Duty and the known Laws of the Land, whereby many of the King's Subjects have been and hereafter may be long detained in Prison, in such Cases where by Law they are bailable, to their great Charges and Vexation:

II. For the Prevention whereof, and the more speedy Relief of all Persons imprisoned for any such criminal or supposed criminal Matters; Be it enacted by the King's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority thereof, That whensoever any Person or Persons shall bring any *Habeas Corpus* directed unto any Sheriff or Sheriffs, Gaoler, Minister or other Person whatsoever, for any Person in his or their Custody, and the said Writ shall be served upon the said Officer, or left at the Gaol or Prison with any of the Under-Officers, Under-Keepers or Deputy of the said Officers or Keepers, that the said Officer or Officers, his or their Under-Officers, Under-Keepers or Deputies, shall within three Days after the Service thereof as aforesaid (unless the Commitment aforesaid were for Treason or Felony, plainly and specially expressed in the Warrant of Commitment) upon Payment or Tender of the Charges of bringing the said Prisoner, . . . make

Return of such Writ; and bring or cause to be brought the Body of the Party so committed or restrained, unto or before the Lord Chancellor, or Lord Keeper of the Great Seal of *England* for the Time being, or the Judges or Barons of the said Court from whence the said Writ shall issue, or unto and before such other Person or Persons before whom the said Writ is made returnable, according to the Command thereof; and shall then likewise certify the true Causes of his Detainer or Imprisonment, unless the Commitment of the said Party be in any Place beyond the distance of twenty Miles from the Place or Places where such Court or Person is or shall be residing; and if beyond the Distance of twenty Miles, and not above one hundred Miles, then within the Space of ten Days, and if beyond the Distance of one hundred Miles, then within the Space of twenty Days, after such Delivery aforesaid, and not longer.

III. And to the Intent that no Sheriff, Gaoler or other Officer may pretend Ignorance of the Import of any such Writ; Be it enacted by the Authority aforesaid, That all such Writs shall be marked in this Manner, *Per Statutum tricesimo primo Caroli Secundi Regis*, and shall be signed by the Person that awards the same; and if any Person or Persons shall be or stand committed or detained as aforesaid, for any Crime, unless for Felony or Treason plainly expressed in the Warrant of Commitment, in the Vacation Time, and out of Term, it shall and may be lawful to and for the Person or Persons so committed or detained (other than Persons Convict or in Execution by legal Process) or any one on his or their Behalf, to appeal or complain to the Lord Chancellor or Lord Keeper, or any one of His Majesty's Justices, either of the one Bench or of the other, or the Barons of the Exchequer of the Degree of the Coif; . . . and thereupon within two Days after the Party shall be brought before them, the said Lord Chancellor or Lord Keeper, or such Justice or Baron before whom the Prisoner shall be brought as aforesaid, shall discharge the said Prisoner from his Imprisonment, taking his or their Recognizance, with one or more Surety or Sureties, in any Sum according to their Discretions, having regard to the Quality of the Prisoner and Nature of the Offence, for his or their Appearance in the court of King's Bench the Term following, or at the next Assizes, Sessions or general Gaol-Delivery, of and for such County, City or Place where the Commitment was, or where the Offence was committed, or in such other Court where the said Offence is properly cognizable, as the Case shall require, and then shall certify the said Writ with the Return thereof, and the said Recognizance or Recognizances into the said Court where such Appearance is to be made; unless it shall appear unto the said Lord Chancellor or Lord Keeper, or Justice or Justices, or Baron or Barons, that the Party so committed is detained upon a legal Process, Order or Warrant out of some Court that hath Jurisdiction of criminal Matters, or by some Warrant signed and sealed with the Hand and Seal of any of the said Justices or Barons, or some Justice or Justices of the Peace, for such Matters or Offences for the which by the Law the Prisoner is not bailable. . . .

V. And be it further enacted by the Authority aforesaid, That if any Officer . . . shall neglect or refuse to make the Returns aforesaid, or to bring the Body or Bodies of the Prisoner or Prisoners according to the Command of the said Writ, within the respective Times aforesaid, or upon Demand made by the Prisoner or Person in His behalf, shall refuse to deliver, or within the Space of six Hours after the Demand shall not deliver, to the Person so demanding, a

true Copy of the Warrant or Warrants of Commitment and Detainer of such Prisoner, which he and they are hereby required to deliver accordingly; all and every . . . shall for the first Offence forfeit to the Prisoner or Party grieved the Sum of one hundred Pounds; and for the second Offence the sum of two hundred Pounds, and shall and is hereby made incapable to hold or execute his said Office; . . .

VI. And for the prevention of unjust Vexation by reiterated Commitments for the same Offence: Be it enacted by the Authority aforesaid, That no Person or Persons which shall be delivered or set at large upon any *Habeas Corpus*, shall at any Time hereafter be again imprisoned or committed for the same Offence by any Person or Persons whatsoever, other than by the legal Order and Process of such Court wherein he or thay shall be bound by Recognizance to appear, or other Court having Jurisdiction of the Cause; . . .

VII. Provided always and be it further enacted, That if any Person or Persons shall be committed for High Treason or Felony, plainly and specially expressed in the Warrant of Commitment, upon his Prayer or Petition in open Court the first Week of the Term or first Day of the Sessions of *Oyer* and *Terminer* or General Gaol-delivery, to be brought to his Trial, shall not be indicted some Time in the next Term . . . after such Commitment; it shall and may be lawful to and for the Judges of the Court of King's Bench and Justices of *Oyer* and *Terminer* or General Gaol-delivery, and they are hereby required, upon Motion to them made in open Court the last Day of the Term . . . either by the Prisoner or any one in his Behalf, to set at Liberty the Prisoner upon Bail, unless it appear to the Judges and Justices upon Oath made, that the Witnesses for the King could not be produced the same Term . . . ; and if any Person or Persons committed as aforesaid, upon his Prayer or Petition in Open court the first Week of the Term or first Day of the Sessions of *Oyer* and *Terminer* or General Gaol-delivery, to be brought to his Trial, shall not be indicted and tried the second Term . . . after his Commitment, or upon his Trial shall be acquitted, he shall be discharged from his Imprisonment. . . .

IX. Provided always, and be it enacted by the Authority aforesaid, That if any Person or Persons, Subjects of this Realm, shall be committed to any Prison or in Custody of any Officer or Officers whatsoever, for any criminal or supposed criminal Matter, that the said Person shall not be removed from the said Prison and Custody into the Custody of any other Officer or Officers; unless it be by *Habeas Corpus* or some other legal Writ; or where the Prisoner is delivered to the Constable or other Inferior Officer to carry such Prisoner to some common Gaol, or where any Person is sent by Order of any Judge of Assize or Justice of the Peace, to any common Work-house or House of Correction; or where the Prisoner is removed from one Prison or Place to another within the same County, in order to his or her Trial or Discharge in due Course of Law; or in Case of sudden Fire or Infection, or other Necessity; . . .

X. Provided also, and be it further enacted by the Authority aforesaid, That . . . if the said Lord Chancellor or Lord Keeper, or any Judge or Judges, Baron or Barons for the Time being, of the Degree of the Coif, of any of the Courts aforesaid, in the Vacation-time, upon View of the Copy or Copies of the Warrant or Warrants of Commitment or Detainer, or upon Oath made that such Copy or Copies were denied as aforesaid, shall deny any Writ of *Habeas Corpus* by this Act required to be granted, being moved for as aforesaid, they

shall severally forfeit to the Prisoner or Party grieved the Sum of five hundred Pounds, . . .

XII. And for preventing illegal Imprisonments in Prisons beyond the Seas; Be it further enacted by the Authority aforesaid, That no Subject of this Realm that now is, or hereafter shall be an Inhabitant or Resiant of this Kingdom of *England*, Dominion of *Wales*, or Town of *Berwick* upon *Tweed*, shall or may be sent Prisoner into *Scotland*, *Ireland*, *Jersey*, *Guernsey*, *Tangier*, or into Parts, Garrisons, Islands or Places beyond the Seas, which are or at any Time hereafter shall be within or without the Dominions of His Majesty, His Heirs or Successors; and that every such Imprisonment is hereafter enacted and adjudged to be illegal; . . .

XIV. Provided always, and be it enacted, that if any Person or Persons lawfully convicted of any Felony, shall in open Court pray to be transported beyond the Seas, and the Court shall think fit to leave him or them in Prison for that Purpose, such Person or Persons may be transported into any Parts beyond the Seas; this Act, or any Thing therein contained to the contrary notwithstanding. . . .

Bill of Rights
1689

NOTE

WHEN THE despotism of James II finally forced the nation into revolt, the crown was offered to his daughter Mary and her husband, William of Orange, the offer being accompanied by a declaration of rights from the convention that issued the invitation. On the convention becoming a Parliament under the new monarchs, the declaration was converted into a Bill of Rights on December 16, 1789, which gives formal recognition of the liberties established during the long struggle with the divine right claimed by the Stuarts.

The text is from the *Statutes at Large*. **3.** 275 (1 Gul. & Mar. sess. 2. c. 2). Portions of the act which deal with the offer of the crown, the acceptance, royal oath and obligations, and the succession are omitted.

TEXT

WHEREAS the Lords Spiritual and Temporal, and Commons, assembled at *Westminster*, lawfully, fully and freely representing all the Estates of the People of this Realm, did upon the thirteenth Day of *February* in the Year of our Lord One thousand six hundred eighty-eight, present unto Their Majesties, then called and known by the Names and Style of *William* and *Mary*, Prince and Princess of *Orange*, being present in their proper Persons, a certain Declaration in Writing made by the said Lords and Commons, in the Words following; *viz.*

WHEREAS the late King *James* the Second, by the Assistance of divers evil Counsellors, Judges, and Ministers employed by him, did endeavour to subvert and extirpate the Protestant Religion and the Laws and Liberties of this Kingdom.

1. By assuming and exercising a Power of dispensing with and suspending of Laws, and the Execution of Laws, without consent of Parliament.

2. By committing and prosecuting divers worthy Prelates, for humbly petitioning to be excused from concurring to the said assumed Power.

3. By issuing and causing to be executed a Commission under the Great Seal for erecting a Court called, *The Court of Commissioners for Ecclesiastical Causes.*

4. By levying Money for and to the Use of the Crown, by pretence of Prerogative, for other Time, and in other Manner, than the same was granted by Parliament.

5. By raising and keeping a Standing Army within this Kingdom in Time of Peace, without Consent of Parliament, and quartering Soldiers contrary to Law.

6. By causing several good Subjects, being Protestants, to be disarmed, at the same Time when Papists were both armed and employed, contrary to Law.

7. By violating the Freedom of Election of Members to serve in Parliament.

8. By Prosecutions in the Court of King's Bench, for Matters and Causes cognizable only in Parliament; and by divers other arbitrary and illegal Courses.

9. And whereas of late Years, partial, corrupt, and unqualified Persons, have been returned and served on Juries in Trials, and particularly divers Jurors in Trials for High Treason, which were not Freeholders.

10. And excessive Bail hath been required of Persons committed in criminal Cases, to elude the Benefit of the Laws made for the Liberty of the Subjects.

11. And excessive Fines have been imposed; and illegal and cruel Punishments inflicted.

12. And several Grants and Promises made of Fines and Forfeitures, before any Conviction or Judgment against the Persons, upon whom the same were to be levied.

All which are utterly and directly contrary to the known Laws and Statutes, and Freedom of this Realm.

And whereas the said late King *James* the Second having abdicated the Government, and the Throne being thereby vacant, His Highness the Prince of *Orange* (whom it hath pleased Almighty God to make the glorious Instrument of delivering this Kingdom from Popery and arbitrary Power) did (by the Advice of the Lords Spiritual and Temporal, and divers principal Persons of the Commons) cause Letters to be written to the Lords Spiritual and Temporal, being Protestants; and other Letters to the several Counties, Cities, Universities, Boroughs, and Cinque Ports, for the choosing of such Persons to represent them, as were of Right to be sent to Parliament, to meet and sit at *Westminster* upon the two and twentieth Day of *January* in this Year One thousand six hundred eighty and eight, in order to such an Establishment, as that their Religion, Laws, and Liberties might not again be in Danger of being subverted: upon which Letters Elections having been accordingly made,

And thereupon the said Lords Spiritual and Temporal, and Commons, pursuant to their respective Letters and Elections, being now assembled in a full and free Representative of this Nation, taking into their most serious Consideration the best Means for attaining the Ends aforesaid; do in the first Place (as their Ancestors in like Case have usually done) for the vindicating and asserting their ancient Rights and Liberties, declare:

1. That the pretended Power of suspending Laws, or the Execution of Laws, by regal Authority, without consent of Parliament, is illegal.

2. That the pretended Power of dispensing with Laws, or the execution of Laws, by regal Authority, as it hath been assumed and exercised of late, is illegal.

3. That the Commission for erecting the late Court of Commissioners for Ecclesiastical Causes, and all other Commissions and Courts of like Nature, are illegal and pernicious.

4. That levying Money for or to the Use of the Crown, by Pretence of Prerogative, without Grant of Parliament, for longer Time, or in other Manner than the same is or shall be granted, is illegal.

5. That it is the Right of Subjects to Petition the King, and all Commitments and Prosecutions for such petitioning are illegal.

6. That the raising or keeping a Standing Army within the Kingdom in Time of Peace, unless it be with Consent of Parliament, is against Law.

7. That the Subjects which are Protestant, may have Arms for their Defence suitable to their Conditions, and as allowed by Law.

8. That Election of Members of Parliament ought to be free.

9. That the Freedom of Speech, and Debates or Proceedings in Parliament, ought not to be impeached or questioned in any Court or Place out of Parliament.

10. That excessive Bail ought not to be required, nor excessive Fines imposed; nor cruel and unusual Punishments inflicted.

11. That Jurors ought to be duly impanelled and returned, and Jurors which pass upon Men in Trials for High Treason ought to be Freeholders.

12. That all Grants and Promises of Fines and Forfeitures of particular Persons before Conviction, are illegal and void.

13. And that for Redress of all Grievances, and for the amending, strengthening, and preserving of the Laws, Parliaments ought to be held frequently.

And they do claim, demand, and insist upon all and singular the Premisses, as their undoubted Rights and Liberties; and that no Declarations, Judgments, Doings, or Proceedings, to the Prejudice of the People in any of the said Premisses, ought in any wise to be drawn hereafter into Consequence or Example. . . .

IV. Upon which their said Majesties did accept the Crown and Royal Dignity of the Kingdoms of *England*, *France* and *Ireland*, and the Dominions thereunto belonging, according to the Resolution and Desire of the said Lords and Commons contained in the said Declaration.

V. And thereupon Their Majesties were pleased, that the said Lords Spiritual and Temporal, and Commons, being the two Houses of Parliament, should continue to sit, and with Their Majesties Royal Concurrence make effectual Provision for the Settlement of the Religion, Laws and Liberties of this Kingdom, so that the same for the future might not be in Danger again of being subverted; to which the said Lords Spiritual and Temporal, and Commons, did agree and proceed to act accordingly:

VI. Now in pursuance of the Premisses, the said Lords Spiritual and Temporal, and Commons, in Parliament assembled, for the ratifying, confirming and establishing the said Declaration, and the Articles, Clauses, Matters, and Things therein contained, by the Force of a Law made in due Form by Authority of Parliament, do pray that it may be declared and enacted, That all and singular the Rights and Liberties asserted and claimed in the said Declaration, are the true, ancient, and indubitable Rights and Liberties of the People of this Kingdom, and so shall be esteemed, allowed, adjudged, deemed, and taken to be, and that all and every the Particulars aforesaid shall be firmly and strictly holden and observed, as they are expressed in the said Declaration; and all Officers and Ministers whatsoever shall serve Their Majesties and Their Successors according to the same in all Times to come. . . .

XI. All which Their Majesties are contented and pleased shall be declared, enacted, and established by Authority of this present Parliament, and shall stand, remain, and be the Law of this Realm for ever; and the same are by Their said Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by the Authority of the same, declared, enacted, and established accordingly. . . .

Declaration of Independence
1776

NOTE

THE first year of the American Revolution was one of change in sentiment from loyalty to the British connection to a desire for independence. The North Carolina provincial congress on April 12, 1776, was the first to instruct the delegates in the Continental Congress directly and specifically to agree to independence; and, after indirect action in Rhode Island and Massachusetts, on May 15 the Virginia provincial convention directed its delegates to move for independence. A resolution to this effect and for confederation was introduced in the Congress by Richard Henry Lee of Virginia and John Adams of Massachusetts on June 7. The question of independence was postponed in order to give the delegates time to learn the sentiments of their constituents; but a committee was appointed to draft a declaration. The members of it were Thomas Jefferson, John Adams, Benjamin Franklin, Roger Sherman, and Robert R. Livingston. Jefferson wrote the draft. The resolution for independence was adopted on July 2, 1776, by the Congress, so that this date is the real Independence Day. The draft for the Declaration was then discussed for two days, amended, and adopted on July 4, when, endorsed by the president and secretary only it was made public. On July 19 the Declaration was ordered engrossed on parchment and this copy, the existing original Declaration of Independence, was signed on August 2 by the members then present and later during the year by other members. There is not a complete coincidence between those who voted for the Declaration and those who signed it. A majority did both, but some signatures are of members who did not vote for it, and some who signed were not members of the Congress until after July 4, Charles Carroll of Carrollton, the last surviving signer, being of this class.

This reprint is from the copperplate facsimile made in 1823, with two changes made advisable by a study of a photograph of the Declaration made after the document had faded. It involves in a few cases a doubt as to capitals similar to that found in the original Constitution. The signatures in the original are in six columns by states without names, except that Matthew Thornton, evidently the last to sign, should be under New Hampshire. The groups here are in the same order, as follows: first column, Georgia, North Carolina, South Carolina, Maryland, Virginia; second column, Virginia (continued), Pennsylvania, Delaware, New York; third column, New Jersey, New Hampshire, Massachusetts, Rhode Island, Connecticut. John Hancock of Massachusetts signs as president of the Congress.

TEXT

In Congress, July 4, 1776

The unanimous Declaration of the thirteen united States of America,

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation. ——— We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object, evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. — Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world. ——— He has refused his Assent to Laws, the most wholesome and necessary for the public good. —— He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them. —— He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only. —— He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures. —— He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people. —— He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within. —— He has endeavoured to prevent the population of these States; for that

purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands. —— He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers. —— He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries. —— He has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our people, and eat out their substance. —— He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures. —— He has affected to render the Military independent of and superior to the Civil power. —— He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation: — For quartering large bodies of armed troops among us: — For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States: — For cutting off our Trade with all parts of the world: — For imposing Taxes on us without our Consent: — For depriving us in many cases, of the benefits of Trial by Jury: — For transporting us beyond Seas to be tried for pretended offences: — For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies: — For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Government: — For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever. —— He has abdicated Government here, by declaring us out of his Protection and waging War against us. —— He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people. —— He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation. —— He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands. —— He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions. In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people. Nor have We been wanting in attentions to our Brittish brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence They too have been deaf to the voice of justice and of consanguinity. We

must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.——

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. —— And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

John Hancock

Button Gwinnett
Lyman Hall
Geo Walton.

Wm Hooper
Joseph Hewes,
John Penn

Edward Rutledge.
Thos Heyward Junr
Thomas Lynch Junr
Arthur Middleton

Samuel Chase
Wm Paca
Thos Stone
Charles Carroll
of Carrollton

George Wythe
Richard Henry Lee.
Th Jefferson

Benja Harrison
Thos Nelson jr.
Francis Lightfoot Lee
Carter Braxton

Robt Morris
Benjamin Rush
Benjs Franklin
John Morton
Geo Clymer
Jas Smith.
Geo. Taylor
James Wilson
Geo. Ross

Caesar Rodney
Geo Read
Tho M: Kean

Wm Floyd
Phil. Livingston
Frans Lewis
Lewis Morris

Richd Stockton
Jno Witherspoon
Fras Hopkinson
John Hart
Abra Clark

Josiah Bartlett
Wm Whipple

Saml Adams
John Adams
Robt Treat Paine
Elbridge Gerry

Step. Hopkins
William Ellery

Roger Sherman
Saml Huntington
Wm Williams
Oliver Wolcott
Matthew Thornton

Articles of Confederation
1781

NOTE

THE RESOLUTION for independence, introduced in the Continental Congress on June 7, 1776, called also for a plan of confederation. A committee for this purpose was authorized on June 11 and appointed the next day. It consisted of a member from each colony. The original draft, which was reported on July 12, was mainly the work of John Dickinson. Often considered by the Congress for over a year, the Articles were not finally approved and submitted to the states until November 17, 1777. They required the approval of all of the states and as that of Maryland was not given until March 1, 1781, this is the date when the Articles became active and the nation, previously existing by general agreement only, became a legal government. The date July 9, 1778, in the Articles is that when the delegates of the first group of eight ratifying states signed.

The present text is from the parchment roll in the Library of Congress of the Articles as signed by the delegates under state authorization. The exact rendering, especially of the signatures, is occasionally doubtful.

TEXT

TO ALL TO WHOM these Presents shall come, we the undersigned Delegates of the States affixed to our Names send greeting. Whereas the Delegates of the United States of America in Congress assembled did on the fifteenth day of November in the Year of our Lord One Thousand Seven Hundred and Seventy-seven, and in the Second Year of the Independence of America agree to certain articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia in the Words following, viz. "Articles of Confederation and perpetual Union between the states of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia.

Article I. The Stile of this confederacy shall be "The United States of America."

Article II. Each state retains its sovereignty, freedom and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.

Article III. The said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their Liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

Article IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, paupers, vagabonds and fugitives from Justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restriction shall not extend so far as to prevent the removal of property imported into any state, to any other state of which the Owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any state, on the property of the united states, or either of them.

If any Person guilty of, or charged with treason, felony, or other high misdemeanor in any state, shall flee from Justice, and be found in any of the united states, he shall upon demand of the Governor or executive power, of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offence.

Full faith and credit shall be given in each of these states to the records, acts and judicial proceedings of the courts and magistrates of every other state.

Article V. For the more convenient management of the general interests of the united states, delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each state, to recal its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the Year.

No state shall be represented in Congress by less than two, nor by more than seven Members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the united states, for which he, or another for his benefit receives any salary, fees or emolument of any kind.

Each state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of the states.

In determining questions in the united states, in Congress assembled, each state shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any Court, or place out of Congress, and the members of congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and attendance on congress, except for treason, felony, or breach of the peace.

Article VI. No state without the Consent of the united states in congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conferrence, agreement, alliance or treaty with any King prince or state; nor shall any person holding any office of profit or trust under the united

states, or any of them, accept of any present, emolument, office or title of any kind whatever from any king, prince or foreign state; nor shall the united states in congress assembled, or any of them, grant any title of nobility.

No two or more states shall enter into any treaty, confederation or alliance whatever between them, without the consent of the united states in congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No state shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the united states in congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by congress, to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any state, except such number only, as shall be deemed necessary by the united states in congress assembled, for the defence of such state, or its trade; nor shall any body of forces be kept up by any state, in time of peace, except such number only, as in the judgment of the united states, in congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state; but every state shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No state shall engage in any war without the consent of the united states in congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay, till the united states in congress assembled can be consulted: nor shall any state grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the united states in congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the united states in congress assembled, unless such state be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the united states in congress assembled shall determine otherwise.

Article VII. When land-forces are raised by any state for the common defence, all officers of or under the rank of colonel, shall be appointed by the legislature of each state respectively by whom such forces shall be raised, or in such manner as such state shall direct, and all vacancies shall be filled up by the state which first made the appointment.

Article VIII. All charges of war, and all other expences that shall be incurred for the common defence or general welfare, and allowed by the united states in congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states, in proportion to the value of all land within each state, granted to or surveyed for any Person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the united states in congress assembled, shall from time to time direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states within the time agreed upon by the united states in congress assembled.

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Article IX. The united states in congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever—of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the united states shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of congress shall be appointed a judge of any of the said courts.

The united states in congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more states concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any state in controversy with another shall present a petition to congress, stating the matter in question and praying for a hearing, notice thereof shall be given by order of congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, congress shall name three persons out of each of the united states, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as congress shall direct, shall in the presence of congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without shewing reasons, which congress shall judge sufficient, or being present shall refuse to strike, the congress shall proceed to nominate three persons out of each state, and the secretary of congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to congress, and lodged among the acts of congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the state, where the cause shall be tried, "well and truly to hear and determine the mat-

ter in question, according to the best of his judgment, without favour, affection or hope of reward:" provided also that no state shall be deprived of territory for the benefit of the united states.

All controversies concerning the private right of soil claimed under different grants of two or more states, whose jurisdictions as they may respect such lands, and the states which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the congress of the united states, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

The united states in congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states—fixing the standard of weights and measures throughout the united states—regulating the trade and managing all affairs with the Indians, not members of any of the states, provided that the legislative right of any state within its own limit be not infringed or violated—establishing or regulating post-offices from one state to another, throughout all the united states, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expences of the said office—appointing all officers of the land forces, in the service of the united states, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the united states—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The united states in congress assembled shall have authority to appoint a committee, to sit in the recess of congress, to be denominated "A Committee of the States," and to consist of one delegate from each state; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the united states under their direction—to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of Money to be raised for service of the united states, and to appropriate and apply the same for defraying the public expences—to borrow money, or emit bills on the credit of the united states, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted,—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisition shall be binding, and thereupon the legislature of each state shall appoint the regimental officers, raise the men and cloath, arm and equip them in a soldier like manner, at the expence of the united states, and the officers and men so cloathed, armed and equipped shall march to the place appointed, and within the time agreed on by the united states in congress assembled: But if the united states in congress assembled shall, on consideration of circumstances judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, cloathed, armed and equipped in the same manner as the quota of such state,

unless the legislature of such state shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise officer, cloath, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so cloathed, armed and equipped, shall march to the place appointed, and within the time agreed on by the united states in congress assembled.

The united states in congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expences necessary for the defence and welfare of the united states, or any of them, nor emit bills, nor borrow money on the credit of the united states, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine states assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the united states in congress assembled.

The congress of the united states shall have power to adjourn to any time within the year, and to any place within the united states, so that no period of adjournment be for a longer duration than the space of six Months, and shall publish the Journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secresy; and the yeas and nays of the delegates of each state on any question shall be entered on the Journal, when it is desired by any delegate; and the delegates of a state, or any of them, at his or their request shall be furnished with a transcript of the said Journal, except such parts as are above excepted, to lay before the legislatures of the several states.

Article X. The committee of the states, or any nine of them, shall be authorized to execute, in the recess of congress, such of the powers of congress as the united states in congress assembled, by the consent of nine states, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states in the congress of the united states assembled is requisite.

Article XI. Canada acceding to this confederation, and joining in the measures of the united states, shall be admitted into, and entitled to all the advantages of this union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine states.

Article XII. All bills of credit emitted, monies borrowed and debts contracted by, or under the authority of congress, before the assembling of the united states, in pursuance of the present confederation, shall be deemed and considered as a charge against the united states, for payment and satisfaction whereof the said united states, and the public faith are hereby solemnly pledged.

Article XIII. Every state shall abide by the determinations of the united states in congress assembled, on all questions which by this confederation are submitted to them. And the Articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any altera-

tion at any time hereafter be made in any of them; unless such alteration be agreed to in a congress of the united states, and be afterwards confirmed by the legislatures of every state.

And whereas it hath pleased the Great Governor of the World to incline the hearts of the legislatures we respectively represent in congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. Know Ye that we the under-signed delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the united states in congress assembled, on all questions, which by the said confederation are submitted to them. And that the articles thereof shall be inviolably observed by the states we respectively represent, and that the union shall be perpetual. In Witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the state of Pennsylvania the ninth day of July in the Year of our Lord one Thousand seven Hundred and Seventy-eight, and in the third year of the independence of America.

Josiah Bartlett John Wentworth, jun^{r} August 8th 1778	On the part & behalf of the State of New Hampshire
John Hancock Samuel Adams Elbridge Gerry. Francis Dana James Lovell Samuel Holten.	On the part and behalf of the State of Massachusetts Bay
William Ellery Henry Marchant John Collins	On the part and behalf of the State of Rhode-Island and Providence Plantations
Roger Sherman Samuel Huntington Oliver Wolcott Titus Hosmer Andrew Adams	On the Part and behalf of the State of Connecticut
Ja^{s} Duane. Fra: Lewis Wm Duer. Gouv Morris	On the Part and Behalf of the State of New York
Jno Witherspoon Nathl Scudder	On the Part and in Behalf of the State of New Jersey. Novr 26, 1778.

Robt Morris, Daniel Roberdeau, Jon. Bayard Smith. William Clingan Joseph Reed, 22d July 1778	On the part and behalf of the State of Pennsylvania.
Thos M:Kean, Feb 22, 1779 John Dickinson, May 5th– 1779 Nicholas Van Dyke,	On the part & behalf of the State of Delaware
John Hanson March 1 1781 Daniel Carroll, do	On the part and behalf of the State of Maryland
Richard Henry Lee John Banister Thomas Adams Jno Harvie Francis Lightfoot Lee	On the Part and Behalf of the State of Virginia
John Penn July 21st, 1778 Cornq Harnett Jno Williams	On the part and Behalf of the State of Nq Carolina
Henry Laurens. William Henry Drayton Jno Mathews Richd Hutson. Thos Heyward, junr	On the part & behalf of the State of South-Carolina
Jno Walton 24th July 1778 Edwd Telfair. Edwd Langworthy.	On the part & behalf of the State of Georgia

Constitution of the United States
1789

NOTE

SECRETARY WILLIAM JACKSON took the engrossed Constitution to New York and delivered it to the Continental Congress. Congress, receiving it on September 20, 1787, placed it with its other papers. After the new government went into operation these records, which evidently included both the Declaration of Independence and the Constitution, were turned over to President Washington, and, in accordance with the act of September 15, 1789, to the custody of the Department of State.

When the capture of Washington by the British was imminent in 1814, the secretary of state, James Monroe, was able to remove all the papers of his office to a place of safety, so that both of the great documents escaped destruction in the burning of the public buildings by the enemy.

The original Declaration was exhibited for many years, until light and air threatened its destruction; but the Constitution was not. On September 30, 1921, both documents were transferred to the Library of Congress. A special shrine was prepared for them in which they have been on view since February 28, 1924, but under conditions that prevent deterioration.

During the early years of the national government the printed copies of the Constitution seem to have made no attempt to be literally exact. In 1820, however, an edition was prepared in the Department of State which was "copied from and compared with the roll." In 1846 William Hickey published his manual on the Constitution, in which he gave a very exact reprint, generally followed ever since.

The reprint of the Constitution given here is from a photograph of the original. It endeavors to be accurate in every particular—capitals, spelling, punctuation, and paragraphing being exactly as in the engrossed parchment. Two things must, however, be borne in mind. The engrosser seems to have intended to write all nouns with a capital, but forgot his rule in some cases, and in other cases for his capital he has used an enlarged small letter. His enlargements vary in degree and it is not always possible to decide what his intention was. The parchment has wrinkled here and there and become rubbed, especially on the margins, causing occasional blurs that make punctuation particularly doubtful. An article on the man who engrossed the Constitution will be found on p. 761.

The signatures here follow the order in the original. Washington as president signed first, and the deputies followed in state groups in geographical

order, beginning their signing immediately below the name of the president.

Attention is called to the fact that in the note after Article VII, respecting the interlineations, the references are to the pages and lines of the original and not to this reprint. That note is not complete; there is a final interlineation to which it does not refer.

The text of the Constitution is followed by the resolves which the convention passed for getting the Constitution ratified and put in operation, the letter sent to the Continental Congress with the draft of the Constitution, and the resolves of Congress submitting the draft to the states and later, after eleven states had ratified, for starting the new government. The text of the amendments follows these. This last text is taken from the original rolls in the Department of State, the early amendments being subject to the caution given above respecting the original of the Constitution.

TEXT

WE THE people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article. I.

Section. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Rep-

resentatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any

Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section. 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section. 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section. 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section. 9. 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 the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in

Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section. 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article. II.

Section. 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number

of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President,

declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section. 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully

executed, and shall Commission all the Officers of the United States.
Section. 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article III.

Section. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.
Section. 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.
Section. 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of

Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article. IV.

Section. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section. 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Article. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several

States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate.

Article. VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article. VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independance of the United States of America the Twelfth. In witness whereof We have hereunto subscribed our Names,

G° WASHINGTON—Presdt
and deputy from Virginia

The Word, "the", being interlined between the seventh and eighth Lines of the first Page, The word "Thirty" being partly written on an Erazure in the fifteenth Line of the first Page, The Words "is tried" being interlined between the thirty second and thirty third Lines of the first Page and the Word "the" being interlined between the forty third and forty fourth Lines of the second Page.

Attest WILLIAM JACKSON
Secretary

Delaware
- GEO: READ
- GUNNING BEDFORD jun
- JOHN DICKINSON
- RICHARD BASSETT
- JACO: BROOM

Maryland
- JAMES M^C^HENRY
- DAN OF S^T^ THO^S^ JENIFER
- DAN^L^ CARROLL

Virginia
- JOHN BLAIR—
- JAMES MADISON JR.

North Carolina
- W^M^ BLOUNT
- RICH^D^ DOBBS SPAIGHT.
- HU WILLIAMSON

South Carolina
- J. RUTLEDGE
- CHARLES COTESWORTH PINCKNEY
- CHARLES PINCKNEY
- PIERCE BUTLER.

Georgia
- WILLIAM FEW
- ABR BALDWIN

New Hampshire
- JOHN LANGDON
- NICHOLAS GILMAN

Massachusetts
- NATHANIEL GORHAM
- RUFUS KING

Connecticut
- W^M^ SAM^L^ JOHNSON
- ROGER SHERMAN

New York . . . ALEXANDER HAMILTON

New Jersey
- WIL: LIVINGSTON
- DAVID BREARLEY.
- W^M^ PATERSON.
- JONA: DAYTON

Pensylvania
- B FRANKLIN
- THOMAS MIFFLIN
- ROB^T^ MORRIS
- GEO. CLYMER
- THO^S^ FITZSIMONS
- JARED INGERSOLL
- JAMES WILSON
- GOUV MORRIS

In Convention Monday, September 17th, 1787
Present:
The States of

New Hampshire, Massachusetts, Connecticut, Mr Hamilton from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia.

Resolved,

That the preceeding Constitution be laid before the United States in Congress assembled, and that it is the Opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates, chosen in each State by the People thereof, under the Recommendation of its Legislature, for their Assent and Ratification; and that each Convention assenting to, and ratifying the Same, should give Notice thereof to the United States in Congress assembled.

Resolved, That it is the Opinion of this Convention, that as soon as the Conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a Day on which Electors should be appointed by the States which shall have ratified the same, and a Day on which the Electors should assemble to vote for the President, and the Time and Place for commencing Proceedings under this Constitution. That after such Publication the Electors should be appointed, and the Senators and Representatives elected: That the Electors should meet on the Day fixed for the Election of the President, and should transmit their Votes certified, signed, sealed and directed, as the Constitution requires, to the Secretary of the United States in Congress assembled, that the Senators and Representatives should convene at the Time and Place assigned; that the Senators should appoint a President of the Senate, for the sole Purpose of receiving, opening and counting the Votes for President; and, that after he shall be chosen, the Congress, together with the President, should, without Delay, proceed to execute this Constitution.

By the Unanimous Order of the Convention

G° WASHINGTON Presd^t

W. JACKSON Secretary.

In Convention, September 17, 1787.

Sir,

We have now the honor to submit to the consideration of the United States in Congress assembled, that Constitution which had appeared to us the most adviseable.

The friends of our country have long seen and desired, that the

power of making war, peace, and treaties, that of levying money and regulating commerce, and the correspondent executive and judicial authorities should be fully and effectually vested in the general government of the Union: But the impropriety of delegating such extensive trust to one body of men is evident—Hence results the necessity of a different organization.

It is obviously impracticable in the federal government of these states, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all: Individuals entering into society, must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. 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 encreased by a difference among the several states as to their situation, extent, habits, and particular interests.

In all our deliberations on this subject we kept steadily in our view, that which appears to us the greatest interest of every true American, the consolidation of our Union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each state in the Convention to be less rigid on points of inferior magnitude, than might have been otherwise expected; and thus 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 indispensible.

That it will meet the full and entire approbation of every state is not perhaps to be expected; but each will doubtless consider, that had her interest been alone consulted, the consequences might have been particularly disagreeable or injurious to others; that it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish.

With great respect, We have the honor to be, Sir,

Your Excellency's

most obedient and humble servants,

GEORGE WASHINGTON, *President*.

By unanimous Order of the Convention.

His Excellency the President of Congress.

IN CONGRESS

Friday, September 28, 1787.

Congress assembled present New hampshire Massachusetts Connecticut New York New Jersey Pensylvania, Delaware Virginia North Carolina South Carolina and Georgia and from Maryland Mr Ross.

Congress having received the report of the Convention lately assembled in Philadelphia.

Resolved Unanimously that the said Report with the resolutions and letter accompanying the same be transmitted to the several legislatures in Order to be submitted to a convention of Delegates chosen in each state by the people thereof in conformity to the resolves of the Convention made and provided in that case.

Saturday, September 13, 1788.

Congress assembled present New hampshire Massachusetts Connecticut New York New Jersey Pensylvania Virginia North Carolina South Carolina and Georgia and from Rhode island Mr Arnold and from Delaware Mr Kearny. . . .

Whereas the Convention assembled in Philadelphia pursuant to the resolution of Congress of the 21st of Feby 1787 did on the 17th of Sept in the same year report to the United States in Congress assembled a constitution for the people of the United States, whereupon Congress on the 28 of the same Sept did resolve unanimously "That the said report with the resolutions and letter accompanying the same be transmitted to the several legislatures in order to be submitted to a convention of Delegates chosen in each state by the people thereof in conformity to the resolves of the convention made and provided in that case" And whereas the constitution so reported by the Convention and by Congress transmitted to the several legislatures has been ratified in the manner therein declared to be sufficient for the establishment of the same and such ratifications duly authenticated have been received by Congress and are filed in the Office of the Secretary therefore *Resolved* That the first Wednesday in Jany next be the day for appointing Electors in the several states, which before the said day shall have ratified the said constitution; that the first Wednesday in feby next be the day for the electors to assemble in their respective states and vote for a president; and that the first Wednesday in March next be the time and the present seat of Congress the place for commencing proceedings under the said constitution.

ADMENDMENTS TO THE CONSTITUTION 1791–1933

[AMENDMENT I]

CONGRESS shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

[AMENDMENT II]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

[AMENDMENT III]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

[AMENDMENT IV]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[AMENDMENT V]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

[AMENDMENT VI]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of

the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

[AMENDMENT VII]

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

[AMENDMENT VIII]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

[AMENDMENT IX]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

[AMENDMENT X]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

[AMENDMENT XI]

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

[AMENDMENT XII]

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest

number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

[AMENDMENT] XIII

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Section 2. Congress shall have power to enforce this article by appropriate legislation.

[AMENDMENT] XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors

for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

[AMENDMENT] XV

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.——

Section 2. The Congress shall have power to enforce this article by appropriate legislation.——

[AMENDMENT] XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

[AMENDMENT XVII]

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided,* That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

[AMENDMENT XVIII]

SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

SEC. 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

SEC. 3. This article shall be inoperative until it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

[AMENDMENT XIX]

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

[AMENDMENT XX]

SECTION 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

SEC. 2. The Congress shall assemble at least once in every year

and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

SEC. 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

SEC. 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

SEC. 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

SEC. 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

[AMENDMENT XXI]

SECTION 1. The eighteenth article of the amendment to the Constitution of the United States is hereby repealed.

SEC. 2. The transportation or importation into any States, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

SEC. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

George Washington's Farewell Address 1796

NOTE

ACCEPTING the office of President with great reluctance, Washington hoped he might retire as soon as the new government was in successful operation. Disappointed in this and again at the end of the first term, he determined to eliminate himself as a candidate for a third term. It was a personal matter with him; there is no evidence that the decision was influenced by a belief in the advisability of rotation. In 1792 he planned a farewell address and asked Madison to work it up. This earlier document was the basis of the much enlarged address as finally written in 1796, Hamilton taking Madison's place as adviser. The address is in two parts: In the first, the President definitely declines a third term, gives reasons, and thanks for the honors which had been conferred on him and for the confidence of the people. In the second more important part, he presents, as a result of his experience and as a last legacy of advice, thoughts upon the government.

This reprint is from a facsimile of the manuscript which Washington gave to Claypoole as his "copy." It is by no means "clean" copy, especially as to the use of capitals. After Claypoole's death, the manuscript was ordered to be sold at auction on February 12, 1850. Senator Henry Clay on January 24 offered a joint resolution for its purchase by the government, but the resolution was not signed by President Taylor until the day of the sale. The manuscript was sold to James Lenox for $2,300, and passed, with his library, to the New York Public Library. There is no evidence of any bid on behalf of the national government.

TEXT

Friends, & Fellow-Citizens

The period for a new election of a Citizen, to administer the Executive government of the United States, being not far distant, and the time actually arrived, when your thoughts must be employed in designating the person, who is to be cloathed with that important trust, it appears to me proper, especially as it may conduce to a more distinct expression of the public voice, that I should now apprise you of the resolution I have formed, to decline being considered among the number of those, out of whom a choice is to be made.—

I beg you, at the same time, to do me the justice to be assured, that this resolution has not been taken, without a strict regard to all the considerations appertaining to the relation, which binds a dutiful citizen to his country—and

that, in withdrawing the tender of service which silence in my situation might imply, I am influenced by no diminution of zeal for your future interest, no deficiency of grateful respect for your past kindness; but am supported by a full conviction that the step is compatible with both.

The acceptance of, & continuance hitherto in, the office to which your Suffrages have twice called me, have been a uniform sacrifice of inclination to the opinion of duty, and to a deference for what appeared to be your desire.—I constantly hoped, that it would have been much earlier in my power, consistently with motives, which I was not at liberty to disregard, to return to that retirement, from which I had been reluctantly drawn.—The strength of my inclination to do this, previous to the last Election, had even led to the preparation of an address to declare it to you; but mature reflection on the then perplexed & critical posture of our Affairs with foreign Nations, and the unanimous advice of persons entitled to my confidence, impelled me to abandon the idea.—

I rejoice, that the state of your concerns, external as well as internal, no longer renders the pursuit of inclination incompatible with the sentiment of duty, or propriety; & am persuaded whatever partiality may be retained for my services, that in the present circumstances of our country, you will not disapprove my determination to retire.—

The impressions, with which, I first undertook the arduous trust, were explained on the proper occasion.—In the discharge of this trust, I will only say, that I have, with good intentions, contributed towards the Organization and Administration of the government, the best exertions of which a very fallible judgment was capable.—Not unconscious, in the outset, of the inferiority of my qualifications, experience in my own eyes, perhaps still more in the eyes of others, has strengthned the motives to diffidence of myself; and every day the encreasing weight of years admonishes me more and more, that the shade of retirement is as necessary to me as it will be welcome.—Satisfied that if any circumstances have given peculiar value to my services, they were temporary, I have the consolation to believe, that while choice and prudence invite me to quit the political scene, patriotism does not forbid it.—

In looking forward to the moment, which is intended to terminate the career of my public life, my feelings do not permit me to suspend the deep acknowledgment of that debt of gratitude wch. I owe to my beloved country,—for the many honors it has conferred upon me; still more for the stedfast confidence with which it has supported me; and for the opportunities I have thence enjoyed of manifesting my inviolable attachment, by services faithful & persevering, though in usefulness unequal to my zeal.—If benefits have resulted to our country from these services, let it always be remembered to your praise, and as an instructive example in our annals, that, under circumstances in which the Passions agitated in every direction were liable to mislead, amidst appearances sometimes dubious,—viscissitudes of fortune often discouraging,—in situations in which not unfrequently want of Success has countenanced the spirit of criticism,—the constancy of your support was the essential prop of the efforts, and a guarantee of the plans by which they were effected.—Profoundly penetrated with this idea, I shall carry it with me to my grave, as a strong incitement to unceasing vows that Heaven may continue to you the choicest tokens of its beneficence—that your Union & brotherly affection may

be perpetual—that the free constitution, which is the work of your hands, may be sacredly maintained—that its administration in every department may be stamped with wisdom and Virtue—that, in fine, the happiness of the people of these States, under the auspices of liberty, may be made complete, by so careful a preservation and so prudent a use of this blessing as will acquire to them the glory of recommending it to the applause, the affection—and adoption of every nation which is yet a stranger to it.

Here, perhaps, I ought to stop. But a solicitude for your welfare, which cannot end but with my life, and the apprehension of danger, natural to that solicitude, urge me on an occasion like the present, to offer to your solemn contemplation, and to recommend to your frequent review, some sentiments; which are the result of much reflection, of no inconsiderable observation, and which appear to me all important to the permanency of your felicity as a People.—These will be offered to you with the more freedom, as you can only see in them the disinterested warnings of a parting friend, who can possibly have no personal motive to biass his counsel. Nor can I forget, as an encouragement to it, your endulgent reception of my sentiments on a former and not dissimilar occasion.

Interwoven as is the love of liberty with every ligament of your hearts, no recommendation of mine is necessary to fortify or confirm the attachment.—

The Unity of Government which constitutes you one people is also now dear to you.—It is justly so;—for it is a main Pillar in the Edifice of your real independence, the support of your tranquility at home; your peace abroad; of your safety;—of your prosperity;—of that very Liberty which you so highly prize.—But as it is easy to foresee, that from different causes & from different quarters, much pains will be taken, many artifices employed, to weaken in your minds the conviction of this truth;—as this is the point in your political fortress against which the batteries of internal & external enemies will be most constantly and actively (though often covertly & insidiously) directed, it is of infinite moment, that you should properly estimate the immense value of your national Union to your collective & individual happiness;—that you should cherish a cordial, habitual & immoveable attachment to it; accustoming yourself to think and speak of it as of the Palladium of your political safety and prosperity; watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can in any event be abandoned, and indignantly frowning upon the first dawning of every attempt to alienate any portion of our Country from the rest, or to enfeeble the sacred ties which now link together the various parts.

For this you have every inducement of sympathy and interest.—Citizens by birth or choice, of a common country, that country has a right to concentrate your affections.—The name of AMERICAN, which belongs to you, in your national capacity, must always exalt the just pride of Patriotism, more than any appellation derived from local discriminations.—With slight shades of difference, you have the same Religeon, Manners, Habits & political Principles.—You have in a common cause fought & triumphed together—The independence & liberty you possess are the work of joint councils, and joint efforts—of common dangers, sufferings and successes.—

But these considerations, however powerfully they address themselves to your sensibility are greatly outweighed by those which apply more immediately

to your Interest.—Here every portion of our country finds the most commanding motives for carefully guarding & preserving the Union of the whole.

The *North*, in an unrestrained intercourse with the *South*, protected by the equal Laws of a common government, finds in the productions of the latter, great additional resources of Maratime & commercial enterprise—and precious materials of manufacturing industry.—The *South* in the same Intercourse, benefitting by the agency of the *North*, sees its agriculture grow & its commerce expand. Turning partly into its own channels the seamen of the *North*, it finds its particular navigation envigorated;—and while it contributes, in different ways, to nourish & increase the general mass of the national navigation, it looks forward to the protection of a Maratime strength, to which itself is unequally adapted.—The *East*, in a like intercourse with the *West*, already finds, and in the progressive improvement of interior communications, by land & water, will more & more find a valuable vent for the commodities which it brings from abroad, or manufactures at home.—The *West* derives from the *East* supplies requisite to its growth and comfort,—and what is perhaps of still greater consequence, it must of necessity owe the *secure* enjoyment of indispensable *outlets* for its own productions to the weight, influence, and the future Maritime strength of the Atlantic side of the Union, directed by an indissoluble community of Interest as *one Nation*.—Any other tenure by which the *West* can hold this essential advantage, whether derived from its own seperate strength, or from an apostate & unnatural connection with any foreign Power, must be intrinsically precarious;—

While then every part of our country thus feels an immediate & particular Interest in Union, all the parts combined cannot fail to find in the united mass of means & efforts greater strength, greater resource, proportionably greater security from external danger, a less frequent interruption of their Peace by foreign Nations;—and, what is of inestimable value! they must derive from Union an exemption from those broils and Wars between themselves, which so frequently afflict neighbouring countries, not tied together by the same government; which their own rivalships alone would be sufficient to produce, but which opposite foreign alliances, attachments & intriegues would stimulate and imbitter.—Hence likewise they will avoid the necessity of those overgrown Military establishments, which under any form of Government are inauspicious to liberty, and which are to be regarded as particularly hostile to Republican Liberty: In this sense it is, that your Union ought to be considered as a main prop of your liberty, and that the love of the one ought to endear to you the preservation of the other.—

These considerations speak a persuasive language to every reflecting & virtuous mind,—and exhibit the continuance of the UNION as a primary object of Patriotic desire.—Is there a doubt, whether a common government can embrace so large a sphere?—Let experience solve it.—To listen to mere speculation in such a case were criminal.—We are authorized to hope that a proper organization of the whole, with the auxiliary agency of governments for the respective Sub divisions, will afford a happy issue to the experiment.—'Tis well worth a fair and full experiment. With such powerful and obvious motives to union, affecting all parts of our country, while experience shall not have demonstrated its impracticability, there will always be reason, to

distrust the patriotism of those, who in any quarter may endeavor to weaken its bands.—

In contemplating the causes wch. may disturb our Union, it occurs as matter of serious concern, that any ground should have been furnished for characterizing parties by *Geographical* discriminations—*Northern* and *Southern*—*Atlantic* and *Western;* whence designing men may endeavour to excite a belief that there is a real difference of local interests and views. One of the expedients of Party to acquire influence, within particular districts, is to misrepresent the opinions & aims of other Districts.—You cannot shield yourselves too much against the jealousies & heart burnings which spring from these misrepresentations.—They tend to render Alien to each other those who ought to be bound together by fraternal affection.—The Inhabitants of our Western country have lately had a useful lesson on this head.—They have seen, in the Negociation by the Executive, and in the unanimous ratification by the Senate, of the Treaty with Spain, and in the universal satisfaction at that event, throughout the United States, a decisive proof how unfounded were the suspicions propagated among them of a policy in the General Government and in the Atlantic States unfriendly to their Interests in regard to the MISSISSIPPI—They have been witnesses to the formation of two Treaties, that with G: Britain, and that with Spain, which secure to them every thing they could desire, in respect to our Foreign relations, towards confirming their prosperity.—Will it not be their wisdom to rely for the preservation of of these advantages on the UNION by wch. they were procured?—Will they not henceforth be deaf to those advisers, if such there are, who would sever them from their Brethren and connect them with Aliens?—

To the efficacy and permanency of Your Union, a Government for the whole is indispensable.—No Alliances however strict between the parts can be an adequate substitute.—They must inevitably experience the infractions & interruptions which all Alliances in all times have experienced.—Sensible of this momentous truth, you have improved upon your first essay, by the adoption of a Constitution of Government, better calculated than your former for an intimate Union, and for the efficacious management of your common concerns.—This government, the offspring of our own choice uninfluenced and unawed, adopted upon full investigation & mature deliberation, completely free in its principles, in the distribution of its powers, uniting security with energy, and containing within itself a provision for its own amendment, has a just claim to your confidence and your support.—Respect for its authority, compliance with its Laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true Liberty.—The basis of our political systems is the right of the people to make and to alter their Constitutions of Government.—But the Constitution which at any time exists, 'till changed by an explicit and authentic act of the whole People, is sacredly obligatory upon all.—The very idea of the power and the right of the People to establish Government presupposes the duty of every individual to obey the established Government.

All obstructions to the execution of the Laws, all combinations and Associations, under whatever plausible character, with the real design to direct, controul counteract, or awe the regular deliberation and action of the Constituted authorities are destructive of this fundamental principle and

of fatal tendency.—They serve to organize faction, to give it an artificial and extraordinary force—to put in the place of the delegated will of the Nation, the will of a party;—often a small but artful and enterprising minority of the Community;—and, according to the alternate triumphs of different parties, to make the public administration the Mirror of the ill concerted and incongruous projects of faction, rather than the Organ of consistent and wholesome plans digested by common councils and modefied by mutual interests—However combinations or Associations of the above description may now & then answer popular ends, they are likely, in the course of time and things, to become potent engines, by which cunning, ambitious and unprincipled men will be enabled to subvert the Power of the People, & to usurp for themselves the reins of Government; destroying afterwards the very engines which have lifted them to unjust dominion.—

Towards the preservation of your Government and the permanency of your present happy state, it is requisite, not only that you steadily discountenance irregular oppositions to its acknowledged authority, but also that you resist with care the spirit of innovation upon its principles however specious the pretexts.—one method of assault may be to effect, in the forms of the Constitution, alterations which will impair the energy of the system, and thus to undermine what cannot be directly overthrown.—In all the changes to which you may be invited, remember that time and habit are at least as necessary to fix the true character of Governments, as of other human institutions—that experience is the surest standard, by which to test the real tendency of the existing Constitution of a country—that facility in changes upon the credit of mere hypotheses & opinion exposes to perpetual change, from the endless variety of hypotheses and opinion:—and remember, especially, that for the efficient management of your common interests, in a country so extensive as ours, a Government of as much vigour as is consistent with the perfect security of Liberty is indispensable—Liberty itself will find in such a Government, with powers properly distributed and adjusted, its surest Guardian.—It is indeed little else than a name, where the Government is too feeble to withstand the enterprises of faction, to confine each member of the Society within the limits prescribed by the laws & to maintain all in the secure & tranquil enjoyment of the rights of person & property.—

I have already intimated to you the danger of Parties in the State, with particular reference to the founding of them on Geographical discriminations.—Let me now take a more comprehensive view, & warn you in the most solemn manner against the baneful effects of the Spirit of Party, generally

This Spirit, unfortunately, is inseperable from our nature, having its root in the strongest passions of the human Mind.—It exists under different shapes in all Governments, more or less stifled, controuled, or repressed; but in those of the popular form it is seen in its greatest rankness and is truly their worst enemy.—

The alternate domination of one faction over another, sharpened by the spirit of revenge natural to party dissention, which in different ages & countries has perpetrated the most horrid enormities, is istelf a frightful despotism.—But this leads at length to a more formal and permanent despotism.—The disorders & miseries, which result, gradually incline the minds of men to seek security & repose in the absolute power of an Individual: and sooner or later

the chief of some prevailing faction more able or more fortunate than his competitors, turns this disposition to the purposes of his own elevation, on the ruins of Public Liberty.—

Without looking forward to an extremity of this kind (which nevertheless ought not to be entirely out of sight) the common & continual mischiefs of the spirit of Party are sufficient to make it the interest and the duty of a wise People to discourage and restrain it.—

It serves always to distract the Public Councils and enfeeble the Public Administration.—It agitates the Community with ill founded jealousies and false alarms, kindles the animosity of one part against another, foments occasionally riot & insurrection.—It opens the door to foreign influence & corruption, which find a facilitated access to the government itself through the channels of party passions. Thus the policy and and the will of one country, are subjected to the policy and will of another.—

There is an opinion that parties in free countries are useful checks upon the Administration of the Government and serve to keep alive the Spirit of Liberty.—This within certain limits is probably true—and in Governments of a Monarchical cast Patriotism may look with endulgence, if not with favour, upon the spirit of party.—But in those of the popular character, in Governments purely elective, it is a spirit not to be encouraged.—From their natural tendency, it is certain there will always be enough of that spirit for every salutary purpose.—And there being constant danger of excess, the effort ought to be, by force of public opinion, to mitigate & assuage it.—A fire not to be quenched; it demands a uniform vigilance to prevent its bursting into a flame, lest instead of warming it should consume.—

It is important, likewise, that the habits of thinking in a free Country should inspire caution in those entrusted with its administration, to confine themselves within their respective Constitutional spheres; avoiding in the exercise of the Powers of one department to encroach upon another.—The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create whatever the form of government, a real despotism.—A just estimate of that love of power, and proneness to abuse it, which predominates in the human heart, is sufficient to satisfy us of the truth of this position.—The necessity of reciprocal checks in the exercise of political power; by dividing and distributing it into different depositories, & constituting each the Guardian of the Public Weal against invasions by the others, has been evinced by experiments ancient & modern;—some of them in our country & under our own eyes.—To preserve them must be as necessary as to institute them.—If in the opinion of the People, the distribution or modification of the Constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates.—But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed.—The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield.—

Of all the dispositions and habits which lead to political prosperity, Religion and morality are indispensable supports.—In vain would that man claim the tribute of Patriotism, who should labour to subvert these great Pillars of human happiness, these firmest props of the duties of Men & citizens.—

The mere Politician, equally with the pious man ought to respect & to cherish them.—A volume could not trace all their connections with private & public felicity.—Let it simply be asked where is the security for property, for reputation, for life, if the sense of religious obligation *desert* the oaths, which are the instruments of investigation in Courts of Justice?—And let us with caution indulge the supposition, that morality can be maintained without religion.—Whatever may be conceded to the influence of refined education on minds of peculiar structure—reason & experience both forbid us to expect that National Morality can prevail in exclusion of religious principle.—

'Tis substantially true, that virtue or morality is a necessary spring of popular government.—The rule indeed extends with more or less force to every species of Free Government.—Who that is a sincere friend to it, can look with indifference upon attempts to shake the foundation of the fabric.

Promote then as an object of primary importance, Institutions for the general diffusion of knowledge.—In proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened.

As a very important source of strength & security, cherish public credit.—One method of preserving it is to use it as sparingly as possible:—avoiding occasions of expence by cultivating peace, but remembering also that timely disbursements to prepare for danger frequently prevent much greater disbursements to repel it—avoiding likewise the accumulation of debt, not only by shunning occasions of expence, but by vigorous exertions in time of Peace to discharge the Debts which unavoidable wars may have occasioned, not ungenerously throwing upon posterity the burthen which we ourselves ought to bear. The execution of these maxims belongs to your Representatives, but it is necessary that public opinion should cooperate.—To facilitate to them the performance of their duty, it is essential that you should practically bear in mind, that towards the payment of debts there must be Revenue—that to have Revenue there must be taxes—that no taxes can be devised which are not more or less inconvenient and unpleasant—that the intrinsic embarrassment inseperable from the selection of the proper objects (which is always a choice of difficulties) ought to be a decisive motive for a candid construction of the Conduct of the Government in making it, and for a spirit of acquiescence in the measures for obtaining Revenue which the public exigencies may at any time dictate.—

Observe good faith & justice towards all Nations Cultivate peace and harmony with all—Religion & morality enjoin this conduct; and can it be that good policy does not equally enjoin it?—It will be worthy of a free, enlightened, and, at no distant period, a great Nation, to give to mankind the magnanimous and too novel example of a People always guided by an exalted justice & benevolence.—Who can doubt that in the course of time and things the fruits of such a plan would richly repay any temporary advantages wch. might be lost by a steady adherence to it? Can it be, that Providence has not coñected the permanent felicity of a Nation with its virtue?—The experiment, at least, is recommended by every sentiment which ennobles human Nature.—Alas! is it rendered impossible by its vices?

In the execution of such a plan nothing is more essential than that permanent, inveterate antipathies against particular Nations and passionate attach-

ments for others should be excluded;—and that in place of them just & amicable feelings towards all should be cultivated.—The Nation, which indulges towards another an habitual hatred, or an habitual fondness, is in some degree a slave.—It is a slave to its animosity or to its affection, either of which is sufficient to lead it astray from its duty and its interest.—Antipathy in one Nation against another—disposes each more readily to offer insult and injury, to lay hold of slight causes of umbrage, and to be haughty and intractable, when accidental or trifling occasions of dispute occur.—Hence frequent collisions, obstinate envenomed and bloody contests.—The Nation, prompted by illwill & resentment sometimes impels to War the Government, contrary to the best calculations of policy.—The Government sometimes participates in the national propensity, and adopts through passion what reason would reject;—at other times, it makes the animosity of the Nation subservient to projects of hostility instigated by pride, ambition and other sinister & pernicious motives.—The peace often, sometimes perhaps the Liberty, of Nations has been the victim.—

So likewise, a passionate attachment of one Nation for another produces a variety of evils.—Sympathy for the favourite nation, facilitating the illusion of an imaginary common interest, in cases where no real common interest exists, and infusing into one the enmities of the other, betrays the former into a participation in the quarrels & Wars of the latter, without adequate inducement or justification:—It leads also to concessions to the favourite Nation of priviledges denied to others, which is apt doubly to injure the Nation making the concessions—by unnecessarily parting with what ought to have been retained—& by exciting jealousy, ill will, and a disposition to retaliate, in the parties from whom eql. priviledges are withheld: And it gives to ambitious, corrupted, or deludid citizens (who devote themselves to the favourite Nation) facility to betray, or sacrifice the interests of their own country, without odium, sometimes even with popularity;—gilding with the apearances of a virtuous sense of obligation a commendable deference for public opinion, or a laudable zeal for public good, the base or foolish compliances of ambition corruption or infatuation.—

As avenues to foreign influence in innumerable ways, such attachments are particularly alarming to the truly enlightened and independent Patriot.—How many opportunities do they afford to tamper with domestic factions, to practise the arts of seduction, to mislead public opinion, to influence or awe the public Councils!—Such an attachment of a small or weak, towards a great & powerful Nation, dooms the former to be the satellite of the latter.—

Against the insidious wiles of foreign influence, (I conjure you to believe me fellow citizens,) the jealousy of a free people ought to be *constantly* awake; since history and experience prove that foreign influence is one of the most baneful foes of Republican Government.—But that jealousy to be useful must be impartial; else it becomes the instrument of the very influence to be avoided, instead of a defence against it.—Excessive partiality for one foreign nation and excessive dislike of another, cause those whom they actuate to see danger only on one side, and serve to veil and even second the arts of influence on the other.—Real Patriots, who may resist the intriegues of the favourite, are liable to become suspected and odious; while its tools and dupes usurp the applause & confidence of the people, to surrender their interests.—

The Great rule of conduct for us, in regard to foreign Nations is in extending our commercial relations to have with them as little *political* connection as

possible.—So far as we have already formed engagements let them be fulfilled, with perfect good faith.—Here let us stop.

Europe has a set of primary interests, which to us have none, or a very remote relation.—Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns.—Hence therefore it must be unwise in us to implicate ourselves, by artificial ties, in the ordinary vicissitudes of her politics, or the ordinary combinations & collisions of her friendships, or enmities:—

Our detached & distant situation invites and enables us to pursue a different course.—If we remain one People, under an efficient government, the period is not far off, when we may defy material injury from external annoyance;—when we may take such an attitude as will cause the neutrality we may at any time resolve upon to be scrupulously respected;—when belligerent nations, under the impossibility of making acquisitions upon us, will not lightly hazard the giving us provocation;—when we may choose peace or War, as our interest guided by justice shall Counsel.—

Why forego the advantages of so peculiar a situation?—Why quit our own to stand upon foreign ground?—Why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European Ambition, Rivalship, Interest, Humour or Caprice?—

'Tis our true policy to steer clear of permanent Alliances, with any portion of the foreign World—So far, I mean, as we are now at liberty to do it—for let me not be understood as capable of patronising infidility to existing engagements (I hold the maxim no less applicable to public than to private affairs that honesty is always the best policy).—I repeat it therefore, let those engagements be observed in their genuine sense.—But in my opinion, it is unnecessary and would be unwise to extend them.—

Taking care always to keep ourselves, by suitable establishments, on a respectably defensive posture, we may safely trust to temporary alliances for extraordinary emergencies.—

Harmony, liberal intercourse with all Nations, are recommended by policy, humanity and interest.—But even our Commercial policy should hold an equal and impartial hand:—neither seeking nor granting exclusive favours or preferences;—consulting the natural course of things;—diffusing & deversifying by gentle means the streams of Commerce, but forcing nothing;—establishing with Powers so disposed—in order to give to trade a stable course, to define the rights of our Merchants, and to enable the Government to support them—conventional rules of intercourse; the best that present circumstances and mutual opinion will permit, but temporary, & liable to be from time to time abandoned or varied, as experience and circumstances shall dictate; constantly keeping in view, that 'tis folly in one Nation to look for disinterested favors from another—that it must pay with a portion of its Independence for whatever it may accept under that character—that by such acceptance, it may place itself in the condition of having given equivalents for nominal favours and yet of being reproached with ingratitude for not giving more.—There can be no greater error than to expect, or calculate upon real favours from Nation to Nation.—'Tis an illusion which experience must cure, which a just pride ought to discard.—

In offering to you, my Countrymen, these counsels of an old and affection-

ate friend, I dare not hope they will make the strong and lasting impression, I could wish—that they will controul the usual current of the passions, or prevent our Nation from running the course which has hitherto marked the Destiny of Nations:—But if I may even flatter myself, that they may be productive of some partial benefit, some occasional good;—that they may now & then recur to moderate the fury of party spirit, to warn against the mischiefs of foreign Intriegue, to guard against the Impostures of pretended patriotism—this hope will be a full recompence for the solicitude for your welfare, by which they have been dictated.—

How far in the discharge of my Official duties, I have been guided by the principles which have been delineated, the public Records and other evidences of my conduct must Witness to You and to the world.—To myself, the assurance of my own conscience is, that I have at least believed myself to be guided by them.

In relation to the still subsisting War in Europe, my Proclamation of the 22d. of April 1793 is the index to my Plan.—Sanctioned by your approving voice and by that of Your Representatives in both Houses of Congress, the spirit of that measure has continually governed me;—uninfluenced by any attempts to deter or divert me from it.—

After deliberate examination with the aid of the best lights I could obtain I was well satisfied that our Country, under all the circumstances of the case, had a right to take, and was bound in duty and interest, to take a Neutral position.—Having taken it, I determined, as far as should depend upon me, to maintain it, with moderation, perseverence & firmness.—

The considerations, which respect the right to hold this conduct, it is not necessary on this occasion to detail.—I will only observe, that according to my understanding of the matter, that right, so far from being denied by any of the Belligerent Powers has been virtually admitted by all.—

The duty of holding a Neutral conduct may be inferred, without any thing more, from the obligation which justice and humanity impose on every Nation, in cases in which it is free to act, to maintain inviolate the relations of Peace and amity towards other Nations.—

The inducements of interest for observing that conduct will best be referred to your own reflections & experience.—With me, a predominant motive has been to endeavour to gain time to our country to settle & mature its yet recent institutions, and to progress without interruption, to that degree of strength & consistency, which is necessary to give it, humanly speaking, the command of its own fortunes.—

Though in reviewing the incidents of my Administration, I am unconscious of intentional error—I am nevertheless too sensible of my defects not to think it probable that I may have committed many errors.—Whatever they may be I fervently beseech the Almighty to avert or mitigate the evils to which they may tend.—I shall also carry with me the hope that my Country will never cease to view them with indulgence; and that after forty five years of my life dedicated to its Service, with an upright zeal, the faults of incompetent abilities will be consigned to oblivion, as myself must soon be to the Mansions of rest.

Relying on its kindness in this as in other things, and actuated by that fervent love towards it, which is so natural to a Man, who views in it the native

soil of himself and his progenitors for several Generations;—I anticipate with pleasing expectation that retreat, in which I promise myself to realize, without alloy, the sweet enjoyment of partaking, in the midst of my fellow Citizens, the benign influence of good Laws under a free Government—the ever favourite object of my heart, and the happy reward, as I trust, of our mutual cares, labours and dangers

United States }
19th September } 1796

G° WASHINGTON

Monroe Doctrine
1823

NOTE

ALL THE preceding papers, except the last, are legal enactments. Washington's Farewell Address, on the other hand, is a presentation of American policy as privately advised by the chief founder of the Union. Like that, the Monroe Doctrine is an assertion, in this case official by the head of the nation, of a fundamental principle in American foreign policy, but it is not a law. Both of them, in spite of this distinct character, are truly Liberty Documents, because they present statements, which have been accepted by succeeding administrations and by the people as a whole, of conduct considered essential to the well-being and freedom of our land. The two great papers are intimately related; for much of Washington's advice was as to our foreign relations and a declaration of attitude toward them, of which the Monroe Doctrine is a logical result.

There was, however, legislative as well as diplomatic precedent for the policy which President Monroe pronounced in 1823. On January 15, 1811, at the time when it was feared that, because of conditions resulting from the Napoleonic Wars, the Spanish provinces in America, and especially East Florida, might pass to some other European nation, the justification of the occupation of East Florida by the United States was stated in a joint resolution of Congress, having the authority of a law, as follows:

"Taking into view the peculiar situation of Spain, and of her American provinces; and considering the influence which the destiny of the territory adjoining the southern border of the United States may have upon their security, tranquillity, and commerce: Therefore,

"*Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the United States, under the peculiar circumstances of the existing crisis, cannot, without serious inquietude, see any part of the said territory pass into the hands of any foreign power; and that a due regard to their own safety compels them to provide, under certain contingencies, for the temporary occupation of the said territory; they, at the same time, declare that the said territory shall, in their hands, remain subject to future negotiation."

There have been various occasions when warning has been given of the consistent adherence of this nation to the policy, because of the danger to other American nations, or the fear that foreign privileges or occupations there would threaten the safety of the United States, or the possibility of the transfer of American possessions from one European nation to another. On June 3, 1940,

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another joint resolution reiterated the principle of that of 1811, informing the warring nations in Europe that our long-established policy concerning the acquisition of territory in this hemisphere by non-American powers and the establishment of their systems herein remained unaltered.

The immediate occasion of President Monroe's doctrine was the extension of Russia's claim on the western continent and the fear that other European nations intended to aid Spain in regaining her American possessions, which, under the opportunity furnished during and after the Napoleonic Wars, had declared their independence. The text is from the annual message of December 2, 1823, and is taken from Richardson, *Messages and Papers of the Presidents*, **2**.209, 217–219.

TEXT

At the proposal of the Russian Imperial Government, made through the minister of the Emperor residing here, a full power and instructions have been transmitted to the minister of the United States at St. Petersburg to arrange by amicable negotiation the respective rights and interests of the two nations on the northwest coast of this continent. A similar proposal had been made by His Imperial Majesty to the Government of Great Britain, which has likewise been acceded to. The Government of the United States has been desirous by this friendly proceeding of manifesting the great value which they have invariably attached to the friendship of the Emperor and their solicitude to cultivate the best understanding with his Government. In the discussions to which this interest has given rise and in the arrangements by which they may terminate the occasion has been judged proper for asserting, as a principle in which the rights and interests of the United States are involved, that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers. . . .

It was stated at the commencement of the last session that a great effort was then making in Spain and Portugal to improve the condition of the people of those countries, and that it appeared to be conducted with extraordinary moderation. It need scarcely be remarked that the result has been so far very different from what was then anticipated. Of events in that quarter of the globe, with which we have so much intercourse and from which we derive our origin, we have always been anxious and interested spectators. The citizens of the United States cherish sentiments the most friendly in favor of the liberty and happiness of their fellow-men on that side of the Atlantic. In the wars of the European powers in matters relating to themselves we have never taken any part, nor does it comport with our policy so to do. It is only when our rights are invaded or seriously menaced that we resent injuries or make preparations for our defense. With the movements in this hemisphere we are of necessity more immediately connected, and by causes which must be obvious to all enlightened and impartial observers. The political system of the allied powers is essentially different in this respect from that of America. This difference proceeds from that which exists in their respective Governments; and to the defense of our own, which has been achieved by the loss of so much blood and treasure, and matured by the widsom of their most enlightened citizens, and under which we have enjoyed unexampled felicity, this whole

nation is devoted. We owe it, therefore to candor and to the amicable relations existing between the United States and those powers to declare that we should consider any attempt on their part to extend their system to any portion of this hemisphere as dangerous to our peace and safety. With the existing colonies or dependencies of any European power we have not interfered and shall not interfere. But with the Governments who have declared their independence and maintained it, and whose independence we have, on great consideration and on just principles, acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, by any European power in any other light than as the manifestation of an unfriendly disposition toward the United States. In the war between those new Governments and Spain we declared our neutrality at the time of their recognition, and to this we have adhered, and shall continue to adhere, providing no change shall occur which, in the judgment of the competent authorities of this Government, shall make a corresponding change on the part of the United States indispensable to their security.

The late events in Spain and Portugal show that Europe is still unsettled. Of this important fact no stronger proof can be adduced than that the allied powers should have thought it proper, on any principle satisfactory to themselves, to have interposed by force in the internal concerns of Spain. To what extent such interposition may be carried, on the same principle, is a question in which all independent powers whose governments differ from theirs are interested, even those most remote, and surely none more so than the United States. Our policy in regard to Europe, which was adopted at an early stage of the wars which have so long agitated that quarter of the globe, nevertheless remains the same, which is, not to interfere in the internal concerns of any of its powers; to consider the government *de facto* as the legitimate government for us; to cultivate friendly relations with it, and to preserve those relations by a frank, firm, and manly policy, meeting in all instances the just claims of every power, submitting to injuries from none. But in regard to those continents circumstances are eminently and conspicuously different. It is impossible that the allied powers should extend their political system to any portion of either continent without endangering our peace and happiness; nor can anyone believe that our southern brethren, if left to themselves, would adopt it of their own accord. It is equally impossible, therefore, that we should behold such interposition in any form with indifference. If we look to the comparative strength and resources of Spain and those new Governments, and their distance from each other, it must be obvious that she can never subdue them. It is still the true policy of the United States to leave the parties to themselves, in the hope that other powers will pursue the same course.

If we compare the present condition of our Union with its actual state at the close of our Revolution, the history of the world furnishes no example of a progress in improvement in all the important circumstances which constitute the happiness of a nation which bears any resemblance to it. . . . To what then, do we owe these blessings? It is known to all that we derive them from the excellence of our institutions. Ought we not, then, to adopt every measure which may be necessary to perpetuate them?

IV

CELEBRATION OF THE CONSTITUTION SESQUICENTENNIAL

Preface

THIS VOLUME constitutes the report of the United States Constitution Sesquicentennial Commission, and the historical data and information contained in the preceding sections are the selected results of research by the Commission's staff during the celebration period.

The work of the Commission was primarily that of a coordinating organization, designed also to serve as a disseminator of historical facts and information not readily available to the thousands of local committees formed by states, cities, schools, patriotic groups, churches, and fraternal and civic organizations. The Commission initiated the formation of these committees, maintained close contact with them, and supplied them at frequent intervals with factual information and suggested plans of observances.

The enthusiastic response to the Commission's efforts and the keen interest that was manifested throughout the entire observance period testified most eloquently to the soundness of the Commission's aims in focusing attention on those principles which have given us a government which obeys those whom it rules, and whose people rule the government which they obey.

The portions which follow are added to furnish a summary of the principal celebration activities with which the Commission itself was directly concerned, and also with some added major details. Each observance sponsored directly by the Commission was duplicated by similar and varying celebrations held all over the nation, and it is believed the following pages will present an adequate idea of the character and scope of the celebration as a whole.

SOL BLOOM,
Director General,
United States Constitution Sesquicentennial Commission.

Report of the Commission

CREATION OF THE COMMISSION AND ITS POLICIES

THE CELEBRATION of the one hundred and fiftieth anniversary of the formation, ratification, and establishment of the Constitution, was provided for in a joint resolution of the Congress, approved August 23, 1935, which authorized the establishment of the United States Constitution Sesquicentennial Commission (*see* p. II). Although Congress authorized a total appropriation of $485,000, actually only $360,000 was appropriated. At the close of the celebration period the Commission had on hand a considerable amount of salable material, and the proceeds of such sales will be turned back to the Treasury.

Under the authority of the resolution of Congress and subsequently enacted legislation, the Commission prepared nation-wide plans. Letters were sent to mayors and also to the heads of patriotic societies and other organizations, and radio addresses were made inviting the submission of suggestions for consideration. The ideas received from such sources, so far as they were practical and constructive, were included in the program of the Commission.

The Director General, in establishing the policy of the Commission, aimed to make the celebration the occasion for instilling in the mind and heart of every American, young and old, an individual realization of his relation to the Constitution—how it is the fortress of his liberty, the stronghold in which he can take refuge from oppression. It was constantly aimed to bring home the knowledge that the Constitution is the spirit of America, the flowering of freedom in a free land. The Commission desired to impress upon American citizens that the Constitution is their law, made by them and alterable only by them—the sublime emanation of their will, binding upon Presidents, Congress, courts and states, holding these authorities by irresistible power within their respective spheres, and commanding them to respect and protect the rights of every human being under the American flag.

OFFICIAL PROCLAMATION BY THE PRESIDENT

ON JULY 4, 1937, the President, Franklin D. Roosevelt, issued a formal proclamation designating the period commencing September 17, 1937, as one of commemoration of those events which led to the establishment of our government under the Constitution.

The text of the President's proclamation follows:

WHEREAS the Constitution of the United States was signed on September 17, 1787, and had by June 21, 1788, been ratified by the necessary number of States and,

WHEREAS George Washington was inaugurated as the first President of the United States on April 30, 1789,

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, hereby designate the period from September 17, 1937, to April 30, 1939, as one of commemoration of the one hundred and fiftieth anniversary of the signing and the ratification of the Constitution and of the inauguration of the first President under that Constitution.

In commemorating this period we shall affirm our debt to those who ordained and established the Constitution "in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity."

We shall recognize that the Constitution is an enduring instrument fit for the governing of a far-flung population of more than one hundred and thirty million, engaged in diverse and varied pursuits, even as it was fit for the governing of a small agrarian Nation of less than four million.

It is therefore appropriate that in the period herein set apart we shall think afresh of the founding of our Government under the Constitution, how it has served us in the past and how in the days to come its principles will guide the Nation ever forward.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this fourth day of July, in the year of Our Lord nineteen hundred and thirty-seven, and of the Independence of the United States of America the one hundred and sixty-second.

By the President:

Cordell Hull
Secretary of State.

Franklin D. Roosevelt

A copy of the President's proclamation was placed in every postoffice, and hundreds of thousands of beautiful reproductions, illuminated in colors, with the seal of the United States and draped

American flags and bordered with pictures of the signers of the Constitution, were distributed to schools, institutions, and committees throughout the United States.

AIMS OF THE COMMISSION

IN CARRYING out the educative and informative purposes of the celebration, two principal purposes were kept constantly in mind. The first was to make available, in plain and simple language, factual data about the Constitution and those events that led to its formation and establishment. The second was to celebrate those events in a manner designed to conform to the educational aims of the commemoration. Extensive research and writing, followed by the printing and distribution of the results, was necessary for the first; and a broad and inclusive plan for the second, with an organization adequate to bring to the attention of the entire nation the significance of the celebration, and to suggest and direct the many-phased expression of it.

ORGANIZATION CHART

THESE aims, and the means to be employed to carry them out, are shown diagrammatically on the next two pages. As was inevitable, the development of the work brought about divergences. Some of the features attracted more attention than was anticipated and demands upon the time of the limited staff to the detriment of other phases of the plan. In other cases, interest or the means of gratifying it did not come up to the expected level. However, in the main the plan was carried out, and the chart is given here as indicative of the activities of the Commission.

ORGANIZATION PERSONNEL

THE ORGANIZATION and direction of this greatest celebration ever held in commemoration of the establishment of a government, required the services of the best talent available. The director general was fortunate in being able to draw about him not only men and women of devoted loyalty, but those who were specialists in the various phases of the celebration activities. When it is remembered what extensive work was accomplished, the staff seems small; but it was built up as the demands for service increased and reduced as the pressure relaxed. As the end of the celebration approached, the staff continued to be reduced until only those necessary to the preparation and compilation of this volume were retained.

ORGANIZATION CHART OF THE UNITED STATES CONSTITUTION SESQUICENTENNIAL COMMISSION

CHAIRMAN

VICE CHAIRMAN

DIRECTOR GENERAL

ADVISORY COMMITTEES

PRESIDENTS OF OUTSTANDING ORGANIZATIONS
MEDAL COMMITTEE
HISTORICAL COMMITTEE
COMMITTEE ON PICTURES AND POSTERS

COOPERATING AGENCIES

GOVERNMENT DEPARTMENTS
INDEPENDENT ESTABLISHMENTS
STATE COMMISSIONS
CITY AND TOWN COMMITTEES
ORGANIZATIONS OF EVERY TYPE

EDUCATIONAL ACTIVITIES

SCHOOLS AND LIBRARIES

COOPERATION WITH EDUCATIONAL AUTHORITIES:
- United States Office of Education.
- National Education Association.
- Library of Congress.

AVENUES OF CONTACT — SCHOOLS, LIBRARIES:
- School Administrators:
  - State and Territorial Departments of Education.
  - County and State Superintendents.
  - Principals—Elementary and Secondary Schools.
  - Classroom Teachers.
  - Superintendents of State Training Schools.
  - Superintendents of

HISTORICAL ACTIVITIES

This work included the writing and editing of historical publications of the Commission, and assistance on historical subjects to other departments of the Commission.
- Research.
- Documentations.
- Addresses.
- Editorial Work.
- Answering historical inquiries.
- Relations with historical bodies; archives, historical and genealogical societies.

ADMINISTRATION

- General Office Management.
- Personnel.
- Accounts.
- Correspondence Files.
- Service.
- Purchases.
- Mail Room.
- Mimeographing.
- Messenger Service.

EDUCATIONAL ACTIVITIES — Concluded.

PROGRAM OF EDUCATIONAL PLANS Continued.
- Constitution Appre-

PUBLIC RELATIONS

The information service included the collection of news, information, and pictures relating to the framing and establishment of the Constitution and their distribution throughout the United States and its possessions. It also included service to newspaper and press syndicates and assistance to writers, speakers, and producers of motion picture news reels.

PUBLICATIONS:
- Newspapers.
- Magazines.
- Information sheets.
- Editorial contacts.
- Feature writers.
- Syndicates.
- News Services.
- Foreign-language press.
- Addressograph lists.
- Editing office publications.
- Information service.

PUBLICATIONS

- Report on General Plans of the Commission.
- Pamphlet on Plans for the Celebration.
- Main Historical Volumes containing the Documentary History of the Constitution of the United States, the Formation of the Union, Madison's Notes, and additional appropriate historical material, for libraries.
- Source Material on the Constitution.
- Chronology of the Constitution.
- The Story of the Constitution.
- Biographies of the Delegates and Signers.
- Questions and Answers on the Constitution.
- Outline of the Constitution Study Course.
- Handbook of the Constitution Appreciation Course.
- Contest Pamphlets: Or-

ORGANIZED GROUPS

- State Commissions.
- State Historical Associations.
- City and Town Committees.
- Organization Contacts—Men and Women:
  - Agricultural.
  - Business.
  - Churches.
  - Civic.
  - Fraternal.
  - Labor.
  - Law.
  - Patriotic.
  - Religious.
- Special Programs.
- Participation in Special Activities.

SPECIAL ACTIVITIES

CONSTITUTION POSTAGE STAMPS:
- Enlist cooperation of Post Office Department for issuance.
- Selection of pictures for stamps.
- Sale of Stamps can finance celebration cost.
- Description of stamps.
- Issuance of special cachets throughout the United States.

REPRODUCTION OF SHRINE CONTAINING THE ORIGINAL CONSTITUTION AND DECLARATION OF INDEPENDENCE:
- Preparation.
- Distribution.
- Program of ceremonies of unveiling.

STANDARD SHRINE OF THE CONSTITUTION:
- Preparation.
- Distribution.

CONSTITUTION COMMEMORATIVE MEDAL:

Indian Schools.
State Supervisors of Adult Education.
Special State Schools—Blind and Deaf.
Institutions of Higher Learning:
Universities.
Colleges.
Normal Schools—State and City.
Educational Agencies:
State and Territorial Education Associations.
State and City Elementary Principal Associations.
State Education Journals.
Parent-Teacher Groups:
National, State, and City—Congress of Parents and Teachers.
Organized Youth Educational Groups:
Boy Scouts.
Junior Red Cross.
Campfire Girls.
Girl Scouts.
4-H Clubs.
Library Institutions and Agencies:
State Library Commissions.
State Library Associations.
Special State Libraries—Historical, Educational, and Legal.
Educational Libraries of State and Federal Penitentiaries.
Special State Institutional Libraries.
Public Libraries—Cities, Towns, and Counties.
School Libraries—University, College, and High School.
Library Schools.

EDUCATIONAL ACTIVITIES—Contd.

PROGRAM OF LIBRARY PLANS:
Library Survey—questionnaire to 3,000 libraries.
Acquisition of books for Commission Library.
Questionnaire to book publishers.
Classification of Commission Constitution material.
Display of Constitution material.
Information to all library agencies.
Preparation of booklets.
Preparation of classified Constitution Bibliography.
Suggestions for Constitution Exhibits.
Distribution of the Constitution Shrine.
PROGRAM OF EDUCATIONAL PLANS:
Consideration of a constructive program for schools.
Preparation of educational material.
Authentic information to schools and study groups.
Distribution of historical and educational literature.
Suggestions for programs, projects, and other educational features.
Distribution of pictures and posters.
ciation Course of Study:
Preparation and Distribution of Course of Study Handbook for Schools and Study Groups.
Project and Contest Activity:
1. Creative Writing Contests (1936-37).
Writing of Plays:
High School (State).
University and College (National).
Directors and Teachers (National).
Writing of Pageants:
Drama Directors (National).
Poetry—Original Poems (National):
Short poem for elementary schools.
Longer poem for public programs.
Lyric poem (hymn).
2. Nation-wide series of Educational Contests 1937-38):
Declamatory in elementary schools.
Essay in high schools.
Oratorical in colleges and universities.
3. Journalistic Achievement Contests (1937-39):
High School Periodicals.
4. Every Pupil Constitution Test. (1938-39).

CLIPPINGS OF ALL NEWS ITEMS CONCERNING THE CONSTITUTION ITSELF AND THE SESQUICENTENNIAL CELEBRATION.
RADIO:
Preparation of addresses.
Broadcasting dates.
Scheduling features.
Cooperating stations.
Short talks on the Constitution.
MOTION-PICTURE NEWS REELS:
Publicity shots.
Celebration pictures.
PICTURES:
Selection.
Collection.
Distribution.
Files.
ART FEATURES:
Drawings.
Facsimiles.
Calendars.
Cards, Menus.
Posters.
CONTACTS:
Organizations.
Cooperating agencies.
Writers, editors, publishers.
Editorial Associations.
Advertising agencies.
Club, school, and college publications.
ganization and Regulations.
Declamatory Selections.
Winning Essays and Orations.
Tree Planting Booklet.
Plays and Pageants.
Costume Book for Plays and Pageants.
Appropriate Music for Plays and Pageants.
Certificates of Participation.
Posters and pictures.
Information Sheets.
Sermons on the Constitution.
Speeches on the Constitution.
News Releases.
Complete final Report of the Commission.

SPECIAL ACTIVITIES—Continued.

CONSTITUTION POSTERS:
Preparation of posters.
Nation-wide distribution.
CONSTITUTION BUTTON:
Design and preparation.
CONSTITUTION PILGRIMAGES:
To the National Capital.
To Philadelphia, the home of the Constitution.
Presentation of certificates certifying as to visit to shrine.
Pamphlet on the historical features of these cities.
ART EXHIBIT:
Portraits of Signers of the Constitution.
Portraits of Deputies to the Constitutional Convention.
Catalogue of Art Exhibit.
CONVENTIONS:
Activities to draw national conventions to Washington and Philadelphia in 1937 and 1938.
Medal Advisory Committee.
Medal Design.
Types of Medals:
Official and Badge.
Suggest standardized medal for national use.
Platinum, silver, and bronze medals.
CONSTITUTION FILM:
Description.
Solicitation of cooperation.
Distribution.
PLAYS, PAGEANTS, AND MUSIC:
Preparation and distribution of suitable plays and pageants relating to the formation, signing, and ratification of the Constitution of the United States.
Collection and distribution of original music of the period.
Special music for Constitution Celebration programs.
PLANTING OF MEMORIAL TREES:
Cooperation with American Tree Association.
Publication of Tree Planting Booklet.
Forms of planting.
Participation of organization groups, cities, and towns.
Insular possessions.

The heads of the different divisions are listed here and the Director General considers it fitting to make acknowledgement to them and also to those other members of the staff whose loyalty and unselfish and enthusiastic cooperation were so largely responsible for the success of the celebration. It is also a pleasure to acknowledge the work done by Boyd Crawford, secretary to the Director General of the Commission, for his unstinted labors during the period of the celebration and especially in assisting in the preparation of this report.

STAFF DEPARTMENT HEADS

DAVID M. MATTESON, *Historian*

DR. CLARENCE R. WILLIAMS, *Special Historical Research*

ROBERT MOORE, *Administrative and Personnel*

HAZEL B. NIELSON, *Education and Women's Activities*

DONALD MACGREGOR and ALAN R. MURRAY, *Special Activities*

WINANT JOHNSTON, *Foreign Participation*

HENRY LITCHFIELD WEST, *Press*

OWEN KANE, JR., *Art, under Supervision of Mrs. McCook Knox, Chairman of Portrait Committee*

SHIRLEY GIBBS, *States, Cities, and Towns*

CHARLES A. CUSICK, *Legal*

MARGARET FROYD, *Stenographic Service*

MEYER SOLMSON and B. H. KASINDORF, *Distribution*

MARIE MOORE FORREST, *Plays and Pageants*

M. C. RICHARDSON, *Fraternal Organizations*

ELEANOR S. BOWEN, *Music*

MARY E. DOWNEY, *Librarian*

LEE SPRUCE, *Filing*

JOSEPH TASTET, *Auditor*

JOHN P. CREED, *Mailing*

SPECIAL ADVISERS TO THE DIRECTOR GENERAL

IRA E. BENNETT
MANNY STRAUSS
LOUIS ROTHSCHILD

COOPERATION WITH LOCAL ORGANIZATIONS

CONTACT was initiated and maintained with state commissions, county, city, and local committees, as well as with thousands of committees formed by civic, patriotic, and fraternal organizations. Every effort was made to provide specific data and helpful suggestions that would extend over the entire celebration period and make possible the cooperative activity of the many local commissions and committees, made up of public spirited men and women who gave freely of their time and ability in carrying out the projects of the national commission and also, supplementary to those of their own, spending the funds raised for this purpose through state or municipal appropriations or private contributions. Particular attention was paid to

the organization of the educational activities of the Commission, and constant touch was maintained with schools, officials, and religious and patriotic groups throughout the country. Much time was devoted by the education division to the fostering of essay and other contests in the schools. As chief of the education division, Miss Hazel B. Nielson maintained and supervised Constitution exhibits at the conventions held by the National Education Association and other educational organizations during the celebration period.

INFORMATION SHEETS

TO ENCOURAGE originality, the Commission followed a policy of outlining and suggesting, rather than one of direction, with the local committees organized in the different states. Informative material and helpful suggestions were issued in the form of information sheets, especially prepared for various groups. These information sheets, size 17″ x 21″, and printed on both sides, were distributed as phases of the celebration progressed. Following is a list of these sheets:

Sheet No. 1.—Library Special, No. 1.
Sheet No. 2.—Women's Division Special, No. 1.
Sheet No. 3.—Special Educational Issue, No. 1.
Sheet No. 4.—Library Special, No. 2.
Sheet No. 5.—Special Educational Issue No. 1, revised.
Sheet No. 6.—Library Special, No. 2, revised.
Sheet No. 7.—Legal Division, No. 1.
Sheet No. 8.—City Committees Special, No. 1.
Sheet No. 9.—General Committees, No. 1.
Sheet No. 10.—Education Special, No. 2.
Sheet No. 11.—Cities and Towns Committees Special, No. 2.
Sheet No. 12.—State, Cities, and Towns Committees, No. 3.
Sheet No. 13.—General Committees, No. 1, revised.
Sheet No. 14.—Music Division Special, No. 1.
Sheet No. 15.—Church Committees Special, No. 1.
Sheet No. 16.—Women's Special, No. 2.
Sheet No. 17.—Education Special, No. 3.
Sheet No. 18.—General Committees, No. 2.
Sheet No. 19.—Men's Organizations Special, No. 1.
Sheet No. 20.—State, Cities, and Towns Committees, No. 4.
Sheet No. 21.—General Committees, No. 3.
Sheet No. 22.—Tree Planting Special, No. 1.
Sheet No. 23.—Education Special, No. 4.
Sheet No. 24.—Women's Special, No. 3.
Sheet No. 25.—Library Special, No. 3.
Sheet No. 26.—Education Special, No. 5.
Sheet No. 27.—State, Cities, and Towns Committees, No. 5.
Sheet No. 28.—Legal Division, No. 2.
Sheet No. 29.—General Committees, No. 4.

Sheet No. 30.—Men's Organizations Special, No. 2.
Sheet No. 31.—American Legion Special.
Sheet No. 32.—American Legion Special, No. 2.
Sheet No. 33.—Masonic Special, No. 1.
Sheet No. 34.—Masonic Special, No. 2.
Sheet No. 35.—Women's Special, No. 4.
Sheet No. 36.—Women's Special, No. 5.
Sheet No. 37.—Library Special, No. 4.
Sheet No. 38.—Library Special, No. 5.
Sheet No. 39.—Music Division Special, No. 2.
Sheet No. 40.—Music Division Special, No. 3.
Sheet No. 41.—Education Special, No. 6.
Sheet No. 42.—Education Special, No. 7.
Sheet No. 43.—States, Cities and Towns Committees, No. 6.
Sheet No. 44.—States, Cities and Towns Committees, No. 7.

PUBLICATIONS AND COMMEMORATIVE ITEMS

In addition to the Information Sheets, many other publications and commemorative items were issued and distributed by the Commission. Besides hundreds of informative news releases, the Commission issued the following:

Pamphlet containing the Constitution and amendments, Declaration of Independence, etc.

Book, The Story of the Constitution (published in two editions, standard and de luxe).

Facsimile reproductions of the four pages of the Constitution. Size 29½″ x 24″.

Facsimile reproduction of the Bill of Rights. Size 29⅞″ x 30⅞″.

Facsimile reproduction of the Declaration of Independence. Size 29½″ x 24″

Sheet of pictures of Signers of the Constitution. Size 29½″ x 24″.

Set of maps of Thirteen Original States—18 maps depicting the Thirteen Original States at the time of the formation of the Constitution, including Maine, Kentucky, and Tennessee, which were at that time portions of Massachusetts, Virginia, and North Carolina, respectively, and also two maps of the United States. Size each 20″ x 26″.

Map of New York City at the time of Washington's inauguration—with a large picture of George Washington taking the oath of office as first President. Also maps and itineraries of the routes followed by Washington and Adams from Mount Vernon, Va., and Braintree, Mass., to New York City for the inauguration. Size 20″ x 26″.

Book, Music associated with the Period of the Formation of the Constitution and the Inauguration of George Washington.

Book, music associated with the period of the formation of the Constitution and the inauguration of George Washington.

Music, "Gimme That Good Old Constitution."

Music sheet, Federal March.

Catalogue describing subjects of loan exhibit of portraits of the signers and deputies to the Convention of 1787 and signers of the Declaration of Independence, etc. (*see* p. 770).

Power of the People.

Fourth and Fifth Amendments to the Constitution of the United States, by Hon. Henry F. Ashurst.

Reproductions of portraits of George Washington by Gilbert Stuart and Charles Willson Peale. Size 21½″ x 27½″.

The Proclamation of the President, illuminated with pictures of signers of the Constitution, etc. Size 17″ x 23″.

Pageant, Our Constitution.

Pageant, From Many to One.

Certificate of participation (large). Size 17″ x 20″.

Certificate of participation (small). Size 8″ x 9¼″.

Boy Scout post card.

Official posters:

Reproduction of the painting, We the People, by Howard Chandler Christy. In three sizes, 15″ x 22½″, 20″ x 30″, 29″ x 43″.

Reproduction of the painting, The Signing of the Constitution, by Howard Chandler Christy. In three sizes, 12″ x 14½″, 24″ x 27″, 38″ x 42″.

Cut-out, display of colored cut-out figures of several of the delegates, signing the Constitution, reproduced from Christy painting, We the People. In three sizes, 22″ x 14½″, 29″ x 19¼″, 42¼″ x 27¾″.

Diorama of The Signing of the Constitution—colored shadow box display lithographed in eight colors. Size 37″ x 43″.

Replica of the Shrine of the Constitution in the Library of Congress.

Floor Standard Shrines of the Constitution.

Descriptive pamphlet on Floor Standard Shrines of the Constitution.

Descriptive pamphlet on Replica of the Shrine of the Constitution.

Sets of 75 broadsides (99 sheets) comprising photostatic reproductions of newspaper supplements, official acts, documents, etc., issued in connection with the ratification of the Constitution and the formation of the Government.

Table of broadsides (descriptive, *see* p. 603).

Set of pictures of signers of the Constitution. Size 11″ x 14″ each, in special envelope frame.

Descriptive list of pictures of signers of the Constitution.

Tree marker—copper, specially designed to mark permanently trees planted as a tribute to the Constitution.

Descriptive tree-marker pamphlet.

Program suggestions for September 17, 1937, the one hundred and fiftieth anniversary of the signing of the Constitution.

Program for March 4, 1939, the one hundred and fiftieth anniversary of the commencement of the First Congress of the United States under the Constitution.

Program for April 14, 1939, the one hundred and fiftieth anniversary of the notification by Charles Thomson of the election of George Washington as first President of the United States.

Pamphlet, High Courts of the World and their Powers (*see* p. 759).

WE THE PEOPLE

Theme painting of the Constitution Sesquicentennial Celebration, made by Howard Chandler Christy and reproduced as the official poster and in other forms by the Constitution Commission.

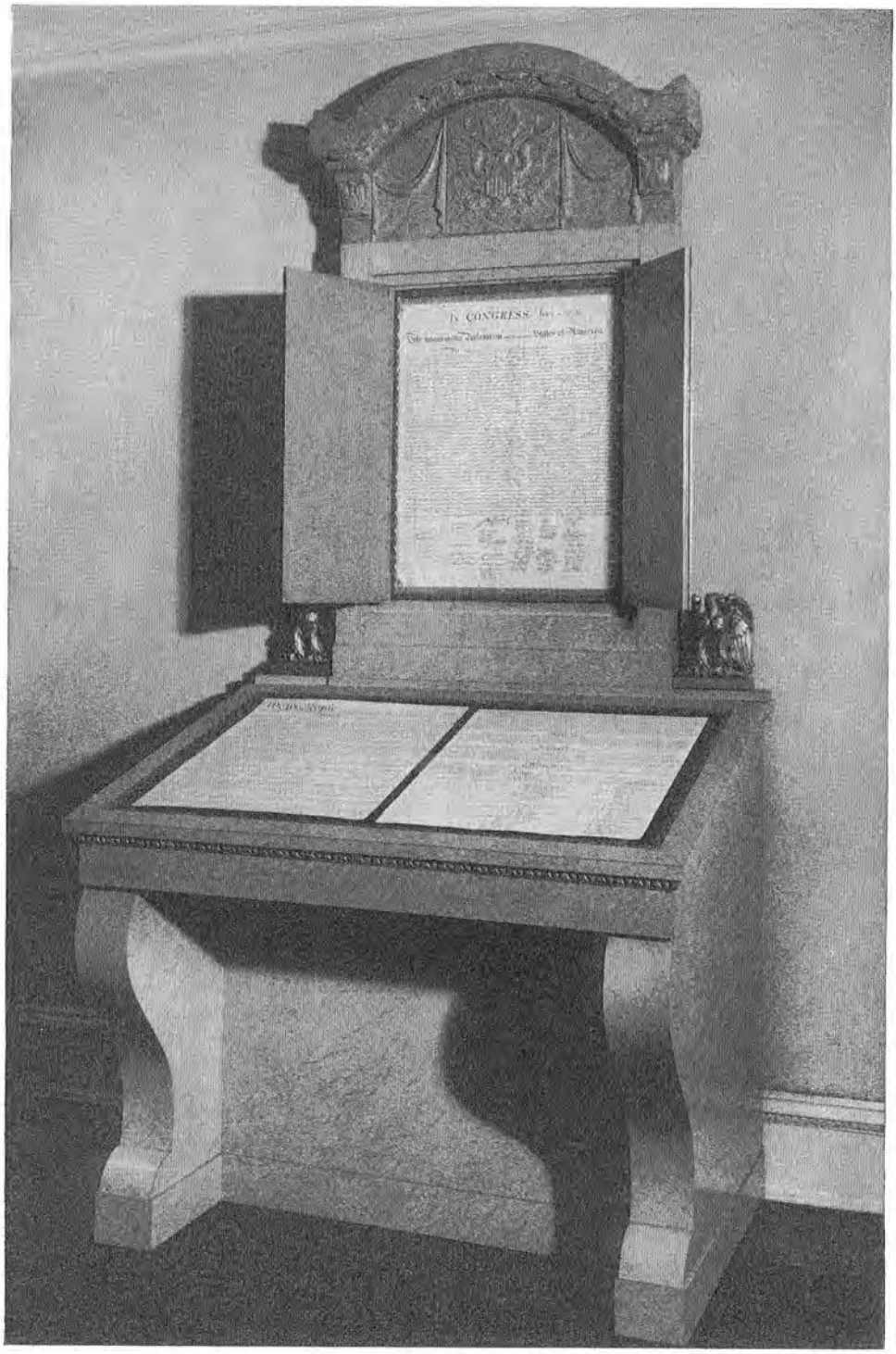
Sermon, Much Given—Much Required, by the Right Reverend James E. Freeman, D. D., LL. D., D. C. L., Bishop of Washington.
Pamphlet, The Man who engrossed the Constitution (*see* p. 761).
Speech, The Heart and Soul of the Constitution.
Pamphlet, Georgia and the Constitution.
Speech, The Constitution as the Safeguard of Liberty.
Speech, delivered by the President of the United States on the one hundred and fiftieth anniversary of the signing of the Constitution.
Speech, Constitutional Government, by Hon. William E. Borah.
Mimeographed data on Highlights in the Life of Charles Thomson.
Mimeographed data on the First Congress of the United States under the Constitution.
Pamphlet, Organization and Regulations of the Declamatory, Essay, and Oratorical Contests of the United States Constitution Sesquicentennial Commission.
Clip sheet on foreign stamps issued in commemoration of the one hundred and fiftieth anniversary of the formation of the Constitution.
Descriptive order sheet of commemorative items and publications.
Photographs of signers of the Constitution, etc., for window displays.
Bronze plaques of The Signing of the Constitution (We the People).
Plaster plaques of The Signing of the Constitution (We the People).
Booklet, George Washington the President—Triumphant Journey as President-elect—First Term of the First President.

NOTE.—The above list is all of historical constitutional material and gives the reader an idea of the tremendous amount of data assembled and distributed by the Commission and which, it is believed, covers every known subject on the Constitution.

SHRINE OF THE CONSTITUTION OF THE UNITED STATES

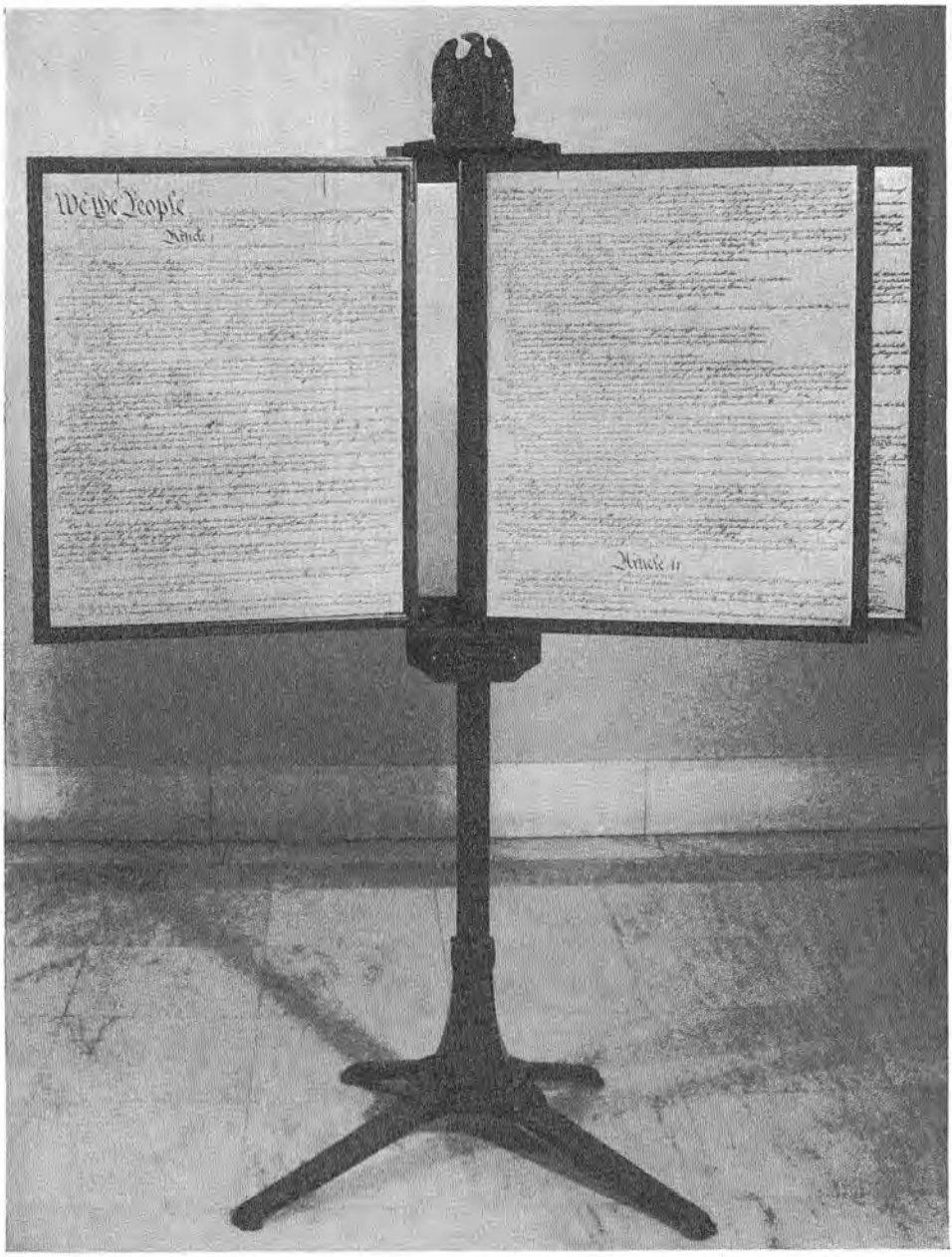
ONE OF the earliest projects of the Commission was to bring to every community in the United States actual facsimile reproductions of the four pages of the Constitution. Forty-one replicas of the shrine in the Library of Congress at Washington, where the original documents of the Constitution and Declaration of Independence are preserved, were constructed and distributed to key cities throughout the country. These replicas were most ingeniously manufactured with a formica veneer, giving the exact impression of the marble used in the original shrine in the Library of Congress. The replicas were manufactured by John C. Knipp and Sons, of Baltimore, Md.

A smaller shrine, consisting of swinging display frames, and placed on a steel floor standard, was also distributed by the Commission. It contained the four pages of the Constitution, the Declaration of Independence, and a sheet of pictures of the signers of the Constitution. Some 1,450 of these were sold to schools, churches, libraries, and other public gathering places. They were made by Seal, Inc., of Shelton, Conn.



REPLICA OF THE SHRINE OF THE CONSTITUTION

Replica of the Shrine of the Constitution in the Library of Congress, City of Washington. They were made of formica, giving the appearance of the original marble Shrine, and were manufactured by John C. Knipp & Sons, of Baltimore, Md. They contain the four pages of the Constitution in facsimile and a facsimile of the Declaration of Independence.



STANDARD SHRINE OF THE CONSTITUTION

Standard Shrine of the Constitution, distributed by the Commission, of steel, finished in bronze, with three swinging frames containing facsimiles of the four sheets of the Constitution, and the Declaration of Independence, and a sheet of pictures of Signers of the Constitution. They were made by Seal, Inc., of Shelton, Conn.

The facsimiles of the Constitution and the Declaration of Independence contained in these shrines are for the practical purpose of permitting close examination and reading of the text and signatures, in many ways clearer in the replicas than in the original documents, which are somewhat faded.

THE STORY OF THE CONSTITUTION

The Story of the Constitution, the chief publication of the Commission during the celebration, contained 192 pages, and was, as its name indicates, a story based upon profound historical scholarship and authoritative value. It explained the origins of our country and what the steps were that led up to the formation of the Constitution. It told what the Constitution stands for, its principles and the means by which it operates. In addition to a wealth of historical data, it contained the text of the Constitution, the Declaration of Independence, Washington's Farewell Address and also an alphabetical analysis. This work has been incorporated in the present volume.

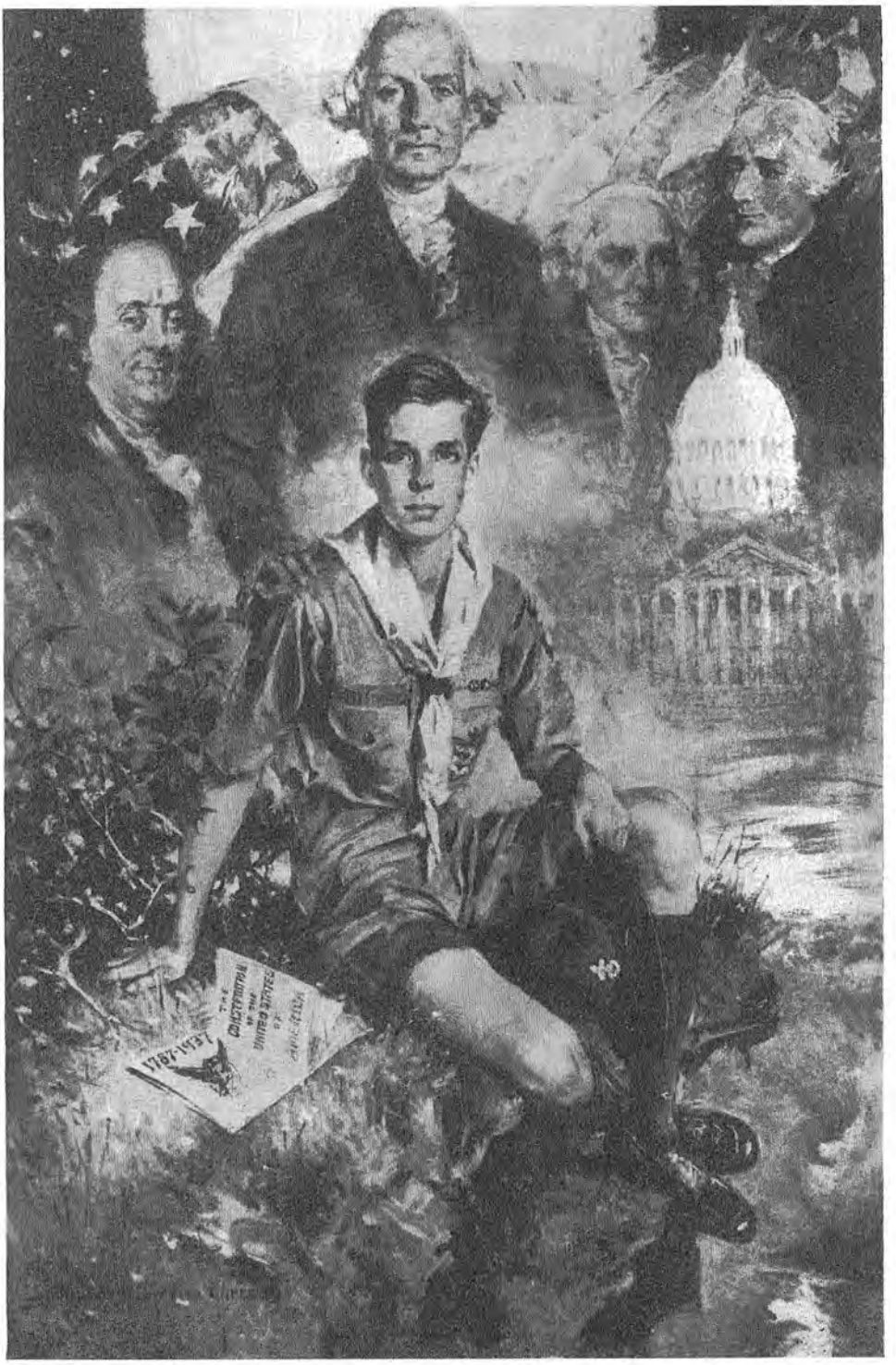
Copies of this book were placed in special bindings on trains throughout the country and on boats and ocean liners. It was placed on sale for a nominal sum to assist in defraying cost of publication and was made available in drug stores, five-and-ten cent stores, and book stores everywhere. *The Story of the Constitution* became a standard text in many schools and colleges, and hundreds of thousands of copies were sold and otherwise distributed.

BOY SCOUTS

THE BOY SCOUTS of America held their first National Jamboree in Washington during July 1937. To connect the event with the Sesquicentennial and to emphasize the importance of a knowledge of the Constitution in the training of future citizens, Howard Chandler Christy painted the picture, "The Boy Scout," for the Commission, which, reproduced as a post card, was distributed by many thousands during the encampment. In addition, a special edition of *The Story of the Constitution* was prepared, containing the Certificate of Patriotic Participation, and a copy was presented to each scout who attended the Jamboree.

SESQUICENTENNIAL HISTORICAL LOAN EXHIBIT

OF SPECIAL INTEREST to the Director General was his plan of holding a loan exhibit of original portraits of the signers of the Constitution, other deputies to the Philadelphia Convention of 1787, signers of the



THE BOY SCOUT

Painting by Howard Chandler Christy for the Boy Scout National Jamboree, 1937.

Declaration of Independence, and their families and associates. This project was a logical development of the program for the study of the Constitution and the events and people connected with its formation and establishment. Necessarily, it was an activity which, from the nature of things, could not be taken to the people in their own homes and communities.

The Art Exhibit which was held in the Corcoran Gallery of Art, Washington, D. C., from November 27, 1937, to February 1, 1938, and then extended by popular demand for another month, was given commodious and attractive housing through the board of trustees of the institution. A distinguished portrait committee of the Sesquicentennial Commission was appointed, with Mrs. McCook Knox as chairman, who, a few years previously had served with distinction in a similar capacity as chairman of the George Washington Bicentennial Historical Loan Exhibit held in the same gallery in the City of Washington.

On previous occasions, notably during the Centennial Celebration of the Inauguration of George Washington as First President of the United States in 1889, and the George Washington Bicentennial Celebration in 1932, exhibits of portraits of George Washington were held, to which portraits of many of his associates were added. However, the Sesquicentennial Exhibit was unique in that it included a large group of persons in various important ways associated in the formation of our Government. It included nearly all of the men who, by their wisdom, courage and foresight, left a political heritage unequaled in all the annals of history; and it was, therefore, particularly fitting that their portraits were assembled during the celebration of the one hundred fiftieth year of their work.

The exhibit was the result of over a year's painstaking work by the Portrait Committee and the Commission's staff. The Commission acknowledges its gratitude and expresses its deep appreciation to the many individuals, museums, historical societies, and patriotic organizations who loaned portraits, and to the members of the Portrait Committee for their invaluable assistance and cooperation. The Commission is especially indebted to Mrs. McCook Knox, chairman of the Portrait Committee, for her time and indefatigable efforts. The Portrait Committee and its chairman served without remuneration. The Commission also tenders its thanks for the invaluable assistance given by Mr. John Hill Morgan, member of the Portrait Committee from New York, Mr. David M. Matteson, the Commission's Historian, who prepared the biographical notes for the exhibit catalogue, and to Mr. Winant Johnston and Mr.

Owen Kane of the Commission's staff for their valuable work in preparing for the exhibit.

The Commission also expresses its gratitude to the director and trustees of the Corcoran Gallery of Art for their hospitality in placing the pictures where they might be seen by the public under the most favorable conditions. It is desired here to record special appreciation to Mr. C. Powell Minnigerode, Director of the Corcoran Gallery of Art, for his unfailing interest and helpfulness in arranging and caring for this loan exhibit of priceless portraits.

OFFICIAL CONSTITUTION SESQUICENTENNIAL MEDALS

ONE OF the outstanding observances of the one hundred fiftieth anniversary period was the striking of the official Constitution Sesquicentennial Medals. The designs for these medals were created by Sol Bloom, Director General, with the Bailey, Banks & Biddle Company, of Philadelphia. Two medals were made. The larger is based on a section of the famous painting by Howard Chandler Christy, entitled "We The People," which served as the theme painting of the celebration. The reverse of this medal shows the Capitol Building in the City of Washington, with an arch above formed of the seals of the thirteen original states. Below is the seal of the United States, flanked on the left by Carpenters' Hall and on the right by Independence Hall in Philadelphia.

The badge medal has been acclaimed as the most beautiful of its kind ever designed. In the center of the obverse side is the seal of the United States, encircled by the words, "United States Constitution Sesquicentennial Commission—1787–1937." Fitted into the fluted edges of the medal is an endless triple chain or ribbon on which are inscribed the names of the forty-eight states, and the territories and possessions of the United States. Exquisitely modeled on the reverse side, and encircling a view of Independence Hall, are busts of Washington, Hamilton, Madison, Morris and Pinckney, men who took leading roles in the formation of the Constitution at Philadelphia in 1787.

REPRODUCTION OF OLD MAPS OF THE THIRTEEN ORIGINAL STATES

THROUGH the cooperation and expert assistance of Colonel Lawrence Martin, Chief of the Division of Maps, Library of Congress, the Commission was enabled to issue a set of eighteen reproductions of

OFFICIAL CONSTITUTION SESQUICENTENNIAL MEDAL (OBVERSE)

old maps; for besides those of the thirteen original states at the time of the formation of the Constitution, maps of Maine, Kentucky, Tennessee (former portions of Massachusetts, Virginia, and North Carolina, respectively) are included, as well as two maps of the United States of that period.

An additional map was issued to commemorate the one hundred and fiftieth anniversary of the inauguration of George Washington as the first President of the United States. This map included New York City at the time of Washington's inauguration and also small itinerary maps showing the routes taken by Washington and Adams from Mt. Vernon, Va., and Braintree, Mass., to New York. A reproduction was also included of an old print of the inauguration ceremony which had been used during the Centennial Celebration, fifty years before.

These maps were among the many publications issued by the Commission that proved especially popular in schools, colleges, and historical societies, as well as libraries throughout the country.

OFFICIAL CONSTITUTION SESQUICENTENNIAL MEDAL (REVERSE)

BROADSIDES

SEVERAL months were spent by Dr. Clarence R. Williams of the historical staff in preparing and arranging for the reproduction of broadsides relating to the ratification of the Constitution and the formation of our government. These were gathered from the originals in the archives of our foremost historical societies and large libraries. Seventy-five complete documents, comprising ninety-nine sheets, were made available in photostatic reproductions. They are of profound interest. From the originals, the men of that day learned of the arguments for and against the Constitution, of the progress of ratification by the states, of celebrations in honor of the success of the Constitution, and of their duties as citizens in electing representatives for the First Congress under the Constitution.

Sets of these broadsides were made available to schools, colleges, libraries, and historical societies throughout the country. The following list describes the broadsides included in the set issued by the Commission.

OFFICIAL CONSTITUTION SESQUICENTENNIAL BADGE MEDAL

TABLE OF BROADSIDES

NEW HAMPSHIRE

1. 1787, ? The Constitution of the United States as recommended to Congress the 17th of September, 1787, by the *Grand Federal Convention.*
   Portsmouth: Printed and sold by John Melcher, at his office in Market-Street. (Price Seven Pence).
   From the Boston Public Library. Evans 20796.*

2. 1788, Nov. 12. Act of the New Hampshire Legislature for the election of Representatives and Electors. (2 pp.) [This copy is addressed to the town of Wolfborough, N. H.]
   From the New Hampshire Historical Society.

MASSACHUSETTS

3. 1788, Nov. 19. Act of the Massachusetts Legislature for the election of Representatives and Electors.
   Boston: Printed by Adams & Nourse,
   Printers to the Honorable General Court.
   From the Library of Congress. Evans 21240.

4. 1789, April 10. Notice to the Town of Northampton to vote for a Representative. [With pen signature of John Hancock.]
   From the Library of Congress.

5. 1789, ? Memorial presented to Congress by the Massachusetts officers of the Continental Army, asking for justice. [Signed by B. Lincoln.]
   From the Library of Congress.

6. 1790, Feb. 24. Report of the Committee of both Houses of the Massachusetts Legislature appointed to consider further Amendments in the Constitution of the United States. (3pp.)
   Boston: Printed by Thomas Adams.
   From the Boston Public Library. Evans 22655.

7. 1790, June 14. Resolve of the Massachusetts Legislature concerning the election of Representatives. [Addressed to the selectmen of Weymouth.]
   Boston: Printed by Thomas Adams.
   From the Boston Public Library.

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*Number given by Charles Evans in his *American Bibliography.*

NOTE.—Where not otherwise indicated, each broadside consists of one page, with the exception of a few small broadsides, two of which are reproduced on the same sheet. These latter are Nos. 10 and 18, 26 and 28, 29 and 32, 37 and 38, 58 and 59, and 61 and 63.

RHODE ISLAND

8. 1788. In General Assembly, February Session.
Act allowing Town-Meetings to vote on ratification on the fourth Monday in March, 1788.
Providence: Printed by Bennett Wheeler.
From the Library of Congress. Evans 21430.

9. 1788. In General Assembly, October Session.
Voted and Resolved, That the Secretary forthwith cause to be printed a sufficient number of copies of Governor Clinton's Letter with the Amendments proposed by the Convention of the State of New-York, and transmit one as soon as possible to each Town-Clerk, that these may be considered in Town-Meeting and the Voters determine whether they wish Delegates appointed to meet in Convention with those of the State of New-York and such other States as shall appoint the same. (3pp. on folded sheet).
[Providence:] Printed by Bennett Wheeler.
From the Library of Congress. Evans 21431.

10. 1789. In General Assembly, September Session.
Act relative to a Convention in this State. [Towns should instruct their representatives in the state legislature regarding their wishes.]
[Providence:] Printed by J. Carter.
From the Library of Congress. Evans 22109.

11. 1789. In General Assembly, October Session.
Voted and Resolved, That the Secretary be directed to cause to be printed One Hundred and Fifty Copies of the Amendments to the new Constitution as agreed to by Congress . . . to be laid before the Freemen of the Town-Meetings to be holden on Monday next, agreeably to a former Resolve of this Assembly for their Consideration. [The proposed amendments are printed above this resolution.]
[Providence:] Printed by Bennett Wheeler.
From the Library of Congress. Evans 22202.

12. 1790. In General Assembly, January Session.
Act calling for a Convention to take into consideration the Constitution proposed for the United States.
[Providence:] Printed by J. Carter.
From the Rhode Island Historical Society. Evans 22840.

13. 1790, March 6. The Bill of Rights and Amendments to the Constitution as agreed upon by the Rhode Island convention at South Kingston.
[Newport: Printed by Peter Edes.]
From the N. Y. Public Library. Evans 22845.

14. 1790, May 29. Ratification of the Constitution by the Rhode Island convention with Declaration of Rights and proposed amendments.
[Newport: Printed by Peter Edes.]
From the Rhode Island Historical Society. Evans 22848.

15. 1790, May 31. Providence broadside announcing Rhode Island ratifies the Constitution.
[Providence]: Printed by J. Carter.
From the Rhode Island Historical Society. Evans 22847.

16. 1790, June 14. Proclamation of Governor Arthur Fenner, calling upon State officials to take the oath to support the Constitution.
Providence: Printed by John Carter.
From the Rhode Island Historical Society. Evans 22844.

17. 1790. In General Assembly, June Session.
Act prescribing the mode of electing Senators and a Representative.
[Providence:] Printed by J. Carter.
From the Rhode Island Historical Society. Evans 22841.

18. 1790. In General Assembly, September Session.
Resolve for electing a Representative (for the Second Congress) on the third Monday in October.
[Providence:] Printed by J. Carter.
From the Rhode Island Historical Society. Evans 22843.

CONNECTICUT

19. 1787, Oct. 31. The Constitution of the United States.
New Haven: Printed by Josiah Meigs.
From the Connecticut State Library. Evans 20795.

20. 1788, October. Act directing the nomination and election of Representatives.
[New Haven: Printed by T. and S. Green.]
From the Connecticut Historical Society. Evans 21017.

NEW YORK

21. 1787, Oct. 24. Letters of "Centinel" Nos. I and II and of "Timoleon." [A New York printing.] (2 pp.)
From the Library of Congress.

22. 1788, Jan. 31. Act calling a ratifying convention for New York.
From the New York State Library.

23. 1788, March 15. To the Independent Electors of the City and County of Albany. [Nomination of Federalist candidates for the ratifying convention and the legislature of New York.]
[Albany:] Printed by Charles R. Webster.
From the New York State Library.

24. 1788, April 2. Once more—for the—LIBERTIES of the People of America. The present *Election* is important,—It may give *Peace* or *War* to the people of this state and perhaps to the union.—The sons of liberty. . . invite all, who wish for the peace, liberty, and honor of the state, to vote for the following nominations, as members of the *legislature*, being men who have uniformly manifested their attachment to the *liberties* of *America*.
From the Library of Congress. Evans 21350.

24a 1788, April ?. Circular letter from an Albany committee opposing the Constitution without amendments and naming Antifederal candidates for the ratifying convention and the state legislature. Signed for the committee by Jer. Van Rensselaer, Chairman, and Mat. Visscher, Clerk.
From the State Historical Society of Wisconsin.

25. 1788, April 21. To the Inhabitants of King's County by "A Flatbush Farmer." [A reply to "A King's County Farmer," in Dutch, which was itself a reply to "A Flatbush Farmer" of March 23, 1788.] (2 pp. on both sides of the sheet.)
New York: Printed by Francis Childs.
From the Library of Congress. Evans 21502.

26. 1788, April 28. To the Inhabitants of King's County by a "A Flatbush Farmer." [A reply to "A King's County Farmer" of April 26, 1788.]
New York: Printed by Francis Childs.
From the New York Public Library.

27. 1788, April 28. To the Independent Electors of the City of New-York by "Many Federalists." [Argues that New York should ratify. Signed by John Jay, Alexander Hamilton, R. C. Livingston, Isaac Roosevelt, and others.]
From the Library of Congress. Evans 21501.

28. 1788, April 29. To the Citizens of New-York by "One and All." [A reply to "Many Federalists."]
From the Library of Congress. Evans 21500.

29. 1788, April 30. To the Citizens of New-York by "One of Yourselves."
From the New York Public Library.

30. 1788, ? Extract from an Address to the People of the State of New-York on the subject of the Federal Constitution. [By John Jay.]
From the Library of Congress. Compare Evans 21175.

31. 1788, July 2. Supplement to the *Independent Journal,* New York, July 2, 1788. "In our Independent Journal of this Morning, we announced the Ratification of the New Constitution by the Convention of Virginia: For the gratification of our Readers, we publish the following particulars, received by this day's post:—"
New York: Printed by J. and A. McLean.
From the New York Public Library.

32. 1788, July 2. Poghkeepsie, [sic] July 2d, 1788. Just arrived by express, the ratification of the New Constitution by the Convention of the State of Virginia, on Wednesday, the 25th of June, by a majority of 10.
From the New York Public Library.

33. 1788, July 23. Order of Procession, in Honor of the Constitution of the United States. By Order of the Committee of Arrangements, Richard Platt, Chairman.
From the New York Historical Society.

34. 1788, July 23. Ode for the Federal Procession, upon the Adoption of the New Government. Composed by Mr. L * *. [Samuel Low.]
From the New York Historical Society.

35. 1788, July 28. Supplement Extraordinary to the *Independent Journal.* Monday, July 28, 1788. "On Saturday evening about 9 o'clock arrived the joyful tidings of the adoption of the New Constitution, at Poughkeepsie, on Friday, July 25."
New York: Printed by J. and A. McLean.
From the New York Historical Society.

36. 1789, Jan. 27. An Act Directing the Times, Places and Manner of electing Representatives in this State, for the House of Representatives of the Congress of the United States of America. (2 pp.)
Albany: Printed by Samuel and John Loudon, Printers to the State. M,DCCLXXXIX.
From the New York State Library.

37. 1789, March 4. New York preserved, or the Plot discovered. Election card signed by "One and All."
From the Library of Congress. Evans 21329.

38. 1789, March 4. Election card urging votes for Mr. John Lawrence signed "A Federal Elector."
From the Library of Congress.

NEW JERSEY

39. 1788, June 5. Trenton broadside announcing that South Carolina has ratified.
Trenton: Printed by Quequelle & Wilson.
From the New York Public Library. Evans 21469.

40. 1789, April 21. A Sonata, Sung by a Number of young Girls, dressed in white and decked with Wreaths and Chaplets of Flowers, holding Baskets of Flowers in their Hands, as General Washington passed under the Triumphal Arch raised on the Bridge at Trenton, April 21, 1789.
From the Library of Congress.

40a 1789, ? TAKE CARE by "A Friend to New-Jersey." [Relating to the election of New Jersey's first representatives to Congress.]
From The Huntington Library, San Marino, California. *Reproduced by permission.*

PENNSYLVANIA

41. 1787, Sept. 23. Friends, Countrymen and Fellow Citizens: by "A Constitutional Mechanic." [Replies to "Friends of Equal Liberty" and argues against the Pennsylvania minority.]
[Philadelphia: Eleazer Oswald.]
From the Library of Congress.

42. 1787, Sept. 29. An Address of the Subscribers Members of the late House of Representatives of the Commonwealth of Pennsylvania to their Constituents. [Signed with the names of sixteen of the Pennsylvania Minority.] (3 pp. on folded sheet.)
From the Library of Congress.

43. 1787, Sept. 29. Eine Addresse der Endsunterschriebenen, Glieder des letztern Hauses der Representanten der Republik Pennsylvanien, an ihre Constituenten. [No. 42 in German.]
From the New York Public Library. Evans 20622.

44. 1787, October. To the People of Pennsylvania, by "Centinel." [Probably by Samuel Bryan. Critical of the Constitution. Printed in the *Independent Gazetteer* of Philadelphia, October 5, 1787. This is No. I.]
[Philadelphia: Printed by F. Bailey.]
From the Historical Society of Pennsylvania. Evans 20248.

45. 1787, October. Centinel, No. II. To the People of Pennsylvania. (2 pp.)
[Philadelphia: Printed by F. Bailey.]
From the New York Public Library. Evans 20249.

46. 1787, Oct. 29. From the *Independent Gazetteer* by "An Old Whig." [Old Whig No. IV, beginning, "This is certainly a very important crisis."]
Philadelphia: Printed by Eleazer Oswald, at the Coffee-House.
From the New York Public Library. Evans 20379.

47. 1787, Nov. 1. From the *Independent Gazetteer* by "An Old Whig." [Old Whig No. V, which discusses the need of a Bill of Rights.]
Philadelphia: Printed by Eleazer Oswald, at the Coffee-House.
From the New York Public Library. Evans 20380.

48. 1787, November. To the Citizens of Philadelphia by "An Officer of the Late Continental Army" [William Findley]. "The important day is drawing near." [Reprinted from the *Independent Gazetteer*, November 6, 1787.]
[Philadelphia: Printed by Eleazer Oswald.]
From the New York Public Library. Evans 20358.

49. 1787, Dec. 12. The Address and Reasons of Dissent of the Minority of the Convention, of the State of Pennsylvania, to their Constituents. (3 pp.)
Philadelphia: Printed by E. Oswald, at the Coffee-House.
From the Library of Congress. Evans 20618.

50. 1788, July 4. Order of Procession, In honor of the Establishment of the Constitution of the United States. [Signed] Francis Hopkinson, Chairman.
Philadelphia: Printed by Hall and Sellers.
From the Library of Congress. Evans 21386.

51. 1788, July 4. An Ode for the Federal Procession by Francis Hopkinson.
[Philadelphia:] Printed by M. Cary.
From the Library of Congress. Cf. Evans 21151.

MARYLAND

52. 1788, May. To the People of Maryland. [The plea of the Maryland Minority and the amendments they favored.] (3 pp. on folded sheet.)
From the Library of Congress.

VIRGINIA

53. 1786, Nov. 23. An Act for appointing Deputies from this Commonwealth to a Convention proposed to be held in the City of Philadelphia in May next, for the purpose of Revising the Fœderal Constitution.
[Richmond: Printed by John Dunlap and James Hayes.]
From the Library of Congress. Evans 20101.

54. 1787, Oct. 25. In the House of Delegates, Thursday, the 25th of October, 1787. Agreed to by the Senate, October 31. [A resolve that the proceedings of the Federal Convention be submitted to a ratifying convention.]
[Richmond: Printed by Dixon and Holt.]
From the New York Public Library. Evans 20839.

55. 1787, Dec. 12. Act providing for the payments of the members of the Virginia ratifying convention.
From the Library of Congress. Evans 20842.

56. 1788, June 25. In Convention. [Ratification by Virginia including the text of the Constitution.] (3 pp. on folded sheet.)
Richmond: Printed by Augustine Davis, Printer to the Honorable Convention.
From the Library of Congress. Evans 21552.

57. 1788, June 25 & 27. In Convention. [Ratification with proposed amendments] Proceedings from the Journal. (4 pp. on folded sheet.)
Richmond: Printed by Augustine Davis, Printer to the Honorable Convention.
From the Library of Congress. Evans 21553.

58. 1788, Nov. 20. Resolve of the Virginia Legislature that Congress be petitioned to call a Second General Convention to consider and report amendments to the Constitution.
From the Library of Congress.

59. 1788, Nov. 20. Accompanying invitation to the other states to cooperate with Virginia in asking Congress to call a Second General Convention to consider and report amendments to the Constitution.
From the Library of Congress.

60. 1788, ? Arthur Lee election broadside offering himself as a candidate for Representative in the First Congress of the United States.
Fredericksburg: Printed by T. Green & Comp. near the Post-Office.
From the Library of the University of Virginia.

NORTH CAROLINA

61. 1787, Jan. 6. Act for appointing deputies to the Philadelphia Constitutional Convention of 1787, with names of those delegates who were elected.
From the New York Public Library.

62. 1787, Aug. 1, 2. Declaration of Rights and Amendments proposed by the first North Carolina ratifying convention. (4 pp. on folded sheet.)
[Hillsborough: Printed by Robert Ferguson.]
From the Historical Society of Pennsylvania (p. 1) and the Library of Congress (pp. 2, 3, 4). Evans 21341.

63. 1789, Nov. 23. Resolution of the second North Carolina ratifying convention instructing the Representatives of North Carolina in Congress to apply for specified amendments to the Constitution.
[Edenton: Printed by Hodge and Wills.]
From the New York Public Library. Evans 22039.

SOUTH CAROLINA

64. 1788, Nov. 22. To the Citizens of Charleston District. [An election broadside by William Smith defending himself against the charge of his opponent, David Ramsay, that he had not been in the United States seven years and therefore was not qualified to run for representative.]
From the Library of Congress.

CONGRESS OF THE CONFEDERATION

65. 1787, Sept. 28. Congress, having received the report of the Convention lately assembled at Philadelphia, resolves unanimously to transmit it to the States. [Signed] Charles Thomson, Secretary.
Philadelphia: Printed by Dunlap and Claypoole.
From the Library of Congress. Perhaps Evans 20790.

66. 1788, July 8. The Committee . . . to whom were referred the Ratifications of the New Constitution which have been transmitted to Congress by the several ratifying States, report as follows:
From the Library of Congress. Evans 21520.

67. 1788, Sept. 13. Resolution of Congress providing for the setting up of the Government under the Constitution. [With the pen signature of Chas. Thomson, Secy.]
From the New York Public Library. Evans 21518.

CONGRESS UNDER THE CONSTITUTION

68. 1789, April 29. Order of ceremony at the inauguration of Washington as the first President of the United States, as arranged by the committees of Congress.
From the Library of Congress.

68a. 1789, April 30. Speech of his Excellency the President of the United States to both Houses of Congress. [Washington's first inaugural address.]
[Albany:] Printed by C. R. and G. Webster.
From The Huntington Library, San Marino, California. *Reproduced by permission.*
Evans 22212.

69. 1789, June 27. An Act to establish an Executive Department to be denominated the Department of War.
New York: Printed by Thomas Greenleaf.
From Library of Congress. Cf. Evans 22194.

70. 1789, July 28. Report of a committee of the House of Representatives on proposed amendments to the Constitution. (2pp.)
New York: Printed by Thomas Greenleaf.
From the Library of Congress. Evans 22200.

71. 1789, Aug. 24. Seventeen amendments to the Constitution passed by the House and referred to the Senate. (3pp.)
New York: Printed by T. Greenleaf, near the Coffee-House.
From the Library of Congress. Evans 22201.

72. 1789, Sept. 29. An Act making Appropriations for the service of the present Year. An Act to recognize and adapt to the Constitution of the United States the establishment of the troops. An Act to regulate Processes in the Courts of the United States. (2pp. on both sides.)
From the William L. Clements Library, University of Michigan.

73. 1789, Dec. 7. Petition that the residence of Congress be on the Potomac issued by a committee of residents of Alexandria and Georgetown.
[Alexandria: Printed by Hanson and Bond.]
From the Library of Congress. Evans 21637.

74. 1790, June 2. News broadside announcing the House has voted the next session of Congress be held in Philadelphia and that Rhode Island has ratified the Constitution.
[Philadelphia:] Printed by Dunlap and Claypoole.
From the N. Y. Public Library. Evans 22986.

75. 1794, Jan. 15. City of Washington. Articles of Agreement for the purpose of raising and investing a Capital in Lots of Building in the said City. [James Greenleaf.]
From the Pa. State Library. Evans 27068.

SPECIAL COMMEMORATIVE POSTAGE STAMPS

THREE special postage stamps were issued by the United States Government during the celebration, commemorating the Signing of the Constitution, its Ratification by the Ninth State, New Hampshire (which made it binding upon the states which had previously ratified), and the Inauguration of George Washington as First President of the United States. Each stamp was 3-cent denomination, used for carrying letter mail.

The first was placed on sale at Philadelphia, on September 17, 1937, the 150th Anniversary of the Signing of the Constitution in that city, and reproduced, in bright red-violet, the painting of that great event by Junius Brutus Stearns. Eight hundred eighty thousand one hundred stamps were sold on the first day, and 281,478 "first-day" covers were canceled. The issue was made available in all other postoffices throughout the country on the following day.

The second, placed on first-day sale on June 21, 1938, also at Philadelphia, depicted two horsemen, one mounting, and the other galloping away, spreading the news that the Constitution had become effective through its ratification by New Hampshire, the ninth state to ratify. This stamp was of a deep violet color. Three hundred ninety-five thousand eight hundred ninety-two stamps were sold on the first day of issuance and 232,873 covers were canceled.

The third, a bright red-violet, was first placed on sale in New York City on April 30, 1939, and depicted Washington on the balcony of Federal Hall, in New York City, taking the oath of office as First President of the United States. The design was taken from the painting by Alonzo Chappel. First day sales amounted to 803,955 stamps, with 395,644 covers canceled.

Altogether, more than two hundred and sixty million of these stamps were printed at the Bureau of Engraving and Printing; during the celebration they carried their patriotic message throughout the land, calling the attention of people everywhere to the historic events they commemorated.

Receipts from first-day sales were estimated in excess of $62,000. Most of these were bought by collectors and never actually put into use, therefore representing a large percentage of profit to the Post Office Department.

It is, of course, impossible to determine how many of these stamps sold during the celebration period were for collection purposes, but it has been estimated as more than sufficient to defray the entire costs of the celebration.

FOREIGN POSTAGE STAMPS ISSUED IN HONOR OF THE CONSTITUTION

DURING the celebration, a unique honor was paid the United States when fifteen nations joined in the observance by issuing sets of beautiful postage stamps commemorating the establishment of our government under the Constitution. Such special sets of stamps were issued by the following countries:

Brazil	France	Nicaragua
China	Guatemala	Panama
Dominican Republic	Haiti	Poland
Ecuador	Honduras	Spain
El Salvador	Ireland	Turkey

VISIT OF THE KING AND QUEEN OF GREAT BRITAIN

DURING the celebration period, their Britannic Majesties, King George VI and Queen Elizabeth, visited the United States. They were met at the Union Station in Washington by the President and Mrs. Franklin D. Roosevelt, and, during their stay in Washington, on June 9, 1939, attended a congressional reception given in their honor in the rotunda of the Capitol, where the members of the Senate and the House of Representatives met their Majesties.

MAGNA CARTA

THROUGH the efforts of Representative Sol Bloom, Director General of the Commission, the British Government and Lincoln Cathedral agreed to send to the United States for exhibit, one of the four extant copies of Magna Carta. This early document of human rights had been wrested from King John by the barons of England at Runnymede in 1215, almost three hundred years before Columbus discovered America and nearly six hundred years before our Constitution was written. This copy, in a splendid state of preservation, was placed on exhibit in Magna Carta Hall at the New York World's Fair. Between the 1939 and 1940 seasons of the World's Fair, it was brought to Washington and placed in the Library of Congress, in close proximity to those later and greater documents of human liberty, the Declaration of Independence and the Constitution of the United States (for texts of these documents, *see* pp. 511, 529, 541).

MASONIC TRIBUTE

AMONG the many societies that participated in the celebration of the Sesquicentennial, the Masons were especially interested and active. Not only was this the case with respect to the special observances of

VISIT OF THE KING AND QUEEN AT THE CAPITOL

Their Britannic Majesties, King George VI and Queen Elizabeth, being escorted down the steps of the East Front of the Capitol, Washington, D. C., by (left to right) Representative Sol Bloom, Senator Key Pittman, Senator Alben W. Barkley, and Senator Charles L. McNary.

the order, but also, through the care and skill of Colonel John H. Cowles, Sovereign Grand Commander of the Supreme Council 33° of the Ancient and Accepted Scottish Rite, and with the particular interest and encouragement of Director General Bloom of the Commission, a Masonic Tribute to the Constitution and the Inauguration of George Washington as First President of the United States was issued. This took the form of a pamphlet of many illustrations and much historical letterpress commemorating the prominent share which Masons, led by George Washington himself, have had in the one hundred fifty years of our national existence, Masonic membership being claimed for various Signers of both the Declaration of Independence and the Constitution, as well as Presidents, Justices, of the Supreme Court, Cabinet officers, and others who have been leaders in American history.

PRINCIPAL EVENTS OF THE CELEBRATION PERIOD

ALTHOUGH many different historic events connected with the formation and establishment of the Constitution were celebrated, the observance period itself was divided into five major parts, commemorating the following principal events relating to the Constitution and the establishment of the three branches of our government under it:

1. The Signing of the Constitution
2. Ratification of the Constitution by the States
3. Meeting of the First Congress under the Constitution (establishment of the legislative branch of the government)
4. Washington's Inauguration as First President of the United States (establishment of the executive branch of the government)
5. First meeting of the Supreme Court of the United States (establishment of the third branch of our government, the judiciary)

In the pages that follow, are given the principal addresses and the proceedings held in commemoration of these five major phases. The first event to be commemorated, that of the Signing of the Constitution, was observed on September 17, 1937, with ceremonies held at the tomb of Washington at Mount Vernon. Later that day services were held at the exact hour the Constitution was signed, at the Shrine of the Constitution in the Library of Congress in Washington. During the same evening, President Franklin D. Roosevelt delivered an address from the Sylvan Theater at the Washington

Monument grounds in Washington. These addresses and ceremonies were broadcast over national radio networks. During the day, local committees placed wreathes upon all graves which could be located of deputies to the Philadelphia Convention of 1787.

The next principal event to be observed by the Commission was the ratification of the Constitution by New Hampshire, the ninth state to ratify and whose action established the Constitution as the basis of government for those states which had already accepted it.

Included in this report are the official proceedings of the Joint Session of the Congress held on March 4, 1939, in commemoration of the first meeting of the Congress under the Constitution, 150 years before.

The proceedings held at Mount Vernon, on April 14, 1939, in commemoration of George Washington's notification by Charles Thomson, secretary of the Continental Congress, of his election as first President of the United States, are also included. They are followed by an account of the ceremonies and the addresses delivered on April 30, 1939, celebrating the 150th Anniversary of Washington's Inauguration. These ceremonies were held at the New York World's Fair, which had been dedicated to the observance of that anniversary.

The last phase of the celebration took place when the First Meeting of the Supreme Court of the United States was commemorated on February 1, 1940, That date was marked by simple but impressive ceremonies at the Supreme Court and by addresses delivered in the Senate and House of Representatives. Arrangements were also made to honor all deceased members of the Supreme Court by placing wreathes on their graves.

Commemoration of the Signing of the Constitution

ADDRESS OF HONORABLE SOL BLOOM

DIRECTOR GENERAL, UNITED STATES CONSTITUTION SESQUICENTENNIAL COMMISSION, AT MOUNT VERNON, FRIDAY, SEPTEMBER 17, 1937, IN LAYING A WREATH UPON THE SARCOPHAGUS OF GEORGE WASHINGTON

HERE, upon the mortal remains of God's great servant, we deposit a wreath as a token of the gratitude and love of the American people on the 150th anniversary of the day when Washington signed the Constitution of the United States.

On September 17, 1787, the Victor of the Revolution affixed his signature to the ordinance by which We the People of the United States enjoy our liberty.

The Constitution which bears the signature of Washington confirmed and made perpetual the liberty which we had won by the sword. Until that Constitution was established, the outcome of his toils and dangers was uncertain. Upon its establishment, the independence of the United States and the liberty of the American people became secure forever.

We may be sure that Washington looked upon the signing of the Constitution as the crowning act of his life. He was giving to his countrymen, if they would ratify and preserve it, a government destined to flourish for all time—a government established by the people themselves, uniting them in an indestructible union to preserve the blessings of liberty for themselves and their posterity.

At this hour, in many states, grateful citizens are laying wreaths upon the graves of those patriots who shared with Washington the labor of forming the Constitution. Happy the memory of these founders of the American Union! Happy their fortune to have been associated in immortal toil with one of God's immortals! Here, at America's holiest spot, from the tomb of Washington, we send salutations in his behalf to his fellow deputies of the constitutional

SERVICES AT THE TOMB OF WASHINGTON

Ceremonies at Tomb of Washington, Mount Vernon, Va., September 17, 1937. The Rt. Rev. James E. Freeman, Bishop of Washington, Hon. Sol Bloom, Gen. S. Gardner Waller, Adjutant General of Virginia, and Col. Joseph Dutton, of Virginia Sons of the Revolution

convention, wherever they may lie. The flag of our country waves over them. Their bones are a part of the land they loved—a free land, a grateful and loyal land. Their souls, as part and parcel of the Constitution, can never die.

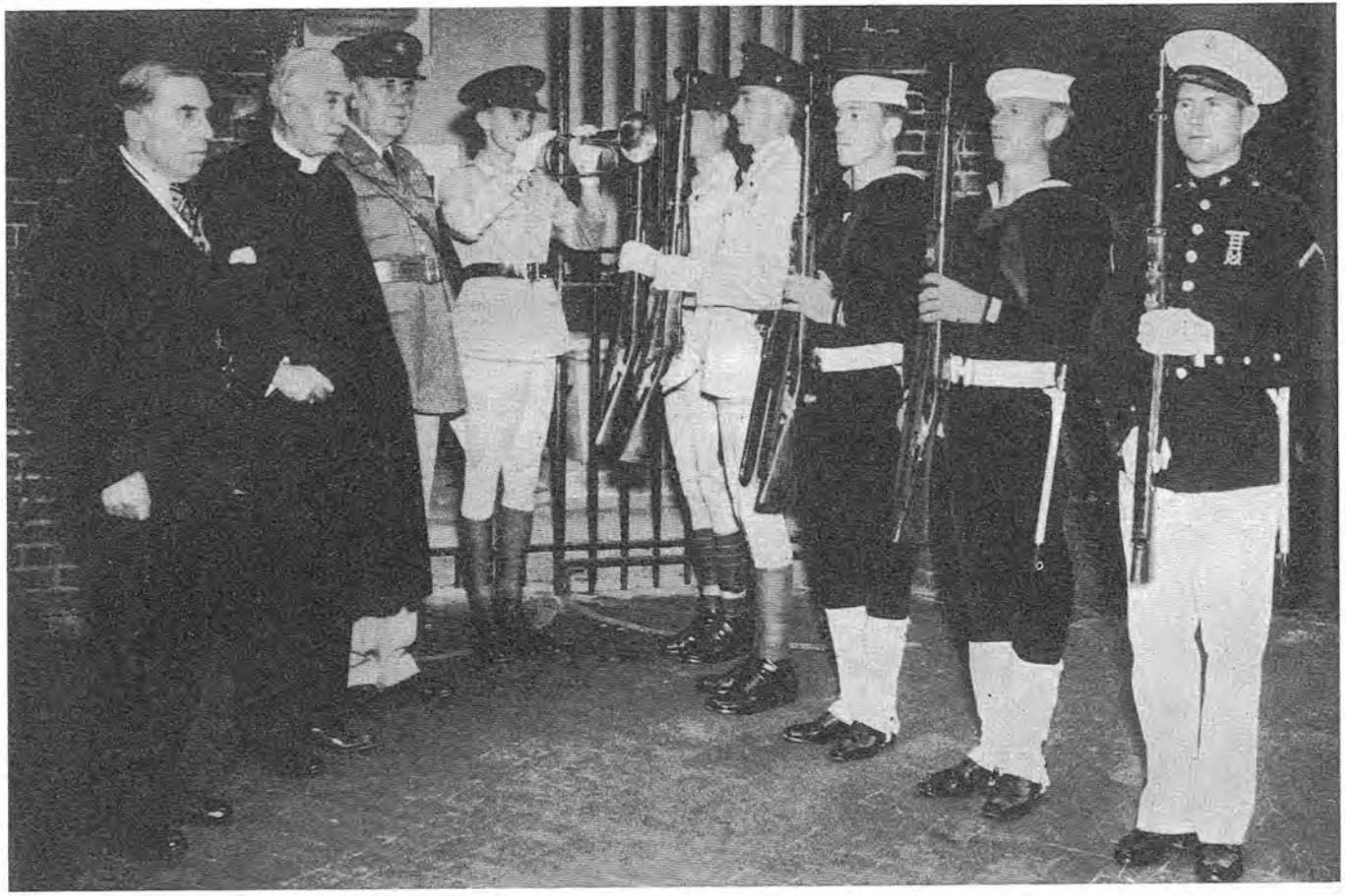
We stand near the body of George Washington. We feel the presence of his spirit. From this marble no voice comes to our earthly ear, but we have his parting words, his counsel and farewell. On the eve of his retirement to Mount Vernon he told his countrymen that their constant support was the prop of his efforts and the guarantee of the success of his plans. And then he added this blessing, which comes to us now like a benediction:

> Profoundly penetrated with this idea, I shall carry it with me to my grave, as a strong incitement to unceasing vows that Heaven may continue to you the choicest tokens of its beneficence—that your union & brotherly affection may be perpetual—that the free constitution, which is the work of your hands, may be sacredly maintained—that its administration in every department may be stamped with wisdom and virtue—that, in fine, the happiness of the people of these States, under the auspices of liberty, may be made complete, by so careful a preservation and so prudent a use of this blessing as will acquire to them the glory of recommending it to the applause, the affection—and adoption of every nation which is yet a stranger to it.

In these words we hear the voice of our country's father, admonishing us to maintain sacredly the free Constitution. And we hear him counsel us to preserve the Union as the pillar of liberty itself. These sentiments, he says,

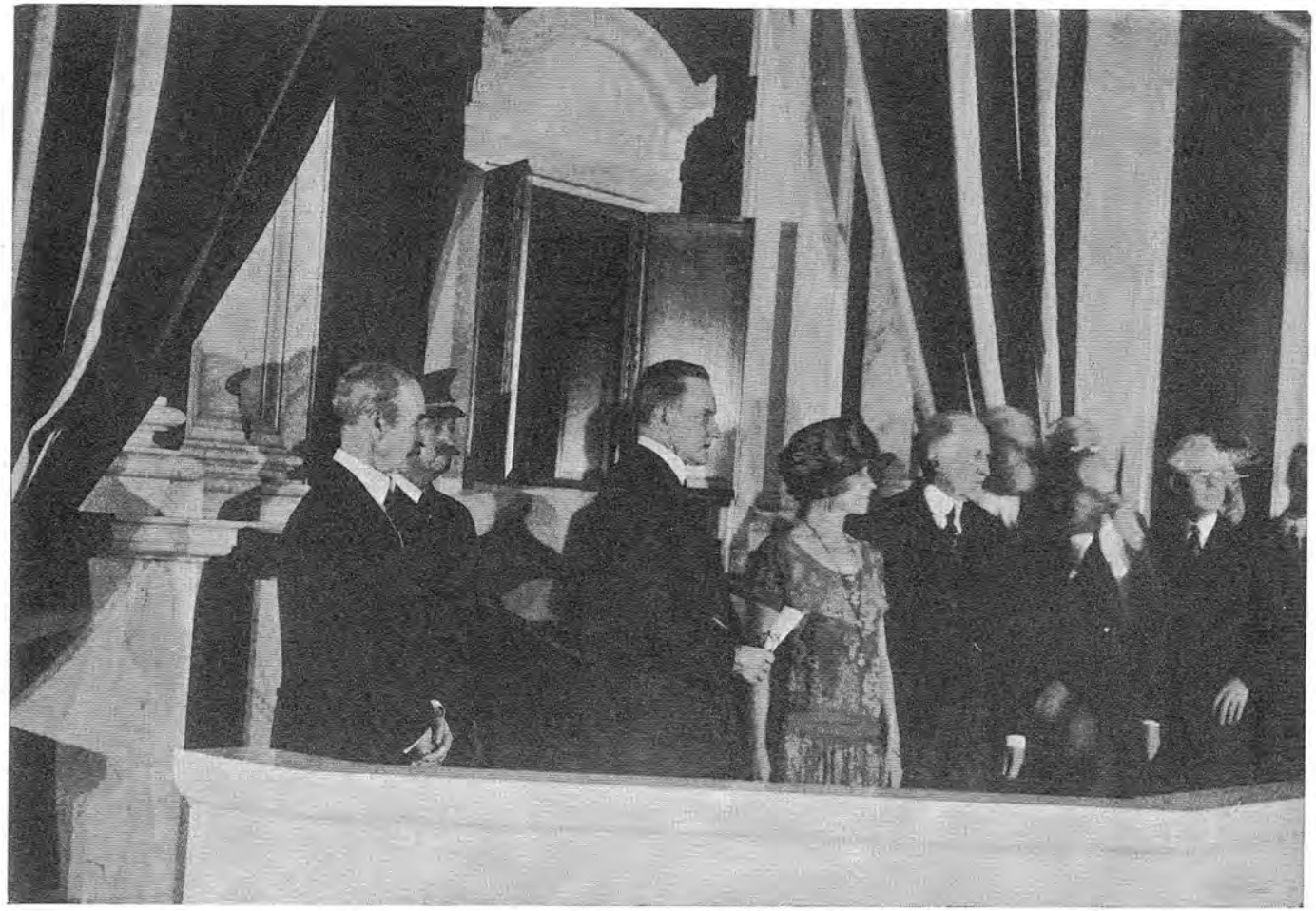
> . . . will be offered to you with the more freedom, as you can only see in them the disinterested warnings of a parting friend, . . . Interwoven as is the love of liberty with every ligament of your hearts, no recommendation of mine is necessary to fortify or confirm the attachment. The Unity of Government which constitutes you one people is also now dear to you.—It is justly so;—for it is a main Pillar in the Edifice of your real independence, the support of your tranquility at home; your peace abroad; of your safety;—of your prosperity;—of that very Liberty which you so highly prize. . . . it is of infinite moment, that you should properly estimate the immense value of your national union to your collective & individual happiness;—that you should cherish a cordial, habitual & immoveable attachment to it; . . . The name of AMERICAN, which belongs to you, in your national capacity, must always exalt the just pride of Patriotism, . . . your union ought to be considered as a main prop of your liberty, and the love of the one ought to endear to you the preservation of the other.

Let us cherish these counsels from him who lies before us; and let us trust that 150 years from now, and for all future time, Americans may come as we do and lay the wreath of gratitude and affection upon the tomb of Washington.



CEREMONIES AT TOMB OF WASHINGTON

Services at the Tomb of George Washington, Mount Vernon, September 17, 1937. Mr. Bloom, Bishop Freeman, and General Waller.



DEDICATION OF THE SHRINE OF THE CONSTITUTION

Dedication of the Shrine of the Constitution, February 28, 1924; Dr. Herbert Putnam (Librarian of the Library of Congress)

ADDRESS OF HONORABLE SOL BLOOM

DIRECTOR GENERAL, UNITED STATES CONSTITUTION SESQUICENTENNIAL COMMISSION, AT THE SHRINE OF THE CONSTITUTION IN THE LIBRARY OF CONGRESS, CITY OF WASHINGTON, FRIDAY, SEPTEMBER 17, 1937, AT 3:45 P. M., BROADCAST AT THE HOUR THAT THE SIGNING OF THE CONSTITUTION WAS COMPLETED

ONE HUNDRED fifty years ago today, at this hour, the members of the Philadelphia Convention signed the Constitution of the United States. The document, engrossed upon four large sheets of parchment, lay upon the table before George Washington, president of the convention and deputy from Virginia.

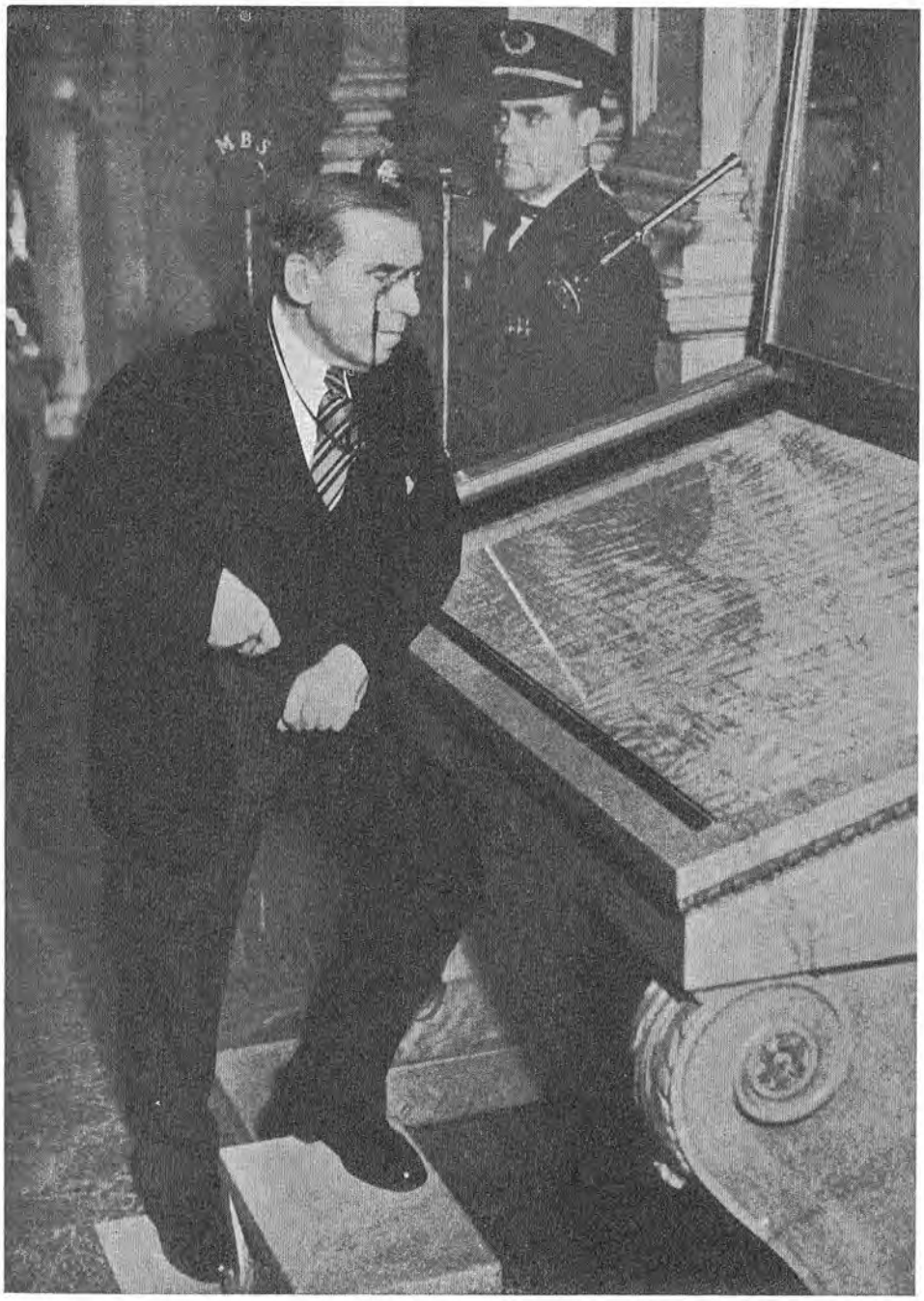
I am now standing in the Library of Congress in Washington, and before me lies the original Constitution of the United States—the same document that felt the touch of George Washington's hand 150 years ago at this very hour.

Here is his signature—a bold, clear hand, with the ink as fresh as if he had signed it yesterday—"Go Washington, President and Deputy from Virginia."

As the deputies came forward to sign the Constitution they were grouped according to their states. They signed in geographical order, with New Hampshire first and Georgia last.

As we look upon this yellow parchment, with its familiar opening line, "We the People of the United States," we can imagine the scene of 150 years ago, in Independence Hall in Philadelphia. The deputies had worked incessantly since May 25, all through a hot summer. The convention was in session eighty-eight days, but even when not in session the deputies were constantly meeting, conferring, discussing points of difference, reconciling disputes, hammering out on the anvil of debate the majestic form of the United States government.

Now, on the 17th day of September, they were gathered to sign and seal the finished work. As I glance down at these names their figures seem to stand before me. I see Benjamin Franklin, somewhat bowed with age, his keen eyes twinkling behind enormous spectacles. He is chatting with a younger man of fresh complexion and handsome features—Alexander Hamilton of New York. There, near by, is a rather tall figure, and I notice that he walks with halting gait as he advances to sign the Constitution. I see now the reason—he has lost one leg, and walks upon a wooden stump. It is Gouverneur Morris of Pennsylvania. It was he who collected the various resolutions passed by the convention, and arranged them in the symmetrical form we know as the Constitution of the United States. To him, more than to any other, we are indebted for the solemn language of the Preamble.



Courtesy of Washington Post

READING THE PREAMBLE TO THE CONSTITUTION

Hon. Sol Bloom, reading the Preamble to the Constitution at the exercises held at the Shrine of the Constitution, Library of Congress, Washington, D. C., September 17, 1937.

A small, shy gentleman in black advances. He and General Washington exchange nods of friendly courtesy, and I see this gentleman sign his name—"James Madison, Jr." Madison, the most industrious and resourceful deputy of all, the genius of statecraft and persuasiveness who wove into one fabric so many conflicting opinions.

So they come forward—informally, chatting, smiling, with the air of men who are relieved of a tremendous load of labor and responsibility. They sign the parchment in turn, and stand in scattered groups, waiting for General Washington to announce adjournment *sine die*. In due time Washington brings the gavel down and dissolves the convention. With a wave of the hand he gives the Constitution into the keeping of the secretary, Col. William Jackson, and steps down to join his fellow deputies as they leave the hall.

Outside, an excited throng greets the members as they depart. The news flies from mouth to mouth, and from city to city. The Union is saved! The Government of the United States is born!

George Washington heaves a sigh of relief and deep satisfaction. His life work is crowned with triumph. The Union will not perish if the people will only stamp with their approval the Constitution that has been formed. He pauses, raises his hand in salute to the people's greetings, and turns to grasp in friendship the hand of a portly and dignified fellow deputy who accompanies him to his carriage.

It is Robert Morris—Robert Morris, the Rock of the Revolution, the patriot who paid out of his own pocket part of the expenses of Washington's army from Dobbs Ferry to Yorktown, where Cornwallis laid down his arms. Poor Robert Morris! He had signed the Declaration of Independence, the Articles of Confederation, and the Constitution. He had carried the burden of financing the Revolution. With amazing genius he had found means to support Washington in spite of the poverty of the country—and now he fervently clasps the hand of his old friend as they leave Independence Hall.

Robert Morris had gained immense wealth. He owned a large part of the western half of New York State and millions of acres in Georgia, South Carolina, Virginia, and Pennsylvania. But land development was slow; failures in London and Dublin disrupted his credit; a partner proved dishonest; and by 1798 Robert Morris, a bankrupt, was thrown into debtor's prison. As he lay there languishing he heard the news of the death of his old friend, George Washington. Poor Robert Morris!

These thoughts come to us as we gaze at the signatures of Washington and his associates, inscribed on this parchment before us.

What have been the adventures of this document since it left Washington's hand? We know that the secretary of the convention, William Jackson, took this Constitution from Philadelphia to New York and delivered it to the president of the Congress on September 20, 1787. It was placed among the archives of the Congress. After the new government went into operation and the Old Congress expired, this Constitution, together with the Declaration of Independence and other papers, was placed in the hands of President Washington. In response to an act of Congress, September 15, 1789, President Washington deposited the Constitution with the Department of State. It was carried back from New York to Philadelphia when the seat of government was transferred. In 1800 the government was removed to the District of Columbia, and we presume this Constitution, with other papers, was carried down the Delaware and up Chesapeake Bay and thence to Washington.

In 1814, when the Capitol and other building were burned by the British, this Constitution and the Declaration of Independence were taken from the State Department by the secretary of state, James Monroe, and temporarily stored near Leesburg, Virginia.

The Constitution remained in the custody of the State Department 132 years, until September 30, 1921. It was then deposited in the Library of Congress, along with the Declaration of Independence; and since February 1924 they have been upon public view, in this gloriously beautiful hall of the Library. The Declaration of Independence hangs on the wall before me, the Constitution lies in its case, both enclosed in suitable glass that protect them from injurious light rays.

I raise my eyes from the signature of George Washington and glance through the window across the plaza, and see the majestic dome of the Capitol. I see the northeastern corner of the central structure, under which lies the cornerstone laid by Washington's own hand. What a panorama of national history is unfolded when we contrast that signing day, 150 years ago, with this September day of 1937! The hopes of the founders have been realized beyond their fondest dreams. The United States created by them has become the mightiest nation of all time.

Today at noon I stood at the tomb of Washington at Mount Vernon and deposited a wreath upon his sarcophagus in memory of his labors in forming the Constitution. Now I am looking at his signature. His spirit seems to be present on this memorable anniversary. We almost hear his voice, speaking in his Farewell Address: . . . "that Heaven may continue to you the choicest tokens of its beneficence . . .

that your union & brotherly affection may be perpetual . . . that the free constitution, which is the work of your own hands, may be sacredly maintained . . . that the happiness of the people of these States, under the auspices of liberty, may be made complete. . . . "

"This free constitution, which is the work of your own hands!" How solemn these parting words of Washington! He admonishes us of this generation, that we too are makers of the Constitution. All Americans are custodians and guardians of this charter of their liberties. They can make it and unmake it. Thank God, it has come down to us in full force and effect, and we pray that it will be maintained until the last generation of mankind.

I gaze down upon the Constitution, and read again the beginning of the Preamble—"We the People of the United States." The lettering is bold and clear. Here is the enacting clause whereby the people create the government of the United States. It is the most momentous expression of their will that could have been made by the American people, and it is the only one that they have ever made. All laws, treaties, and acts of government, in peace and war, have been made in obedience to this supreme law ordained by the people.

This Preamble not only creates the United States Government, but it sets forth the objects to which all free peoples aspire, everywhere in the world. It has lighted the pathway of liberty to many nations, and we believe that in it are found the seeds of human liberty throughout the whole earth.

I ask you to go over these words with me, as I read from the original Constitution: "We the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

So mote it be!

To celebrate

The One hundred and fiftieth Anniversary
of the Signing of the Constitution

The United States Constitution Sesquicentennial Commission
and
The District of Columbia Constitution Commission
request the honor of the company of

at the Ceremonies at which
The President of The United States
will deliver an Address
on Friday evening, the seventeenth of September
Nineteen hundred and thirty-seven
at nine o'clock
at the Sylvan Theatre (Washington Monument)
in the City of Washington

The favor of a reply is requested
Sol Bloom, Director General
Washington, D.C.

Informal Dress

ADDRESS OF THE PRESIDENT OF THE UNITED STATES

ON THE 150TH ANNIVERSARY OF THE SIGNING OF THE CONSTITUTION OF THE UNITED STATES, DELIVERED AT THE SYLVAN THEATRE, WASHINGTON MONUMENT GROUNDS, WASHINGTON, D. C., SEPTEMBER 17, 1937

MY FELLOW AMERICANS:

Tonight, 150 years ago, thirty-eight [1] weary delegates to a Convention in Philadelphia signed the Constitution. Four handwritten sheets of parchment were enough to state the terms on which thirteen independent weak little republics agreed to try to survive together as one strong nation.

A third of the original delegates had given up and gone home. The moral force of Washington and Franklin had kept the rest together. Those remained who cared the most; and caring most, dared most.

The world of 1787 provided a perfect opportunity for the organization of a new form of government thousands of miles removed from influences hostile to it. How we then governed ourselves did not greatly concern Europe. And what occurred in Europe did not immediately affect us.

Today the picture is different.

Now what we do has enormous immediate effect not only among the nations of Europe but also among those of the Americas and the Far East, and what in any part of the world they do as surely and quickly affects us.

In such an atmosphere our generation has watched democracies replace monarchies which had failed their people and dictatorships displace democracies which had failed to function. And of late we have heard a clear challenge to the democratic idea of representative government.

We do not deny that the methods of the challengers—whether they be called "communistic" or "dictatorial" or "military"—have obtained for many who live under them material things they did not obtain under democracies which they had failed to make function. Unemployment has been lessened—even though the cause is a mad manufacturing of armaments. Order prevails—even though maintained by fear, at the expense of liberty and individual rights.

So their leaders laugh at all constitutions, predict the copying of their own methods, and prophesy the early end of democracy throughout the world.

[1] There are thirty-nine signatures, one being of an absent delegate made by a colleague at his request.

FRANKLIN D. ROOSEVELT, PRESIDENT OF THE UNITED STATES

The President of the United States delivering an address at the Sylvan Theater, City of Washington, the night of September 17, 1937.

Both that attitude and that prediction are denied by those of us who still believe in democracy—that is, by the overwhelming majority of the nations of the world and by the overwhelming majority of the people of the world.

And the denial is based on two reasons eternally right.

The first reason is that modern men and women will not tamely commit to one man or one group the permanent conduct of their government. Eventually they will insist not only on the right to choose who shall govern them but also upon the periodic reconsideration of that choice by the free exercise of the ballot.

And the second reason is that the state of world affairs brought about by those new forms of government threatens civilization. Armaments and deficits pile up together. Trade barriers multiply and merchant ships are threatened on the high seas. Fear spreads throughout the world—fear of aggression, fear of invasion, fear of revolution, fear of death.

The people of America are rightly determined to keep that growing menace from our shores.

The known and measurable danger of becoming involved in war we face confidently. As to that, your government knows your mind, and you know your government's mind.

But it takes even more foresight, intelligence, and patience to meet the subtle attack which spreading dictatorship makes upon the morale of a democracy.

In our generation, a new idea has come to dominate thought about government—the idea that the resources of the nation can be made to produce a far higher standard of living for the masses if only government is intelligent and energetic in giving the right direction to economic life.

That idea—or more properly that ideal—is wholly justified by the facts. It cannot be thrust aside by those who want to go back to the conditions of ten years ago or even preserve the conditions of today. It puts all forms of government to proof.

That ideal makes understandable the demands of labor for shorter hours and higher wages, the demands of farmers for a more stable income, the demands of the great majority of business men for relief from disruptive trade practices, the demands of all for the end of that kind of license, often mistermed "liberty," which permits a handful of the population to take far more than their tolerable share from the rest of the people.

And as other forms of government in other lands parade their pseudo-science of economic organization, even some of our own

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people may wonder whether democracy can match dictatorship in giving this generation the things they want from government.

We have those who really fear the majority rule of democracy, who want old forms of economic and social control to remain in a few hands. They say in their hearts: "If constitutional democracy continues to threaten our control why should we be against a *plutocratic* dictatorship which would perpetuate our control?"

And we have those who are in too much of a hurry, who are impatient at the processes of constitutional democracies, who want Utopia overnight and are not sure that some vague form of *proletarian* dictatorship is not the quickest road to it.

Both types are equally dangerous. One represents cold-blooded resolve to hold power. We have engaged in a definite, and so far successful, contest against that. The other represents a reckless resolve to seize power. Equally we are against that.

And the overwhelming majority of the American people fully understand and completely approve that course as the course of the present government of the United States.

To hold to that course our constitutional democratic form of government must meet the insistence of the great mass of our people that economic and social security and the standard of American living be raised from what they are to levels which the people know our resources justify.

Only by succeeding in *that* can we ensure against internal doubt as to the worthwhileness of our democracy and dissipate the illusion that the necessary price of efficiency is dictatorship with its attendant spirit of aggression.

That is why I have been saying for months that there is a crisis in American affairs which demands action now—a crisis particularly dangerous because its external and internal difficulties reenforce each other.

Personally I paint a broad picture. For only if the problem is seen in perspective can we see its solution in perspective.

I am not a pessimist. I believe that democratic government in this country can do all the things which common-sense people, seeing that picture as a whole, have the right to expect. I believe that these things can be done under the Constitution, without the surrender of a single one of the civil and religious liberties it was intended to safeguard.

And I am determined that under the Constitution these things *shall* be done.

The men who wrote the Constitution were the men who fought

the Revolution. They had watched a weak emergency government almost lose the war and continue economic distress among thirteen little republics—at peace but without effective national government.

So when these men planned a new government, they drew the kind of agreement which men make when they really want to work together under it for a very long time.

For the youngest of nations they drew what is today the oldest written instrument under which men have continuously lived together as a nation.

The Constitution of the United States was a layman's document, not a lawyer's contract. *That* cannot be stressed too often. Madison, most responsible for it, was not a lawyer—nor was Washington or Franklin, whose sense of the give-and-take of life had kept the Convention together.

This great laymen's document was a charter of general principles—completely different from the "whereases" and the "parties of the first part" and the fine print which lawyers put into leases and insurance policies and instalment agreements.

When the framers were dealing with what they rightly considered eternal verities, unchangeable by time and circumstance, they used specific language. In no uncertain terms, for instance, they forbade titles of nobility, the suspension of habeas corpus, and the withdrawal of money from the Treasury except after appropriation by law. With almost equal definiteness they detailed the Bill of Rights.

But when they considered the fundamental powers of the new national government they used generality, implication, and statement of mere objectives, as intentional phrases which flexible statesmanship of the future, within the Constitution, could adapt to time and circumstance. For instance, the framers used broad and general language capable of meeting evolution and change when they referred to commerce between the states, the taxing power, and the general welfare.

Even the Supreme Court was treated with that purposeful lack of specification. Contrary to the belief of many Americans, the Constitution says nothing about any power of the Court to declare legislation unconstitutional; nor does it mention the number of judges for the Court. Again and again the Convention voted down proposals to give justices of the Court a veto over legislation. Clearly a majority of the delegates believed that the relation of the Court to the Congress and the Executive, like the other subjects treated in general terms, would work itself out by evolution and change over the years.

But for 150 years we have had an unending struggle between those who would preserve this original broad concept of the Constitution as a layman's instrument of government and those who would shrivel the Constitution into a lawyer's contract.

Those of us who really believe in the enduring wisdom of the Constitution hold no rancor against those who professionally or politically talk and think in purely legalistic phrases. We cannot seriously be alarmed when they cry "unconstitutional" at every effort to better the condition of our people.

Such cries have always been with us—and, ultimately, they have always been overruled.

Lawyers distinguished in 1787 insisted that the Constitution itself was unconstitutional under the Articles of Confederation. But the ratifying conventions overruled them.

Lawyers distinguished in their day warned Washington and Hamilton that the protective tariff was unconstitutional—warned Jefferson that the Louisiana Purchase was unconstitutional—warned Monroe that to open up roads across the Alleghanies was unconstitutional. But the Executive and the Congress overruled them.

Lawyers distinguished in their day persuaded a divided Supreme Court that the Congress had no power to govern slavery in the territories, that the long-standing Missouri Compromise was unconstitutional. But a War between the States overruled them.

Lawyers distinguished in their day persuaded the Odd Man on the Supreme Court that the methods of financing the Civil War were unconstitutional. But a new Odd Man overruled them.

The great senatorial constitutional authority of his day, Senator Evarts, issued a solemn warning that the proposed Interstate Commerce Act and the federal regulation of railway rates which the farmers demanded would be unconstitutional. But both the Senate and the Supreme Court overruled him.

Less than two years ago fifty-eight of the highest priced lawyers in the land gave the nation (without cost to the nation) a solemn and formal opinion that the Wagner Labor Relations Act was unconstitutional. And in a few months, first a national election and later the Supreme Court overruled them.

For twenty years the Odd Man on the Supreme Court refused to admit that state minimum wage laws for women were constitutional. A few months ago, after my message to the Congress on the rejuvenation of the judiciary, the Odd Man admitted that the Court had been wrong—for all those twenty years—and overruled himself.

In this constant struggle the lawyers of no political party—mine or any other—have had a consistent or unblemished record. But the lay rank and file of political parties *has* had a consistent record.

Unlike some lawyers, they have respected as sacred *all* branches of their government. They have seen nothing *more* sacred about one branch than about either of the others. They have considered as *most* sacred the concrete welfare of the generation of the day. And with laymen's common-sense of what government is for, they have demanded that all three branches be efficient—that all three be interdependent as well as independent—and that all three work together to meet the living generation's expectations of government.

That lay rank and file can take cheer from the historic fact that every effort to construe the Constitution as a lawyer's contract rather than a layman's charter has ultimately failed. Whenever legalistic interpretation has clashed with contemporary sense on great questions of broad national policy, ultimately the people and the Congress have had their way.

But that word "ultimately" covers a terrible cost.

It cost a Civil War to gain recognition of the constitutional power of the Congress to legislate for the territories.

It cost twenty years of taxation on those *least* able to pay to recognize the constitutional power of the Congress to levy taxes on those *most* able to pay.

It cost twenty years of exploitation of women's labor to recognize the constitutional power of the states to pass minimum wage laws for their protection.

It has cost twenty years already—and no one knows how many more are to come—to obtain a constitutional interpretation that will let the nation regulate the shipment of national commerce of goods sweated from the labor of little children.

We know it takes time to adjust government to the needs of society. But modern history proves that reforms too long delayed or denied have jeopardized peace, undermined democracy, and swept away civil and religious liberties.

Yes, time more than ever before is vital in statesmanship and in government—in all three branches of it.

We will no longer be permitted to sacrifice each generation in turn while the law catches up with life.

We can no longer afford the luxury of twenty-year lags.

You will find no justification in any of the language of the Constitution for delay in the reforms which the mass of the American people now demand.

Yet nearly every attempt to meet those demands for social and economic betterment has been jeopardized or actually forbidden by those who have sought to *read* into the Constitution language which the framers refused to *write* into the Constitution.

No one cherishes more deeply than I the civil and religious liberties achieved by so much blood and anguish through the many centuries of Anglo-American history. But the Constitution guarantees liberty, not license masquerading as liberty.

Let me put the real situation in the simplest terms. The present government of the United States has never taken away and never will take away any liberty from any minority, unless it be a minority which so abuses its liberty as to do positive and definite harm to its neighbors constituting the majority. But the government of the United States refuses to forget that the Bill of Rights was put into the Constitution not only to protect minorities against intolerance of majorities, but to protect majorities against the enthronement of minorities.

Nothing would so surely destroy the substance of what the Bill of Rights protects than its perversion to prevent social progress. The surest protection of the individual and of minorities is that fundamental tolerance and feeling for fair play which the Bill of Rights assumes. But tolerance and fair play would disappear here as it has in some other lands if the great mass of people were denied confidence in their justice, their security, and their self-respect. Desperate people in other lands surrendered their liberties when freedom came merely to mean humiliation and starvation. The crisis of 1933 should make us understand that.

On this solemn anniversary I ask that the American people rejoice in the wisdom of their Constitution.

I ask that they guarantee the effectiveness of each of its parts by living by the Constitution as a *whole*.

I ask that they have faith in its ultimate capacity to work out the problems of democracy, but that they justify that faith by making it work now rather than twenty years from now.

I ask that they give their fealty to the Constitution *itself* and not to its misinterpreters.

I ask that they exalt the glorious simplicity of its purposes rather than a century of complicated legalism.

I ask that majorities and minorities subordinate intolerance and power alike to the common good of all.

For us the Constitution is a common bond, without bitterness, for those who see America as Lincoln saw it "the last, best hope of earth."

So we revere it—not because it is old but because it is ever new—not in the worship of its past alone but in the faith of the living who keep it young, now and in the years to come.

ADDRESS OF HONORABLE WILLIAM E. BORAH

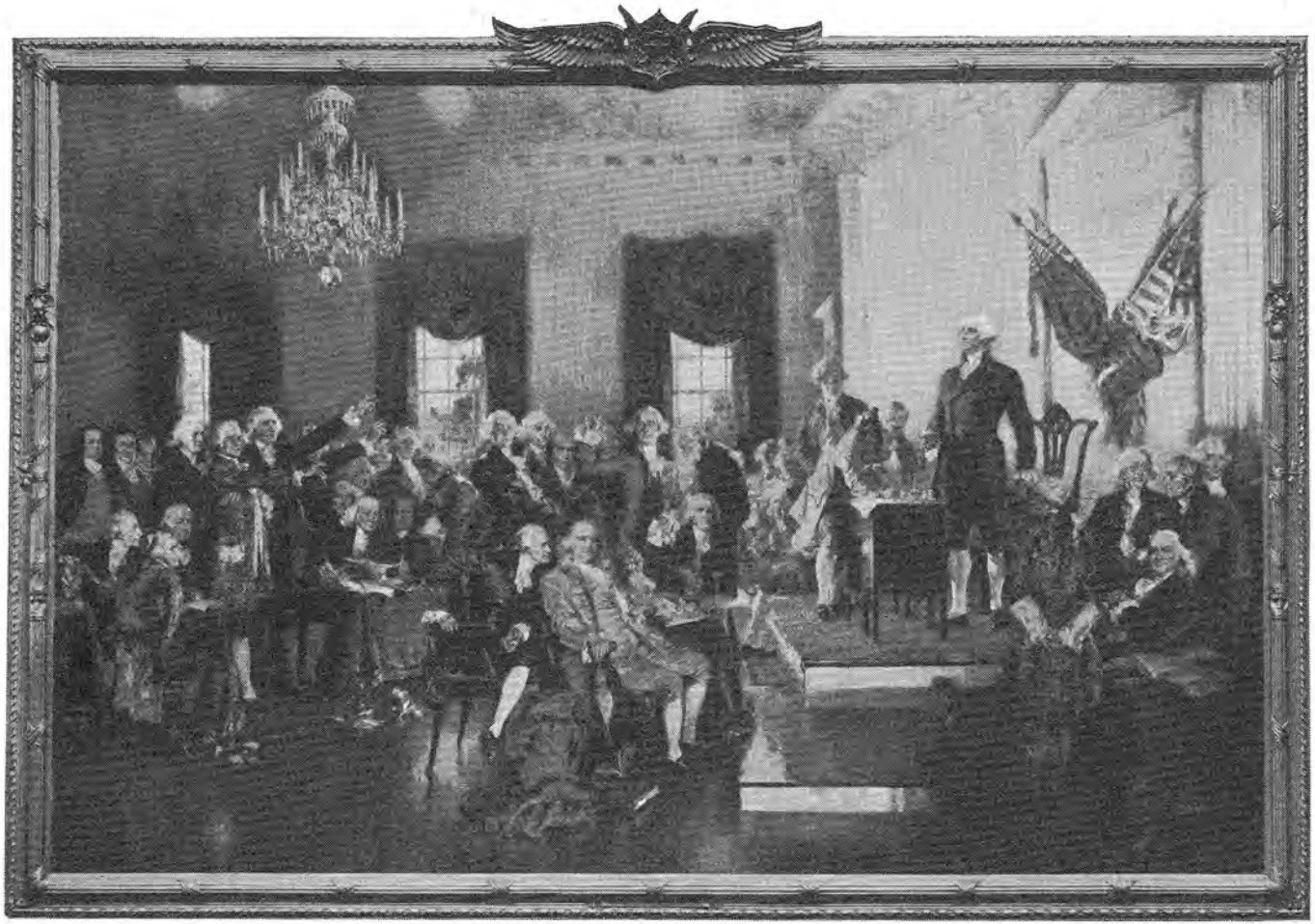
UNITED STATES SENATOR FROM IDAHO, ON CONSTITUTIONAL GOVERNMENT, CONSTITUTION HALL, WASHINGTON, D. C., SEPTEMBER 16, 1937, UNDER THE AUSPICES OF THE GRAND LODGE, F. A. A. M., OF THE DISTRICT OF COLUMBIA AND THE UNITED STATES CONSTITUTION SESQUICENTENNIAL COMMISSION

LADIES AND GENTLEMEN: It sometimes seems to make but little difference to those so fortunate as to possess influence or to enjoy power, economical or political, what kind of a government you have. It may be a matter of some importance to them, but it is not vital. They fare reasonably well under any kind of government. The industrial leaders in two of the most despotic governments of Europe are said to be entirely content with their security and satisfied with their profits.

But no kind of government has yet been devised—and both reason and experience teach none can be devised—which offers opportunity and insures liberty to the average man or woman, which preserves and protects the rights and privileges of those whom Lincoln called the common people, except a government of law with independent tribunals of justice. There is no such thing as security for the masses or protection for minority groups, political, racial, or religious, never has been—and in the nature of things never can be—under any form of government, save government where the people through their representatives make the laws and uncontrolled courts construe them.

This is the kind of government for which the Declaration of Independence declared and for which American patriots waged a seven years war. This is the kind of government which on September 17, 1787, was submitted to the people for approval.

The story of the writing of the Constitution, its submission and its adoption, and finally, the launching of a free nation, needs to be reread and retold again and again. The boldness of that enterprise, the over-mastering spirit with which it was carried forward, the unselfish devotion of the leaders to the cause of human liberty, and above all, the comforts and the blessings which this plan of government has brought to the average man or woman, lifts the story into the realm of sacred history. Perhaps you would expect me to retell that story tonight, but I have other things which it seems I ought to

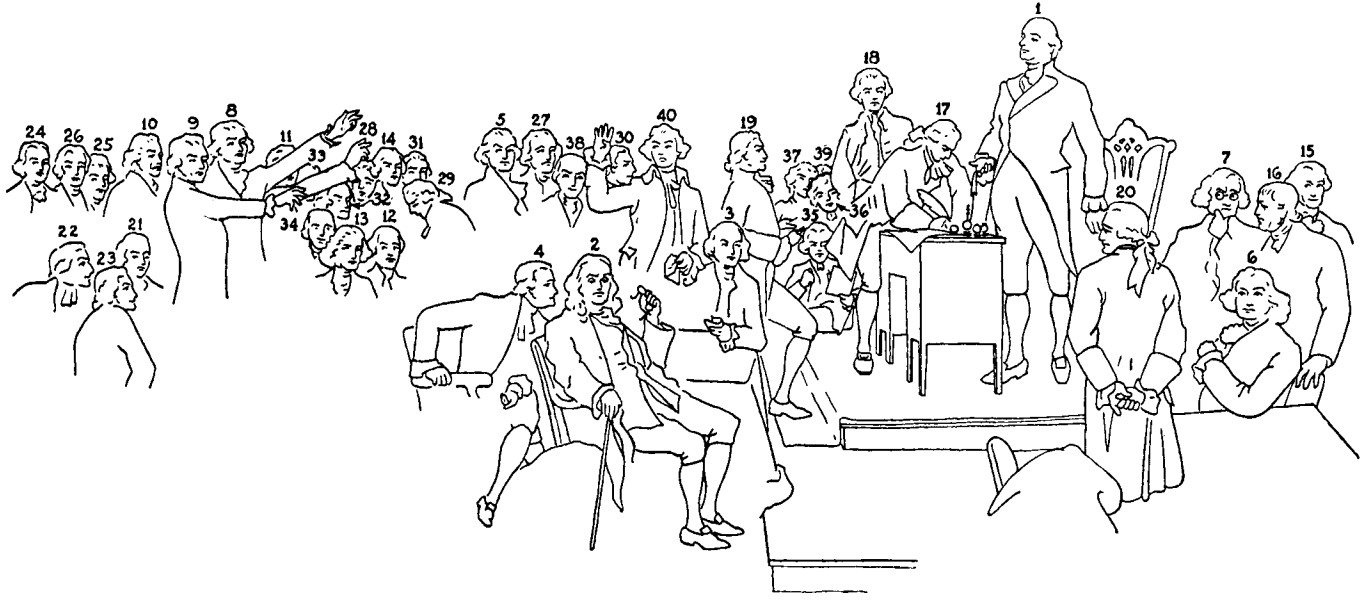


Painting by Howard Chandler Christy

SIGNING OF THE CONSTITUTION OF THE UNITED STATES

This painting, originally suggested to Mr. Christy by the Honorable Sol Bloom, Director General of the Commission, was authorized by a joint resolution of Congress on April 20, 1939, and was unveiled in the Rotunda of the Capitol on May 29, 1940. It will be

SCENE AT THE SIGNING OF THE CONSTITUTION OF THE UNITED STATES



1. Washington, George . . . . . Va.
2. Franklin, Benjamin . . . . . Pa.
3. Madison, James . . . . . Va.
4. Hamilton, Alexander . . . . N. Y.
5. Morris, Gouverneur . . . . . Pa.
6. Morris, Robert . . . . . Pa.
7. Wilson, James . . . . . Pa.
8. Pinckney, Chas. Cotesworth . . S. C.
9. Pinckney, Chas. . . . . S. C.
10. Rutledge, John . . . . . S. C.
11. Butler, Pierce . . . . . S. C.
12. Sherman, Rager . . . . . Conn.
13. Johnson, William Samuel . . . Conn.
14. McHenry, James . . . . . Md.
15. Read, Gearge . . . . . Del.
16. Bassett, Richard . . . . . Del.
17. Spaight, Richard Dobbs . . . N. C.
18. Blaunt, William . . . . . N. C.
19. Williamson, Hugh . . . . . N. C.
20. Jenifer, Daniel of St. Thomas . Md.
21. King, Rufus . . . . . Mass.
22. Gorham, Nathaniel . . . . . Mass.
23. Dayton, Janathan . . . . . N. J.
24. Carroll, Daniel . . . . . Md.
25. Few, William . . . . . Ga.
26. Baldwin, Abraham . . . . . Ga.
27. Langdon, John . . . . . N. H.
28. Gilman, Nicholas . . . . . N. H.
29. Livingstan, William . . . . . N. J.
30. Paterson, William . . . . . N. J.
31. Mifflin, Thomas . . . . . Pa.
32. Clymer, George . . . . . Pa.
33. FitzSimons, Thomas . . . . . Pa.
34. Ingersoll, Jared . . . . . Pa.
35. Bedford, Gunning, Jr. . . . . Del.
36. Brearley, David . . . . . N. J.
37. Dickinson, John . . . . . Del.
38. Blair, John . . . . . Va.
39. Braam, Jacob . . . . . Del.
40. Jackson, William (Secretary)

discuss. Before doing so, however, let me pause for one observation which seems relevant in connection with the adoption of the Constitution and relevant to the happenings and duties of our own immediate time.

It is often said in recent years that the Constitution of the United States is not a sacred document. This is one of the assumptions constantly advanced by those who would change the Constitution as you would change a statute, bend it or twist it to every political breeze, or tear it up altogether. Of course, the Constitution, as it exists at any particular time, is not sacred as against the right and power of the people to amend it in the manner provided in the Constitution. The people may make over our government in any manner which seems to the people proper and wise. The means and the method are always at hand to adjust the powers of government to the tasks of government, not the powers which individuals or groups may insist the government should have, but the powers which all the people may determine the government shall have. And therein lies the whole difference between democracy and autocracy.

But until the people speak, until the people make known their desire, the Constitution is sacredly binding upon the people, upon officials, upon the Congress, the Executive, and the courts. In the language of the father of our country: "The basis of our political systems is the right of the people to make and to alter their constitutions of government—But the Constitution which at any time exists, 'till changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all."

Certainly, it must be so regarded by all who take a solemn oath to maintain and support it. It is sacred against the right or power of Congress or the Executive or the courts, or of all combined, to change or modify it through unwarranted, forced or strained constructions. Such changes are usurpations—none the less vicious because not openly avowed. If that were not true, constitutional government would be a mere trap with which to ensnare the peoples' support to accomplish their own enslavement.

Will those who contend that the Constitution is not sacred go so far as to say that the right of the people to determine the form of government under which they live is not sacred, that liberty is not sacred, that to be free from arbitrary arrests and the torture chamber is not sacred, that the right to live your faith and worship your God unmolested is not sacred? If they will not go so far as to say these things are not sacred, then let us remember that upon the exclusive power of the people to make their Constitution and to keep it as they

make it, or amend it, as they choose, all these sacred things depend. When the people lose control of their constitution, they have already lost control of their government! It is an old story that when the people lose power, they lose liberty.

I may have a wrong conception of the word sacred. But I feel that an instrument of government, purchased by years of sacrifice and bloodshed upon the field, by weeks and months of arduous effort in counsel, which has held together people of all climes, races, and faiths in ordered liberty, which gives freedom to all who come within its jurisdiction, which makes the people sovereign and public officials their agents, is sacred by every rule which measures the worth of human progress or human freedom.

Mr. Chairman, it has often been stated, there was not much new or original in the Constitution of the United States. Its simplicity and its strength and durability lie in the fact that the framers were content to be guided by experience and to place in our scheme of government no more than experience had revealed as expedient and wise. It may well be—indeed, one might say, it must be—that, in dealing with new problems, experience will again call for such changes as may be deemed expedient and wise. Widespread poverty in the midst of wealth, the concentration of economic power, the unquenchable thirst of a progressive people for the better things of life, have brought, and will continue to bring, to the government matters for consideration. And the people, as I have already said, have the power, and I doubt not will have the intelligence and the patriotism to meet all such exigencies and to grant to the government whatever powers are necessary.

But some of the experiences embodied in our framework of government had been so bitter and searching, so unerring in the truths revealed, so profoundly a part of the scheme of freedom, that they can never be changed without a surrender of the whole scheme of freedom itself. In the way of illustration, no one will contend that the right of the people to amend the Constitution should ever be taken away from the people or that through subterfuge they should be cheated of that right. And it seems equally beyond question that, if the people are to write the fundamental law, incorporating therein the pledges and guarantees which keep them free, and to prescribe the limits beyond which their agents and servants may not go, in interfering with or disregarding its terms, then there must somewhere be set up an umpire, impartial and final, to judge between the people and their agents and servants. No one familiar with the history of the Constitutional Convention or familiar with the

thought of the day outside of the convention, will doubt that the framers, without division, recognized the necessity of creating such an umpire. And they will have no doubt that this idea met with the approval of the people of those times. Looking upon the pure and impartial administration of justice as the highest achievement of government and the surest bond of national union, they, with practically one accord, sought to set up a tribunal of justice free and apart from the storms of politics.

In this vital matter the framers were working again by the light of experience, for the idea of an independent tribunal of justice did not originate, in the first instance, in the councils of state or among those of great influence. It had originated with the humble and persecuted, with those who had suffered from political opinions or religious beliefs, and the sanctity of whose homes and the security of whose families had often been violated by those in power. The demand for tribunals, uninfluenced by, and unafraid of, political power, came from the people of Old England, was carried across the sea by those seeking security in a New World, was kept alive throughout the colonies, gathered up and incorporated by Jefferson in the Declaration of Independence, and finally, came to majestic completeness in the Constitution. No institution of ours has its roots deeper down in the elemental passions of a free people.

We enjoy in this country what a distinguished churchman has called "A Modern Miracle." Men of all races, English, German, Italian, Norwegian, Irish, Greek, and all, with their varied and conflicting views and ways of thinking and living, representing all faiths, all creeds, and all religions, Protestant, Catholic, Jew, Scientist, and those with no belief, all living in peace and security under one flag. It seems no less than a miracle when we recall rivers running red with human blood shed in racial and religious warfare, and when we now look abroad and see great nations tortured with racial and religious controversies, torn with internecine strife, visiting on each other cruelties which find few parallels in all the history of persecutions. Let us pause in our service this evening and make inquiry why it is we are so richly blessed.

We shall find it is not because Divine Providence has sought us out for special favor, for He "hath made of one blood all nations of men," not because we are altogether different from other peoples in our likes and dislikes, our prejudices and our passions. We shall find that our peculiarly good fortune and our rare blessings are due primarily to the fact that we have had a Constitution guaranteeing liberty and protection under the law to all, and a Supreme Court

which for one hundred fifty years has never, when appealed to, permitted that guarantee to be disregarded.

There have been times when political forces have sought to disregard some or all of the guarantees of the Constitution, freedom of speech, of the press, freedom from arbitrary arrests, freedom of priest or minister to administer to his people. And there have been times when political forces have sought to close the courts. But when national feeling has run high—as national feeling at times inevitably will—when great leaders have swayed with the storm—as great leaders sometimes do—the Supreme tribunal created by the fathers has remembered the Constitution and thrown its shield about all who sought its protection. When in the haste or zeal of some great effort those in control of the political forces of the nation have looked upon the Bill of Rights as an obstacle to their aims, the Court has proved to be as James Madison expressed the hope and belief it would prove, "an impenetrable bulwark against every assumption of power in the Legislature or the Executive," and has furthermore resisted "every encroachment upon the rights" which the people had stipulated in the Constitution should never be disregarded or surrendered. This "modern miracle" of ours is constitutional government with its checks and balances, its laws and courts, in practical operation. It is democracy working.

The marvel of those men who stood about the birth of this nation is not that they met the exigencies of the immediate hour—other leaders in other times had done that, only to see their work perish with them—but that they could and did outline principles of government applicable to all times. They saw in their clear vision a great republic deriving all power from the people and designed solely to serve the people. They were familiar with the tragic efforts of the people in the past to set up such a government and they could see, or thought they could see, some of the vicissitudes of the future, and they built not for their own day, but for all time. They understood well that occasions would arise when the people themselves, as well as their leaders, might grow restless under those constitutional restraints upon which all the rights of the people rest, and they sought to guard against that day. May I quote here the words of Thomas Jefferson: "An elective despotism was not the government we fought for, but one which should not only be founded on free principles, but in which the powers of government be so divided and balanced among several bodies, . . . that no one could transcend their legal limits without being effectually checked and restrained by the others."

Since the Great War, the world has seemed more or less topsy turvy. That event came near banishing moral forces from public affairs. Consciously or unconsciously, leaders and peoples alike have ever since felt the baneful influence of the theory that force is the sole, as well as the supreme, arbiter in all matters, domestic or foreign, touching the affairs of government. Logically, therefore, before the wounded were hardly off the field and while the hospitals in practically all countries were crowded with the maimed and the insane, preparations were begun for other wars. Huge programs for increased armaments on the one hand, with tax burdens without precedent imposed upon the already harassed and broken citizen on the other hand. All this in the face of a fast-approaching economic breakdown, devastating and worldwide. The sanctity of treaties and the solemn obligations of nations gave way under the weight of the war passion, while the people were asked to carry heavier and heavier burdens, which they have done with a fortitude and a martyrdom unparalleled in the history of mankind.

Is it any wonder that, under such circumstances, the whole theory of democratic government should be placed under challenge by its enemies and often left to function under suspicion by its friends? Need we be surprised that during this period practically every principle vital to the existence of popular government has either been assailed or doubted? Could we expect that, during the reign of this saturnalia of force and the mad aftermath, the system of government which depends for its highest achievement upon peace and for its very life upon the liberty and self-helping, self-governing capacity of the individual should go unscathed? But the attack calls for action, not surrender—not even a compromise of the principles embodied in our Constitution. We are not to take up the role of cowards fleeing before a revolution, but to retain the role of American citizens conscious of the worth of the heritage left for a time in our keeping and conscious also of our duty to transmit the heritage unimpaired. The people in this country believe in constitutional government. They have given evidence of that too often to leave the matter in doubt. Great emergencies may call for exceptional exertions of power upon the part of government, but that does not establish principles and should not be permitted to establish precedents. The principles of free government are the chief concern of the America people. This they have many times demonstrated and there is no reason to feel they will fail to do so again.

Here I desire to digress long enough to take notice of a statement made recently by a high official of a foreign government and, undoubt-

edly, by authority of his government. His statement was to the effect that the emissaries from his country coming here to preach their doctrine must be protected by our government, that they must enjoy, as it were, immunity in their efforts to sow the seeds of religious intolerance, race hatred, and arbitrary power among us. It seems to me this high official has a very inadequate understanding of the workings of constitutional government and a strange misconception of the American people. It seems worth while to explain. The orderly procedure in such matters under constitutional government would be about as follows: These emissaries will be protected by the guaranteed right of assemblage, of free speech, of free press—vital liberties long since murdered in the land from whence the emissaries came. The people of this country are fairly well informed already of the teachings and practices in that country by news which has long since reached our shores. But they will listen—in patience, if not respect. So long as these emissaries observe the laws of the land, they will receive the protection of the laws. If these emissaries are so willful, however, as is their wont, as to violate the laws of the land, they will have a trial, not in the puppet courts of their homeland, but in independent courts where justice is administered without fear or favor and without price. If they should be found guilty, they will be punished regardless of the country from which they came. And if their crimes are of such a nature as to call for such action, constitutional government will probably electrocute these evangels of discord and leave arbitrary power to take care of the implied threat already given. This, it seems to me, would be the orderly procedure under constitutional government. The advice is given freely but with little hope it will be understood.

Many believe that constitutional government is approaching its severest test. The supposition is that the intricate and complex problems growing out of modern industrial life can not be dealt with successfully through the slow-moving machinery of constitutional government. But while the task of government in these extraordinary times is very great, the patience, the energy, the resourcefulness, and the patriotism of these one hundred thirty million people are also very great—immeasurable, incalculable. Never has education been so widespread, never the means of transmitting knowledge to all and upon all subjects so universal and perfect. Thomas Carlyle, in his life of Robert Burns, comparing the modern era with former times, said: "Man stands, as it were, in the midst of a boundless arsenal and magazine, filled with all the weapons and engines which man's skill has been able to devise from earliest time; and he

works accordingly, with a strength borrowed from all past ages." And while the citizen in these days stands in the midst of all kinds of questions calling for greater and graver responsibility, what reason have we to suppose that the American citizen will not be equal to the task? Certainly, there has been no evidence either of incompetency or unreliability in these frightful years through which we have just passed.

There seems to me something decidedly un-American in these doubts and fears touching the inability of democracy to cope with the problems of modern life. Let's leave these doubts and fears to those who openly decry our system of free government and who hate the very principles upon which it rests. Why should we doubt that system of government which has brought so much of happiness to the individual and so much of power to the nation? If fate should be against democracy, it will be time enough to grapple with that tragedy when it comes, but let's not commit the crime of encouraging it. Under that self-discipline which national exigencies always suggest and which a great people always accepts, there is no reason why the achievements of our government and the success of our people in the past should be anything more than the prelude to still greater achievements in the future.

And may I say to the youth of this country, those who will have most to do in directing the affairs of the nation in the near future, that the more they study the history of our country, the more they will realize that success in public affairs, as in all other things, comes, not to those who doubt but to those who believe. Those whom this republic has placed among her immortals were not those who staggered through in unbelief, but those who believed that what constitutional government had promised constitutional government would perform.

The best illustration of this pessimistic political philosophy is the theory so often advanced that personal liberty has become incompatible with economic security, that the time has come when if the masses would make sure of shelter and food they must surrender freedom. The things to be done, it is argued, are so big, so vast, that they must be done by the government and the citizen must yield up all discretion, all judgment, together with most of his ancient privileges and his personal liberty. If that is true, of course we began wrong one hundred fifty years ago. If that is true, Washington and Jefferson were wrong and Mussolini and Hitler are right. This theory would write lie across the Declaration of Independence and obsolete across the Federal Constitution. But the theory itself is false, and

has been proven to be false by all human experience. Personal liberty and the discretion and judgment of the citizens are not incompatible with, but are essential factors in, economic security. In those countries where the people have been induced to give up their rights as free men and free women under the promise of economic security, they have lost both. There has been greater advancement since the Declaration of Independence and the adoption of the Federal Constitution in all those things which contribute to the moral and physical well being, to the happiness and dignity of the man in the factory, in the store, on the farm and in the mine, to make it possible to own homes and to dwell in them in security, than in the three thousand years preceding. Our work is by no means complete. But that which has been accomplished demonstrates we are on the right road. No! No! Liberty in its full and true sense is an indispensable part of economic security. Political liberty and economic freedom are allies, not enemies.

In considering these gloomy theories and the reason why these views are among us, we must keep in mind the experience of the last twenty-five years—the Gethsemane through which humanity has passed. They have been mad, confusing, discouraging years. They spread far and wide the seeds of distrust and despair. The Great War and the worldwide depression which followed naturally left their wounds upon the body politic and exacted their toll of human suffering, but as this long night of agony draws to a close and the dawn of a new day breaks, this outstanding, inspiring fact remains—it is in those countries, and those countries alone, where men and women are still free, free to choose their own calling or profession, free to live their own lives, free to worship their God as they conceive their God, that material recovery has been greatest and economic security most pronounced. The exacting years of the war, the devastating years of the depression, have demonstrated that constitutional government is the only government which, in restoring the economic welfare of the people, at the same time preserves their rights and their liberty. While caring for the material interests of the citizen, it does not barter away his spiritual freedom.

This government and what it stands for, this Constitution and what it means to the happiness and to the advancement of the people, not only to those so fortunate as to find shelter under its terms, but as a steadying, stabilizing force for all humanity, is the priceless heritage which has been entrusted for a brief time to our keeping, and, as a people, we know its worth and, as a people, we

will preserve it and pass it on unimpaired to our children and our children's children.

In conclusion, this anniversary will call forth many words of praise for our great charter of government; but after all is said that may be said about our Constitution, it all seems inadequate and vain compared with the irrefutable facts and the living truths which testify to its worth. Its measure of worth is revealed and confirmed, not by words, but by experience. We cherish and value it, not because of what may be said of it, but because of what it has done for us as a people. It has given us peace among ourselves and between forty-eight sovereign states. It has guaranteed alike the welfare of the individual and of the public. Beyond any frame of government yet devised, it leaves room for that individual initiative which is the crowning characteristic of our people, while it affords complete opportunity for unity in all that concerns the nation as a whole. While mindful of human infirmities and of individual wants, its ultimate objective is national power and national glory. Finally, the strongest assurance of its perpetuity is the fact that it affords perfect machinery for gathering up, as it were, and formulating into laws and policies the reserve common sense of a great people. And it is common sense that rules the world.

We have not lived, we are not to live, in the Republic of Plato, but in the Republic of Washington and Jefferson, Jackson and Lincoln, fitted for the storm as well as the calm. We shall have our differences, our contentions, and our controversies, even our seasons of bitterness and discord. We shall make mistakes and some times grope long for the right way. At times we shall fight harder for party than for country, for political power rather than public welfare. But such is the nature, such the glory of democracy that ultimately all such things are lost in the depth of devotion for that constitutional system which, in a world all but terrified with intolerance and oppression, keeps us independent, united, and free.

Commemoration of the Ratification of the Constitution

RADIO ADDRESS OF HONORABLE SOL BLOOM

DIRECTOR GENERAL, UNITED STATES CONSTITUTION SESQUICENTENNIAL COMMISSION, DELIVERED OVER NETWORK OF COLUMBIA BROADCASTING SYSTEM, 4:15 P. M., JUNE 21, 1938, FROM INDEPENDENCE HALL, PHILADELPHIA, PA.

THE TWENTY-FIRST day of June is a milestone on the long and rough road of human liberty. It marks the hour when Americans, after suffering many disappointments and dangers, found the secret of "more perfect Union." From that hour the United States of America has grown more and more powerful among nations, armed as it is with the breastplate of peace, the shield of liberty and the sword of justice.

Almighty Providence has ordained that the United States shall stand as a lighthouse, immovable by any storm, to throw the beam of hope to all mankind. Thanks to the American spirit as manifested on June 21, 1788, human liberty is a reality—a perpetual fact—and the right of a human being to pursue happiness is not a dream. On that day the Constitution of the United States came into being. Eight states having previously voted ratification, the vote of New Hampshire on that day consummated the Union.

No pages of history are more inspiring than those which tell of the beginnings of American independence, the struggles and partial failures in the search for the secret of Union, and the final success of the people in establishing upon everlasting foundations a government of their own choosing. Although brave, other peoples were equally brave; and Americans did not succeed by bravery alone. Although patriotic and intelligent, Americans made mistakes which baffled their hopes. Their courage was shaken by reverses in the field, and their fortitude was sapped by long-continued disappointments in statecraft. But they profited by their bitter experiences,

and worked their way patiently through errors to perfect the Constitution. On this day, 150 years ago, they triumphed.

Many students of history regard the victory of the Revolution as a miracle. The financial resources of the Americans were meager to the point of beggary. Their political system was in effect a lack of system—a hodgepodge, an improvised arrangement which could have been expected to insure defeat instead of victory. There was no central government. The only agency of common action was a convention of delegates from the colonies—a convention that sprang from the universal protest against the injustice of the British government. Calling itself the Continental Congress, this convention had no constitution or standard of precedents. It made its rules as it went along gradually enlarging its powers of government Its fundamental rule was that each colony should have one vote.

It assembled first in September, 1774, adopted a petition to the king asking for redress of grievances, took steps to remind England that commercial retaliations were on foot and adjourned after recommending another congress or convention to be held in Philadelphia on May 10, 1775.

Although active in the struggle for righting of the wrongs then suffered by the colonists, the Continental Congress continued to lack the powers essential to efficient government.

June 10 and June 11, 1776, are important dates in American history. On June 10 it was resolved that a committee should be appointed to draw up a Declaration of Independence. On the next day a resolution was passed to appoint a committee to prepare and digest the form of a confederation to be entered into between the colonies.

The Declaration of Independence was adopted on July 4, 1776, and the war went on. The committee charged with preparation of a form of Confederation brought in a draft on July 12. This report was debated until November 15, 1777, before it was agreed to. The Congress directed that the Articles of Confederation be submitted to the legislatures of the states with the recommendation that, if approved, their delegates in Congress be authorized to ratify them. A form of ratification was drawn up, and on July 9, 1778, the Articles of Confederation were ratified by the delegates of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, Pennsylvania, Virginia, and South Carolina. But the confederation could not go into effect until all states concurred. So, with stumbling and inadequate powers, the Congress did its best to support Washington in his discouraging campaign.

Long delays, for various reasons, prevented ratification of the Articles by the delegates of other states. New Jersey's delegates did not ratify until November 26, 1778. Delaware delayed until May 5, 1779. Maryland instructed its delegates not to ratify the Articles until a satisfactory settlement of the western land question could be found; but the enemies of independence circulated reports of the early dissolution of the Union and defeat in war, and Maryland finally directed its delegates to ratify. They signed the Articles on March 1, 1781, and the next day the Congress assembled under its new powers.

The war had been conducted all this time under direction of committees of Congress. These committees were rudimentary departments of Foreign Affairs, Treasury, War, and Marine. The Congress exercised legislative, executive, and judicial functions.

The Confederation had been in existence only seven months when Cornwallis surrendered to Washington on October 19, 1781. From the day when Congress prepared for confederation until the Articles went into effect, four years and nine months elapsed. These were the years when the fate of the Revolution hung in the balance. Then followed eight years of unhappy and unfortunate efforts at government under the Confederation—the period from March 1, 1781, to March 4, 1789, when the Constitution went into operation. These were the years of doubt, when it seemed that a people who had won their independence were incapable of preserving it.

The men who framed the Constitution had been through the war and the agonizing years of demoralization under the Confederation. They remembered that it had taken nearly five years to bring the states into the Confederation, and that after they were confederated all efforts to perfect the government were blocked because of the objections of one or two states. They were agreed upon two fundamental propositions: First, that a more perfect Union must be established; and second, that the rule of unanimity must be abolished. One state had, indeed, refused to take part in framing the Constitution.

The Articles of Confederation provided that they should never be altered unless "agreed to in a congress of the united states, and be afterwards confirmed by the legislature of every state."

For the sublime purpose of forming a more perfect Union the framers of the Constitution boldly proposed to set aside this provision of the Articles of Confederation. They proposed that conventions, and not legislatures, should have power of ratification; and that the conventions of nine states, and not thirteen, should have

power to establish the Union. They provided that the Constitution itself should be subject to amendment by the vote of three-fourths of the states instead of all the states.

This bold action was denounced in all the states by individuals who described it as revolutionary. The objectors were in the majority in some states. So, if the rule of unanimity had been observed, it is safe to say that the Constitution would not have been established. But the practical common sense of the people supported the makers of the Constitution. Charges of "revolutionary action" and "usurpation of power" were dismissed with this argument: "Are we not masters? Do we not have power to form a more perfect Union if we choose? Let the will of three-fourths of the states be the expression of our will."

The people in state conventions proceeded to consider the draft of the Constitution. The discussions were exceedingly penetrating and informative. Great patriots opposed the Constitution. Indeed, one Virginia delegate who voted against ratification was afterward elected President of the United States—James Monroe. The vote in many states was very close.

Delaware, by unanimous vote, was the first to ratify, on December 7, 1787. Pennsylvania followed, by a vote of 46 to 23. New Jersey and Georgia were next, with unanimous votes. Connecticut ratified by a vote of 128 to 40. The struggle in Massachusetts was prolonged until February 6, 1788, when the vote for ratification was recorded, 187 for and 168 against. Maryland and South Carolina ratified by substantial majorities, while Virginia and New York were locked in doubtful debate.

Then, on June 21, 1788, 150 years ago today, New Hampshire's delegates by a vote of 57 to 47 crowned the years of trial by ratifying the Constitution. Thereupon it was transformed from a blueprint into an everlasting structure.

Congress on July 2 received official word of the action of New Hampshire. It discussed ways and means for putting the Constitution into operation. It fixed the first Wednesday in January, 1789, as the day for choosing presidential electors; the first Wednesday in February for balloting for President and Vice President; and the first Wednesday in March for the commencement of the government under the Constitution.

Although delays occurred which prevented President Washington from taking the oath of office until April 30, it has been judicially held that the United States government came into operation on March 4, 1789.

From that day to this, the history of the United States has been one of Liberty Triumphant. We honor ourselves and our posterity when we celebrate today, the birthday of the more perfect Union without which our liberty would be but a hopeless dream. Throughout the shifting time-flood of 150 years, when nations have been engulfed like sand, and humanity has clung to the wreckage of governments, the Rock of American Union has withstood the battering-rams of accident and war. This Rock of Union is the foundation upon which Liberty, as from a lighthouse, flashes its beams throughout the world. Storm-tossed millions in many lands see this eternal light and renew their courage. The message goes forth: "Do not despair. We, like you, were engulfed in trouble. Seek liberty in yourselves, in your own Union. Base your union upon the rock of individual liberty, pull together, and you will be saved."

Observance of the Sesquicentennial of the Congress

CONCURRENT RESOLUTION NO. 4

[Submitted by Mr. BLOOM of New York]

Resolved by the House of Representatives (the Senate concurring), That in commemoration of the one hundred fiftieth anniversary of the First Congress of the United States under the Constitution, begun and held at the city of New York on Wednesday, the 4th of March 1789, the two Houses of Congress shall assemble in the Hall of the House of Representatives at 12 o'clock meridian, on Saturday, March 4, 1939.

That a joint committee consisting of five Members of the House of Representatives and five Members of the Senate shall be appointed by the Speaker of the House of Representatives and the President of the Senate, respectively, which is empowered to make suitable arrangements for fitting and proper exercises for the joint session of Congress herein authorized.

That invitations to attend the exercises be extended to the President of the United States and the Members of his Cabinet, the Chief Justice and Associate Justices of the Supreme Court of the United States, the Diplomatic Corps (through the Secretary of State), the General of the Armies, the Chief of Staff of the Army, the Chief of Naval Operations, the Major General Commandant of the Marine Corps, and the Commandant of the Coast Guard, and such other persons as the joint committee on arrangements shall deem proper.

That the President of the United States is hereby invited to address the American people at the joint session of the Congress in commemoration of the one hundred fiftieth anniversary of the First Congress of the United States under the Constitution.

Adopted February 1, 1939.

1789  1939

To celebrate
The One Hundred and Fiftieth Anniversary
of the First Congress of the
United States under the Constitution

The honor of your presence is requested at a joint
session of the Congress
at twelve o'clock, meridian
March fourth, Nineteen thirty-nine
To be held in the House of Representatives
City of Washington

Joint Committee on Arrangements

Senate	House
Alben W. Barkley, Chairman	Sam Rayburn, Chairman
Key Pittman	Adolph J. Sabath
Pat Harrison	Sol Bloom, Director of Arrangements
Charles L. McNary	Charles A. Eaton
William E. Borah	Jessie Sumner

CONGRESS OF THE UNITED STATES

The Joint Committee on Arrangements

For the Senate:

ALBEN W. BARKLEY,
Chairman
Kentucky

KEY PITTMAN
Nevada

PAT HARRISON
Mississippi

CHARLES L. MCNARY
Oregon

WILLIAM E. BORAH
Idaho

For the House:

SAM RAYBURN,
Chairman
Texas

ADOLPH J. SABATH
Illinois

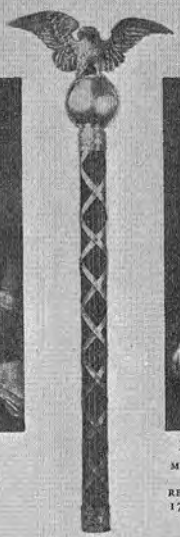
SOL BLOOM,
Director of Arrangements
New York

CHARLES A. EATON
New Jersey

JESSIE SUMNER
Illinois

JOHN ADAMS, Mass.

LAWYER; COLONIAL LEGISLATURE, CONTINENTAL CONGRESS, 1774–1777; VICE PRESIDENT, 1789–1797; PRESIDENT, 1797–1801



FREDERICK A. MUHLENBERG, Pa.

MINISTER, LUTHERAN CHURCH; CONTINENTAL CONGRESS, 1779–1780; STATE HOUSE OF REPRESENTATIVES, SPEAKER; CONGRESS, 1789–1797, SPEAKER, FIRST AND THIRD CONGRESSES

MARCH 4, 1789

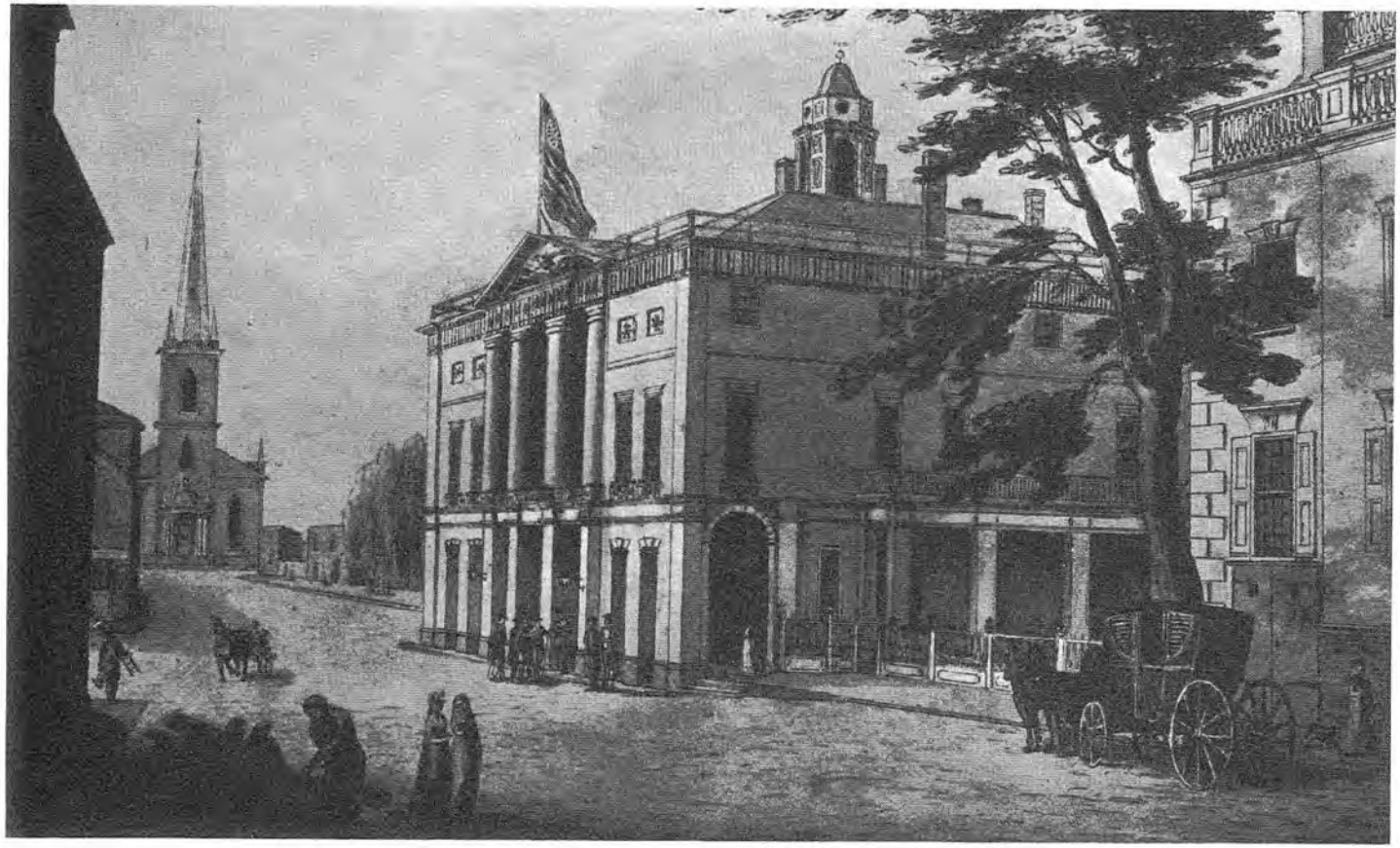
JOHN N. GARNER, Tex.

LAWYER; STATE HOUSE OF REPRESENTATIVES; CONGRESS, 1903–1933, SPEAKER, 1931–1933; VICE PRESIDENT, 1933—

WILLIAM B. BANKHEAD, Ala.

LAWYER, STATE HOUSE OF REPRESENTATIVES; AND OFFICES; CONGRESS, 1917—; SPEAKER, 1936—

MARCH 4, 1939



FEDERAL HALL

Meeting Place of the First Congress of the United States under the Constitution, New York City, March 4, 1789

THE UNITED STATES CAPITOL, 1939

VIEW OF THE CONGRESS OF THE UNITED STATES IN JOINT SESSION, MARCH 4, 1939

PROCEEDINGS

THE HOUSE of Representatives met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

Most gracious Lord of mankind, Thou wert our fathers' God. In Thee they trusted and were never put to shame. In darkness Thou didst give them light, in danger succor, and in perplexity guidance. Oh, blessed is the nation whose God is the Lord. Today we seek to do homage to it because of its ideals. Our soil bears the footprints of the glorious company of apostles of liberty and humanity. They closed old epochs and ushered in new ones by declaring the rights of God and man; may we ever love their labors with the breath of life. O breathe upon this great people the same wisdom, the same sacrificial devotion, and the same ambition for the highest treasures which bring in their train all earthly good. We love and cherish our homeland and rejoice that by Thy merciful providence we were reared beneath its benignant skies. Grant, blessed Lord, that a fervent and unwearied love of country may be so strong that tyrants and their cohorts may never be able to loosen the fireproof foundations of our democracy. Preserve us from all revolutionary passions and the rolling tides of war; continue to be the anchor of our Nation's thoughts and the guardian of its soul. Thine shall be the praise forever. Through Christ our Saviour. Amen.

At 12 o'clock and 5 minutes p. m., the Doorkeeper, Mr. Joseph J. Sinnot, announced the Vice President of the United States and the Members of the Senate.

The Members of the House rose.

The Senate, the Vice President and the President Pro Tempore, preceded by its Chief Clerk, Mr. John C. Crockett, and Sergeant at Arms, Col. Chesley W. Jurney, entered the Chamber.

The Vice President took the chair to the right of the Speaker, and the Members of the Senate took the seats reserved for them.

Whereupon, the Speaker relinquished the gavel to the Vice President, who, as the Presiding Officer of the Joint Session of the two Houses, called the meeting to order.

The Doorkeeper announced the following guests of honor, who were escorted to the seats assigned to them:

The Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States.

The Ambassadors, the Ministers and the Chargé d'Affaires of Foreign Governments.

The Chief of Staff of the United States Army, the Chief of Naval Operations of the United States Navy, the Major General Commandant of the United States Marine Corps, and the Commandant of the United States Coast Guard.

The Commissioners of the District of Columbia.

The members of the President's Cabinet.

At 12 o'clock and 16 minutes p. m., the Doorkeeper announced the President of the United States, accompanied by the Joint Congressional Committee on Arrangements of the Senate and House, who was escorted to a seat on the Speaker's rostrum.

Miss Gladys Swarthout sang "America."

The VICE PRESIDENT. The Chair recognizes the gentleman from New York, Mr. BLOOM, a member of the Joint Committee on Arrangements, to read the concurrent resolution providing for the assembling of the two Houses of Congress in the Hall of the House of Representatives on this day for the purpose of holding fitting and proper exercises in commemoration of the One Hundred and Fiftieth Anniversary of the Commencement of the First Congress of the United States under the Constitution.

Mr. BLOOM. On February 1, 1939, the following concurrent resolution was adopted by the Congress [reading]:

Resolved by the House of Representatives (the Senate concurring), That in commemoration of the one hundred fiftieth anniversary of the First Congress of the United States under the Constitution, begun and held at the city of New York on Wednesday, the 4th of March 1789, the two Houses of Congress shall assemble in the Hall of the House of Representatives at 12 o'clock m., on Saturday, March 4, 1939.

That a joint committee consisting of five Members of the House of Representatives and five Members of the Senate shall be appointed by the Speaker of the House of Representatives and the President of the Senate, respectively, which is empowered to make suitable arrangements for fitting and proper exercises for the joint session of Congress herein authorized.

That invitations to attend the exercises be extended to the President of the United States and the members of his Cabinet, the Chief Justice and Associate Justices of the Supreme Court of the United States, the Diplomatic Corps (through the Secretary of State), the General of the Armies, the Chief of Staff of the Army, the Chief of Naval Operations, the Major General Commandant of the Marine Corps, and the Commandant of the Coast Guard, and such other persons as the Joint Committee on Arrangements shall deem proper.

That the President of the United States is hereby invited to address the American people at the joint session of the Congress in commemoration of the one hundred fiftieth anniversary of the First Congress of the United States under the Constitution.

Adopted February 1, 1939.

Mr. BLOOM. Ladies and gentlemen, I have the honor to present the Speaker of the House of Representatives, Mr. WILLIAM B. BANKHEAD.

ADDRESS OF HONORABLE WILLIAM B. BANKHEAD

SPEAKER OF THE HOUSE OF REPRESENTATIVES

Mr. PRESIDENT, Mr. Vice President, Gentlemen of the Supreme Court, Members of the Senate and House of Representatives, Gentlemen of the Diplomatic Corps, Ladies and Gentlemen:

I feel very deeply my great good fortune in being the Speaker of the House today, because of that position I am the one privileged to welcome you to this Hall on this memorable occasion.

A mere century and a half is relatively a short span in the history of a nation, but when that period is the limit of the official life of the most powerful nation on earth, it assumes a vastly more comprehensive significance.

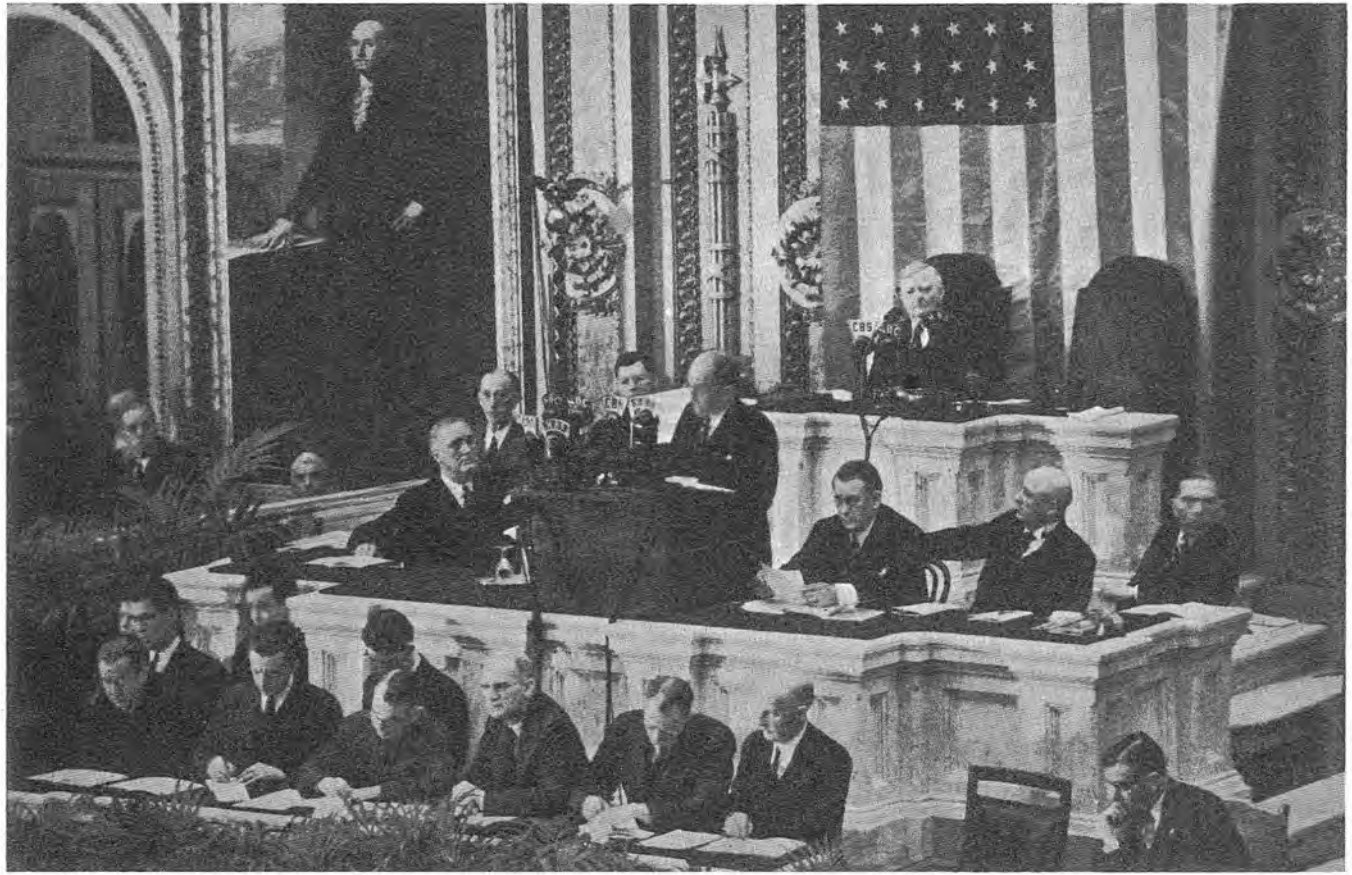
One hundred and fifty years ago this day there assembled in the city of New York the First Congress of the United States of America under its newly adopted Constitution. The mere statement of that incident carries only a reflection of the years that have passed, but in terms of what that occasion meant there has been no more arresting episode in the history of modern civilization. The proprieties of this occasion forbid even a casual review on my part of the historical background of the event we are convened to celebrate.

The student of the records of civilization always remembers a few outstanding things that have marked the progress of man from the dawn of organized society on through the tortuous and halting centuries in his search for a decent and stable formula of government that would combine into a compact of action the peace and security of peoples.

The Ten Commandments, the Sermon on the Mount, St. Paul at Rome, the voyages of Columbus, the Napoleonic Wars, Magna Carta, the Declaration of Independence, and the establishment of our Constitution illustrate a few of the milestones that mark the pilgrimage of men on the journey from chaos to stability.

Today we may find the temper to forget advances in the realms of religion, science, discovery, warfare, and the cultural arts and fix our contemplation on government, and particularly our own government.

There has been no period within the recollection of this generation more full of signs and portents than this present hour of the necessity of reappraising the soundness and desirability of our demo-



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THE SPEAKER OF THE HOUSE OF REPRESENTATIVES ADDRESSING THE CONGRESS

Vice President John N. Garner is seated at the Speaker's desk. To the right of the Speaker is President Roosevelt; to the left are

cratic form of government, and if it yet maintains the confidence and support of our people and of other great nations of the world, as I believe to be the case, then it is our solemn duty to take every needful step and to assume every required obligation to preserve for our posterity the form and essence of a justly balanced and wisely conceived government for a free people. This obligation does not bear upon us as of selfish national concern for our own people alone, although that should always be our primary interest, but in addition thereto, it carries a profound moral obligation to our neighbors across the seas and in the Western Hemisphere, who have honored the prudence and wisdom of our founders by adopting in substance the theory of government that God has not yet created any one man wise enough or benevolent enough to fix and enforce his individual pattern to govern the hearts and minds and conscience and property and lives of every citizen under his jurisdiction. Democracy asserts the inalienable right of the people themselves, through orderly processes and under due restraints to contrive out of their collective judgment, through their legally chosen representatives, the means and measures by which they are to be prospered and protected in the age-old search for security and happiness.

That doctrine the people themselves long ago engrained and chiseled into the structure of our National Constitution. It is yet the sanctuary of our freedom and the sheet anchor of all our liberties, possessing upon this great anniversary the affection and reverence of our citizens. There are evidences of certain sinister influences and minorities now seeking to sap and mine the pillars of this temple of freedom. We may have been too generous in our hospitality to them. We may have been too tolerant of some of their recent manifestations of subversive treachery. We have sought with rather grim patience to respect the guaranty of freedom of speech; but it may be only fair to admonish all such groups that they take counsel of their prudence lest by going one step too far, it will be too late to escape the wrath and indignation of all real Americans.

After such fragmentary observations of our situation and attitude, the time and occasion draw our attention back to our fundamental law which authorizes this legislative assembly. We are still officially celebrating the sesquicentennial of the ratification of the Constitution. Our reverence and devotion to that document is augmented by the passing of the years. Its wisdom and philosophy have been tested by the whirlwinds of party passions, fratricidal warfare, and grave economic convulsions. The inspiration of its construction and the tenacity of its existence have fully justified the

praise bestowed upon it by Mr. Gladstone, which we should never tire of remembering, in these words:

> As the British Constitution is the most subtle organism which has proceeded from the womb and long gestation of progressive history, so the American Constitution is, so far as I can see, the most wonderful work ever struck off at a given time by the brain and purpose of man.

This anniversary conjures up in a parade of reverie and retrospection many solemn and yet comforting memories. Including the membership of the First Congress and up to the present session of the Seventy-sixth Congress 9,159 different individuals have served in the House and Senate. Thirteen hundred and sixty-two have served as Senators; 8,106 have served as Representatives; 450 have served in both Houses; 141 have served as Territorial Delegates and Commissioners.

What an intriguing pageant of brain and talent, of individuality and mannerism, of humor and pathos, of provincialism and scholarship! What a thrill of interest and admiration would we of this Congress obtain if we could see and hear many of those stalwarts of the long ago, who so enthralled the admiration of their partisans and captivated the idolatry of the masses! What a stimulation of the intellect to peruse the older records of debate between the master minds of other but unforgotten days.

For 138 years such Representatives and Senators have come into these Chambers, played their parts in the drama of representative government, made their contributions of service to their country's progress and development, and then are seen no more—either "beckoned by the pallid messenger with the inverted torch to depart" or returned to the walks of private life from whence they came. They served their day and generation.

To my brethern in both branches of Congress this should be embraced as an occasion of rededication to the best interests of our Republic. Despite the limitations of our judgments and intellects—because, forsooth, at no time nor under any administration, have we infallibly measured up to the full needs of the hour—nevertheless, we are the emissaries of our constituencies and the symbols of representative government. May we this day find the grace to renew the prayer of Daniel Webster, deposited in the cornerstone of this wing of the Capitol on July 4, 1851:

> If, therefore, it shall be hereafter the will of God that this structure shall fall from its base, that its foundation be upturned, and this deposit brought to the eyes of men, be it then known, that, on this day, the Union of the United States of America stands firm, that their Constitution still exists unimpaired,

and with all its original usefulness and glory; growing every day stronger and stronger in the affections of the great body of the American people, and attracting more and more the admiration of the world. And all here assembled, whether belonging to public life or to private life, with hearts devoutly thankful to Almighty God for the preservation of the liberty and happiness of the country, unite in sincere and fervent prayers that this deposit, and the walls and arches, the domes and towers, the columns and entablatures now to be erected over it may endure forever!

God save the United States of America.

The VICE PRESIDENT. The Chair recognizes the gentleman from Texas, Mr. RAYBURN.

Mr. RAYBURN. It is a privilege at this time to present the President Pro Tempore of the Senate of the United States, Mr. KEY PITTMAN.

ADDRESS OF HONORABLE KEY PITTMAN

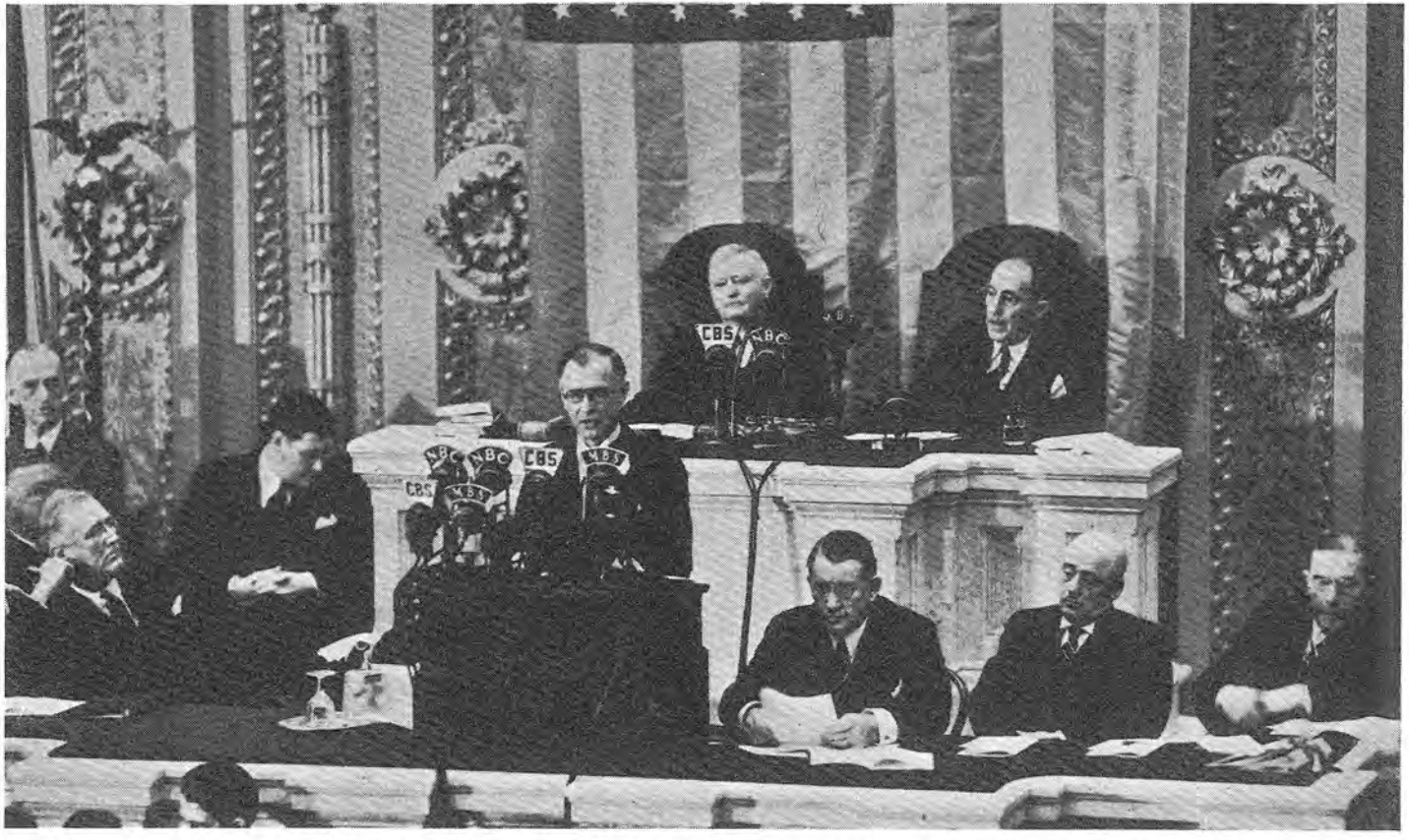
PRESIDENT PRO TEMPORE OF THE SENATE

MR. PRESIDENT, Mr. Vice President, Mr. Speaker, Gentlemen of the Supreme Court, Members of the House of Representatives and the United States Senate, Gentlemen of the Diplomatic Corps, Ladies and Gentlemen:

This in my opinion is the most remarkable and happiest birthday ever celebrated on behalf of a parliamentary body. This celebration is honored by the President of the United States and by the Chief Justice of the United States as heads of the other two great independent departments of our Government, the commanders in chief of every branch of our military service, and the diplomatic corps of the world.

We have just listened with intense interest and pleasure to the able and comprehensive address by the distinguished Speaker of the House of Representatives with regard to the organization, the composition, and the services of Congress. There is little more to be said upon that subject. I would be pleased were the time permitted me to pay tribute to the unselfish, able, and patriotic services of the House of Representatives and the United States Senate throughout their entire history. The Congress and the people of the country are waiting, however, to hear from our President and the Chief Justice of the United States.

When we realize what has been accomplished in the last 150 years, that period is exceedingly brief. When we consider, however, that this government, established in great adversity, has continued without interruption and without change, except to grow stronger each year, 150 years may be deemed in the history of governments a



THE PRESIDENT PRO TEMPORE OF THE SENATE ADDRESSING THE CONGRESS

very long period of time. In fact, I assume to assert that no other government has enjoyed the same undisturbed history.

The fundamental principles of our government, embodied in our great Constitution and its Bill of Rights, have remained unchanged. The right and power of our citizens under their Constitution to govern their own country has not been abridged, but has been broadened and strengthened. The three separate and independent branches of our government—legislative, executive, and judicial—have remained inviolate and have constituted the anchor of our safety which has kept us off the rocks of chaos and revolution. Our Congress has held firmly to the principles under which and for which it was created. The Senate and the House of Representatives have always conscientiously and loyally performed the respective functions of their offices, and will, I am sure, continue to do their part to protect our institutions and the liberty of our citizens. Their conduct and actions have conclusively demonstrated the wisdom of a representative form of government under a constitution such as ours.

Again I take the liberty of recalling to the minds of our citizens—although the history is well known to those present—the very difficult conditions under which our government was formed, established, and maintained. Our population at that time consisted of only 4,000,000 people. These citizens were scattered over a pioneer country whose area was larger than that of Great Britain, France, Germany, and Italy combined. There were no railroads in those days; there were few wagon roads, and such as did exist were at times almost impassable, Our states were independent sovereignties, jealous of their rights and fearful of domination by a central government. This jealousy and fear was a natural threat to the successful formation and establishment of a sound central government under a constitution. That it was ever accomplished is the highest tribute that could be paid to the greatness and patriotism of our statesmen of that day.

The remarkable history of the creation, adoption, and ratification of our Constitution is recorded in the histories of every country.

On yesterday I picked up a musty old volume entitled *Annals of Congress, 1789–90*. It is the original proceedings of the First Congress of the United States. I think for historical purposes I may be permitted to read from this record just a few lines which to me are far more expressive than any language I could use relative to what actually took place upon the organization of the First Congress and the election of the first President and the first Vice President. I find here:

Proceedings of the Senate of the United States at the first session of the First Congress, begun at the City of New York, March 4, 1789.

And then follows this paragraph:

Wednesday, March 4, 1789. This being the day for the meeting of the New Congress, the following Members of the Senate appeared and took their seats:

From New Hampshire, John Langdon and Paine Wingate.

From Massachusetts, Caleb Strong.

From Connecticut, William S. Johnson and Oliver Ellsworth.

From Pennsylvania, William Maclay and Robert Morris.

From Georgia, William Few.

The Members present not being a quorum, they adjourned from day to day. . . .

And so from day to day the Senate adjourned, awaiting the arrival of a quorum. The senators were dragging their way through the muddy roads along the coast and over the Allegheny and Blue Ridge Mountains. And then I find this record:

Monday, April 6. Richard Henry Lee, from Virginia, then appearing, took his seat, and formed a quorum of the whole Senators of the United States.

The credentials of the Members present being read and ordered to be filed, the Senate proceeded, by ballot, to the choice of a President, for the sole purpose of opening and counting the votes for President of the United States.

John Langdon was elected.

This language may be confusing to one not familiar with the procedure. From March 4 until April 6, when Richard Henry Lee took his seat, there being no quorum, the Senate could take no action. Until the ballots were counted it could not be officially determined who was elected Vice President. It was, therefore, necessary to elect a presiding officer solely to count the ballots, in accordance with the directions of the Convention of 1787. As soon as the House had retired after the counting of the votes, the Senate elected Langdon president pro tempore, to serve until Adams arrived, this office being named in the Constitution.

This is the simple, yet dramatic statement of the organization of the United States Senate. Then continues the record of the counting of the electoral votes which resulted in the election of George Washington for President and John Adams for Vice President. It is but a brief statement, and, as it has probably been read by very few people, I believe it will be of interest to our citizens. I quote it:

Ordered, That Mr. Ellsworth inform the House of Representatives that a quorum of the Senate is formed; that a President is elected for the sole purpose of opening the certificates and counting the votes of the electors of the several States in the choice of a President and Vice President of the United States; and that the Senate is now ready, in the Senate chamber to proceed, in the

presence of the House, to discharge that duty; and that the Senate have appointed one of their Members to sit at the clerk's table to make a list of the votes as they shall be declared; submitting it to the wisdom of the House to appoint one or more of their members for the like purpose.

Mr. Ellsworth reported that he had delivered the message; and Mr. Boudinot, from the House of Representatives, informed the Senate that the House is ready forthwith to meet them, to attend the opening and counting of the votes of the electors of the President and Vice President of the United States.

The Speaker and the Members of the House of Representatives attended in the Senate Chamber; and the President elected for the purpose of counting the votes declared that the Senate and House of Representatives had met, and that he, in their presence had opened and counted the votes of the electors for President and Vice President of the United States, which were as follows.

Then follows the vote of each state for each candidate. After the recording of this vote, we find the following entry in this old volume:

Whereby it appeared that George Washington, Esq. was elected President, and John Adams, Esq. Vice President of the United States of America.

Mr. Madison, from the House of Representatives, thus addressed the Senate:

"Mr. President: I am directed by the House of Representatives to inform the Senate, that the House have agreed that the notifications of the election of the President and of the Vice President of the United States, should be made by such persons, and in such manner as the Senate shall be pleased to direct."

And he withdrew.

Whereupon, the Senate appointed Charles Thomson, Esq. to notify George Washington, Esq. of his election to the office of President of the United States of America, and Mr. Sylvanus Bourn, to notify John Adams, Esq. of his election to the office of Vice President of the said United States.

What a precious record! How wonderful it is that so few men, acting with another small body of men in the House of Representatives, could so expeditiously and with such certainty—without precedent—safely and soundly inaugurate the greatest government in the world!

The next step upon the part of the Senate was the inauguration of the Vice President. It is interesting to see how simply this was done. I again read briefly from the Annals of that First Congress. I quote:

Tuesday, April 21. The committee appointed to conduct the Vice President to the Senate chamber, executed their commission, and Mr. Langdon, the Vice President pro tempore, meeting the Vice President on the floor of the Senate chamber, addressed him as follows.

"Sir: I have it in charge from the Senate to introduce you to the chair of this House, and also to congratulate you on your appointment to the office of Vice President of the United States of America."

After which Mr. Langdon conducted the Vice President to the chair, when the Vice President addressed the Senate.

I wish I had time to read you that speech.

This First Congress organized the Supreme Court and the necessary inferior courts. It adopted complete rules for the government of the Senate. These rules remain substantially unchanged. There we find the rule providing for unlimited debate, which has made of the Senate the greatest deliberative body on earth.

On the 30th day of April George Washington took the oath of office and was inaugurated as President of the United States. And so was the modest beginning of our great government, which has brought a greater degree of liberty, prosperity, and happiness to our people than is enjoyed anywhere else in the world—a government that is at peace with the world and respected by the world.

Mr. John Charles Thomas sang "God Bless Our Native Land."

The VICE PRESIDENT. The Chair recognizes the Senator from Kentucky, Mr. BARKLEY.

Mr. BARKLEY. Mr. President, since the 4th day of March 1789 there have been 8,124 men and women who have served in the House of Representatives. One thousand three hundred and eighty-four men and women have served in the United States Senate. The number of those who have served in both Houses is 461. The total number of persons who have served in the Cabinets of all the Presidents is 313. The number of individuals who have served as Governors of the various states is 1,558. There have been 42 Speakers of the House of Representatives; 32 different persons have served as Vice Presidents, of whom 6 have succeeded to the Presidency by virtue of the death of the President; 31 individuals have served as President. On the Supreme Court there have been 70 Associate Justices and 11 Chief Justices of the United States.

The Senate is sometimes referred to as the nation's most exclusive club. In some respects it may be just that, but in many other respects it is no club. But if I might in my imagination create an exclusive club because of the small number of its members, I would refer to it as the Association of Chief Justices. Two of the Chief Justices, Marshall and Taney, served a total of 63 years; only 12 years short of one-half the entire period since the organization of Congress in 1789.

The Supreme Court of the United States and the Chief Justices who have presided over it have exercised profound influence upon the political, social, and economic history of America and will undoubtedly continue to do so as the complexity of modern life continues to develop.

It is my great honor and no less a pleasure to present to you today the eleventh Chief Justice of the United States. He has already served longer than five of the other ten. Whether he shall outserve all of his predecessors, I make no prediction. I am happy to record that he seems to be in robust health of mind and body.

But whether he shall serve as long as Marshall or Taney or Waite or Fuller or White, I think posterity will assign to him a place among the ablest, most influential, and most profound jurists and legal philosophers who have ever served upon the bench or as its presiding Justice. In profound legal learning, in impressive exposition, in the dignity of his bearing, I dare say no previous Chief Justice excelled him. We all take pride in his contributions to the administrative and judicial history of America. I take pride in the broad accomplishments of his intellectual processes, as well as the depth of his moral foundations, which are a part of his character and have made him so impressive a figure in whatever capacity he has chosen to occupy in his long public service.

I present to you the Chief Justice of the United States.

ADDRESS OF HONORABLE CHARLES E. HUGHES

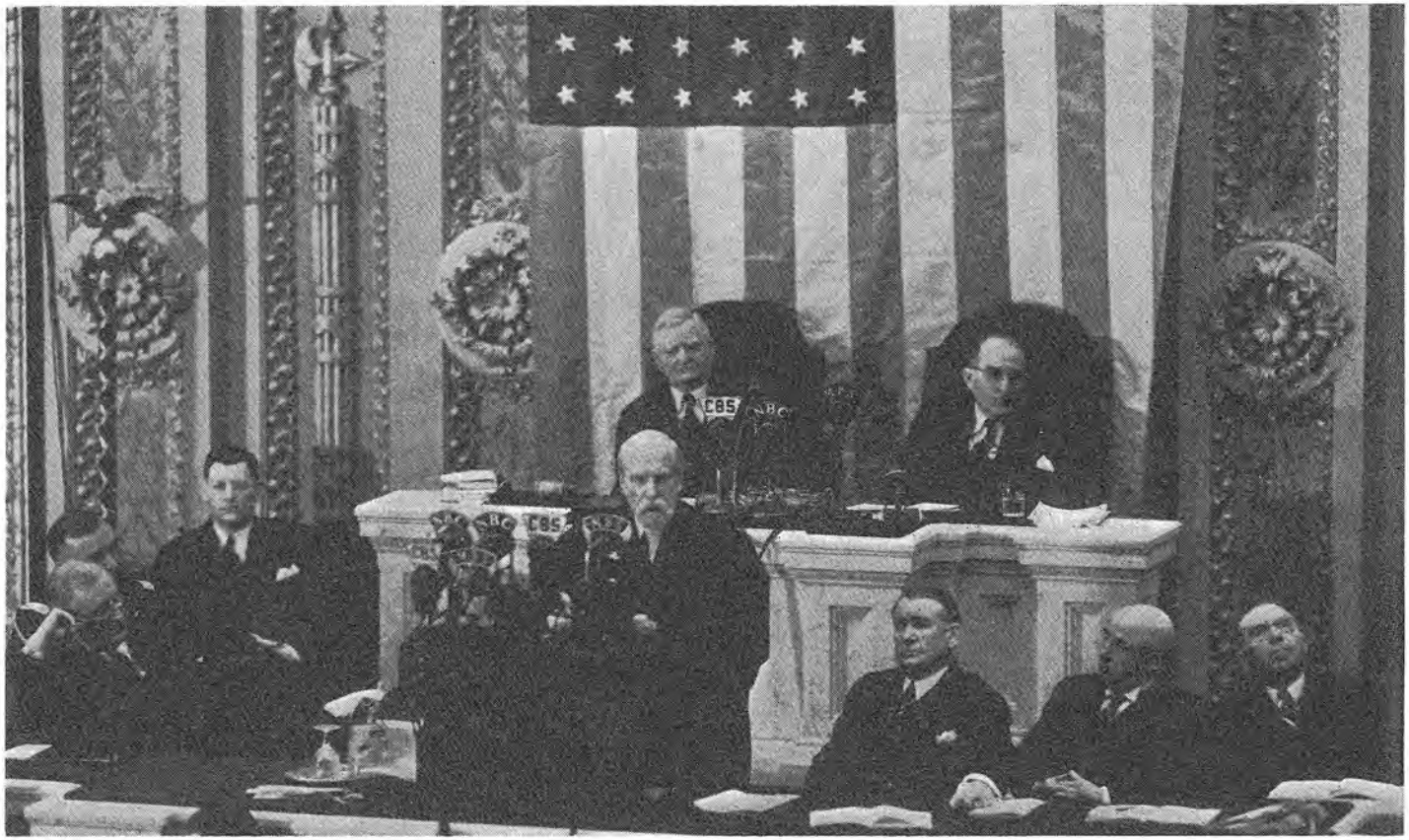
CHIEF JUSTICE OF THE UNITED STATES

MR. PRESIDENT, Mr. Vice President, Mr. Speaker, Members of the Senate and House of Representatives, Gentlemen of the Diplomatic Corps, Ladies and Gentlemen:

I thank you, Senator BARKLEY, from the depths of my heart for your very generous words.

The most significant fact in connection with this anniversary is that after 150 years, notwithstanding expansion of territory, enormous increase in population and profound economic changes, despite direct attack and subversive influences, there is every indication that the vastly preponderant sentiment of the American people is that our form of government shall be preserved.

We come from our distinct departments of governmental activity to testify to our unity of aim in maintaining that form of government in accordance with our common pledge. We are here not as masters, but as servants, not to glory in power, but to attest our loyalty to the commands and restrictions laid down by our sovereign, the people of the United States, in whose name and by whose will we exercise our brief authority. If as such representatives we have, as Benjamin Franklin said—"no more durable preeminence than the different grains in an hourglass"—we serve our hour by unremitting devotion to the principles which have given our government



THE CHIEF JUSTICE OF THE UNITED STATES ADDRESSING THE CONGRESS

both stability and capacity for orderly progress in a world of turmoil and revolutionary upheavals. Gratifying as is the record of achievement, it would be extreme folly to engage in mere laudation or to surrender to the enticing delusions of a thoughtless optimism. Forms of government, however well contrived, cannot assure their own permanence. If we owe to the wisdom and restraint of the fathers a system of government which has thus far stood the test, we all recognize that it is only by wisdom and restraint in our own day that we can make that system last. If today we find ground for confidence that our institutions which have made for liberty and strength will be maintained, it will not be due to abundance of physical resources or to productive capacity, but because these are at the command of a people who still cherish the principles which underlie our system and because of the general appreciation of what is essentially sound in our governmental structure.

With respect to the influences which shape public opinion, we live in a new world. Never have these influences operated more directly, or with such variety of facile instruments, or with such overwhelming force. We have mass production in opinion as well as in goods. The grasp of tradition and of sectional prejudgment is loosened. Postulates of the past must show cause. Our institutions will not be preserved by veneration of what is old, if that is simply expressed in the formal ritual of a shrine. The American people are eager and responsive. They listen attentively to a vast multitude of appeals and, with this receptivity, it is only upon their sound judgment that we can base our hope for a wise conservatism with continued progress and appropriate adaptation to new needs.

We shall do well on this anniversary if the thought of the people is directed to the essentials of our democracy. Here in this body we find the living exponents of the principle of representative government, not government by direct mass action, but by representation which means leadership as well as responsiveness and accountability.

Here, the ground-swells of autocracy, destructive of parliamentary independence, have not yet upset or even disturbed the authority and responsibility of the essential legislative branch of democratic institutions. We have a national government equipped with vast powers which have proved to be adequate to the development of a great nation, and at the same time maintaining the balance between centralized authority and local autonomy. It has been said that to preserve that balance, if we did not have states we should have to create them. In our forty-eight states we have the separate sources of power necessary to protect local interests and thus also to preserve

the central authority, in the vast variety of our concerns, from breaking down under its own weight. Our states, each with her historic background and supported by the loyal sentiment of her citizens, afford opportunity for the essential activity of political units, the advantages of which no artificial terrtiorial arrangement could secure. If our checks and balances sometimes prevent the speedy action which is thought desirable, they also assure in the long run a more deliberate judgment. And what the people really want, they generally get. With the ultimate power of change through amendment in their hands they are always able to obtain whatever a preponderant and abiding sentiment strongly demands.

We not only praise individual liberty but our constitutional system has the unique distinction of insuring it. Our guaranties of fair trials, of due process in the protection of life, liberty, and property—which stands between the citizen and arbitrary power—of religious freedom, of free speech, free press, and free assembly, are the safeguards which have been erected against the abuses threatened by gusts of passion and prejudice which in misguided zeal would destroy the basic interests of democracy. We protect the fundamental rights of minorities, in order to save democratic government from destroying itself by the excesses of its own power. The firmest ground for confidence in the future is that more than ever we realize that, while democracy must have its organization and controls, its vital breath is individual liberty.

I am happy to be here as the representative of the tribunal which is charged with the duty of maintaining, through the decision of controversies, these constitutional guaranties. We are a separate but not an independent arm of government. You, not we, have the purse and the sword. You, not we, determine the establishment and the jurisdiction of the lower federal courts and the bounds of the appellate jurisdiction of the Supreme Court. The Congress first assembled on March 4, 1789, and on September 24, as its twentieth enactment, passed the Judiciary Act—to establish the judicial court of the United States—a statute which is a monument of wisdom, one of the most satisfactory acts in the long history of notable congressional legislation. It may be said to take rank in our annals as next in importance to the Constitution itself.

In thus providing the judicial establishment, and in equipping and sustaining it, you have made possible the effective functioning of the department of government which is designed to safeguard with judicial impartiality and independence the interests of liberty. But in the great enterprise of making democracy workable we are all

partners. One member of our body politic cannot say to another—"I have no need of thee." We work in successful cooperation by being true, each department to its own function, and all to the spirit which pervades our institutions—exalting the processes of reason, seeking through the very limitations of power the promotion of the wise use of power, and finding the ultimate security of life, liberty, and the pursuit of happiness, and the promise of continued stability and a rational progress, in the good sense of the American people.

The VICE PRESIDENT. Ladies and Gentlemen, the President of the United States.

ADDRESS OF HONORABLE FRANKLIN D. ROOSEVELT
PRESIDENT OF THE UNITED STATES

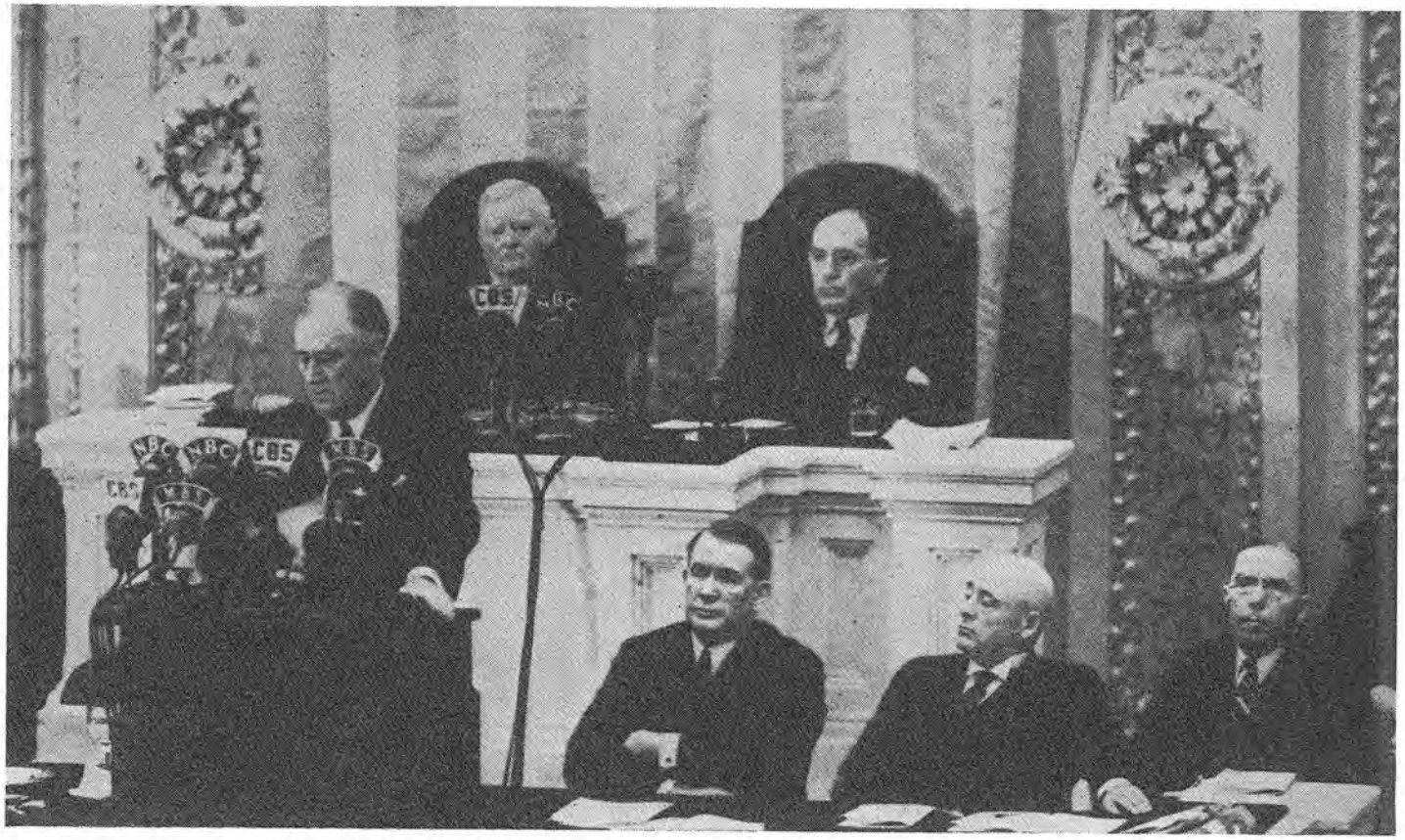
MR. VICE PRESIDENT, Mr. Speaker, Gentlemen of the Supreme Court, Members of the Senate and the House of Representatives, Gentlemen of the Diplomatic Corps, Ladies and Gentlemen:

We near the end of a three-year commemoration of the founding of the government of the United States. It has been aptly suggested that its successful organizing should rank as the eighth wonder of the world—for surely the evolution of permanent substance out of nebulous chaos justifies us in the use of superlatives.

Thus, we may increase our oratory and please our vanity by picturing the period of the War of the Revolution as crowded with a unanimous population of heroes dramatized by the admitted existence of a handful of traitors to fill the necessary role of villain. Nevertheless, we are aware today that a more serious reading of history depicts a far less pleasing scene.

It should not detract from our satisfaction in the result to acknowledge that a very large number of inhabitants of the thirteen revolting colonies were opposed to rebellion and to independence; that there was constant friction between the Continental Congress and the Commander in Chief and his generals in the field; that inefficiency, regardless of the cause of it, was the rule rather than the exception in the long drawn out war; and finally that there is grave doubt as to whether independence would have been won at all if Great Britain herself had not been confronted with wars in Europe which diverted her attention to the maintenance of her own existence in the nearer arena.

We can at least give thanks that in the first chapter all was well that ended well, and we can at least give thanks to those outstanding figures who strove against great odds for the maintenance of the national ideal which their vision and courage had created.



THE PRESIDENT OF THE UNITED STATES ADDRESSING THE CONGRESS

Vice President John N. Garner and Speaker William B. Bankhead are seated at the Speaker's desk. To the left of the President are Senator Alben W. Barkley of Kentucky, Representative Sam Rayburn of Texas, and Representative Sol Bloom of New York

The opening of the new chapter in 1783 discloses very definitely that assurance of continued independence could be guaranteed by none. Dissension and discord were so widely distributed among the thirteen new states that it was impossible to set up a union more strong or permanent than that loose-end, shaky debating society provided for under the Articles of Confederation. That we survived for six years is more a tribute to the ability of the Confederation Congress gracefully to do nothing, and to the exhaustion that followed the end of the war, rather than to any outstanding statesmanship or even leadership. Again, we can properly say of the period of confederation that all was well that ended well.

Those years have rightly been called "the critical period of American history." But for crisis—in this case a crisis of peace—there would have been no union. You, the Members of the Senate and the House; you, the Chief Justice and Associate Justices; and I, the President of the United States, would not be here on this 4th of March, a century and a half later.

It is well to remember that from 1781 to 1789 the Thirteen Original States existed as a nation by the single thread of congressional government and without an executive or a judicial branch. This annual assembly of representatives, moreover, was compelled to act not by a majority but by states, and in the more important functions by the requirement that nine states must consent to the action.

In actual authority the Congresses of the Confederation were principally limited to the fields of external relations and the national defense. The fatal defect was, of course, the lack of power to raise revenue for the maintenance of the system, and our ancestors may be called, at the least, optimistic if they believed that thirteen sovereign republics would promptly pay over to the Confederation even the small sums which were assessed against them for the annual maintenance of the Congress and its functions.

Furthermore, the effect of the existing methods of transportation and communication retarded the development of a truly national government far more greatly than we realize today—and that was true throughout the first half century of our Union. You have heard the phrase "the horse and buggy age." We use it not in derogation of the men who had to spend weeks on the rough highways before they could establish a quorum of the Congress, not in implication of inferiority on the part of those who perforce could not visit their neighbors in other states and visualize at first hand the problems of the whole of an infant nation.

We use it rather to explain the tedious delays and the local antagonisms and jealousies which beset our early paths, and we use it perhaps to remind our citizens of today that the automobile, the railroad, the airplane, the electrical impulse over the wire and through the ether leave to no citizen an excuse for sectionalism, for delay in the execution of the public business, or for a failure to maintain a full understanding of the acceleration of the processes of civilization.

Thus the crisis which faced the new nation through its lack of national powers was recognized as early as 1783, but the very slowness of contacts prevented a sufficient general perception of the danger until 1787, when the Congress of the Confederation issued a call for the holding of a Constitutional Convention in May.

We are familiar with the immortal document which issued from that convention; of the ratification of it by sufficient states to give it effect; of the action of the Confederation Congress which terminated its own existence in calling on the First Federal Congress to assemble on March 4, 1789.

We know of the month's delay before a quorum could be attained, of the counting of the ballots unanimously cast for General Washington, of his notification, of his triumphal journey from Mount Vernon to New York, and of his inauguration as first President on April 30.

So ended the crisis. So from a society of thirteen republics was born a nation with the attributes of nationality and the framework of permanence.

I believe that it has been held by the Supreme Court that the authority of the Articles of Confederation ended on March 3, 1789. Therefore, the Constitution went into effect the next day.

That Constitution was based on the theory of representative government, two of the three branches of its government being chosen by the people, directly in the case of the House of Representatives, by elected legislatures in the case of Senators, and by elected electors in the case of the President and the Vice President. It is true that in many states the franchise was greatly limited, yet the cardinal principle of free choice by the body politic prevailed. I emphasize the words "free choice" because until a very few years ago this fundamental, or perhaps I should call it this ideology of democracy, was in the ascendant throughout the world, and nation after nation was broadening its practice of what the American Constitution had established here so firmly and so well.

The safety of the system of representative democracy is, in the last analysis, based on two essentials: First, that at frequent periods

the voters must choose a new Congress and a new President; and second, that this choice must be made freely, that is to say without any undue force against or influence over the voter in the expression of his personal and sincere opinion.

That, after all, is the greatest difference between what we know as democracy and those other forms of government which, though they seem new to us, are essentially old—for they revert to those systems of concentrated self-perpetuating power against which the representative democratic system was successfully launched several centuries ago.

Today, with many other democracies, the United States will give no encouragement to the belief that our processes are outworn, or that we will approvingly watch the return of forms of government which for 2,000 years have proved their tyranny and their instability alike.

With the direct control of the free choosing of public servants by a free electorate, the Constitution has proved that this type of government cannot long remain in the hands of those who seek personal aggrandizement for selfish ends, whether they act as individuals, as classes, or as groups.

It is, therefore, in the spirit of our system that our elections are positive in their mandate, rather than passive in their acquiescence. Many other nations envy us the enthusiasm, the attacks, the wild overstatements, the falsehood intermingled gayly with the truth that marks our general elections, because they are promptly followed by acquiescence in the result and a return to calmer waters as soon as the ballots are counted.

We celebrate the completion of the building of the constitutional house. But one essential was lacking—for the house had to be made habitable. And even in the period of the building, those who put stone upon stone, those who voted to accept it from the hands of the builders, knew that life within the house needed other things for its inhabitants. Without those things, indeed, they could never be secure in their tenure, happy in their toil and in their rest.

And so there came about that tacit understanding that to the Constitution would be added a bill of rights. Well and truly did the First Congress of the United States fulfill that first unwritten pledge; and the personal guaranties thus given to our individual citizens have established, we trust for all time, what has become as ingrained in our American natures as the free elective choice of our representatives itself.

In that Bill of Rights lies another vast chasm between our repre-

sentative democracy and those reversions to personal rule which have characterized these recent years.

Jury trial: Do the people of our own land ever stop to compare that blessed right of ours with some processes of trial and punishment which of late have reincarnated the "justice" of the Dark Ages?

The taking of private property without due compensation: Would we willingly abandon our security against that in the face of the events of recent years?

The right to be safe against unwarrantable searches and seizures: Read your newspapers and rejoice that our firesides and our households are still safe.

Freedom to assemble and petition the Congress for a redress of grievances: The mail and the telegraph bring daily proof to every senator and every representative that that right is at the height of an unrestrained popularity.

Freedom of speech—yes, that, too, is unchecked, for never has there been so much of it on every side of every subject: it is indeed a freedom which because of the mildness of our laws of libel and slander goes unchecked except by the good sense of the American people. Any person is constitutionally entitled to criticize and call to account the highest and the lowest in the land—save only in one exception. For be it noted that the Constitution itself protects senators and representatives and provides that "for any speech or debate in either House they shall not be questioned in any other place." And that immunity is most carefully not extended to either the Chief Justice or the President.

Freedom of the press: I take it that no sensible man or woman believes that it has been curtailed or threatened or that it should be. The influence of the printed word will always depend on its veracity, and the nation can safely rely on the wise discrimination of a reading public which, with the increase in the general education, is able to sort truth from fiction. Representative democracy will never tolerate suppression of true news at the behest of government.

Freedom of religion: That essential of the rights of mankind everywhere goes back also to the origins of representative government. Where democracy is snuffed out, there, too, the right to worship God in one's own way is circumscribed or abrogated. Shall we by our passiveness, by our silence, by assuming the attitude of the Levite who pulled his skirts together and passed by on the other side, lend encouragement to those who today persecute religion or deny it?

The answer to that is "no," just as in the days of the First Congress of the United States it was "no."

Not for freedom of religion alone does this nation contend by every peaceful means. We believe in the other freedoms of the Bill of Rights, the other freedoms that are inherent in the right of free choice by free men and women. That means democracy to us under the Constitution, not democracy by direct action of the mob; but democracy exercised by representatives chosen by the people themselves.

Here in this great hall are assembled the present members of the government of the United States of America—the Congress, the Supreme Court, and the Executive. Our fathers rightly believe that this government which they set up would seek as a whole to act as a whole for the good governing of the nation. It is in the same spirit that we are met here today, 150 years later, to carry on their task. May God continue to guide our steps.

Miss Gladys Swarthout and Mr. John Charles Thomas sang "The Star-Spangled Banner."

BENEDICTION

REV. ZeBarney Thorne Phillips, D. D., LL. D., Chaplain of the Senate, pronounced the Benediction, as follows:

Unto God's graciousness, tender mercy, and protection we commit you and every citizen of this Nation this day. May the Lord bless us and keep us. May the Lord make His face to shine upon us and be gracious unto us. May He take us in His arms of love and mercy and give us a sense of His own indwelling and of His power. May He lift up the light of His countenance upon us and give us that peace which the world can neither give nor take away, that peace that passeth all understanding. Through Jesus Christ our Lord. Amen.

The VICE PRESIDENT. The Joint Session of the Congress which assembled for the purpose of holding fitting and proper exercises in commemoration of the One Hundred and Fiftieth Anniversary of the Commencement of the First Congress of the United States under the Constitution is now dissolved.

Thereupon,

The Joint Congressional Committee on Arrangements escorted the President of the United States and the members of his Cabinet from the Hall of the House.

The Doorkeeper escorted the other invited guests of honor from the Hall of the House in the following order:

The Chief Justice of the United States and the Associate Justices of the Supreme Court.

The Ambassadors, the Ministers and the Chargés d'Affaires of Foreign Governments.

The Chief of Staff of the United States Army; the Chief of Naval Operations of the United States Navy; the Major General Commandant of the United States Marine Corps; and the Commandant of the United States Coast Guard.

The Commissioners of the District of Columbia.

Upon the retirement of the guests, the Senate returned to its Chamber, and the House of Representatives resumed its session.

The SPEAKER resumed the chair.

The SPEAKER. Without objection, the proceedings in the House today will be included in the RECORD of this date.

There was no objection.

ADJOURNMENT

THE SPEAKER. Without objection, the House will stand adjourned until 12 o'clock on Monday.

There was no objection.

Accordingly (at 1 o'clock and 48 minutes p. m.) the House adjourned until Monday, March 6, 1939, at 12 o'clock noon.

[The musical selections by Miss Gladys Swarthout and Mr. John Charles Thomas, both of the Metropolitan Opera Company, of New York City, were made possible through the courtesy of the National Broadcasting Company.]

FIRST CONGRESS

MARCH 4, 1789 TO MARCH 3, 1791

Vice President of the United States—JOHN ADAMS, of Massachusetts
President Pro Tempore of the Senate—JOHN LANGDON, of New Hampshire
Secretary of the Senate—SAMUEL A. OTIS, of Massachusetts
Speaker of the House of Representatives—FREDERICK A. C. MUHLENBERG, of Pennsylvania
Clerk of the House—JOHN BECKLEY, of Virginia

CONNECTICUT

Senators
Oliver Ellsworth
William S. Johnson

Representatives
Benjamin Huntington
Roger Sherman
Jonathan Sturges
Jonathan Trumbull
Jeremiah Wadsworth

DELAWARE

Senators
Richard Bassett
George Read

Representative
John Vining

GEORGIA

Senators
William Few
James Gunn

Representatives
Abraham Baldwin
James Jackson
George Mathews

MARYLAND

Senators
John Henry
Charles Carroll, of Carrollton

Representatives
Daniel Carroll
Benjamin Contee
George Gale
Joshua Seney
William Smith
Michael Jenifer Stone

MASSACHUSETTS

Senators
Tristram Dalton
Caleb Strong

Representatives
Fisher Ames
Elbridge Gerry
Benjamin Goodhue
Jonathan Grout
George Leonard
George Partridge
Theodore Sedgwick
George Thacher

NEW HAMPSHIRE

Senators
John Langdon
Paine Wingate

Representatives
Abiel Foster
Nicholas Gilman
Samuel Livermore

NEW JERSEY

Senators
Jonathan Elmer
William Paterson [1]
Philemon Dickinson [2]

Representatives
Elias Boudinot
Lambert Cadwalader
Thomas Sinnickson
James Schureman

NEW YORK

Senators
Rufus King
Philip Schuyler

Representatives
Egbert Benson
William Floyd
John Hathorn
John Laurance
Peter Silvester
Jeremiah Van Rensselaer

NORTH CAROLINA

Senators
Benjamin Hawkins
Samuel Johnston

Representatives
John Baptista Ashe
Timothy Bloodworth
John Sevier
John Steele
Hugh Williamson

PENNSYLVANIA

Senators
William Maclay
Robert Morris

Representatives
George Clymer
Thomas FitzSimons
Thomas Hartley
Daniel Hiester
Frederick A. C. Muhlenberg
John Peter G. Muhlenberg
Thomas Scott
Henry Wynkoop

RHODE ISLAND

Senators
Theodore Foster
Joseph Stanton, Jr.

Representative
Benjamin Bourne

SOUTH CAROLINA

Senators
Pierce Butler
Ralph Izard

Representatives
Ædanus Burke
Daniel Huger
William L. Smith
Thomas Sumter
Thomas Tudor Tucker

VIRGINIA

Senators
William Grayson [3]
John Walker [4]
James Monroe [5]
Richard Henry Lee

Representatives
Theodorick Bland [6]
William B. Giles [7]
John Brown
Isaac Coles
Richard Bland Lee
James Madison
Andrew Moore
John Page
Josiah Parker
Alexander White
Samuel Griffin

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[1] Resigned March 2, 1790, having been elected governor.
[2] Elected to fill vacancy caused by the resignation of William Paterson, and took his seat December 6, 1790.
[3] Died March 12, 1790.
[4] Appointed to fill vacancy caused by death of William Grayson, and took his seat April 26, 1790.
[5] Elected to fill vacancy caused by death of William Grayson and took his seat December 6, 1790.
[6] Died June 1, 1790.
[7] Elected to fill vacancy caused by death of Theodorick Bland, and took his seat December 7, 1790.

SEVENTY-SIXTH CONGRESS

JANUARY 3, 1939, TO JANUARY 3, 1941

Vice President of the United States—JOHN N. GARNER, of Texas
President Pro Tempore of the Senate—KEY PITTMAN, of Nevada
Secretary of the Senate—EDWIN A. HALSEY, of Virginia
Speaker of the House of Representatives—WILLIAM B. BANKHEAD, of Alabama
Clerk of the House—SOUTH TRIMBLE, of Kentucky

ALABAMA

Senators
John H. Bankhead, 2d
Lister Hill

Representatives
Frank W. Boykin
George M. Grant
Henry B. Steagall
Sam Hobbs
Joe Starnes
Pete Jarman
William B. Bankhead
John J. Sparkman
Luther Patrick

ARIZONA

Senators
Henry F. Ashurst
Carl Hayden

Representative
John R. Murdock

ARKANSAS

Senators
Hattie W. Caraway
John E. Miller

Representatives
E. C. Gathings
Wilbur D. Mills
Clyde T. Ellis
Ben Cravens [1]
David D. Terry
W. F. Norrell
Wade H. Kitchens

CALIFORNIA

Senators
Hiram W. Johnson
Sheridan Downey

Representatives
Clarence F. Lea
Harry L. Englebright
Frank H. Buck
Franck R. Havenner
Richard J. Welch
Albert E. Carter
John H. Tolan
John Z. Anderson
Bertrand W. Gearhart
Alfred J. Elliott
Carl Hinshaw
Jerry Voorhis
Charles Kramer
Thomas F. Ford
John M. Costello
Leland M. Ford
Lee E. Geyer
Thomas M. Eaton
Harry R. Sheppard
Ed. V. Izac

COLORADO

Senators
Alva B. Adams
Edwin C. Johnson

Representatives
Lawrence Lewis
Fred Cummings
John A. Martin
Edward T. Taylor

CONNECTICUT

Senators
Francis T. Maloney
John A. Danaher

Representatives
B. J. Monkiewicz
William J. Miller
Thomas R. Ball
James A. Shanley
Albert E. Austin
J. Joseph Smith

DELAWARE

Senators
John G. Townsend, Jr.
James H. Hughes

Representative
George S. Williams

FLORIDA

Senators
Charles O. Andrews
Claude Pepper

Representatives
J. Hardin Petersen
Lex Green
Millard F. Caldwell
Pat Cannon
Joe Hendricks

GEORGIA

Senators
Walter F. George
Richard B. Russell

Representatives
Hugh Peterson
E. E. Cox
Stephen Pace
E. M. Owen
Robert Ramspeck
Carl Vinson
Malcolm C. Tarver
W. Ben Gibbs
B. Frank Whelchel
Paul Brown

IDAHO

Senators
William E. Borah
D. Worth Clark

Representatives
Compton I. White
Henry C. Dworshak

ILLINOIS

Senators
J. Hamilton Lewis
Scott W. Lucas

Representatives
John C. Martin
Thomas V. Smith
Arthur W. Mitchell
Raymond S. McKeough
Edward A. Kelly
Harry P. Beam
Adolph J. Sabath
Anton F Maciejewski
Leonard W. Schuetz
Leo Kocialkowski
James McAndrews
Ralph E. Church
Chauncey W. Reed
Noah M. Mason
Leo E. Allen
Anton J. Johnson
Robert B. Chiperfield
Everett M. Dirksen
Leslie C. Arends
Jessie Sumner
William H. Wheat
James M. Barnes
Frank W. Fries
Edwin M. Schaefer
Laurence F. Arnold
Claude V. Parsons
Kent E. Keller

INDIANA

Senators
Frederick Van Nuys
Sherman Minton

Representatives
William T. Schulte
Charles A. Halleck
Robert A. Grant
George W. Gillie
Forest A. Harness
Noble J. Johnson
Gerald W. Landis
John W. Boehne, Jr.
Eugene B. Crowe
Raymond S. Springer
William H. Larrabee
Louis Ludlow

IOWA

Senators
Guy M. Gillette
Clyde L. Herring

Representatives
Thomas E. Martin
William S. Jacobsen
John W. Gwynne
Henry O. Talle
Karl M. LeCompte
Cassius C. Dowell
Ben F. Jensen
Fred C. Gilchrist
Vincent F. Harrington

[1] Died January 13, 1939.

KANSAS

Senators
Arthur Capper
Clyde M. Reed

Representatives
William P. Lambertson
U. S. Guyer
Thomas D. Winter
Edward H. Rees
John M. Houston
Frank Carlson
Clifford R. Hope

KENTUCKY

Senators
Alben W. Barkley
M. M. Logan

Representatives
Noble J. Gregory
Beverly M. Vincent
Emmet O'Neal
Edward W. Creal
Brent Spence
Virgil Chapman
Andrew J. May
Joe B. Bates
John M. Robsion

LOUISIANA

Senators
John H. Overton
Allen J. Ellender

Representatives
Joachim O. Fernandez
Paul H. Maloney
Robert L. Mouton
Overton Brooks
Newt V. Mills
John K. Griffith
René L. DeRouen
A. Leonard Allen

MAINE

Senators
Frederick Hale
Wallace H. White, Jr.

Representatives
James C. Oliver
Clyde H. Smith
Ralph O. Brewster

MARYLAND

Senators
Millard E. Tydings
George L. Radcliffe

Representatives
T. Alan Goldsborough
William P. Cole, Jr.
Thos. D'Alesandro, Jr.
Ambrose J. Kennedy
Lansdale G. Sasscer
William D. Byron

MASSACHUSETTS

Senators
David I. Walsh
Henry Cabot Lodge, Jr.

Representatives
Allen T. Treadway
Charles R. Clason
Joseph E. Casey
Pehr G. Holmes
Edith Nourse Rogers
George J. Bates
Lawrence J. Connery
Arthur D. Healey
Robert Luce
George Holden Tinkham
Thomas A. Flaherty
John W. McCormack
Richard B. Wigglesworth
Joseph W. Martin, Jr.
Charles L. Gifford

MICHIGAN

Senators
Arthur H. Vandenberg
Prentiss M. Brown

Representatives
Rudolph G. Tenerowicz
Earl C. Michener
Paul W. Shafer
Clare E. Hoffman
Carl E. Mapes
William W. Blackney
Jesse P. Wolcott
Fred L. Crawford
Albert J. Engel
Roy O. Woodruff
Fred Bradley
Frank E. Hook
Clarence J. McLeod
Louis C. Rabaut
John D. Dingell
John Lesinki
George A. Dondero

MINNESOTA

Senators
Henrik Shipstead
Ernest Lundeen

Representatives
August H. Andresen
Elmer J. Ryan
John G. Alexander
Melvin J. Maas
Oscar Youngdahl
Harold Knutson
H. Carl Andersen
William A. Pittenger
R. T. Buckler

MISSISSIPPI

Senators
Pat Harrison
Theodore G. Bilbo

Representatives
John E. Rankin
Wall Doxey
William M. Whittington
Aaron Lane Ford
Ross A. Collins
William M. Colmer
Dan R. McGehee

MISSOURI

Senators
Bennett Champ Clark
Harry S. Truman

Representatives
Milton A. Romjue
William L. Nelson
Richard M. Duncan
C. Jasper Bell
Joseph B. Shannon
Reuben T. Wood
Dewey Short
Clyde Williams
Clarence Cannon
Orville Zimmerman
Thomas C. Hennings, Jr.
C. Arthur Anderson
John J. Cochran

MONTANA

Senators
Burton K. Wheeler
James E. Murray

Representatives
J. Thorkelson
James F. O'Connor

NEBRASKA

Senators
George W. Norris
Edward R. Burke

Representatives
George H. Heinke
Charles F. McLaughlin
Karl Stefan
Carl T. Curtis
Harry B. Coffee

NEVADA

Senators
Key Pittman
Pat McCarran

Representative
James G. Scrugham

NEW HAMPSHIRE

Senators
Styles Bridges
Charles W. Tobey

Representatives
Arthur B. Jenks
Foster Stearns

NEW JERSEY

Senators
William H. Smathers
W. Warren Barbour

Representatives
Charles A. Wolverton
Walter S. Jeffries
William H. Sutphin
D. Lane Powers
Charles A. Eaton
Donald H. McLean
J. Parnell Thomas
George N. Seger
Frank C. Osmers, Jr.
Fred A. Hartley, Jr.
Albert L. Vreeland
Robert W. Kean
Mary T. Norton
Edward J. Hart

NEW MEXICO

Senators
Carl A. Hatch
Dennis Chavez

Representative
John J. Dempsey

NEW YORK

Senators
Robert F. Wagner
James M. Mead

Representatives
Matthew J. Merritt
Caroline O'Day
Leonard W. Hall
William B. Barry
Joseph L. Pfeifer
Thomas H. Cullen

Marcellus H. Evans
Andrew L. Somers
John J. Delaney
Donald L. O'Toole
Eugene J. Keogh
Emanuel Celler
James A. O'Leary
Samuel Dickstein
Christopher D. Sullivan
William T. Sirovich
Michael J. Kennedy
James H. Fay
Bruce Barton
Martin J. Kennedy
Sol Bloom
Vito Marcantonio
Joseph A. Gavagan
Edward W. Curley
Charles A. Buckley
James M. Fitzpatrick
Ralph A. Gamble
Hamilton Fish
Lewis K. Rockefeller
William T. Byrne
E. Harold Cluett
Frank Crowther
Wallace E. Pierce
Francis D. Culkin
Fred J. Douglas
Bert Lord
Clarence E. Hancock
John Taber
W. Sterling Cole
Joseph J. O'Brien
James W. Wadsworth
Walter G. Andrews
J. Francis Harter
Pius L. Schwert
Daniel A. Reed

NORTH CAROLINA

Senators
Josiah W. Bailey
Robert R. Reynolds

Representatives
Lindsay C. Warren
John H. Kerr
Graham A. Barden
Harold D. Cooley
Alonzo D. Folger
Carl T. Durham
J. Bayard Clark
W. O. Burgin
Robert L. Doughton
Alfred L. Bulwinkle
Zebulon Weaver

NORTH DAKOTA

Senators
Lynn J. Frazier
Gerald P. Nye

Representatives
Usher L. Burdick
William Lemke

OHIO

Senators
Vic Donahey
Robert A. Taft

Representatives
George H. Bender
L. L. Marshall
Charles H. Elston
William E. Hess
Harry N. Routzohn
Robert F. Jones
Cliff Clevenger
James G. Polk
Clarence J. Brown
Frederick C. Smith
John F. Hunter
Thomas A. Jenkins
Harold K. Claypool
John M. Vorys
Dudley A. White
Dow W. Harter
Robert T. Secrest
James Seccombe
William A. Ashbrook
Earl R. Lewis
Michael J. Kirwan
Martin L. Sweeney
Robert Crosser
Chester C. Bolton

OKLAHOMA

Senators
Elmer Thomas
Josh Lee

Representatives
Will Rogers
Wesley E. Disney
Jack Nichols
Wilburn Cartwright
Lyle H. Boren
A. S. Mike Monroney
Jed Johnson
Sam C. Massingale
Phil Ferguson

OREGON

Senators
Charles L. McNary
Rufus C. Holman

Representatives
James W. Mott
Walter M. Pierce
Homer D. Angell

PENNSYLVANIA

Senators
James J. Davis
Joseph F. Guffey

Representatives
Leon Sacks
James P. McGranery
Michael J. Bradley
J. Burrwood Daly
Fred C. Gartner
Francis J. Myers
George P. Darrow
James Wolfenden
Charles L. Gerlach
J. Roland Kinzer
Patrick J. Boland
J. Harold Flannery
Ivor D. Fenton
Guy L. Moser
Albert G. Rutherford
Robert F. Rich
J. William Ditter
Richard M. Simpson
John C. Kunkel
Benjamin Jarrett
Francis E. Walter
Chester H. Gross
James E. Van Zandt
J. Buell Snyder
Charles I. Faddis
Louis E. Graham
Harve Tibbott
Robert G. Allen
Robert L. Rodgers
Robert J. Corbett
John McDowell
Herman P. Eberharter
Joseph A. McArdle
Matthew A. Dunn

RHODE ISLAND

Senators
Peter G. Gerry
Theodore F. Green

Representatives
Charles F. Risk
Harry Sandager

SOUTH CAROLINA

Senators
Ellison D. Smith
James F. Byrnes

Representatives
Thomas S. McMillan
Hampton P. Fulmer
Butler B. Hare
Joseph R. Bryson
James P. Richards
John L. McMillan

SOUTH DAKOTA

Senators
William J. Bulow
Chan Gurney

Representatives
Karl E. Mundt
Francis Case

TENNESSEE

Senators
Kenneth McKellar
Tom Stewart

Representatives
B. Carroll Reece
J. Will Taylor
Sam D. McReynolds
Albert Gore
Joseph W. Byrns, Jr.
Clarence W. Turner
Herron Pearson
Jere Cooper
Walter Chandler

TEXAS

Senators
Morris Sheppard
Tom Connally

Representatives
Wright Patman
Martin Dies
Lindley Beckworth
Sam Rayburn
Hatton W. Sumners
Luther A. Johnson
Nat Patton
Albert Thomas
Joseph J. Mansfield
Lyndon B. Johnson
W. R. Poage
Fritz G. Lanham
Ed Gossett
Richard M. Kleberg
Milton H. West
R. Ewing Thomason
Clyde L. Garrett
Marvin Jones
George H. Mahon
Paul J. Kilday
Charles L. South

UTAH

Senators

William H. King
Elbert D. Thomas

Representatives

Abe Murdock
J. W. Robinson

VERMONT

Senators

Warren R. Austin
Ernest W. Gibson

Representative

Charles A. Plumley

VIRGINIA

Senators

Carter Glass
Harry Flood Byrd

Representatives

Schuyler Otis Bland
Colgate W. Darden, Jr.
Dave E. Satterfield, Jr.
Patrick H. Drewry
Thomas G. Burch
Clifton A. Woodrum
A. Willis Robertson
Howard W. Smith
John W. Flannagan, Jr.

WASHINGTON

Senators

Homer T. Bone
Lewis B. Schwellenbach

Representatives

Warren G. Magnuson
Mon C. Wallgren
Martin F. Smith
Knute Hill
Charles H. Leavy
John M. Coffee

WEST VIRGINIA

Senators

Matthew M. Neely
Rush D. Holt

Representatives

Andrew C. Schiffler
Jennings Randolph
Andrew Edmiston
George W. Johnson
John Kee
Joe L. Smith

WISCONSIN

Senators

Robert M. La Follette, Jr.
Alexander Wiley

Representatives

Stephen Bolles
Charles Hawks, Jr.
Harry W. Griswold
John C. Schafer
Lewis D. Thill
Frank B. Keefe
Reid F. Murray
Joshua L. Johns
Merlin Hull
Bernard J. Gehrmann

WYOMING

Senators

Joseph C. O'Mahoney
H. H. Schwartz

Representative

Frank O. Horton

ALASKA

Delegate

Anthony J. Dimond

COMMONWEALTH OF THE PHILIPPINES

Resident Commissioner

Joaquin M. Elizalde

HAWAII

Delegate

Samuel W. King

PUERTO RICO

Resident Commissioner

Santiago Iglesias

THE SEAL OF THE UNITED STATES OF AMERICA

1789 1939

The
United States Constitution Sesquicentennial Commission
and the
Mount Vernon Ladies' Association of the Union
request the honor of your presence
at the ceremonies to commemorate
The One Hundred and Fiftieth Anniversary
of the
Notification by Charles Thomson
Secretary of the Continental Congress
of the election of
George Washington
as first President of the United States of America
The President of the United States
will deliver an address
Mount Vernon, Virginia
April fourteenth, Nineteen thirty-nine
Two thirty o'clock

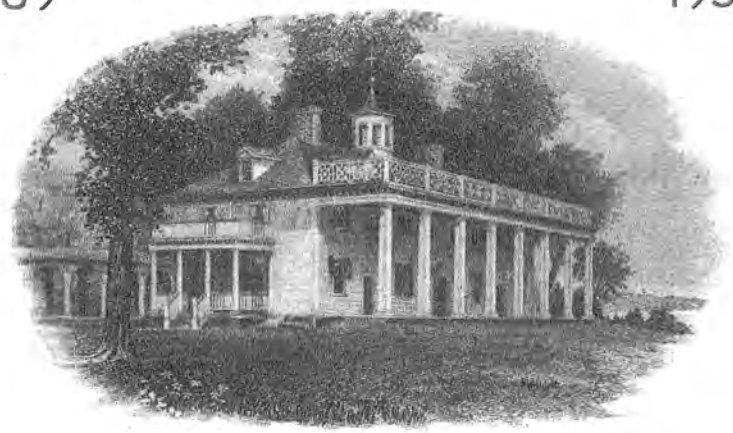
Admission to Mount Vernon
by special card enclosed

Mount Vernon Exercises In Honor of Washington's Notification of Election as President

INVOCATION by the Chaplain of the United States House of Representatives, Rev. James Shera Montgomery, D. D.:

Almighty God, our heavenly Father upon earth, in this sacred presence we wait at the altar of prayer. Bless every one present with the mercy of a grateful heart. We are grateful today for our beloved Country and all that it means to us. We praise Thee for the sacrifice and service of our Forefathers who have made this day possible and historic. We pray Thee to bless the great fundamentals of our republic upon which it must ever rest for its glory and perpetuity. Stabilize more and more the great institutions of our democracy. Grant Thy richest blessings upon all our homes; may happiness, peace and prosperity radiate about every fireside.

1789 1939



ADMIT THE BEARER
TO
MOUNT VERNON
APRIL FOURTEENTH, NINETEEN THIRTY-NINE
TWO THIRTY O'CLOCK

MOUNT VERNON
From an old print

Almighty God, graciously remember our notable President; do Thou stimulate every effort that is being exercised in the cause of world peace. May the time speedily come when the teachings of the Master shall become coextensive with man throughout the wide earth. Grant, dear Lord, Thy abundant blessings upon all who are present; multiply unto them Thy mercies and keep them while many days pass by and at the last claim us all as Thy children. And unto Thee be eternal praises world without end. Through Jesus Christ our Lord. Amen.

Musical selections by Mr. Conrad Thibault[1]

Home, Sweet Home
Carry Me Back to Old Virginny

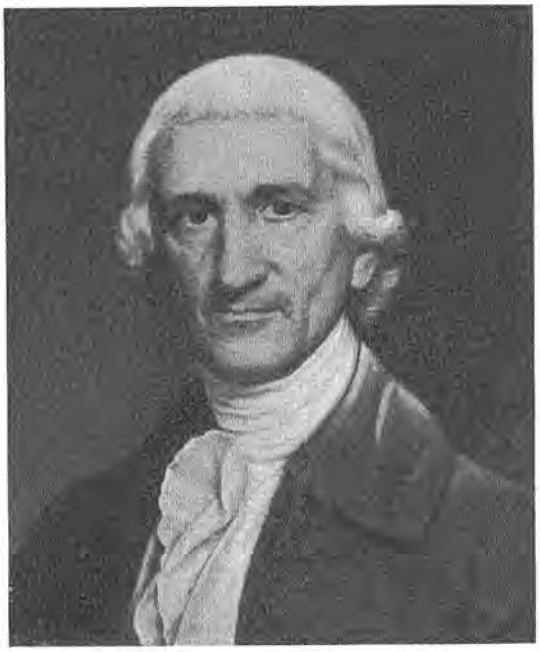
ADDRESS OF MRS. HORACE MANN TOWNER

REGENT, MOUNT VERNON LADIES' ASSOCIATION OF THE UNION

MR. PRESIDENT AND GUESTS:

In behalf of the Mount Vernon Ladies' Association of the Union, I take pleasure in welcoming you to the place where began that series of highly important events which culminated in the inauguration of General George Washington, as the first President of these United States.

[1] The musical selections by Mr. Conrad Thibault were made possible through the courtesy of the National Broadcasting Company.



CHARLES THOMSON
Artist unknown

It was appropriate that an event which touched so closely the lives of George and Martha Washington should have taken place at Mount Vernon, the home which they so deeply loved. Today, one hundred and fifty years later, we look out upon the same river and upon the identical surroundings which Washington's skill and devoted care made possible. Every student of the life and character of George Washington realizes the far reaching influence which everything connected with his home at Mount Vernon had upon his career. It is not possible to estimate fairly, nor to understand clearly, his personality, without knowing something of the home in which he lived and died, and which was ever in his thoughts. The soldier and statesman found always at Mount Vernon his most enduring happiness.

We are happy that it is possible to have this commemoration of the 150th anniversary of the significant event of April 14, 1789, take place at Mount Vernon, in this home which we have had the privilege of restoring and preserving since 1859, not only for our own generation but for generations yet to come. Again, I welcome you.

READING BY REPRESENTATIVE SOL BLOOM OF ADDRESSES OF NOTIFICATION

Message delivered by Charles Thomson

Sir, the President of the Senate, chosen for the special purpose, having opened and counted the votes of the electors in the presence

of the Senate and House of Representatives, I was honored with the commands of the Senate to wait upon your Excellency with the information of your being elected to the office of President of the United States of America. This commission was intrusted to me on account of my having been long in the confidence of the late Congress, and charged with the duties of one of the principal civil departments of the Government. I have now, sir, to inform you that the proofs you have given of your patriotism and your readiness to sacrifice domestic ease and private enjoyments to preserve the happiness of your country did not permit the two Houses to harbor a doubt of your undertaking this great and important office, to which you are called, not only by the unanimous vote of the electors, but by the voice of America.

I have it, therefore, in command to accompany you to New York where the Senate and House of Representatives are convened for the dispatch of public business.

WASHINGTON'S REPLY

Sir: I have been accustomed to pay so much respect to the opinion of my fellow-citizens, that the knowledge of their having given their unanimous suffrages in my favor, scarcely leaves me the alternative for an option. I can not, I believe, give a greater evidence of my sensibility of the honor which they have done me than by accepting the appointment.

I am so much affected by this fresh proof of my Country's Esteem and Confidence that silence can best explain my gratitude. While I realize the arduous nature of the Task which is imposed upon me, and feel my own inability to perform it, I wish however that there may not be reason for regretting the Choice, for indeed all I can promise is only to accomplish that which can be done by an honest zeal.

Upon considering how long a time some of the Gentlemen of both Houses of Congress have been at New York, how anxiously desirous they must be to proceed to business, and how deeply the public mind appears to be impressed with the necessity of doing it speedily, I can not find myself at liberty to delay my journey. I shall therefore be in readiness to set out the day after tomorrow and shall be happy in the pleasure of your company; if you will permit me to say that it is a peculiar gratification to have received the communication from you.

222964—40——45

CEREMONIES AT MOUNT VERNON, VA.

Left to right, Hon. Sol. Bloom, Director General of the Commission, Mr. Conrad Thibault, National Broadcasting Co., Mr. Boyd Crawford, Secretary to the Director General, Rev. James Shera Montgomery, Chaplain, United States House of Representatives, Hon. Franklin D. Roosevelt, President of the United States, and Brig. Gen. Edwin M. Watson, Secretary to the President

ADDRESS OF HONORABLE FRANKLIN D. ROOSEVELT

PRESIDENT OF THE UNITED STATES

MADAM REGENT, MISTER DIRECTOR GENERAL, LADIES AND GENTLEMEN:

We have come to the home of George Washington today in memory of another day, exactly 150 years ago, when the owner of Mount Vernon received a message from the First Congress of the United States.

Here in his beloved Mount Vernon he listened to the formal message from the Congress announcing his election as the first President of the United States of America. Charles Thomson, his guest, had ridden hither from New York to bring it—Charles Thomson, native of County Derry in Ireland, a Pennsylvania Irishman, with a passionate zeal for liberty, who, through fifteen eventful years, had served as the secretary of the Continental Congress.

We who are here today can readily visualize that scene from this porch—the sprouting lawn, the budding trees and the dogwoods, and the majestic Potomac running by at the foot of the hill. We can visualize the thoughts, too, which flowed through General Washington's mind. Saying farewell to his army in 1783, the independence of the colonies assured, he, already the Father of his Country, had returned to his beloved Mount Vernon with the hope and expectation that his task was done and that he would live a happy and useful life on his broad acres during the remainder of his days.

But trying times still lay ahead for the struggling nation, and those years after 1783 proved the most critical peace years in all our history. Called from his home, he had presided with skill and patience over the Constitutional Convention in 1787. And anxiety and doubt had attended him for many months thereafter while he waited for belated news that the Constitution itself had been ratified by the states.

I take it that when the permanent framework of the Union had been assured in the summer of 1788, the elections ordered and the First Congress summoned, General Washington must have known that the task of the Presidency would, without question, fall on him. It meant that once more he would leave Mount Vernon behind him, with no certainty of his return, and that on his shoulders, in the far off North, would lie the burden of initiating the civil leadership of a new, untried republic. He knew that his would be the task of ending uncertainty, jealousy between the several states, and creating, with

the help of the Congress, a functioning national government fit to take its place among the organized nations of the world.

Two days later he was to set forth on that long and difficult journey by highway and ferry and barge, which was to culminate in his inauguration as President on the balcony of Federal Hall in New York on April 30, 1789. Doubtless on this very porch he sat with Charles Thomson, hearing at first-hand of the long efforts of the first Senate and the first House of Representatives to obtain a quorum, learning of the unanimity by which the votes of the electors were cast for him, listening to the precedents that were being set in the conduct of the first legislature under the Constitution, and thinking doubtless that his own every move from that day on for many years to come would be chronicled for future generations and thereby set the tempo and the customs of the Presidency of the United States.

But I am to be forgiven if I, the Thirty-First President, dwell for a moment on the feelings within the heart of him who was about to be the First President.

Washington was essentially a man close to mother earth. His early training on a plantation, his profession of surveyor, his studies in agriculture and the development of farm lands were never replaced by his outstanding military service under Braddock or as Commander-in-Chief for the eight years of the Revolution. We know that when Mount Vernon came to him by inheritance, here his heart was planted for all time. Here he could talk with his neighbors about the improvement of navigation on the river, about grist mills on the creeks, about the improving of highways, about the dream of a canal to the western country, about saw mills and rotation of crops, about the top soil, which even then had begun to run off to the sea, about the planting of trees, new varieties of food and fodder crops, new breeds of horses and cattle and sheep. Here, too, he had his books and was in touch with the authors and artists of the new and old worlds. Here at the junction point of the North and of the South, at the foot of one of the main arteries that led to the exciting new lands beyond the mountains, the travelers and the news stopped at his door.

Rightly, he must have felt that his labors in the service of his state and of his nation had rounded out his contribution to the public weal. Rightly he felt that he had earned the privilege of returning for all time to the private life which had been his dream.

That Washington would have refused public service if the call had been a normal one has always been my belief. But the summons to the Presidency had come to him in a time of real crisis and deep

emergency. The dangers that beset the young nation were as real as though the very independence Washington had won for it had been threatened once more by foreign foes. Clear it must have been that the permanence of the republic was at stake and that if the new government, under the Constitution, should fail in its early days, the several states, falling out among themselves, would become so many small and weak nations subject to attack and conquest from overseas. So it came about that once more he put from him the life he loved so well and took upon himself the Presidency.

That cannot have been a happy day for General and Mrs. George Washington on the fourteenth of April 1789—a day of torn emotions, a day of many regrets. The decision had been made. We, their successors, are thankful for that decision and proud of it. And I think that it would have made General and Mrs. Washington happy if they had known that one hundred and fifty years later tens of millions of Americans would appreciate and understand how they felt that day in their Mount Vernon home.

Musical selection by Mr. Conrad Thibault *Star Spangled Banner*

Benediction by the Chaplain of the United States Senate, Rev. Z. Barney Thorne Phillips, D. D.

May the blessing of God Almighty, the Father, the Son, and the Holy Spirit be upon our country, our beloved President, and all unto whom we have committed the authority of governance, and abide with them and their successors forever. Amen.

Musical selections by the United States Marine Band.

Memorial Celebration at the New York World's Fair

On April 30, 1939, of the Inauguration of George Washington as First President of the United States

ADDRESS OF HONORABLE FRANKLIN D. ROOSEVELT

President of the United States

From henceforth the 30th day of April will have a dual significance—the inauguration of the first President of the United States, thus beginning the executive branch of the federal government and the opening of the New York World's Fair of 1939.

Today the cycle of sesquicentennial commemorations is complete. Two years ago, in Philadelphia and in other communities, was celebrated the Constitutional Convention of 1787, which gave to us the form of government under which we have lived ever since. Last year was celebrated in many states the ratification of the Constitution by the original states. On March 4 of this year the first meeting of the First Congress was commemorated at a distinguished gathering in the House of Representatives in the National Capitol. On April 14 I went to Mount Vernon with the Cabinet in memory of that day, exactly 150 years before, when General Washington was formally notified of his election as first President.

Two days later he left the home he loved so well and proceeded by easy stages to New York, greeted with triumphal arches and flower-strewn streets in the large communities through which he passed on his way to New York City. Fortunately, there have been preserved for us many accounts of his taking of the oath of office on April 30 on the balcony of the old Federal Hall. In a scene of republican simplicity and surrounded by the great men of the time, most of whom had served with him in the cause of independence throughout the Revolution, the oath was administreed by the chancellor of the State of New York, Robert R. Livingston.

The permanent government of the United States had become a fact. The period of revolution and the critical days that followed were over. The long future lay ahead.

In the framework of government which had been devised and in the early years of its administration, it is of enormous significance to us today that those early leaders successfully planned for such use of the Constitution as would fit it to a constantly expanding nation. That the original framework was capable of expansion from its application to thirteen states with less than 4,000,000 people to forty-eight states with more than 130,000,000 people is the best tribute to the vision of the fathers. In this it stands unique in the whole history of the world, for no other form of government has remained unchanged so long and seen, at the same time, any comparable expansion of population or of area.

It is significant that the astounding changes and advances in almost every phase of human life have made necessary so relatively few changes in the Constitution. All of the earlier amendments may be accepted as part of the original Constitution because the Bill of Rights, which guaranteed and has maintained personal liberty through freedom of speech, freedom of the press, freedom of religion, and similar essentials of democracy, was already popularly accepted while the Constitution itself was in the process of ratification.

There followed the amendments which put an end to the practice of human slavery and a number of later amendments which made our practice of government more direct, including the extension of the franchise to the women of the nation. It is well to note, also, that the only restrictive amendment which deliberately took away one form of wholly personal liberty was, after a trial of a few years, overwhelmingly repealed.

Only once has permanence of the Constitution been threatened—it was threatened by an internal war brought about principally by the very fact of the expansion of American civilization across the continent—a threat which resulted eventually and happily in a closer union than ever before. And of these later years—these very recent years, indeed—the history books of the next generation will set it forth that sectionalism and regional jealousies diminished and that the people of every part of our land acquired a national solidarity of economic and social thought such as had never been seen before.

That this has been accomplished has been due, first, to our form of government itself and, secondly, to a spirit of wise tolerance

which, with few exceptions, has been the rule. We in the United States and, indeed, in all the Americas remember that our population stems from many races and kindreds and tongues. Often, I think, we Americans offer up the silent prayer that on the continent of Europe, from which the American Hemisphere was principally colonized, the years to come will break down many barriers of intercourse between nations—barriers which may be historic, but which so greatly, through the centuries, have lead to strife and hindered friendship and normal intercourse.

The United States stands today as a completely homogeneous nation, similar in its civilization from coast to coast and from north to south, united in a common purpose to work for the greatest good of the greatest number, united in the desire to move forward to better things in the use of its great resources of nature and its even greater resources of intelligent, educated manhood and womanhood, and united in its desire to encourage peace and goodwill among all the nations of the world.

Born of that unity of purpose, that knowledge of strength, that singleness of ideal, two great expositions, one at each end of the continent, mark this year in which we live. And it is fitting that they commemorate the one hundred and fiftieth anniversary of the birth of our permanent government.

Opened two months ago, the exposition on the magic island in San Francisco Bay presents to visitors from all the world a view of the amazing development of our Far West and of the neighbors of the American continent and the nations of the isles of the Pacific. Here at the New York World's Fair many nations are also represented—most of the nations of the world—and the theme is "The World of Tomorrow."

This general and, I might almost say, spontaneous participation by other countries, is a gesture of friendship and good will toward the United States for which I render grateful thanks. It is not through the physical exhibits alone that this gesture has manifested itself. The magic of modern communications makes possible a continuing participation by word of mouth itself. Already, on Sunday afternoon radio programs, no fewer than seventeen foreign nations have shown their good will to this country since the 1st of January.

In many instances the chiefs of state in the countries taking part in the programs have spoken, and in every case the principal speaker has extended greetings to the President of the United States. In this place and at this time, as we open this New York

World's Fair, I desire to thank all of them and to assure them that we, as a nation, heartily reciprocate all of their cordial sentiments.

All who come to this World's Fair in New York and to the exposition in San Francisco will receive the heartiest of welcomes. They will find that the eyes of the United States are fixed on the future. Our wagon is hitched to a star.

But it is a star of good will, a star of progress for mankind, a star of greater happiness and less hardship, a star of international good will, and, above all, a star of peace. May the months to come carry us forward in the rays of that hope.

I hereby dedicate the New York World's Fair of 1939 and declare it open to all mankind.

ADDRESS OF HONORABLE HERBERT H. LEHMAN

GOVERNOR OF THE STATE OF NEW YORK

I AM greatly honored in having the privilege of participating today in the dedication of this great fair.

Here we have living proof of the divine blessings, of material resources and spiritual strength which have been granted to our people. On these grounds there are exhibited the fruits of our industry, of our mines, and of our laboratories. But on every hand there is symbolized something far more precious, more typical of America than material progress—our faith in our destiny and our confidence in our future. Men elsewhere may doubt the days that lie ahead; here we accept adversity with hopeful and confident hearts. Our nation was born in struggle and in sacrifice. It is not new for our people to surmount obstacles and bring order out of chaos. We shall do so again.

One hundred and fifty years ago on this very day the first President of the United States was inaugurated in this city. His illustrious successor—the thirty-second in the line of Presidents—is here with us today. It is a young nation that has had only thirty-two rulers. It is virile and imaginative; capable and resourceful. Free men everywhere look toward our land for leadership and guidance. Mr. President, we are proud that in these dangerous days they have not looked in vain.

It is almost unbelievable, standing amidst this great pageant of material progress, that there are yet hidden from man two great secrets of the social relationship in which man must live. One is the secret of how to distribute the fruits of the field, of the mill,

of the laboratory, so that all may have a sufficiency of the goods of the world, goods for which they are willing to exchange the toil of their hands and the sweat of their brows. The other is the secret of living together in understanding and friendship, in tolerance and in good-will. I pray that some day—in the "world of tomorrow"—these secrets, too, will be revealed to us. It is not too hopeful to believe that the day will come when we will build a world in which men will seek to help their neighbors, not to harm them; a world of which the keystone will be justice, equality, and tolerance; a world in which right will ever be the master of might.

This fair will bring to our state a great army of visitors from every other state in the Union and from every other country on the face of the globe We will learn from them, and I hope they may learn something from us. The exchange of ideas and views which come when people meet in cordial relationship will inevitably lead to a more sympathetic understanding of each other's philosophy and problems.

The fair, I am certain, will bring a clearer realization of our resources and hopes and ideals as a nation. It will bring to our millions of visitors a better appreciation of the part that New York City and New York State play in the economic and social life of the nation.

The citizens of the State of New York are a hospitable people. They will seek during the months of the fair to show our visitors that New York wants nothing in her own self-interest which is against the interest of other peoples. We in this state believe that our larger interests lie with every other part of the nation. This momentous undertaking has been conceived with broad vision and has been executed with singular and signal success. It will be the means of demonstrating that all parts of our country are linked in a common interest—that what affects the happiness and prosperity of one part affects the happiness and prosperity of all.

We of New York want to share with the rest of the nation whatever is good in our life and in our experience. We want to know what people in other parts of the country have done so that we, in turn, can profit by their experience and achievements. We will eagerly welcome to the State of New York all those who do us honor by coming to us from our own country and from abroad. I can promise that they will be received by the people of the State of New York with heartfelt cordiality and that in whatever part of the state they may travel they will receive a warm and friendly welcome.

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ADDRESS OF HONORABLE F. H. LAGUARDIA

MAYOR OF THE CITY OF NEW YORK

MR. PRESIDENT, distinguished guests, ladies, and gentlemen, on behalf of the people of the City of New York, I bid you welcome. As the host city, the people extend a cordial invitation to all our neighbors throughout the United States to honor us with a visit to this inspiring fair.

Among the many exhibits of science, industry, commerce, may I point to one exhibit which I hope all visitors will note, and that is the City of New York itself.

Not what you will see in the city's exhibit, but our exhibit to the whole world is that in a city of seven and one-half million people, coming from every land and every country, and children of these people who have come from every country in the world, live here together in peace and harmony. And for that we claim we are most unselfish about it, and pray and hope that other countries may copy. All we do is to let every man and woman have a say in their own government, and we have eliminated artifical stimulus of hatred. That is New York City's contribution to the world's fair.

And now, Mr. Whalen, please accept the thanks of the mayor and through him of the people of this city to you for the direction, and to you men out there who built this fair—go our thanks and gratitude.

Mr. President, you are always welcome to New York City. In fact, you belong here. And I know that your greatest thrill must have been this morning as you were received by hundreds of thousands of people who waited your arrival and cheered you on the way to this fair.

We are indeed fortunate and should give thanks that we are living in a country that refuses to admit that out of all the marvelous things that you will find in this fair it is impossible for men and women to live properly. Yet the United States has another exhibit, not necessarily found in the various halls, and that is that in periods where other countries were suffering we built and constructed an ideal throughout the United States of the vision and the dignity of the leader of the Republic.

Finally, New York City will welcome our visitors with open arms not only today, the opening of the fair, but all through the fair and every day thereafter. The city of today greets the world of tomorrow.

ADDRESS OF HONORABLE SIR LOUIS BEALE K. C. M. G., C. B. E.

COMMISSIONER GENERAL FOR HIS MAJESTY'S GOVERNMENT IN THE UNITED KINGDOM FOR THE NEW YORK WORLD'S FAIR, ELECTED TO REPRESENT THE COMMISSIONERS GENERAL OF THE PARTICIPATING FOREIGN GOVERNMENTS

I HAVE the great honor, on this memorable occasion, commemorating the inauguration—150 years ago—of the beloved first President of the United States, from whose great qualities of heart and mind all peoples have benefited, to speak on behalf of the foreign commissioners general to the New York World's Fair, and in their name to say, first, how much we have enjoyed working with the administrators of the fair and with their officials, and how much we have appreciated their cooperation and the spirit of harmony which has prevailed in all our relations. Speaking with even greater emphasis, I must then express the pride and satisfaction of the nations represented at the fair at being associated with the people of the United States of America in this event of world-wide significance.

The President of the United States invited the countries of the world to come to New York to play each its part in this historic parade of national achievement; they have responded with enthusiasm and sincerity to his gracious invitation. There are here represented nearly sixty of the nations of the world. Every country, deeply sensible of the privilege of participation, is seeking to make fully and faithfully a contribution, national and patriotic, it is true, but a contribution worthy of this great occasion, based on friendship and acceptable to the people of this great nation—a contribution which shall play a real and important part in the magnificent international pageant which is now spread before us.

The word "friendship" denotes exactly and faithfully the spirit of foreign participation at the World's Fair, and I am persuaded that the spirit of friendship inspires all who are here responsible for any form of participation and will equally animate all who come as visitors from all quarters of the world.

Those of you who have been able to make a tour through the fairgrounds at any time during the past few weeks will have been given a sure promise of a beauty which will gladden the eye and heart of every visitor. The majestic scale of the fair, the bold conception of its planning, and the masterly execution of the work, both in building and landscaping, have insured an outstanding achievement.

The fair was designed to show the advancement of human welfare and the creation of a better and more abundant life, and its creators have never faltered in their steadfast purpose of pointing the way to a finer world of the future. In that purpose the foreign countries participating have joined wholeheartedly; so that, in very truth, the New York World's Fair cannot fail to be an instrument of the highest value in increasing the happiness and welfare of the peoples of the world.

With our highest esteem we, the commissioners general, salute the President and people of the United States of America and wish them every success in this great enterprise.

ADDRESS OF HONORABLE GROVER A. WHALEN

PRESIDENT, NEW YORK WORLD'S FAIR

THAT the world of tomorrow might not catch us unawares we have seen fit to create the New York World's Fair as an adventure along the frontiers of progress and world understanding.

On opening day, April 30, 1939, we have here, within the confines of a mere 1,216-acre tract, a fabulous display of works representing man's highest accomplishments. Small wonder, then, that the moment is one of deepest solemnity as we gather here for a moment of benediction upon what has been done and with a prayer in our hearts for what can be done.

These have been called "magic acres." We are here to regard them as modern acres, expressive not only of the scintillating minds of America, as projected into tomorrow, but as an expression from almost all of the world that the hopes and aspirations of America are in no way different from those of the rest of the world.

We have on these grounds the assurance that the equipment and knowledge of today, when alined by, and with, man's better nature, constitute the only alliance upon which Divine Providence will smile and lend spiritual aid. Let our chief concern be, therefore, that the greatest possible number of persons see, and come to know, what has been wrought here.

These works around about us shall speak for themselves. Their money cost has been great, but it is not their money cost that makes them great. Rather is it that they represent almost the sum total of all that man has produced since history began—that they sample the best of man's creative talent—that they spring from the surge within him toward betterment of existing conditions—and that they lend concrete evidence of faith in the future and of courage to go on in the face of many doctrines of futility.

Like these very ceremonies in the Court of Peace, by which we officially open the international exposition, the fair is the expression of many minds and the work of many hands of sixty nations. On behalf of the exposition, innumerable men and women of all nations, creeds, colors, and stations of life have given their best.

Young people built this fair; people young in spirit and with the faith and courage of youth. They have dared to adventure along the frontiers of modern thought, modern production, and modern science, which take the place of geographic frontiers known to our forefathers. Many a man is ready to admit that with the building of the fair he has grown in mental and spiritual stature. Let any man who has directly or indirectly taken part in the creation of this exposition say to himself, "Of the fair I am proud, but I am more proud that I was not one of those who said it couldn't be done."

The New York World's Fair was conceived by the men and women of the city whose name it bears. It was caught up by the American people as providing expression for the past 150 years of their endeavor and of their ideals for the years to come. Because there is contagion in the vitality and ideals of the American people, the nations of the world in turn accepted the New York World's Fair as the means of fostering a philosophy of unselfishness, which alone can bring to us an era of prosperous happiness and harmony among men.

Thus it is that we meet here today as a congress of nations intent on the progress of the world. Even on the opening day of the fair it is obvious that the exposition is a stimulant administered to world thought of conscientious and scientific development of all man's economic and social resources. The fair demonstrates the world's willingness to develop higher standards of individual living and all the potentials of world peace. The fair represents the need man has for constructive work to occupy his mind and hands. And let it be remembered that when man does not build he destroys, if only time.

Never in the history of the world has there been a more hopeful picture than the one presented here during the past year. These acres have seen no strife. They have seen exemplary cooperation among individuals, among industries, among states, and among nations. If the buildings, exhibits, and surroundings be considered as "lessons" or "words," they are words to take with all seriousness, for behind them are the ideals and prayers of ninety percent of the globe's population.

The fair faces the rising sun. We have not been unaware of what has taken place in the world or what is taking place in the world. To us was entrusted the vision of an international exposition

that might turn the course of humanity into easier highroads. We looked deep into human history, less for precedent than for guidance along new ways. If we found it necessary to violate many precedents, we did so with the sure knowledge that in that very violation lay the way to true progress.

We looked back through 150 years of progress in business industry, the arts, and social life, not merely to commemorate that period but that we might build more wisely toward the future. We have made tremendous strides since George Washington was inaugurated first President of the United States, but we should not rest content on our laurels of the moment. We shall go forward if we but maintain our faith and courage and hold to the high ideals that have guided us in the past.

Three years ago, when the theme of the New York World's Fair was first promulgated, we announced that we would: ". . . gather together the genius and the imagination of the twentieth century to formulate replies to the living questions of our age which clamored for answers from living men and women."

The theme, as announced at that early day, continues: "We are convinced that the potential assets, material, and spiritual of our country are such that if readily used they will make for a general public good such as has never before been known. In order to make its contribution toward this process, the fair will show the most promising developments of production, service, and social factors of the present day in relation to their bearing on the life of the great mass of the people. . . . Thus, in presenting a new lay-out for a richer life, the fair will not only predict but may even dictate the shape of things to come."

How well we have carried out our trust since these words were written in 1936 the world may judge during 1939. The events of the past three years since that theme was written have neither tampered with the ideals of the fair nor dampened the ardor of its creators. Rather have they contrived to set the international exposition in perspective by setting it in contrast. The exposition, as open today, demonstrates the will toward eventual cooperation among nations, using the tools of peace, namely, the ways and products of business and industry, of architecture and art, of education and science. The many buildings and exhibits, as presented in their splendid surroundings, represent a new display technique, it is true, but infinitely beyond that they represent the new attitude of industries and nations toward their world-wide social obligations.

There can be no doubt in the thinking mind about the future. We have in the world today startling examples of the destruction that may be worked by man's will. Fortunate is it indeed, then, that we have here at the New York World's Fair a joyful display of man's nature at work toward the goal of true utility and true beauty, be these of some such product as a lowly carpet sweeper or some such lofty concept as a social order typified by peace.

Let there be no mistake. There is a choice of paths obviously open to us. Who, other than those shackled by pure emotion, can hesitate over taking the high road for which the New York World's Fair is a blueprint, a blueprint drawn by sixty nations in the manner of science inspirited with humanity. We must not pause long for words at the crossroads, for while words are good, examples are more effective. Let us continue with marketing and using the knowledge we already have. Use of that knowledge will speedily bring us greater knowledge for our avail in what George Washington called the "discernment and pursuit of the public good."

The fair commemorates the one hundred and fiftieth anniversary of Washington's inauguration as first President of the United States. While en route from Mount Vernon to New York City, scene of the inaugural, Mr. Washington was addressed by "the trustees and faculty of the University of Pennsylvania." In reply, the President-elect wrote: "I can see hopes . . . that we are at the eve of a very enlightened era. The same unremitting exertions, which, under all the blasting storms of war, caused the arts and sciences to flourish in America, will doubtless bring them nearer to maturity when they shall have been sufficiently invigorated by the milder rays of peace."

We have here at the New York World's Fair exhibits on display of our progress toward the "maturity" mentioned by Washington. They clearly show that we have kept faith with our Constitution. The accomplishments of a century and a half have been sufficient to inspire creation of an international exposition that shall, in turn, renew faith, courage, and endeavor for all mankind. We may not rest until the lessons of the New York World's Fair have become examples of benefits to civilization.

ADDRESS OF HONORABLE HERBERT H. LEHMAN

GOVERNOR OF THE STATE OF NEW YORK, DEDICATING THE HEROIC STATUE OF GEORGE WASHINGTON BY JAMES EARLE FRASER, CONSTITUTION MALL, NEW YORK WORLD'S FAIR

ON THIS very day and in this very city 150 years ago George Washington was inaugurated as the first President of the United States. He was a great soldier whose military genius was recognized throughout the world; he was a wealthy landowner who had earned the respect and affection of his neighbors; he was a statesman whose leadership his fellows were glad to follow. He had served his country as well in peace as he had in war.

I do not think, however, that Washington is dear to us only because of his accomplishments, great as they were. It was because of his character that he has held the affection of the nation, beyond, I believe, any other American. He was more than a great soldier, more than a wise statesman or rich landowner. He was a loyal, humble, courageous, and sincere man.

There may or may not be historic truth in the popular cherry-tree incident, but it is told and retold by a grateful people as a symbol of Washington's sterling honesty. At Valley Forge he divided his food with a drummer boy, and on the battlefield he urged no man to go where he would not dare to go himself. We like to recall the picture of Washington crossing the Delaware. There he stood erect, braving the winter elements, facing uncertainty and danger, amidst his troops. We finally like to think of him returning to Mount Vernon after laying down the burdens of the Presidency and thereafter eagerly serving his community in humble capacity.

We do not recall Washington so much as a brilliant statesman but as a man farsighted enough to plot a course that his country follows even to this day. Rejecting a crown, he secured for the new nation a democracy in which all would have a voice in government. Never a politician, Washington still was able to direct the political thought of many divergent political groups into one common channel dedicated to the general good of his country. He gave us national pride, yet developed in us a distrust of conquest or imperialism. He gave us an undying determination to defend our nation and our homes with unswerving loyalty, but to hate aggression and national selfishness.

The things that made Washington great are the things that make for greatness today wherever they are found. Sometimes

STATUE OF GEORGE WASHINGTON, CONSTITUTION MALL NEW YORK WORLD'S FAIR 1939

it is a greatness that is limited to a small sphere of life, since we cannot all be in high places. But always it makes for true Americanism and real citizenship. Washington was great because he was a real American; not a real American because he was great.

Let us then, in dedicating this statue, dedicate ourselves also to the principles for which George Washington fought and by which he lived. Those principles—loyalty, justice, tolerance, and liberty—are just as true a way of life today as they were 150 years ago.

REPORT OF THE CEREMONIES

AT REENACTMENT OF THE INAUGURATION OF GEORGE WASHINGTON AS FIRST PRESIDENT OF THE UNITED STATES UNDER THE CONSTITUTION

[Article from the New York Times, May 1, 1939]

THE GREAT event in American history that the World's Fair officially commemorates—the one hundred and fiftieth anniversary of George Washington's inauguration as first President of the United States—was reenacted on Constitution Mall yesterday in an impressive pageant that brought from thousands of applauding spectators new and hearty proof that Washington still lives in the hearts of his countrymen.

In the presence of Governor Lehman, who dedicated the imposing sixty-eight-foot statue of Washington that dominates the Mall, a group of costumed figures from the stately world of yesterday reproduced with historical fidelity the ceremony that took place in front of the present Subtreasury Building on Wall Street exactly 150 years ago.

The ceremonies ended a pageant that began two weeks ago at the door of the historic manor at Mount Vernon, Va. On that day Denys Wortman, artist and cartoonist, stepped from the mansion, a reincarnated General Washington, and embarked on an eight-day ride by coach and horse to New York.

His 160-year-old colonial coach, drawn by four bay horses, clattered through the fair grounds yesterday afternoon in an incongruous contrast to the streamlined setting of the world of tomorrow. At the base of the huge statue the general and his costumed party stepped out of their coach and out of the past, and General Washington took the oath as President, reading again his inaugural address.

A roll of drums and a flourish of trumpets from the smartly attired Seventh Regiment Band saluted the new President; a guard of honor presented arms; and some 8,000 onlookers who had crowded into the small plaza now known as Washington Square cheered wildly.

Governor Lehman and Grover Whalen, president of the Fair Corporation, hastened to congratulate President Washington, and the Governor then formally dedicated the statue. . . .

Participants in the exercises included several descendants of persons who figured in the original inaugural ceremonies. Robert R. Livingston, who, as chancellor of the State of New York, administered the oath of office to Washington in 1789, was impersonated yesterday by a descendant of the same name.

The general was attended by his aide-de-camp, Col. David Humphreys; by Charles Thomson, secretary of the Continental Congress; and by his servant, "Billy," all of whom made the ride by coach from Mount Vernon. They were impersonated by Laurens M. Hamilton, a direct descendant of Alexander Hamilton, who represented Colonel Humphreys; Dr. William S. Horton, of Lynbrook, Long Island, as Mr. Thomson; and by Marshall Thomas, negro waiter at the Century Club, who enacted the role of "Billy."

They had arrived in New York by barge from Elizabeth, N. J., last Monday, on the anniversary of Washington's original arrival, and following the precedent he set 150 years ago, they devoted a week to a round of ceremonies in the city.

Yesterday they were guests of Messmore Kendall, president general of the National Society of the Sons of the American Revolution, at a luncheon at the Fairway Yacht Club, and they came to the fair grounds by speedboat from the club's pier on the Hudson River. Their coach was brought to the grounds by an army motor van. While the party prepared for the ceremonies in a hide-out on the fair grounds, detachments of national guardsmen and members of the regular army permanently attached to Camp George Washington at the fair grounds formed a guard of honor beside the statue. The Seventh Regiment Band served as the representative of all New York National Guard bands.

General Washington wore a magnificent suit of black velvet, a white lace jabot around his throat, and a black three-cornered hat. His suit was embellished with silver buttons and he wore silver buckles on his knee breeches and his shoes. His head was covered with a powdered white wig.

The other participants in the ceremony, all in authentic costume, included Francis Parsons Webb as Gen. Samuel B. Webb, commander of the famous Third Connecticut Regiment of the Continental Army; Cortlandt Otis as Samuel A. Otis, first secretary of the United States Senate; L. I. Lincoln Adams as John Adams, first Vice President of the United States; Arthur Benson as Judge Egbert

Benson, first attorney general of New York, justice of the state supreme court, and member of both the Continental Congress and the Congress under the Constitution; and George V. Henry as Richard Henry Lee, first senator from Virginia. All of these are descendants of the persons whom they portrayed yesterday.

Chancellor Livingston read the oath, and the general repeated it after him, his left hand on a huge crimson-bound Bible and his right hand upraised. "Long live George Washington, President of the United States," loudly intoned the chancellor at the conclusion of the ceremony. The crowd roared, "Hurray for George." The trumpets rang out, and the drums rolled.

The 160-year-old coach, a treasured possesson of the Franklin Institute of Philadelphia, will be on exhibition throughout the fair in Washington Hall.

Observance of the Sesquicentennial of the Supreme Court

HOUSE CONCURRENT RESOLUTION NO. 33

[Submitted by Mr. BLOOM of New York]

Resolved by the House of Representatives (the Senate concurring), That a joint committee consisting of five Members of the House of Representatives and five Members of the Senate shall be appointed by the Speaker of the House of Representatives and the President of the Senate, respectively, which is empowered to make plans and suitable arrangements for fitting and proper exercises, to be held on the 1st day of February 1940, in commemoration of the one hundred and fiftieth anniversary of the commencement of the first session of the Supreme Court of the United States, held at the city of New York on Monday, the 1st day of February 1790.

Adopted February 1, 1939.

CONGRESS OF THE UNITED STATES

The Joint Committee on Arrangements

SENATE COMMITTEE	HOUSE COMMITTEE
HENRY F. ASHURST, *Chairman*	SOL BLOOM, *Chairman*
KEY PITTMAN	Director of Arrangements
CARL A. HATCH	HATTON W. SUMNERS
WILLIAM E. BORAH	EUGENE J. KEOGH
WARREN R. AUSTIN	U. S. GUYER
	EARL C. MICHENER


THE EXCHANGE
NEW YORK 1790
1790
1940
JAY
HUGHES
Sesquicentennial Celebration
of the
Supreme Court of the United States
City of Washington
February first Nineteen Hundred Forty
Senate Committee
Henry F. Ashurst
Chairman
Roy Vallman
Carl A. Hatch
William E. Borah
Warren R. Austin
House Committee
Sol Bloom
Chairman
Hatton W. Sumners
Eugene J. Keogh
W. J. Bryer
Earl C. Michener
THE SUPREME COURT OF THE UNITED STATES

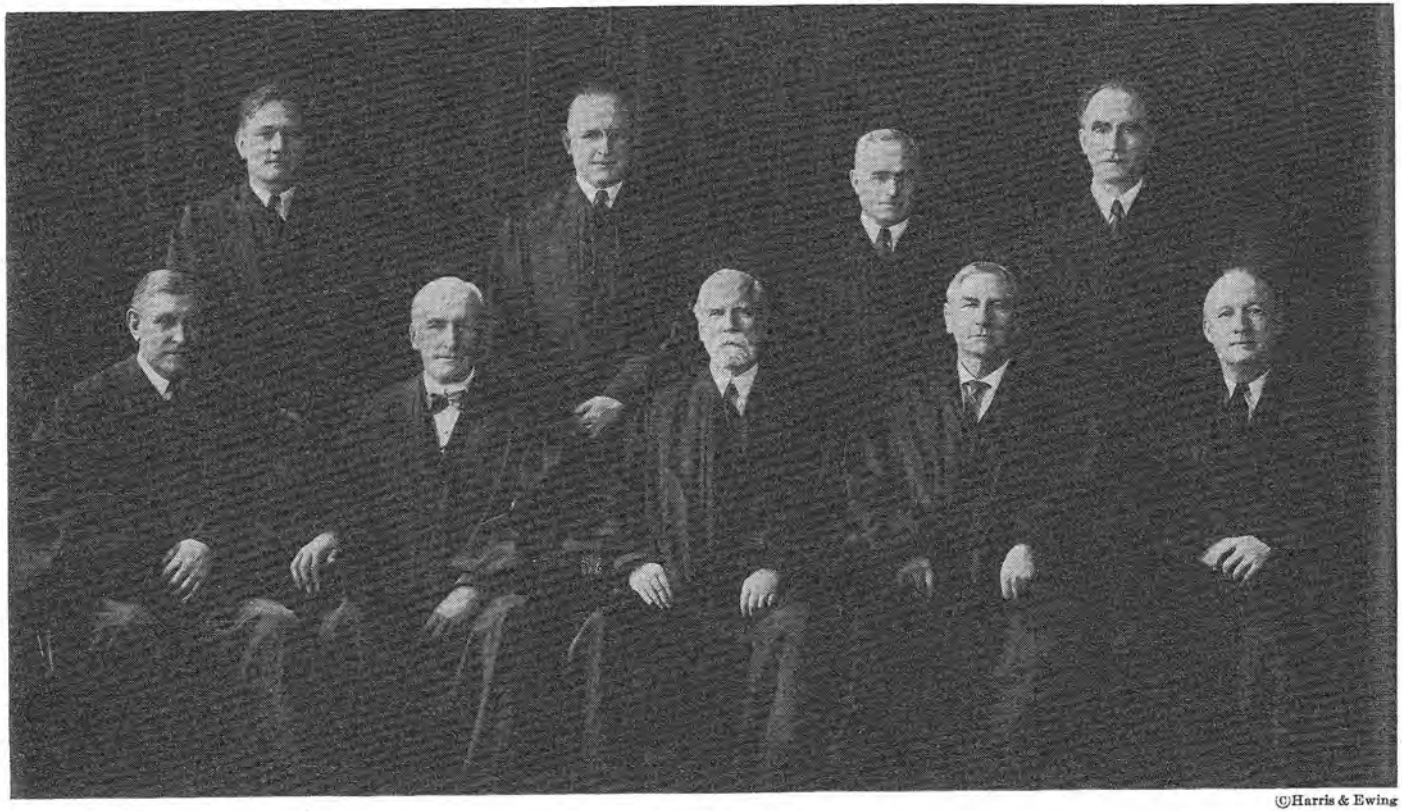
THE SUPREME COURT OF THE UNITED STATES, 1940

ASSOCIATE JUSTICE WILLIAM O. DOUGLAS

ASSOCIATE JUSTICE STANLEY F. REED

ASSOCIATE JUSTICE FELIX FRANKFURTER

ASSOCIATE JUSTICE FRANK MURPHY



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ASSOCIATE JUSTICE OWEN J. ROBERTS

ASSOCIATE JUSTICE JAMES C. M'REYNOLDS

THE CHIEF JUSTICE OF THE UNITED STATES CHARLES E. HUGHES

ASSOCIATE JUSTICE HARLAN F. STONE

ASSOCIATE JUSTICE HUGO L. BLACK

PROCEEDINGS IN THE SUPREME COURT OF THE UNITED STATES

PROCEEDINGS OF THE FIRST SESSION OF THE SUPREME COURT OF THE UNITED STATES

MONDAY, FEBRUARY 1, 1790

At the SUPREME JUDICIAL COURT of the UNITED STATES, begun and held at New York (being the seat of the National Government) on the first Monday of February, and on the first day of said month Anno Domini 1790.

Present:

The Honorable JOHN JAY, ESQUIRE, *Chief Justice*
The Honorable WILLIAM CUSHING, and
The Honorable JAMES WILSON, ESQRS., *Associate Justices.*

This being the day assigned by law, for commencing the first sessions of the Supreme Court of the United States, and a sufficient number of Justices not being convened, the Court is adjourned, by the Justices now present, untill to morrow, at one of the clock in the afternoon.

PROCEEDINGS OF THE 150TH ANNIVERSARY OF THF SUPREME COURT OF THE UNITED STATES

TUESDAY, FEBRUARY 1, 1940

Pursuant to adjournment the Court met at the Supreme Court Building.

Present:

The Honorable CHARLES E. HUGHES, *Chief Justice.*
JAMES C. MCREYNOLDS,
HARLAN F. STONE,
OWEN J. ROBERTS,
HUGO L. BLACK,
STANLEY REED,
FELIX FRANKFURTER, and
WILLIAM O. DOUGLAS, *Associate Justices.*
THOMAS ENNALLS WAGGAMAN, ESQUIRE, *Marshal.*
CHARLES ELMORE CROPLEY, *Clerk.*

Proclamation being made the Court is opened.

NOTE.—Addresses by the Attorney General, the President of the American Bar Association, and the Chief Justice were entertained. The Court then proceeded to admit seven attorneys to practice as members of the bar and to hear certain motions and arguments of counsel in cases.

Proclamation being made the Court is adjourned until tomorrow at 12 o'clock.

ADDRESS OF HONORABLE ROBERT H. JACKSON

ATTORNEY GENERAL OF THE UNITED STATES

MR. CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The bar of the Supreme Court, including those who here represent the executive branch of the government, desires to observe with you the one hundred fiftieth anniversary of this court's service. We do so in a spirit of rededication to the great principles of freedom and order which come to life in your judgments.

The court, as we know it, could hardly have been foreseen from its beginnings. When it first convened, no one seemed in immediate need of its appellate process, and it adjourned to await the perpetration of errors by lower courts. Errors were, of course, soon forthcoming. The justices who sat upon the bench, although not them-

selves aged, were older than the court itself. The duration of an argument was then measured in days instead of hours. All questions were open ones, and neither the statesmanship of the justices nor the imagination of the advocate was confined by the ruling case. Some philosophers have so feared the weight of tradition as to assert that happy are a people who have no history. We, however, may at least believe that there was some happiness in belonging to a bar that had little occasion to distinguish precedents or in sitting upon a court that could not be invited to overrule itself. Few tribunals have had greater opportunity for original and constructive work, and none ever seized opportunity with more daring and wisdom.

From the very beginning the duties of the court required it, by interpretation of the Constitution, to settle doubts which the framers themselves had been unable to resolve. Luther Martin in his great plea in *McCulloch* v. *Maryland* was not only an advocate but a witness of what had been and a prophet of things to come. He said: "The whole of this subject of taxation is full of difficulties, which the Convention found it impossible to solve in a manner entirely satisfactory." Thus, controversies so delicate that the framers would have risked their unity if an answer had been forced were bequeathed to this court. During its early days it had the aid of counsel who expounded the Constitution from intimate and personal experience in its making. They knew that to get acceptance of its fundamental design for government many controversial details were left to be filled in from time to time by the wisdom of those who were to follow. This knowledge made them bold.

The passing of John Marshall marked the passing of that phase of the court's experience. Thereafter the Constitution became less a living and contemporary thing—more and more a tradition. The work of the court became less an exposition of its text and setting and purposes and became more largely a study of what later men had said about it. The Constitution was less resorted to for deciding cases, and cases were more resorted to for deciding about the Constitution. This was the inevitable consequence of accumulating a body of judicial experience and opinion which the legal profession would regard as precedents.

It would, I am persuaded, be a mistake to regard the work of the court of our own time as either less important or less constructive than that of its earlier days. It is perhaps more difficult to revise an old doctrine to fit changed conditions than to write a new doctrine on a clean slate. But, as the underlying structure of society shifts,

its law must be reviewed and rewritten in terms of current conditions if it is not to be a dead science.

In this sense, this age is one of founding fathers to those who follow. Of course, they will reexamine the work of this day, and some will be rejected. Time will no doubt disclose that sometimes when our generation thinks it is correcting a mistake of the past, it is really only substituting one of its own. But the greater number of your judgments become a part of the basic philosophy on which a future society will adjust its conflicts.

We who strive at your bar venture to think ourselves also in some measure consecreated to the task of administering justice. Recent opinions have reminded us that the initiative in reconsidering legal doctrine should come from an adequate challenge by counsel. Lawyers are close to the concrete consequences upon daily life of the pronouncements of this court. It is for us to bring the cases and to present for your corrective action any wrongs and injustices that result from operation of the law.

However well the court and its bar may discharge their tasks, the destiny of this court is inseparably linked to the fate of our democratic system of representative government. Judicial functions, as we have evolved them, can be discharged only in that kind of society which is willing to submit its conflicts to adjudication and to subordinate power to reason. The future of the court may depend more upon the competence of the executive and legislative branches of government to solve their problems adequately and in time than upon the merit which is its own. There seems no likelihood that the tensions and conflicts of our society are to decrease. Time increases the disparity between underlying economic and social conditions, in response to which our federation was fashioned, and those in which it must function. Adjustment grows more urgent, more extensive, and more delicate. I see no reason to doubt that the problems of the next half century will test the wisdom and courage of this court as severely as any half century of its existence.

In a system which makes legal questions of many matters that other nations treat as policy questions, the bench and the bar share an inescapable responsibility for fostering social and cultural attitudes which sustain a free and just government. Our jurisprudence is distinctive in that every great movement in American history has produced a leading case in this court. Ultimately, in some form of litigation, each underlying opposition and unrest in our society finds its way to this judgment seat. Here, conflicts were reconciled or, sometimes, unhappily, intensified. In this forum will be heard the

unending contentions between liberty and authority, between progress and stability, between property rights and personal rights, and between those forces defined by James Bryce as centrifugal and centripetal, and whose struggle he declared made up most of history. The judgments and opinions of this court deeply penetrate the intellectual life of the nation. This court is more than an arbiter of cases and controversies. It is the custodian of a culture and is the protector of a philosophy of equal rights, of civil liberty, of tolerance, and of trusteeship of political and economic power, general acceptance of which gives us a basic national unity. Without it our representative system would be impossible.

Lord Balfour made an observation about British government, equally applicable to American, and expressed a hope that we may well share, when he wrote: "Our alternating Cabinets, though belonging to different parties, have never differed about the foundation of society, and it is evident that our whole political machinery presupposes a people so fundamentally as one that they can afford to bicker; and so sure of their own moderation that they are not dangerously disturbed by the never-ending din of political conflict. May it always be so."

ADDRESS OF HONORABLE CHARLES A. BEARDSLEY

PRESIDENT OF THE AMERICAN BAR ASSOCIATION

MR. CHIEF JUSTICE and ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

I appreciate this opportunity, which has been accorded to me as the representative of the American Bar Association, to participate in this commemoration of the one hundred and fiftieth anniversary of the first session of this honorable court.

It is most fitting that this event should be commemorated. Its commemoration may well serve to recall to the minds of the American people the purposes of the founders of our national government, and the part, in the fulfillment of those purposes, that this court was intended to take, has taken, and will take in the years to come. And this commemoration may well serve, further, to challenge the American people to dedicate themselves anew to the fulfillment of those purposes.

In the preamble of our Constitution, its framers recited the purposes to attain which the Constitution was to be ordained and established. In this recital, the purpose to "establish Justice" is second only to the purpose "to form a more perfect Union."

Daniel Webster reminds us that justice is "the ligament that holds civilized beings together," and "the greatest interest of man on earth." To the end that they might "establish Justice," to the end that they might provide "the ligament that holds civilized beings together," to the end that they might strengthen the foundation of civilization on the North American continent, and to the end that they might serve "the greatest interest of man on earth," the framers of the Constitution provided therein for a federal judiciary, with this court as its head, to administer "justice" under and pursuant to law. In the words of President Washington this court was intended to be "the keystone of our political fabric." And it was intended to be the protector of our Constitution and of the inalienable rights of a free people.

Gladstone's characterization of our Constitution as "the most wonderful product ever struck off at a given time by the brain and purpose of man" is justified by the fact that, for 150 years, this court has approached, as near as any human institution might well be expected to approach, the fulfillment of the purpose of the framers of the Constitution, to "establish Justice" for the American people. We may properly take pride in the extent to which this court has approached that fulfillment, realizing as we do, as Addison reminds us that to be just "to the utmost of our abilities is the glory of man," and that "to be perfectly just is an attribute of the Divine nature."

Not only is it permissible on this occasion for us to recall that this court is a human institution, but it is also desirable for the American people to recall on this occasion that this human institution will endure, and that justice, under and pursuant to law, will be preserved for the American people, only so long as the American people, by their alertness, fidelity, and sanity, cause them to be preserved and to endure. For there are forces at work in the world today that are inimical to the continued fulfillment by this court of the purpose for which it was created.

As a result of the workings of these forces in substantial parts of the world, national temples of justice are no longer honored or worthy of honor, and international morality and law are giving ground to international immorality and anarchy. And many hundreds of millions of people are engaged in war, seeking to settle their differences not according to justice but by force—by the use of a means that is calculated to bring victory to the strongest or to the most unscrupulous of the contending peoples, wholly regardless of justice.

And even within our own borders, there are forces at work that

are inimical to the principles upon which our government is founded, including the principles of justice under and pursuant to law. Thus, there is a tendency among groups of employers and employees to use physical force as the means of settling differences instead of being willing to use the administration of justice—the institution devised by man, when he was emerging from barbarism, as a substitute for combats, for fights, and for wars—an institution that is calculated to bring victory to the contending party who has the most justice on his side, regardless of the relative physical strength of the contending parties.

Also, we have among us many people who are eternally striving to inculcate doctrines that in other parts of the world are producing international lawlessness, anarchy, and war; doctrines that in other parts of the world are destroying temples of justice; and doctrines that in other parts of the world are depriving the people of their liberties and of their lives. And, finally, there is an all-too-widespread inclination to disregard the fundamental principles upon which our government and our civilization are founded, and an all-too-general disposition to ignore the historic warning that "eternal vigilance is the price of liberty."

For 150 years the American people have honored, respected, and sustained this court, and through the years this court has gained for itself the gratitude and affectionate regard of the American people, because the American people have been steadfast in their devotion to the fundamental principles upon which our government is founded, and because the American people have seen in the record of this court the evidence of the striving by its members to be just "to the utmost of their abilities." This court has gained, and has retained, this honor, this respect, this gratitude, and this affectionate regard, although, in the words of a nineteenth-century publicist, this court has no "palaces or treasures, no arms but truth and wisdom, and no splendor but the justice and publicity of its judgments."

On this occasion, as we commemorate the one hundred fiftieth anniversary of the first session of this court, we dedicate ourselves anew to the task of defending our Constitution, to the task of guarding our liberties, and to the task of strengthening, defending, and preserving this court as "the keystone of our political fabric," as the protector of our Constitution, and as the guarantor of justice for the American people under and pursuant to law, not only for another 150 years but also for all time.

ADDRESS OF HONORABLE CHARLES E. HUGHES
CHIEF JUSTICE OF THE UNITED STATES

MR. ATTORNEY GENERAL AND MR. BEARDSLEY:

The Court welcomes the words of appreciation you have spoken in recognition of the one hundred fiftieth anniversary of the day appointed for the first session of this tribunal. We are highly gratified at the presence of distinguished senators and representatives—the members of the Judiciary Committees of the Houses of Congress and of the special joint committee appointed in relation to this occasion. We trust that what has been said echoes a sentiment cherished in the hearts of the American people. They have again and again evinced the sound instinct which leads them, regardless of any special knowledge of legal matters, to cherish as their priceless possession the judicial institutions which safeguard the reign of law as opposed to despotic will. Democracy is a most hopeful way of life, but its promise of liberty and of human betterment will be but idle words save as the ideals of justice, not only between man and man, but between government and citizen, are held supreme.

The states have the power and privilege of administering justice except in the field delegated to the nation, and in that field there is a distinct and compelling need. The recognition of this anniversary implies the persistence, through the vicissitudes of 150 years, of the deep and abiding conviction that amid the clashes of political policies, the martial demands of crusaders, the appeals of sincere but conflicting voices, the outbursts of passion and of the prejudices growing out of particular interests, there must be somewhere the quiet, deliberate, and effective determination of an arbiter of the fundamental questions which inevitably grow out of our constitutional system and must be determined in controversies as to individual rights. It is the unique function of this court not to dictate policy, not to promote or oppose crusades, but to maintain the balance between states and nation through the maintenance of the rights and duties of individuals.

But, necessary as is this institution, its successful working has depended upon its integrity and the confidence thus inspired. By the method of selection, the tenure of office, the removal from the bias of political ambition, the people have sought to obtain as impartial a body as is humanly possible and to safeguard their basic interests from impairment by the partiality and the passions of politics. The ideals of the institution cannot, of course, obscure its human limitations. It does most of its work without special public attention to

particular decisions. But ever and anon arise questions which excite an intense public interest, are divisive in character, dividing the opinion of lawyers as well as laymen. However serious the division of opinion, these cases must be decided. It should occasion no surprise that there should be acute differences of opinion on difficult questions of constitutional law when in every other field of human achievement, in art, theology, and even on the highest levels of scientific research, there are expert disputants. The more weighty the question, the more serious the debate, the more likely is the opportunity for honest and expert disagreement. This is a token of vitality. It is fortunate and not regrettable that the avenues of criticism are open to all, whether they denounce or praise. This is a vital part of the democratic process. The essential thing is that the independence, the fearlessness, the impartial thought, and conscientious motive of those who decide should both exist and be recognized. And at the end of 150 years this tribunal still stands as an embodiment of the ideal of the independence of the judicial function in this, the highest and most important sphere of its exercise.

We cannot recognize fittingly this anniversary without recalling the services of the men who have preceded us and whose work has made possible such repute as this institution enjoys. This tribunal works in a highly concrete fashion. The traditions it holds have been wrought out through the years at the conference table and in the earnest study and discussions of men constantly alive to a supreme obligation. We do not write on a blank sheet. The court has its jurisprudence, the helpful repository of the deliberate and expressed convictions of generations of sincere minds addressing themselves to exposition and decision, not with the freedom of casual critics or even of studious commentators, but under the pressure and within the limits of a definite official responsibility.

To one who over twenty-nine years ago first took his seat upon this bench, this day is full of memories of associations with those no longer with us, who wrought with strength and high purpose according to the light that was given them, in complete absorption in their judicial duty. We pay our tribute to these men of the more recent period as we recognize our indebtedness to their eminent predecessors. We venerate their example. Reflection upon their lives brings emphasis to the thought that even with the tenure of the judicial office, the service of individuals however important in their day soon yields to the service of others who must meet new problems and carry on in their own strength.

The generations come and go, but the institutions of our govern-

ment have survived. This institution survives as essential to the perpetuation of our constitutional form of government—a system responsive to the needs of a people who seek to maintain the advantages of local government over local concerns and at the same time the necessary national authority over national concerns, and to make sure that the fundamental guarantees with respect to life, liberty, and property, and of freedom of speech, press, assembly, and religion shall be held inviolate. The fathers deemed that system of government well devised to secure the blessings of liberty to themselves and their posterity. Whether that system shall continue does not rest with this court but with the people who have created that system. As Chief Justice Marshall said, "The people make the Constitution, and the people can unmake it. It is the creature of their will, and lives only by their will." It is our responsibility to see that their will as expressed in their Constitution shall be faithfully executed in the determination of their controversies.

And deeply conscious of that responsibility, in the spirit and with the loyalty of those who have preceded us, we now rededicate ourselves to our task.

PROCEEDINGSIN THE SENATE OF THE UNITED STATES

ADDRESS OF HONORABLE CARL A. HATCH

SENATOR FROM NEW MEXICO

MR. PRESIDENT AND MEMBERS OF THE SENATE:

Today marks the one hundred and fiftieth anniversary of the Supreme Court of the United States. We have just returned from the Supreme Court, where appropriate ceremonies celebrating this auspicious occasion have been concluded. The Judiciary Committees of both branches of Congress attended those ceremonies, paying due and proper respect to the judicial branch of the government. Eloquent and able addresses were delivered by the attorney general of the United States and by Mr. Beardsley, president of the American Bar Association. The Chief Justice of the United States responded with remarks eminently befitting the dignity of the high office he occupies and the traditions and ideals of the court. It would hardly seem proper, Mr. President, to let this day pass without some word being said on the floor of the Senate paying at least some measure of tribute to that branch of government which celebrates the anniversary of its birth today.

Fifty years ago, in speaking at the ceremonies held in the city of New York commemorating the one hundredth anniversary of the

Supreme Court, a former President of the United States, Mr. Cleveland, said: "We are accustomed to express on every fit occasion our reverence for the virtue and patriotism in which the foundations of the Republic were laid, and to rejoice in the blessings vouchsafed to us under free institutions."

As Mr. Cleveland spoke 50 years ago, so may we well speak today. We should fittingly express this day our reverence for the virtue and patriotism in which the foundations of the Republic were laid. With even greater fervor we can well rejoice today in the blessings vouchsafed to us under the free institutions of our government.

It was only yesterday, it seems, at the beginning of the World War, that Sir Edward Grey sadly said: "One by one the lights of civilization are being extinguished. They shall not be relighted in our generation." Today as we look across the seas at the Old World we wonder if once more the lights of civilization are being extinguished. For a decade or more we have watched the fall of governments. We have seen liberty die in other lands. We have seen free people and free governments destroyed, and, even as I speak, a small but a brave and fearless people fighting against the advancing hordes of an aggressor who would seize and destroy the right of a free country to rule and govern herself. As we see these things we almost say, as Romain Rolland said during the years of the last World War: "A sacrilegious conflict which shows a maddened Europe ascending its funeral pyre, and, like Hercules, destroying itself with its own hands." As these scenes unfold and as tyranny stalks abroad in other lands and free institutions are obliterated from almost every country in the world, I repeat we may well pause for a moment today and pay our reverence and respect for the "virtue and patriotism in which the foundations of the Republic were laid."

In laying those foundations of this republic our fathers proceeded not by accident. It is no accident that freedom survives in America today. The founders of the republic were men who understood the true science of government. Passionately they believed that powers of government must be separated. As often expressed by them, "the accumulation of all the powers of government in the same hands, whether of one, or a few, or many, and whether hereditary, self-appointed, or elected," could justly be "pronounced the very definition of tyranny." So believing, they laid out the plan upon which the structure of our government rests today.

It was not a new plan. Students of government, they were familiar with every form and theory of government which existed in

the world. In another address delivered on the occasion of the one hundredth anniversary of the Supreme Court, it was said:

> A division of the powers of government was not a political device, newly invented by the statesmen who framed the Constitution of the United States. Aristotle, in the fourth book of his Politics, observes that in every polity there are three departments, the suitable form of each of which the wise lawgiver must consider, and according to the variation of which one State shall differ from another. These he describes as, first, the assembly for public affairs; second, the officers of the State, including their powers and mode of appointment; and, third, the judging or judicial department.

Following this and other plans and being ever mindful of their own mistakes and errors under the Articles of Confederation, our fathers laid the foundations of this Republic. And from their work came the Supreme Court of the United States, the anniversary of whose birth we celebrate today.

In the Supreme Court there was something new and unique in governments of men. Of course, courts of justice had long existed. The statesmen who wrote the Constitution knew well the history of the judiciary. They knew its weaknesses and they knew its strength. They knew its faults and its frailties. English courts had not always functioned according to the principles of English law, in which the colonists devoutly believed. Yet the writers of the Constitution gave birth to the most powerful court known to men, the Supreme Court of the United States, and created it as a separate and independent arm or branch of the federal government.

Of that court, De Tocqueville said: "In the nations of Europe the courts of justice are called upon to try the controversities of private individuals, but the Supreme Court of the United States summons sovereign powers to its bar."

Under the authority of the Constitution but, as the president of the American Bar Association observed this morning, with "no guards, palaces, or treasures, no arms but truth and wisdom, and no splendor but the justice and publicity of its judgments," the Supreme Court of the United States has pursued its course for 150 years. Not always right, of course, not divine, but very human, the Supreme Court has met the multitude of questions presented to it throughout the course of its history and has builded a body of law upon which the freedom of our institutions rests today. I can pay the court no greater tribute than this. If I spoke for hours and voiced all the high and lofty sentiments which have been expressed throughout the years by lawyers and judges commemorating the work of the Supreme Court of the United States, I could speak no greater tribute than I have paid when I say the Supreme Court has helped to build, pre-

serve, and keep free government for the people of the United States.

After all, is there anything else that matters? If free government ever fails here, if tyranny conquers this country, if the right of self-rule ever be denied in the United States, then will we indeed echo the words of Sir Edward Grey and with him sadly say: "One by one the lights of civilization are being extinguished."

But this, Mr. President, must not be. Somewhere in the world the lights of civilization must continue to burn. Somewhere in the world the right of men to be free must be preserved. Somewhere in the world there must be people willing to declare over and over again with Abraham Lincoln, "Government of the people, by the people, for the people shall not perish from the earth." This country, which gave birth to the ideals of free government, is the country where those rights must be preserved and maintained. It is the lot of this country to keep the lights of civilization from being extinguished. It is ours, Mr. President, to maintain and preserve the rights of men to be free. It is ours to hold fast to the principle that men can govern themselves.

As the ultimate repository of the rights and liberties of the people of America, the Supreme Court of the United States has the great responsibility of safeguarding democracy itself. In the years of its existence the court, with few lapses, has done that very thing. The lights of liberty in America have been kept burning. Men have been free in the United States. Free institutions survive in America today. That men may be free tomorrow and throughout the years to come, let not justice be denied. As the court speaks the voice of the people as expressed in the Constitution, let wisdom, truth, and righteousness permeate its decisions. Let those decisions and opinions today speak the commendation of the court. Let its decrees write its history. Let its judgment for others be judgment upon itself. Truly the Supreme Court is the keeper of the lights of freedom, perhaps of civilization. May those lights never be dimmed. May their bright and shining effulgence ever reflect the greatness and the glory of the Supreme Court and the greatness and glory of the United States of America.

ADDRESS OF HONORABLE WARREN R. AUSTIN

SENATOR FROM VERMONT

MR. PRESIDENT AND MEMBERS OF THE SENATE:

The Supreme Court is a unique instrument of popular sovereignty. Without power to enforce its judgments, uncrowned, unsceptered, devoid of sword, or purse, or patronage, the Supreme Court of the

United States for 150 years has successfully guarded the institutions which expel autocracy and animate free government. The authority of this highest tribunal of justice consists of the moral energy springing from popular belief and confidence in, and respect for, the purity, wisdom, and independence of the court.

The limitation upon its function, confining its judicial opinions to cases of injury litigated in due judicial course between parties having a legal interest therein, has maintained that separation of it from the executive and legislative branches of government which has been an effective barrier against concentration of sovereignty. Its judicial power cannot be extended by itself. When properly summoned, it is the duty of the court, from which it may not shrink, to exercise this power. In cases and controversies in which legal judgment can be rendered, it must declare the law. However, that declaration, to endure, must be right. Herein rests the safety of popular government. No departure from this limitation can be suffered. Advisory opinions may not be required of the court by either Congress or executive. Moot cases may not be heard and decided by the court.

The wholesome restriction by the Constitution of original jurisdiction to but a few cases, has not only proved to be peculiarly beneficial to a federal system dependent upon maintenance of local state sovereignties, but it has given vigor to the principle of responsibility direct to the people. The Supreme Court derives whatever exclusive jurisdiction it possesses, and all of its judicial power, from the people by a direct grant. It does not receive such power from Congress, as other federal courts do. This jurisdiction cannot be enlarged nor can it be taken away save by the people themselves. This unique characteristic of the court protects states and citizens from the central government and conserves for the people the prerogative of change. Appellate jurisdiction alone is subject to regulation by Congress.

The supremacy of our fundamental law—the known covenant of our rights—is peculiarly the charge of the court. All citizens, and all officers, high and low, are bound to support the Constitution; yet this is inadequate to perpetuate our free institutions. This we know by the tragic experience of our forefathers without fixed laws to live by.

The people's law, made by themselves, for themselves and their posterity, was fixed in the Constitution. It can be changed only by the people. It cannot be changed by government. It is intended to govern government. It protects the citizen from the government. Those two fortresses of their liberty—state sovereignty and de-

centralization of federal rule—depend upon its sanctity. Therefore, the people established an institution with the novel power of giving stability and vitality to the people's law. The Supreme Court is particularly the people's court.

Though not expressly described in the Constitution, the right to declare statute void for conflict with the fundamental law is clear by necessary implication and inevitable practice. This has been the rod by which the people have disciplined their government. The certainty of its use, notwithstanding the roaring of the transgressors, has punctuated the history of our remarkable progress economically, politically, and socially. Its use has been the marvel and admiration of statesmen, jurists, and historians of other countries.

It has preserved our form of government. For a century and a half it has enabled a logical development of the American system. It has prevented a gap occurring between the limits of the powers of the republic and those of the several states, and likewise it has prevented the overlapping of those powers. It has defined the frontiers and boundaries of jurisdiction.

When the national sovereignty was at low ebb, the court, under Marshall, turned the tide. When the backwash of the War between the States threatened to engulf the South, the court, under Salmon P. Chase and other northern judges, erected a dyke against the reaction. More recently, when the federal government encroached on local self-government, the court, under Hughes, threw up the barricade of judicial protection.

The Supreme Court does not determine or change policy. Its action is but a brake on speed. In due time, change of the fundamental law can be made in conformity to the well-settled public opinion and the prescribed methods. Its power is simply the authority to dispose of a controversy before the court in which one citizen who is a party to a case claims rights guaranteed to him by the Constitution. It is not the absolute negativing or revision of law. This was refused by the constitutional convention.

If public opinion should desire centralization of a power in Washington and diminution of local self-government, the negation by the court of congressional acts can be surmounted by amendments. However, I believe in the principle so precisely stated by Calvin Coolidge: "No method of procedure has ever been devised by which liberty could be divorced from local self-government. No plan of centralization has ever been adopted which did not result in bureaucracy, tyranny, inflexibility, reaction, and decline."

The record of the Supreme Court has been great and good. The

perpetuity of our free institutions will be secure just so long as the people freely give obedience and respect to the judgments of the court.

PROCEEDINGS IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES

THE SPEAKER. Members of the House of Representatives: As you are doubtless aware, this is the one hundred fiftieth anniversary of the first convening of the Supreme Court of the United States. I understand that appropriate ceremonies befitting this anniversary have already been held in the building of the Supreme Court of the United States; however, it was thought entirely fitting and proper, inasmuch as that great Court very kindly joined the House of Representatives and the Senate some weeks ago in celebrating the one hundred fiftieth anniversary of the convening of the First Congress of the United States, that some notice should be taken of today's important historic event by the House of Representatives. Two members of the House have kindly agreed to deliver addresses appropriate for the occasion.

It gives me very great pleasure to present to the House of Representatives the gentleman from Kansas [Mr. GUYER].

ADDRESS OF HONORABLE ULYSSES S. GUYER
REPRESENTATIVE FROM KANSAS

MR. SPEAKER AND MEMBERS OF THE HOUSE OF REPRESENTATIVES:

First, permit me to say that I deem it a distinguished honor to appear on this program with the beloved chairman of the Committee on the Judiciary, the gentleman from Texas, Hon. Hatton W. Sumners, whose greatness of heart, mind, and legal attainments eminently qualify him for a seat on the illustrious court whose sesquicentennial we celebrate today.

On the one hundred fiftieth anniversary of the first session of the Supreme Court of the United States we naturally turn to the convention which created not only the Supreme Court but also the government of our beloved country.

The men who assembled in Philadelphia on Friday, the 25th of May 1787, to write down upon parchment for the first time a scheme of government for the preservation and evolution of liberty, had the most overwhelming task ever placed before a group of men since the morning stars sang together, and, judged by the work they wrought, were the greatest and wisest assembly of men that ever surrounded the council tables of any nation in all the tide of time.

Their wisdom is patently illustrated by the obvious fact that these wise men seemed to know more then, even about so simple a matter as the proper time to convene the Congress, than we did after 150 years of experience. The so-called "lame duck" amendment lacked a single virtue or advantage, while its faults are legion—an amendment induced by the urge and itch to change the Constitution as often as possible in spite of the sage admonition of Washington concerning "the spirit of innovation."

In 1858 Abraham Lincoln, with characteristic lucidity, stated the problem that confronted these devoted patriots when he declared: "It has long been a grave question whether any government, not too strong for the liberties of the people, can be strong enough to maintain itself in a great emergency." Through that long, hot, dusty summer of 1787 that devoted company of patriots struggled to find an answer to the grave question expressed long after by Abraham Lincoln in the gathering storm clouds that enveloped him in the years just prior to 1861. On September 17, when they were ready to sign the proposed Constitution, they had created a government which was to prove not too strong even to trample upon the rights of a slave with shackles on arms and ankles, yet strong enough to maintain itself in the face of the greatest emergency that ever confronted a republic in the history of the earth.

You have seen the milky way, that mysterious belt of light flung like a silver mantle across the shoulder of night. What is the milky way? Uncounted millions of stars larger and brighter than our sun, yet so far away that their light comes to us only in those broken and shattered fragments that leave that romantic trail of light out yonder on the far horizon of the universe. All that staggering vastness of the universe, in which our earth is but a speck of dust, is held together and in perfect harmony by two forces. One pulls toward the center, the other away from it. One is centripetal, the other centrifugal.

In government there are two corresponding forces. One pulls toward the center, the other away from it. One is centripetal and the other centrifugal. One tends toward order, the other toward chaos. One toward organization, the other toward disintegration. One toward despotism and the other toward anarchy.

The task of our fathers at Philadelphia was to devise a government in which the centripetal and the centrifugal forces would be so balanced that there could be neither despotism nor anarchy, balanced so nicely, like the stars and planets in the palm of the Almighty, by which we can predict for years in advance when there will be an

eclipse of the sun or moon. The men who framed our Constitution were familiar with the history of the ages and their philosophies from Plato to Adam Smith, whose *Wealth of Nations* had just before reached America.

The stories of Babylon and Egypt, of Greece and Rome, were commonplace with them. The records of the past were searched for the dangers that would lurk in the path of a government for free men. But when these patriots had done all they could, when they had formed a plan of government with a written constitution, they had only the blueprints of a government—a skeleton without flesh and blood or the breath of life. Out of that noble plan must be evolved a government with arteries and veins, with flesh and blood—a living government. And that is just what has happened in these 150 years. Along with the other departments of the government, our judicial system, with the Supreme Court as its head, developed and rendered this a government of laws and not of men. The Supreme Court that John Jay found on the first day of February 1790 was without form and void. It too, like the whole scheme of our government, must develop and evolve under the Constitution and ever according to the spirit and the letter of that Constitution.

The struggle of the Supreme Court to secure its integrity is one of the most intriguing romances of the political history of the United States. The Supreme Court, in the second decade of our national life, became the center of a raging tempest of party passion not exceeded in our history. At that time the President of the United States demanded that a judge should be expelled from the Court by request of the two Houses of Congress, impatient of the process of impeachment provided by a wise Constitution. This demand by the President was in wide contrast to President Jefferson's ringing statement concerning the formation of the Commonwealth of Virginia. In his "Notes on Virginia" he declared:

> The concentrating of these (the executive, legislative, and judicial powers) in the same hand is precisely the definition of despotic government. An elective despotism was not the government we fought for; but one which should not only be founded on free principles but in which the powers of government should be so divided and balanced among the several bodies of magistrates, as that no one could transcend their legal limits without being effectually checked and restrained by the others. For this reason that convention which passed the ordinance of government laid the foundation on this basis, that the legislative, executive, and judiciary departments should be separate and distinct so that no person should exercise the powers of more than one of them at a time.

That was a noble statement of the whole history of a free government, where no man would ever be permitted to trample on the rights

of another, be he executive, legislator, or judge. It provided a government of checks and balances in which no department could rule alone. If the executive became tyrannical the court could call a sudden halt. If the legislature transcended the authority of the Constitution in its laws the court could interfere. If the judge became corrupt or brought reproach upon the judiciary he could be impeached.

A half century before the Constitution was written, Montesquieu, whom Madison termed the "Oracle of Liberty," discovered this, principle of free government when he declared: "There can be no liberty when the legislative and executive powers are united in the same person or body of magistrates, because apprehension may arise lest the monarch or the senate should enact tyrannical laws to execute them in a tyrannical manner."

That, couples with Aristotle's vague suggestion of three agencies or departments of government, was the germ of the idea that led the makers of the constitution of Virginia, and afterward of the Constitution of the United States, to adopt the system with three independent departments, and I am sure that if Thomas Jefferson had been present when our Constitution of the United States was framed, he would have been most insistent upon adopting that kind of a government, even though, when President, he contemplated the impeachment of all the judges of the Supreme Court, including his illustrious cousin, John Marshall, in direct opposition to the theory of an independent judiciary. Thomas Jefferson was human and he permitted his partisan enthusiasm to overcome his fundamental principle of three independent departments of government. Anyway, we can forgive him, because he ignominiously failed to break the power of the Supreme Court, which John Marshall had galvanized into the greatest tribunal of justice that ever existed on earth. And because, too, that every time that illustrious court has been assailed, and the storms of vituperation and passion have spent themselves, that court always has emerged stronger than ever before.

Those victories were all the more satisfactory because the court viewed the storm with characteristic silence, and without "purse or sword," employing no promoter of propaganda, no hired press agents to circularize the nation, no largess of the people's money to dole out to purchase the public favor, no bureau of defamation to answer the assaults of demagogs, and no defense except the devotion of the people, whose rights and liberties it has sheltered and enshrined. Amid all the vindicative storm of passion and political wrath it has remained the most majestic tribunal on earth.

In that 150 years great judges have upheld the record of the court of John Marshall and Roger B. Taney, whose combined services covered sixty-three years and helped to construct this majestic tribunal; but all of them could not have wrought this work and built this mighty court alone. Back behind them at the nation's firesides, the fathers and mothers helped with their support and prayers to build its majesty—to buttress it with the resistless power and invincible strength of public opinion.

Who else built it? The pioneer out on the fringe of the desert, the pioneer out on the Santa Fe and the Oregon trails, the most romantic trails that ever mapped the frontiers of the earth or that ever blazed the path of empire. They built it in the campfires, where danger haunted their bivouac. They built it in the fields, where disappointment mocked and where gaunt famine stalked. They built it in the little red schoolhouses, where the children loved their books. The soldiers built it on a hundred battlefields when they died for liberty. The mothers at the hearthstones and at the cradles built it, built it in the fathomless blue of their babies' eyes. They built it in the churches, where they gathered to worship their God. John Marshall and Joseph Story built it; William Howard Taft and Charles Evans Hughes built it: Washington and Madison built it; Hamilton and Jefferson built it: Lincoln and Douglas built it; Grant and Lee built it. Victor and vanquished built it. Nobody was always right, but right always triumphed in the end. They all helped to build it in love of country and mankind. May God bless all who aided in shaping its stately form and its mighty destiny.

For a century and a half it has compelled the admiration of all the people of the earth as a symbol of virtue and righteousness. For there was never a time in the history of the earth, since amid the splintered lightnings of Sinai, when the beginning of all law came direct from the lips of God Himself, when the rights of the poor and the needy, the weak and the downtrodden, were guarded with more energy and girded about with more jealous care. Thanks to our judicial system, with this illustrious court at its head. Let no impious hand profane its record or threaten its integrity. We did not build it for today nor for tomorrow; we built it for the centuries. We commit it to the future. Its past is secure. Here may innocence always find sanctuary. Here may the weak ever find refuge. Here may law and order reign. Here may the Constitution be revered. Here may tolerance and fraternity be held sacred. Here may generations yet unborn realize their hopes and ambitions. Here may it stand like the steadfast souls of John Marshall and his fellow jurists,

untarnished and unblemished by sordid avarice or unholy ambition, unshaken by weakness or fear, independent and incorruptible, let it stand adamant for all the centuries to come, for without all this its majesty is but mockery, its strength is sand, for when—

The tumult and the shouting dies,
  The captains and the kings depart;
Still stands thine ancient sacrifice,
  An humble and a contrite heart.
Lord God of Hosts, be with us yet,
  Lest we forget—lest we forget.

"God save the United States of America and this honorable Court."

The SPEAKER. I now have the distinguished honor of presenting the able and beloved chairman of the House Committee on the Judiciary, the Honorable Hatton W. Sumners, of Texas.

ADDRESS OF HONORABLE HATTON W. SUMNERS

REPRESENTATIVE FROM TEXAS

MR. SPEAKER AND MEMBERS OF THE HOUSE OF REPRESENTATIVES:

First, may I express my very great appreciation for the generous remarks of my distinguished colleague, the gentleman from Kansas, Mr. Guyer, to whom you have just listened. I appreciate, as I know you do, the very eloquent address which we have just heard.

I want to speak to you on this occasion in a very plain, practical sort of way; on this, the one hundred and fiftieth anniversary of the inauguration of the Supreme Court, I want to give you, if I can, the picture of our constitutional development, the place which the Supreme Court holds in that scheme, and particularly the responsibility that rests upon you and me in this the one hundred and fiftieth year after the inauguration of the last of the three great departments which constitute the functioning machinery of this government. The first President had been elected, of course; the First Congress had convened on March 4 of the preceding year. On the next day after Congress convened a committee on the judiciary was appointed. The judiciary act was approved by Washington on September 24, 1789. John Jay of New York was nominated to be chief justice; Rutledge of South Carolina, Cushing of Massachusetts, Harrison of Maryland, Wilson of Pennsylvania, and Blair of Virginia to be associate justices. Harrison declined to serve and James Iredell of North Carolina was appointed in his stead. Thus was inaugurated the last of the three departments of the federal government. It was an independent judiciary. The independence of the judiciary had

been secured by two provisions of the Federal Constitution. One is that "Judges . . . shall hold their Offices during good Behaviour," the other provides that they "shall at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office."

ORIGIN OF THE INDEPENDENCE OF THE JUDICIARY

The notion of an independent judiciary did not originate with the Federal Constitutional Convention, however; the origin and evolution of the chief of these provisions securing the independence of the judiciary is typical of most of the provisions in our written constitutional structure. They each originated in necessity and practically all of them had been tested by experience for a long time before the beginning of our independent governmental existence.

For a long time prior to the coming of William and Mary to the British throne there had been much complaint and bitter resentment over the fact that the kings of England, who appointed the judges, and especially during the régime of the Stuarts, either directly or indirectly controlled their judgments. Public opinion condemned that practice and public purpose set about its correction. In the Act of Settlement of the Succession under William III, in 1701 it was provided that judges "shall hold office as long as they behave themselves well." This provision originated out of the necessity to correct a definite, well-recognized maladjustment of the machinery of government. But it did not complete the correction. Later it was discovered that the tenure of the judges terminated with the demise of the king. So, when George III came to the throne some fifty-nine years afterward, in 1760, to correct that condition it was provided, as one of the first acts of his reign, that judges should hold office as long as they behaved themselves well, notwithstanding the demise of the king.

As indicating the trend of constitutional development on that side of the Atlantic, moving power away from its centralization in the king, later on, in the reign of King George it became an axiom of the British Constitution that in the event of a disagreement between the parliament and the king, any appeal taken to the people through the medium of an election should be made by the ministry and not by the king. This was consummated five or six years after the adoption of our Federal Constitution. Internally they were decentralizing. They had long been a nation. Internally we were centralizing; we had not yet become a nation. In order to have the whole picture of those times it is well to have in mind that there

were then approximately half as many people in the colonies as in England, in round numbers 8,000,000 people in England and 4,000,000 on this side of the Atlantic.

THE CONSTITUTION DEVELOPING ON BOTH SIDES OF THE ATLANTIC

During the period of colonization, while we were bargaining with the British crown, it to induce us to emigrate to America, and we for sufficient privileges and liberties to induce us to emigrate, and were writing the resultant negotiations into the terms of the royal charters of the colonies, things equally as important, bearing directly upon our own constitutional structure and the place of our Supreme Court in our structure of government, were taking place on the other side. Our own Constitution was being shaped at the same time on both sides of the Atlantic. As we have seen, the independence of the Court which we inaugurated 150 years ago was fixed in our Constitution by our ancestors in 1701 in the Act of Settlement.

At the time this provision of the Constitution, establishing the independence of the judiciary, was being presented to and accepted by William and Mary, there was also presented to them the Bill of Rights, which was accepted. It contained the following provisions, which were later incorporated into our written constitutional structure:

> That levying money for or to the use of the crown, by pretense or prerogative, without grant of parliament, for longer time or in other manner than the same is or shall be granted, is illegal. That it is the right of subjects to petition the king and all commitments and prosecutions for such petitioning are illegal. That the raising or keeping a standing army within the kingdom in time of peace, unless it be with the consent of parliament, is against law. . . . That elections of members of parliament ought to be free. That the freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. That jurors ought to be duly impanelled and returned and jurors which pass upon men in trials for high treason ought to be freeholders. That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void. And that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliaments ought to be held frequently. And they do claim, demand, and insist upon all and singular the premises, as their undoubted rights and liberties.

THE ORIGIN OF THE CONSTITUTION

If I could do only one thing in America, I would have it understood, and it is the truth, that while the men who met in the Constitutional Convention at Philadelphia were great men, they did not

create the Constitution of this government. I want to emphasize that. The Constitution of this government has a higher authority than the words of men to support it. It came from a source higher than the source of any convention.

Your Constitution and mine existed in the very nature of things before there was any positive precept. It is perfectly evident when you examine life that the Almighty God intended that men should be free. I want you to think about that a minute. In God Almighty's economy He does not attempt to protect human beings against difficulties. In fact, He creates difficulties. The difficulties which we experience in operating a system of free government constitute a part of the gymnastic paraphernalia provided by God Almighty for the development of people. The development of people is the central objective of nature.

The love for liberty, the ambition to be free, the aspiration to be free, have not been given to us in order that we may merely enjoy the blessings of liberty, but in order that we first may struggle to be free and gain strength by the struggle; second, that we may discharge the duties incident to freedom and gain strength by their discharge. That is the plan which God Almighty has intended. That is our plan. It is susceptible of proof. It could be proven before any jury on earth. Therein lies the security of our Constitution and the certainty that it cannot successfully be attacked by those whom we call the "reds" if we but understood it and do not forget that "eternal vigilance is the price of liberty."

Its provisions did not come from the speculations of political philosophers or the deliberations of conventions. They originated out of necessity and they were tried by experience among a people peculiarly gifted with the genius for self-government before we ever came to the responsibility of writing our state and federal constitutions. Therefore, our Constitution has supporting it human authority, the men who met in conventions, and in addition to that it is supported by the fact that it has stood the test of the ages. It is not something that just came from the creative genius of some men, although human beings have helped.

The notion of a fundamental, natural law, supreme and dominant in the social and governmental relations of men, had taken firm root in the philosophy of thinkers as far back as Aristotle. Perhaps men have held to that conviction as far back as men have observed correctly and thought clearly and analytically. Cicero distinguished between *summa lex*, which existed accordingly to his philosophy always before governments or written law, and *lex scripta*, written

laws of man's making, which were to be regarded as void if they were contrary to the laws of nature.

In the Middle Ages such great jurists as Baden of France and Suarez of Spain agreed with these views but went further and held that God had planted a consciousness of these laws in the mind and conscience of man, from which one's understanding of natural rights is derived, and held further that a statute which is contrary to natural justice is ipso facto void. Grotius was in general agreement with this philosophy. Coke, Fortescue, and Blackstone agreed. Blackstone held, however, that there was no power to prevent Parliament from violating the supreme law. However, he did not go so far as some of our American commentators have gone who say that the Constitution is what the Supreme Court says it is, or so far as some of the commentators on the British Constitution go who say that the British Constitution may be changed by the British Parliament. Neither of these statements is correct.

THE VALIDITY OF CONSTITUTIONS

There is no power to prevent the British Parliament from enacting a law contrary to the British Constitution, but that violation of the British Constitution does not change the constitution. It is true there is no power to prevent an ignorant or venal Supreme Court, if there should come to be such a court, from falsely interpreting or falsely applying the provisions of the Constitution, but the Constitution would remain unchanged. We should merely have to await a happier day when the powers which had been abused and the trusts which had been betrayed should pass to fitter hands.

On both sides of the Atlantic, but chiefly on the other side, due to its longer history, the history of this people is replete with the record of great occasions and great achievements when the people, who had for a time been negligent, have aroused themselves and rescued their constitution and revitalized and reestablished it as the supreme law of the land.

One of these instances was the reestablishment of the independence of the judiciary to which I have referred, and while they were doing that they assembled into a documentary statement certain of their fundamental rights, which they had long claimed as a part of their constitution, but which by the power of the kings and the construction of the judiciary which the kings controlled, had been denied to the English people. But these rights still lived.

When we came to write our Federal Constitution, we brought forward into the written documents not only the provision with

regard to the judiciary to which I have referred but the Bill of Rights as well. We did not borrow that Bill of Rights from the British Constitution or the provision with reference to the tenure of the judges from the British Constitution, as our commentators sometimes erroneously state. They belonged to us as much as they belonged to the people on the other side.

This seeming digression is in fact not a digression. It gives us a more comprehensive, though imperfect view of our general constitutional development, moving us toward the creation of our Supreme Court and the establishment in that court of the powers which the Constitution assigns to it.

Obviously we can go no further into an examination of our constitutional development which took place on the other side of the Atlantic; neither shall we be able to examine the philosophy of Paine and others asserting the nonsupremacy of kings and parliaments and judges and human government as against the inalienable, natural rights of men, asserting the inherent limitation upon the fashion and power of governments and the discretion of governments and of their agents. We shall not be able, either, to examine the colonial charters, the forerunners of our state and federal constitutions, and in many respects the most interesting and most important part of our written constitutional development. In passing, may I recommend especially an examination of the charter of Rhode Island granted in 1663. Everything considered, that charter of the little colony of Rhode Island, granted 277 years ago, is one of the greatest state documents of all time.

It is known, of course, that the state constitutions preceded the Federal Constitution and contained all the basic provisions later incorporated in the Federal Constitution and many of its less important provisions as well.

FEDERAL GOVERNMENT DEVELOPMENT

Our federal governmental development, in the scheme of which the Supreme Court has so large a place, both in its natural position and in the result of its decisions, began, no doubt, soon after the establishment of the American colonies. The facts of common interest among the people of the colonies, the influence of common origin, in the main, the same language, similar institutions, the same governmental instincts, community of interest, common dangers, and later joint achievements in behalf of the common interests, began early to draw and to press this homogeneous people back upon themselves into greater and greater solidarity and unity.

The articles of "Firm and Perpetual League of Friendship," entered into in 1643 between the jurisdictions of Massachusetts, Plymouth, Connecticut, and New Haven, have so many provisions and characteristics common to both the Articles of Confederation and the Federal Constitution as to leave no doubt of their close relationship. Just as the meeting called by Simon de Montford in the thirteenth century was the forerunner of the British Parliament, this meeting and its resolutions were the forerunners of the Continental Congress, the Articles of Confederation, and of the Constitution of the United States.

We often hear the statement that the Revolutionary War was fought under the Articles of Confederation. The fact is that the Articles of Confederation were not ratified until the spring of 1781, and Cornwallis surrendered in the fall of that year. There is another erroneous statement, that when the Federal Constitutional Convention met, the Articles of Confederation were, figuratively speaking, thrown out the window. A comparison of the provisions of the Articles of Confederation and those of the Constitution and the weight of probabilities make that statement absurd.

ORIGIN OF THE SUPREME COURT

The Supreme Court was not the first to function as such a court in this country. Prior to the adoption of the Articles of Confederation, the Continental Congress made of itself a semivoluntary Supreme Court in certain matters of the then inchoate and embryonic federal government. From their membership they selected what they first called a committee, and later on they created a court to which it was directed that appeals should lie from proceedings with reference to captured vessels. These vessels were being claimed as prizes of war. All sorts of conflicting interests and claims were growing out of these transactions. In some instances citizens of foreign nations were involved. During the siege of Boston, Washington was compelled to give much time to the adjustment of these controversies. He wrote a letter to the Continental Congress asking that something be done about it. In response, Congress requested that the colonies erect courts, where they did not already exist, to try issues arising out of such captures, and to allow juries in all cases, and that all appeals be to the Congress. Not only was this class of cases appealed to, and adjudicated by the tribunal created first out of the personnel of the Continental Congress, and later as a separate court, but a serious dispute between Pennsylvania and Connecticut over their boundary line was adjudicated by a court established under

the Articles of Confederation. A great practical lesson was learned by those experiences, and later it became fixed in the Federal Constitution that there should be a Supreme Court of the United States, and that its judges should have jurisdiction of the class of cases adjudicated by these earlier federal tribunals.

Controversies, conditions, and the helpful services of a tribunal authorized to adjudicate such controversies, and the need for a governmental agency strong enough to enforce the judgments of such a tribunal, helped to impress the necessity of a "more perfect Union," with a court clothed with such judicial powers as were later given to the Supreme Court by the Constitution.

SUPREME COURT DECIDES CONSTITUTIONAL LIMITATIONS

While the independence of the judiciary had already been established, it remained to be determined in this country whether the Supreme Court of the United States has the power to declare void an act of any federal agency, or of the states, which it deems to be in violation of the Federal Constitution.

The great controversy with reference to the Supreme Court, which arose out of the decisions of *Marbury* v. *Madison* (2 L. Ed. 60, 1803) of *McCulloch* v. *Maryland* (4 L. Ed. 579, 1819), and *Dartmouth College* v. *Woodward* (4 L. Ed. 629, 1819), and so forth, brought definitely to issue whether the Supreme Court has authority to declare an act of Congress and an act of a state unconstitutional.

We are all familiar with these great, far-reaching decisions. Jefferson challenged the authority of the Supreme Court to declare an act of Congress or an act of a state unconstitutional, contending, in substance, that the other two departments of the federal government and the states are each charged with a responsibility to the people of acting within their respective constitutional limitations; that our constitutional system provides an adequate remedy and practical machinery for its enforcement—popular elections. He felt that to give to the Supreme Court the power to declare the acts of agencies of the federal government and of the states void and also to be the sole judge of its own constitutional power is so incompatible with the nature of a democracy that it would destroy the government.

Judge Roane led the people of Virginia in their attack on Marshall. Marshall was very much aroused. He seems to have written many letters; he urged the necessity of the friends of the government to arouse themselves; he considered that there was danger of a reaction toward the old government under the Articles of Confederation. The thing which seemed to have affected him

most is indicated by the following quotations from one of his letters: "I cannot describe the surprise and mortification I have felt that Mr. Madison has embraced them—" referring to Virginia's contentions insisted upon by Mr. Jefferson.

SUPREME COURT NOT THE FIRST TO DECIDE CONSTITUTIONAL LIMITATIONS

It is an interesting fact that Marshall, however, was not the first to claim the right and the duty of the judiciary to pass upon the constitutionality of legislative and administrative acts. In an opinion by the supreme court of New Jersey, Holmes against Walton, 1780, though the record is not to be had, it seems clear that it was held that an act of the legislature providing for a trial by a jury of six men was void because if was violative of the New Jersey constitution.

There was much controversy in the following session of the legislature with reference to this and other similar decisions. In the case of Commonwealth of Virginia against Caton, decided in 1782, the court gave the opinion that it had the power to determine the constitutionality of an act of the legislature and to declare those acts void which were contrary to the constitution. Prior to 1814, there were numerous other state court holdings to the same effect in New York, Connecticut, Rhode Island, North Carolina, Pennsylvania, Ohio, and Vermont.

Mr. Gerry of Massachusetts in the Federal Constitutional Convention in 1787 said: "In some States the Judges had actually set aside laws as being agst. the Constitution. This was done too with general approbation."

While there was much criticism of the decisions of Marshall, particularly in Virginia, Kentucky, and Ohio, there probably was fairly general approbation throughout the country.

In *Worcester* v. *Georgia* (8 L. Ed. 483), decided in 1832, the Supreme Court of the United States held that an act of the Georgia legislature, undertaking to regulate missionaries among the Indians, was unconstitutional. The State of Georgia ignored this decision. The executive branch of the federal government refused to lend itself to the enforcement of this judgment. Finally, the matter ended by the missionary's being released after some eighteen months' confinement. This was perhaps the most severe blow which Marshall received during his long judicial career.

It is an interesting coincidence that Georgia had figured in another very important decision by the Supreme Court (*Chisholm* v.

Georgia, 1 L. Ed. 440). Jay was then chief justice. It involved an action for debt by a citizen of another state against the State of Georgia. The decision, rendered in 1793, held that a state could be sued in the federal courts at the instance of a citizen of another state. Two days after its rendition the eleventh amendment to the Constitution was proposed in Congress and the following December it was submitted. Ratification was not announced until the beginning of 1798. No action seems to have been taken in the matter, however. There were several suits similar to that of Chisholm against Georgia already pending. But before the first of these pending cases (*Hollingsworth* v. *Virginia*, 1 L. Ed. 644, 1798) reached the Supreme Court, the eleventh amendment had been ratified and the court in a unanimous opinion held, in view of its phraseology, that the judicial power of the United States "shall not be construed to extend," instead simply that it "shall not extend" to any suit in law or equity commenced or prosecuted against one of the states by citizens of another state, or by citizens or subjects of any foreign state, that the amendment had a retroactive effect, and thus the court would renounce jurisdiction in any case of this nature, past or present.

It is worthy of note that when the judgment against the State of Georgia was affirmed, Georgia responded by a statute prescribing the death penalty against anyone who would undertake by any process to enforce the judgment within the state.

LESSENING JUDICIAL RESTRAINT UPON OTHER GOVERNMENTAL AGENCIES

With the election of Jackson in 1828, the fight on the policies of Marshall was renewed with great vigor. Chief Justice Taney, who had been in Jackson's Cabinet, was a great influence in the Supreme Court in lessening the restraint which that court had exercised upon the states and departments of the federal government.

It is not at all improbable, if we had time to examine beneath the surface of developments as they are given to us by the historian, we might discover that one of the reasons for the change in the policy of the Supreme Court might have been the fact that union among the states at the time of the change had by natural processes made considerable progress. It is not improbable that it was a natural thing that the Supreme Court should have been instrumental in helping to concentrate governmental power at the point where this union was taking place. Public opinion, the arbiter in disputes affecting the public interest, probably helped determine the matter. As when a broken bone is being healed or the parts of plants are being engrafted

upon each other, nature seems to move its energies to the point of weakness, to strengthen it by what means it can, until the unifying fibers by natural processes shall have done their work.

It may be also that Marshall was so absorbed by his concern for the establishment and preservation of a strong central government that he overlooked or underestimated the importance of preserving the efficiency and virility and fundamental sovereignty of the several state democracies which had created the federal organization as their agent to do for them certain things which individually they were not able to do and to act as the repository of certain governmental powers which they each surrendered to the others.

On the other hand, Jefferson and Jackson and their associates may have underestimated the necessity at that time of permitting governmental strength to move to the points in the governmental structure where union among the states was being effected by natural processes, but had not yet become an actuality. These observations are not so fantastic as at first consideration they may appear.

MOVEMENT OF GOVERNMENTAL POWER DURING THE NATIONAL FORMATIVE PERIOD

In the whole process of national development, when tribes are blended into principalities and principalities into petty governments and these petty governments into a great nation, it is a historical fact that governmental power moves up from the people and from the smaller units of government to the point where union among the newly associated peoples and territories is being effected. That always happens. It seems to be in response to natural law. Clearly the adoption by the states of the Federal Constitution did not unite the people of the states; it did not constitute of them a nation.

I do not believe there is anything more interesting than the history of our own Union—the history of how we came to be a nation—the history of how we got into the big row in 1861. I think it is perfectly clear as we look back at it now. An examination of the debates in Congress discloses the different stages of the growing together of these states. The Constitution was like the tape wrapped around plants being grafted. If there be proper adjustment, if there be kinship in those plants, nature gets to work—nature did get to work. If we had the time, I would like to direct your attention to significant utterances on the floor of this house and in the other chamber in the different crises of the country, showing clearly the relative stage of the development in our becoming a nation.

I will mention, however, one example. John Quincy Adams and twelve of his associates, when Texas was about to be admitted, issued an address to the people of the country in which they said that the admission of Texas would amount to a dissolution of the Union, and the non-slave-owning states would not, and should not, submit. Just across the river here was a gentleman—Wise, of Virginia, who was in this House—and it made him very angry—the idea of these Yankees uttering these treasonable things right here in the Hall of Congress—and he moved to expel them. Seventeen years after that Wise was the head of a Confederate regiment trying to put into effect the doctrine which Adams had declared, and the Adams crowd were having conniption fits about these things that Wise and his people were doing. If it were not so closely associated with that great tragedy, it would be an amusing thing.

STRUCTURAL REASON OF WAR BETWEEN THE STATES

We do not have time to examine the details of that development. It is sufficient for us to note at this time that we have come to be a nation. We were overlong in arriving at our nationalization, due primarily to the fact that in the beginning the institution of slavery as a foreign substance was left in the Constitution lying between the two great sections, North and South, and soon there was added to it the policy of the protective tariff. The states of the two sections had long been united.

Each of the great sections, when in control of the federal organization, used that organization to promote and protect its interests with regard to these two issues. Lying side by side, these two issues were too thick for the fibers of union to penetrate. As a result, under the increasing strain, in 1861, we broke at this point of weakness. The southern states which theretofore had denounced the doctrine of secession which had come from northern states, having lost control of the federal organization, pulled apart, seceded. The southern states seceded because they had lost control of the federal government. The northern states did not secede because no one secedes from that which he controls.

As a result of the War between the States, one of these foreign elements was removed, and as a result of economic developments the protective tariff has been largely absorbed into the general economic and political body of the two sections. We are now a nation united.

GOVERNMENTAL PROGRESS IN A DEMOCRACY

We have been a nation, probably since the Spanish-American War, certainly since the World War. When a people, operating our sort of government, have reached that stage in their national development, it is a historically established fact, and one with which reason has no difficulty in agreeing, that from that time forward all progress in such a government must be in that direction which moves governmental power away from the central organization to which it was moved at the time when the processes of unification were taking place or great emergencies were being dealt with, back into the smaller units of government which are the natural instruments for the functioning of a democracy. Democracy is a government by the people. In order for the people to govern and to continue to develop their capacity to govern they must have the power to govern and the necessity to govern as close to them as it is practical to place it, and there must be provided for their use governmental machinery adapted to the exercise of these functions by the people.

For too long a time we have overemphasized the federal organization in our scheme of government. We ought to have been moving this overallocation of power and governmental responsibility away from it long ago. Just as nature moves strength to the point of union when union is being effected, when union has been effected, it requires of peoples operating systems of free government to move that power back into their democratic governmental organization, or pay the penalty which nature inflicts upon a people who have had an opportunity to cooperate with the plan of nature and refuse to do it. That is something for the statesmen of America to think about. If the people will not do it voluntarily, they are driven by the lash of tyranny to the performance of their neglected duty. I challenge anybody of any political philosophy to contradict the statement that it is a historically established fact and in harmony with reason that after the formative period of a democratic nation there can be no progress in that system except in that direction which moves the power and necessity to govern away from the center and back toward the people, who are the government.

We are not dealing with an academic thing. We are not dealing with a speculative thing. We are dealing with something that is supported by history and to which common sense must agree, because in a democracy there are no governors except the people.

THE STATE'S GOVERNMENTAL MACHINERY ADAPTED TO REQUIREMENTS OF DEMOCRACY

Fortunately for us, the states, not too large territorially and which function in the main through smaller units of government, the chief officers of which are chosen by the people, afford the opportunity and the machinery for the functioning and development of democratic institutions, and for the development of the governmental capacity of the people, who are the governors in a democracy.

In our whole governmental history all commentators, insofar as I know, agree that the Habeas Corpus Act, the Magna Carta, the Petition of Right, the Bill of Rights, and our own Declaration of Independence made great epochs in governmental history, because their effect was to decentralize governmental power and move it back toward the people. On the other hand, no great monument can be found along the road which democracy has traveled, marking the place where governmental power and responsibility have been moved away from the people toward the central governmental agency. That is not progress in a democracy.

The federal organization is a necessary agency of these states to do the things for them which it was created by them to do, but it was never intended to be and never can be the functioning machinery through which the people can discharge the general responsibility of government. It is too big, too far away; the total of its general responsibilities too vast. Its machinery is not adapted to that service. Out of an executive personnel which has now grown to the enormous number of 987,538 persons as of the month of December 1939, at an annual salary as of that month of $1,827,678,708, only one of this approximately 1,000,000 people is elected. There cannot be any possibility of popular control of such an organization.

EFFECT UPON DEMOCRACY OF LOSS OF STATE SOVEREIGNTY

The states must resume the status of the responsible sovereign agencies of general government or democracy cannot live in America. What is the use in trying to deceive ourselves about that?

When we relieve the states of governmental responsibilities which are within their governmental capacity, the power to do the things of which they have been relieved departs from the states. Nature will not permit any power to remain where it is not used. Every time that happens the total governmental strength of the states is lessened and they are left with less and less ability to discharge their remaining duties.

There can be no uncertainty as to the effect of that policy upon

the states, especially, when, in addition to that, we tap the sources of state revenue; bring to Washington the money required by the states to discharge their governmental duties; send a part of that money back to the states as loans and gifts from the federal government to the subdivisions of the states, their counties, their cities, their school districts, private businesses, and private citizens, and thereby, in these matters, attach them directly to the federal government and bring them directly under the operation of the federal governmental power.

By this process we are not only weakening the states but are actually dissolving them. At the same time, we are destroying the self-reliance, the courage, the stamina, and the governmental capacity of their subdivisions and of the people—the most deadly thing that can be done to a democracy. When we do all these things, we do what the declared enemies of our democracy could not do to the structure of our government and to the governmental capacity of the people, upon whose capacity to govern our democracy absolutely depends.

It is axiomatic in our system of government—and I think it is axiomatic everywhere—that he who controls the purse strings controls the government. This was demonstrated when the House of Commons got control of the purse strings in England. It took a long time, but now the Commons are supreme because they never turned loose the purse strings.

We are making a similar demonstration in this country, except that it is in exactly the opposite direction. As we increase state and local governmental dependence upon the federal treasury, dispensing money which has been got from the people of the states, the federal bureaucracy tightens its grip upon the purse strings and increases its governmental control.

We have turned back on the course of democratic progress. Progress is not fast. We are going very fast. Progress is uphill. We are going downhill. That is the easy way.

Democrats, Republicans, people of the nation today celebrating a great occasion, we talk about what these men have done in the days gone by. What are we doing? How well are we doing it? No foreign foe has put his foot on American soil in a hundred years. We have everything in this country that God could give to make a people happy, prosperous, and contented—plenty of material for food, clothing, and shelter; plenty of railroads; plenty of money; plenty of means; plenty of everything—plenty of everything except the intelligence and patriotism required to operate a system of free government. Yet we strut around here and expect people to call us honorable. Shame upon us in America! Shame upon the states-

manship of America! We are all responsible. I take my share and you can take yours.

When we destroy the independent governmental responsibility of the states, the sovereignty of the state is destroyed and the possibility of the preservation of democracy is practically gone. What I am saying is fundamental. I am talking about things that are fundamental, vital things as important to me and to you as the love for liberty. I am not talking about anyone, I am talking about a situation; I am talking about the result of the operation of the laws of cause and effect.

As it was the responsibility of our people 150 years ago to establish the federal organization, in just as definite a sense it is our responsibility to preserve this democracy, not only for the sake of the democracy but for the sake of the federal organization as well. There can be but one end to a policy of continuing to weaken the structure of the underlying states and at the same time continuing to increase the federal overload.

This is not a partisan matter; it is not a sectional matter; it is not that of any department. None are free from responsibility. It is the concern and business of all the people, of all the parties, and of all the officials of all the departments of government, federal and state.

Whether you agree with me or not, I hope that what I have said will be received in the spirit in which it is spoken, and that it will be provocative of thought and of an examination of the facts.

You and I are in responsibility at the high peak of human history, charged with a duty different from that which Madison confronted, different from that which Marshall confronted. They and the statesmen of that time were confronted with the responsibility of helping to hold these states together until they could grow together and form a nation. It was their business to preserve this nation. It is our business to preserve this democracy.

No greater challenge ever came to any people of any age than the challenge which comes to you and me at this time. It is well for us on this, the one hundred fiftieth anniversary of the inauguration of the Supreme Court, celebrating as we do a great event in the history of our government, to be conscious of the fact that we are in responsibility at a time when deliberate persons of sound judgment are deeply concerned for the future of this country. Only a people humbled by the sense of great responsibility, earnestly desiring to know the truth, candid enough to face it, whatever it may be, and courageous enough to do what duty requires, whatever the sacrifice, can make certain the preservation of this democracy.

LIST OF JUSTICES OF THE SUPREME COURT

CHIEF JUSTICES OF THE UNITED STATES

JOHN JAY, N. Y.; [Washington], commissioned Sept. 26, 1789; resigned June 29, 1795; declined reappointment on commission of Dec. 19, 1800; died May 17, 1829; interment Jay Family Cemetery, Rye, N. Y.

JOHN RUTLEDGE, S. C.; [Washington], commissioned July 1, 1795; nomination rejected by Senate Dec. 15, 1795; died July 23, 1800; interment St. Michaels Cemetery, Charleston, S. C.

WILLIAM CUSHING, Mass.; [Washington], commissioned Jan. 27, 1796; declined appointment, but continued as associate justice.

OLIVER ELLSWORTH, Conn.; [Washington], commissioned Mar. 4, 1796; resigned Sept. 30, 1800; died Nov. 26, 1807; interment Old Cemetery, Windsor, Conn.

JOHN MARSHALL, Va. [Adams], commissioned Jan. 31, 1801; died July 6, 1835; interment Shackoe Hill, Richmond, Va.

ROGER B. TANEY, Md.; [Jackson], commissioned Mar. 15, 1836; died Oct. 12, 1864; interment Roman Catholic Cemetery, Frederick, Md.

SALMON P. CHASE, Ohio; [Lincoln], commissioned Dec. 6, 1864; died May 7, 1873; interment Oak Hill Cemetery, Washington, D. C.; reinterment Spring Grove Cemetery, Cincinnati, Ohio.

MORRISON R. WAITE, Ohio; [Grant], commissioned Jan. 21, 1874; died Mar. 23, 1888; interment Woodlawn Cemetery, Toledo, Ohio.

MELVILLE W. FULLER, Ill.; [Cleveland], commissioned July 20, 1888; died July 4, 1910; interment Graceland Cemetery, Chicago, Ill.

EDWARD D. WHITE, La.; [Taft], commissioned Dec. 12, 1910; died May 19, 1921; interment Oak Hill Cemetery, Washington, D. C.

WILLIAM H. TAFT, Conn.; [Harding], commissioned June 30, 1921; resigned Feb. 3, 1930; died Mar. 8, 1930; interment Arlington Cemetery, Arlington, Va.

CHARLES E. HUGHES, N. Y.; [Hoover], commissioned Feb. 13, 1930.

ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

JOHN RUTLEDGE, S. C.; [Washington], commissioned Sept. 26, 1789; resigned Mar. 5, 1791; died July 23, 1800; interment St. Michael's Cemetery, Charleston, S. C.

WILLIAM CUSHING, Mass.; [Washington], commissioned Sept. 27, 1789; died Sept. 13, 1810; interment Scituate, Mass.

*ROBERT H. HARRISON, Md.; [Washington], commissioned Sept. 28, 1789; died Apr. 20, 1790.

JAMES WILSON, Pa.; [Washington], commissioned Sept. 29, 1789; died Aug. 28, 1798; interment Johnston Burial Ground, Edenton, N. C.; reinterment Christ Churchyard, Philadelphia, Pa.

* Denotes that appointee declined appointment; did not take the oath of office, and never became a member of the Court.

NOTE.—Names in brackets indicate the President making the appointment.

JOHN BLAIR, Va.; [Washington], commissioned Sept. 30, 1789; resigned Jan. 27, 1796; died Aug. 31, 1800; interment Bruton Parish Churchyard, Williamsburg, Va.

JAMES IREDELL, N. C.; [Washington], commissioned Feb. 10, 1790; died Oct. 20, 1799; interment Johnston Burial Ground, Edenton, N. C.

THOMAS JOHNSON, Md.; [Washington], commissioned Aug. 5, 1791; resigned Mar. 4, 1793; died Oct. 25, 1819; interment All Saints Episcopal Churchyard, Frederick, Md.; reinterment Mount Olivet Cemetery, Frederick, Md.

WILLIAM PATERSON, N. J.; [Washington], commissioned Mar. 4, 1793; died Sept. 9, 1806; interment Manor House Vault, Albany, N. Y.

SAMUEL CHASE, Md.; [Washington], commissioned Jan. 27, 1796; died June 19, 1811; interment Old St. Pauls Cemetery, Baltimore, Md.

BUSHROD WASHINGTON, Va.; [Adams], commissioned Sept. 29, 1798; died Nov. 26, 1829; interment Mount Vernon, Va.

ALFRED MOORE, N. C.; [Adams], commissioned Dec. 10, 1799; resigned Mar. 1804; died Oct. 15, 1810; interment St. Philips Churchyard, Old Brunswick, near Southport, N. C.

WILLIAM JOHNSON, S. C.; [Jefferson], commissioned Mar. 26, 1804; died Aug. 11, 1834; interment West Cemetery, St. Philips Church, Charleston, S. C.

BROCKHOLST LIVINGSTON, N. Y.; [Jefferson], commissioned Nov. 10, 1806; died Mar. 18, 1823; interment Wall Street Churchyard (Trinity Church), New York, N.Y.

THOMAS TODD, Ky.; [Jefferson], commissioned Mar. 3, 1807; died Feb. 7, 1826; interment Frankfort Cemetery, Frankfort, Ky.

*LEVI LINCOLN, Mass.; [Madison], commissioned Jan. 7, 1811; died Apr. 14, 1820.

*JOHN QUINCY ADAMS, Mass.; [Madison], commissioned Feb. 22, 1811; died Feb. 23, 1848.

JOSEPH STORY, Mass.; [Madison], commissioned Nov. 18, 1811; died Sept. 10, 1845; interment Mount Auburn Cemetery, Cambridge, Mass.

GABRIEL DUVALL, Md.; [Madison], commissioned Nov. 18, 1811; resigned Jan. 1835; died Mar. 6, 1844; interment Duvall Estate, Glen Dale, Prince Georges County, Md.

SMITH THOMPSON, N. Y.; [Monroe], commissioned Sept. 1, 1823; died Dec. 18, 1843; interment Livingston Burial Ground, Poughkeepsie, N. Y.

ROBERT TRIMBLE, Ky.; [J. Q. Adams], commissioned May 9, 1826; died Aug. 25, 1828; interment Paris Cemetery, Paris, Ky.

JOHN MCLEAN, Ohio; [Jackson], commissioned Mar. 7, 1829; died Apr. 4, 1861; interment Spring Grove Cemetery, Cincinnati, Ohio.

HENRY BALDWIN, Pa.; [Jackson], commissioned Jan. 6, 1830; died Apr. 21, 1844; interment Greendale Cemetery, Meadville, Pa.

JAMES M. WAYNE, Ga.; [Jackson], commissioned Jan. 9, 1835; died July 5, 1867; interment Laurel Grove Cemetery, Savannah, Ga.

PHILIP P. BARBOUR, Va.; [Jackson], commissioned Mar. 15, 1836; died Feb. 25, 1841; interment Congressional Cemetery, Washington, D. C.

*WILLIAM SMITH, Ala.; [Van Buren], commissioned Mar. 8, 1837; died June 26, 1840.

JOHN CATRON, Tenn. [Van Buren], commissioned Mar. 8, 1837; died May 30, 1865; interment Mount Olivet Cemetery, Nashville, Tenn.

JOHN MCKINLEY, Ala.; [Van Buren], commissioned Apr. 22, 1837; died July 19, 1852; interment Cave Hill Cemetery, Louisville, Ky.

PETER V. DANIEL, Va.; [Van Buren], commissioned Mar. 3, 1841; died June 30, 1860; interment Hollywood Cemetery, Richmond, Va.

SAMUEL NELSON, N. Y.; [Tyler], commissioned Feb. 13, 1845; resigned Nov. 28, 1872; died Dec. 13, 1873; interment Lakewood Cemetery, Cooperstown, N. Y.

LEVI WOODBURY, N. H.; [Polk], commissioned Sept. 20, 1845; died Sept. 4, 1851; interment Harmony Grove Cemetery, Portsmouth, N. H.

ROBERT C. GRIER, Pa.; [Polk], commissioned Aug. 4, 1846; resigned Jan. 31, 1870, died Sept. 26, 1870; interment West Laurel Hill Cemetery, Philadelphia, Pa.

BENJAMIN, R. CURTIS, Mass.; [Fillmore], commissioned Sept. 22, 1851; resigned Sept. 30, 1857; died Sept. 15, 1874; interment Mount Auburn Cemetery, Cambridge, Mass.

JOHN A. CAMPBELL, Ala.; [Pierce], commissioned Mar. 22, 1853; resigned May 21, 1861; died Mar. 13, 1889; interment Greenmount Cemetery, Baltimore, Md.

NATHAN CLIFFORD, Maine; [Buchanan], commissioned Jan. 12, 1858; died July 25, 1881; interment Evergreen Cemetery, Portland, Maine.

NOAH H. SWAYNE, Ohio; [Lincoln], commissioned Jan. 24, 1862; resigned Jan. 24, 1881; died June 8, 1884; interment Oak Hill Cemetery, Washington, D. C.

SAMUEL F. MILLER, Iowa; [Lincoln], commissioned July 16, 1862; died Oct. 13, 1890; interment Oakland Cemetery, Keokuk, Iowa.

DAVID DAVIS, Ill.; [Lincoln], commissioned Oct. 17, 1862; resigned Mar. 4, 1877; died June 26, 1886; interment Evergreen Cemetery, Bloomington, Ill.

STEPHEN J. FIELD, Calif.; [Lincoln], commissioned Mar. 10, 1863; resigned Dec. 1, 1897; died Apr. 9, 1899; interment Rock Creek Cemetery, Washington, D. C.

EDWIN M. STANTON, Pa.; [Grant], commissioned Dec. 20, 1869, to take effect Feb. 1, 1870; died Dec. 24, 1869, before commission took effect.

WILLIAM STRONG, Pa.; [Grant], commissioned Feb. 18, 1870; resigned Dec. 14, 1880; died Aug. 19, 1895; interment Charles Evans Cemetery, Reading, Pa.

JOSEPH P. BRADLEY, N. J.; [Grant], commissioned Mar. 21, 1870; died Jan. 22, 1892; interment Mount Pleasant Cemetery, Newark, N. J.

WARD HUNT, N. Y.; [Grant], commissioned Dec. 11, 1872; resigned Jan. 7, 1882; died Mar. 24, 1886; interment Forest Hills Cemetery, Utica, N. Y.

JOHN M. HARLAN, KY.; [Hayes], commissioned Nov. 29, 1877; died Oct. 14, 1911; interment Rock Creek Cemetery, Washington, D. C.

WILLIAM B. WOODS, Ga.; [Hayes], commissioned Dec. 21, 1880; died May 14, 1887; interment Cedar Hill Cemetery, Newark, Ohio.

STANLEY MATTHEWS, Ohio; [Garfield], commissioned May 12, 1881, died Mar. 22, 1889; interment Spring Grove Cemetery, Cincinnati, Ohio.

HORACE GRAY, Mass.; [Arthur], commissioned Dec. 20, 1881; died Sept. 15, 1902; interment Mount Auburn Cemetery, Cambridge, Mass.

SAMUEL BLATCHFORD, N. Y.; [Arthur], commissioned Mar. 22, 1882; died July 7, 1893; interment Greenwood Cemetery, New York, N. Y.

*ROSCOE CONKLING, N. Y.; [Arthur], commissioned Feb. 1882; died Apr. 18, 1888.

LUCIUS Q. C. LAMAR, Miss.; [Cleveland], commissioned Jan. 16, 1888; died Jan. 23, 1893; interment Riverside Cemetery, Macon, Ga.; reinterment St. Peters Cemetery, Oxford, Miss.

DAVID J. BREWER, Kans.; [Harrison], commissioned Dec. 18, 1889; died Mar. 28, 1910; interment Mount Muncie Cemetery, Leavenworth, Kans.

HENRY B. BROWN, Mich.; [Harrison], commissioned Dec. 29, 1890; retired May 28, 1906; died Sept. 4, 1913; interment Elmwood Cemetery, Detroit, Mich.

GEORGE SHIRAS, Jr., Pa.; [Harrison], commissioned July 26, 1892; resigned Feb. 23, 1903; died Aug. 2, 1924; interment Allegheny Cemetery, Pittsburgh, Pa.

HOWELL E. JACKSON, Tenn.; [Harrison], commissioned Feb. 18, 1893; died Aug. 8, 1895; interment Mount Olivet Cemetery, Nashville, Tenn.

EDWARD D. WHITE, La.; [Cleveland], commissioned Feb. 19, 1894; resigned Dec. 19, 1910, to become chief justice; died May 19, 1921; interment Oak Hill Cemetery, Washington, D. C.

RUFUS W. PECKHAM, N. Y.; [Cleveland], commissioned Dec. 9, 1895; died Oct. 24, 1909; interment Rural Cemetery, Albany, N. Y.

JOSEPH MCKENNA, Calif.; [McKinley], commissioned Jan. 21, 1898; retired Jan. 5, 1925; died Nov. 21, 1926; interment Mount Olivet Cemetery, Washington, D. C.

OLIVER WENDELL HOLMES, Mass.; [T. Roosevelt], commissioned Dec. 4, 1902; retired Jan. 12, 1932; died Mar. 6, 1935; interment Arlington Cemetery, Arlington, Va.

WILLIAM R. DAY, Ohio; [T. Roosevelt], commissioned Feb. 23, 1903; retired Nov. 13, 1922; died July 9, 1923; interment Westlawn Cemetery, Canton, Ohio.

WILLIAM H. MOODY, Mass.; [T. Roosevelt], commissioned Dec. 12, 1906; resigned Nov. 20, 1910; died July 2, 1917; interment Byfield Cemetery, Georgetown, Mass.

HORACE H. LURTON, Tenn.; [Taft]. commissioned Dec. 20, 1909; died July 12, 1914; interment Greenwood Cemetery, Clarksville, Tenn,

CHARLES E. HUGHES, N. Y.; [Taft], commissioned May 2, 1910; resigned June 10, 1916; commissioned chief justice Feb. 13. 1930 [Hoover].

WILLIS VAN DEVANTER, Wy.; [Taft], commissioned Dec. 16, 1910; retired June 2, 1937.

JOSEPH R. LAMAR, Ga.; [Taft], commissioned Dec. 17, 1910; died Jan. 2, 1916; interment Old Summerville Cemetery, Augusta, Ga.

MAHLON PITNEY, N. J.; [Taft], commissioned Mar. 13, 1912; retired Dec. 31, 1922; died Dec. 9, 1924; interment Evergreen Cemetery, Morristown, N. J.

JAMES C. MCREYNOLDS, Tenn.; [Wilson], commissioned Aug. 29, 1914.

LOUIS D. BRANDEIS, Mass.; [Wilson], commissioned June 1, 1916; retired Feb. 13, 1939.

JOHN H. CLARKE, Ohio; [Wilson], commissioned July 24, 1916; resigned Sept. 18, 1922.

GEORGE SUTHERLAND, Utah; [Harding], commissioned Sept. 5, 1922; retired Jan. 18, 1938.

PIERCE BUTLER, Minn.; [Harding], commissioned Dec. 21, 1922; died Nov. 16, 1939; interment Calvary Cemetery, St. Paul, Minn.

EDWARD T. SANFORD, Tenn.; [Harding], commissioned Jan. 29, 1923; died Mar. 8, 1930; interment Greenwood Cemetery, Knoxville, Tenn.

HARLAN F. STONE, N. Y.; [Coolidge], commissioned Feb. 5, 1925.

OWEN J. ROBERTS, Pa.; [Hoover], commissioned May 20, 1930.

BENJAMIN N. CARDOZO, N. Y.; [Hoover], commissioned Mar. 2, 1932; died July 9, 1938, interment Congregation Cemetery, Cypress Hills, Long Island, N. Y.

HUGO L. BLACK, Ala.; [F. D. Roosevelt], commissioned Aug. 18, 1937.

STANLEY F. REED, Ky.; [F. D. Roosevelt], commissioned Jan. 27, 1938.

FELIX FRANKFURTER, Mass.; [F. D. Roosevelt], commissioned Jan. 20, 1939.

WILLIAM O. DOUGLAS, Conn.; [F. D. Roosevelt], commissioned Apr. 15, 1939.

FRANK MURPHY, Mich.; [F. D. Roosevelt], commissioned Jan. 18, 1940.

High Courts of the World and their Powers

NOTE

THIS table has been prepared, with the assistance of the ambassadors and ministers of the countries represented, to give a general concept of the way in which nations of the world deal with the question of constitutionality of legislative acts. No attempt has been made to give detailed comparsions by setting forth constitutional provisions, statutes, and judicial decisions pertaining to the subject. For that reason it must be noted that some of the answers are subject to various qualifications, but on the whole the table gives a general outline of the treatment of this subject as of 1937.

TABLE

Country	Name of Highest Court	Does court have power comparable to that of the Supreme Court of the United States to pass upon the constitutionality of legislative acts?	[1] Has court limited power to pass upon the constitutionality of legislative acts?
Albania	Gjyqi i Nalte	No	No
Argentina	Suprema Corte de Justicia	Yes	
Austria	Bundesgerichtshof	No	Yes
Belgium	Cour de Cassation	No	No
Bolivia	Corte Suprema de Justicia	Yes	
Brazil	Côrte Suprema dos Estados Unidos do Brasil	Yes	
Bulgaria	Vurkhoven Kassatzionen Sud	No	No
Canada	Supreme Court of Canada	No	Yes
Chile	La Corte Suprema de Justicia	No	Yes
China	Tsuigau Fayuan	No	No
Colombia	Corte Suprema de Justicia	Yes	
Costa Rica	Sala de Casación	Yes	
Cuba	Tribunal Supremo	Yes	
Czechoslovakia	Ústavní soud	No	Yes
Denmark	Højesteret	No	[2]
Dominican Republic	Suprema Corte de Justicia	No	Yes
Ecuador	Corte Suprema de Justicia	No	No
Egypt	Mixed Court of Appeals	No	No

[1] The principal limitations are these: Only parties designated in the constitution may institute actions to determine constitutionality; or only laws of a particular nature, usually those involving individual rights, may be tested.

[2] The Danish government has not taken a definite position on the question whether the "Højesteret" has a limited power to pass on the constitutionality of laws, but when questions of the constitutionality of laws have been presented to the courts by persons claiming that their individual rights have been violated by legislative acts, the government has, up till now, acquiesced in the decision by the courts of the said question.

Country	Name of Highest Court	Does court have power comparable to that of the Supreme Court of the United States to pass upon the constitutionality of legislative acts?	Has court limited power to pass upon the constitutionality of legislative acts?
El Salvador	Suprema Corte de Justicia	No	Yes
Estonia	Riigikohus	No	Yes
Finland	Korkein Oikeus	No	No
France	Cour de Cassation	No	No
Great Britain	House of Lords	No	No
Greece	Areios Pagos	No	Yes
Guatemala	Corte Suprema de Justicia	No	Yes
Haiti	Cour de Cassation	Yes	
Honduras	Corte Supreme de Justicia	No	Yes
Hungary	Magyar Kiralyi Kuria	No	No
Irish Free State	Supreme Court of the Irish Free State	Yes	
Japan	Daishin-in	No	No
Latvia	Latvijas Senāts	No	No
Liberia	Supreme Court of Liberia	Yes	
Lithuania	Vyriausias Tribunolas	No	No
Mexico	Suprema Corte de Justicia	Yes	
Netherlands	Hooge Raad der Nederlanden	No	No
Nicaragua	Corte Suprema de Justicia	Yes	
Norway	Norges Høiesterett	No	Yes
Panama	Corte Suprema de Justicia	No	Yes
Paraguay	Superior Tribunal de Justicia	Yes	
Peru	Corte Suprema de Justicia	No	No
Poland	Sad Najwyzszy	No	No
Portugal	Supremo Tribunal de Justiça	No	No
Romania	Inalta Curte de Casatie si Justitie	Yes	
Siam	San Dika	No	No
Sweden	Konungens Högsta Domstol	No	No
Switzerland	Tribunal Federal Suisse	No	Yes
Turkey	Temyiz mahkemesi	No	No
Union of South Africa	Supreme Court of the Union of South Africa		[3] Yes
Union of Soviet Socialist Republics	Verkhovny Sud	No	Yes
Uruguay	Alta Corte de Justicia	No	Yes
Venezuela	Corte Federal y de Casación	Yes	
Yugoslavia	Kasacioni sud	No	No

[3] The Supreme Court of the Union of South Africa may, however, declare invalid any law which has not been passed by parliament in the manner prescribed by the constitution.

The Man Who Engrossed the Constitution

By

John C. Fitzpatrick

The Supreme Court has answered quite a number of important questions that have been asked about the Constitution of the United States; but one that has been asked daily since the Constitution was placed on public view in the Library of Congress at Washington remains yet to be answered. It is: Who wrote the Constitution? Not who composed those sentences and paragraphs; but who was the penman who engrossed on those four huge sheets of parchment the principles of our government?

It may seem strange that this question has remained unanswered since the year 1787; but the convention that framed the Constitution sat behind closed doors, its members were pledged to secrecy as to its proceedings, and in the bitter political struggle over its adoption, the name of the penman became an unimportant detail. When the convention's work was finished, all its miscellaneous records, reports, resolves, memoranda of every kind were destroyed by order of the convention itself. Everything except the bare journal of the proceedings and a record of the yea and nay votes were burned by the secretary. Some of the deputies retained possession of a few unofficial papers, over which the convention had no control, and these were not destroyed, but came to light years later. The principal one of these was the notes of the debates made by James Madison; but the record that held the answer to the question "who engrossed the Constitution?" went up in the smoke of the fire kindled by Secretary William Jackson.

Who engrossed the Constitution is a perfectly legitimate question and a perfectly natural one, for the writing is beautifully regular and cleanly impressive. If the convention records had not been burned the answer would be easy; but with an intentionally created vacancy staring the investigator in the face, successful identification of a penman who lived one hundred and fifty years ago seemed well-nigh hopeless.

The search was undertaken in behalf of the United States Consti-

tution Sesquicentennial Commission because of the steady persistence with which the question was asked by the hundreds of visitors at the shrine of the Constitution at the Library of Congress and because it seemed that this detail of constitutional history should be known.

The story of the search for, and the finding of, the unknown scribe will be a curious and interesting one to the average person, though the procedure followed is a familiar one to historians; for this procedure parallels, in a general way, some of those followed by sleuths of the law in running down fugitives or unearthing evidence in difficult cases.

In beginning the search the first and natural move was to visit the "scene of the crime" and carefully examine the ground for possible clues. Obviously this did not mean a trip to Philadelphia, where the Constitutional Convention had been held one hundred and fifty years ago; but it did mean a careful scrutiny of all the available data connected with the convention. Just as the detective collects, and accepts or rejects, data as inherently valuable or worthless for his purpose, the mass of information already accumulated and available concerning the Constitution and the convention had to be sifted and weighed. Much previous research had trodden the ground of the Constitutional Convention over and over again for innumerable purposes; but never so far as was known, for the express purpose of identifying the penman of the document. And it is a curious fact, well known to all historians, that documents which have been examined and sifted many times over for different purposes and are looked upon as fully analyzed will yet yield an amazing amount of new information when approached from a different viewpoint.

In a search of this kind the historian has one great advantage over the detective, in that there is no need of haste; the quarry has long since departed this life and the surviving evidence may confidently be counted on to continue to survive, barring always accidental destruction. But the parallel nevertheless is close, for where the detective must work at top speed for fear the trail will grow cold, the historian is blocked by the dusty curtain of time from a trail that is never warm.

The "scene of the crime" in the present instance was the meager surviving records of the Constitutional Convention. Carefully every contemporaneous writing and all published matter *officially* connected with the convention was examined anew: the manuscript material first; then the printed records. The original journal of the proceedings in the writing of Major Jackson yielded nothing. Jackson himself was eliminated at once from consideration, as he did not have

the pen skill so evidently possessed by the engrosser of the Constitution. Along with Jackson were eliminated also all the deputies to the convention, not only for the same reason, but because it was obvious none of them would have undertaken so laborious and mechanical a task. James Madison, William Paterson, Alexander Hamilton, and others took notes of the debates as the convention progressed; but none of these notes yielded a clue. Gouverneur Morris, a deputy from Pennsylvania, was a member of the Committee of Style, which came into existence near the end of the sessions, and, because he was largely responsible for the literary form of the final text of the Constitution, the story gained credence, among the unthinking, that the parchment signed document was in his writing. Even the most cursory comparison of the penmanships demonstrated the impossibility of this being the fact.

The convention records having failed to furnish a clue, the next logical step was to examine the Papers of the Continental Congress, to which body the convention reported and which had, on September 20, 1787, agreed to meet the overhead expenses of the convention. Here it was hoped to find among the financial accounts of that Congress, an entry, or receipt, which would disclose the name of the penman of the Constitution. But the financial records of the Continental Congress are now, in many respects, as unsubstantial as was its paper money which, as is well known, gave rise to that contemptuous saying "not worth a Continental." The papers of that Congress were grouped subjectively and bound up, many years ago, in such wise that the close detailed search demanded for identifying an unknown penman was little better than groping through a fog. Thrown together at the end of the large group of Treasury Papers are various volumes of financial statements, of unsettled accounts, estimates, memoranda, etc., etc., devoid of indexing and inconsistently arranged. Through these, volume by volume, page by page, and piece by piece the search plodded, until imbedded in a mass of financial memoranda the following was found:

1787, Sept. 21.	Dollars
Stationery purchased for the use of the Foederal Convention, paid therefor	36.
William Jackson esqr. late Secretary to the Foederal Convention for his Salary during the sitting thereof agreeably to an Act of Congress of 20th Septembr. 1787 4 Months at 2600 dollars pr. annum is	866.60
To William Jackson esqr. Secretary to the Foederal Convention for allowance made by Act of Congress of 20th Septr. 1787	133.30
To door keeper 4 months at 400 dollars pr. annum	133.30

1787, Sept. 21.	Dollars
To Messenger 4 months at 300 dollars pr. annum	100.
To the Clerks employed to transcribe & engross	30.

Here was distinct and unexpected development; more than one penman apparently, was possible, though the account was a general one covering the whole of the convention; but a critical examination of the engrossed Constitution failed to show the slightest variation of writing throughout the entire text and it is physically impossible for different individuals to engross a long document like the Constitution without revealing some differences of pen handling. One man, and only one engrossed the entire Constitution. The other clerk, or clerks, may have done the bold, decorative lettering of "We the People" and the captions of "Article I," "Article II," etc. But thirty dollars was a small sum to pay for carefully engrossing over four thousand words on four huge sheets of parchment (five really, for the resolve of September 17, submitting the Constitution to the Continental Congress was included in the job), and carefully lettering the first two words and seven article headings, even if the amount covered no work except this engrossment. The impossibility of identifying the letterer was conceded at once, for the limited amount of this penwork does not furnish enough material for study and comparison; lettering, being more restricted work than cursive penmanship, seldom permits enough freedom of movement to reveal pen characteristics. But, after all, the main interest is in the man who engrossed the text, and the letterer and lettering is of minor importance; so the search for the latter was abandoned and all efforts concentrated on the engrosser of the text.

The memoranda of account having neatly pocketed the logical trail in a blind alley, the next move was one faintly analogous to the old "hue and cry," or rather its more modern adaptation of distributing descriptive handbills of the wanted man, far and wide; only, in this case, as the man's identity was unknown, in lieu of issuing a handbill, the pen characteristics of the Constitution were studied and analyzed until the writing literally soaked into the consciousness and supplied a permanent picture which could be compared with every penmanship encountered. Just as the detective, with the features and appearance of his quarry firmly fixed in his mind, keeps on the look-out for his man in the crowd on every side, so also the historian in his daily work, while pursuing lines of different research, is subconsciously on the alert for the wanted writing while examining groups of manuscripts which he knows might, logically, be expected to contain it. A great difficulty, however, was that the penwork of

the Constitution was engrossed with a painstaking regularity and care that reduced, or rather submerged, the pen characteristics to a mechanical agreement with much of the formal writing of the same period. This was not only a disguise, albeit an unintentional one, but created an added difficulty. If the hunted criminal had brains and skill enough to follow this line of disguise he would be much less liable to detection; but he merely seeks to change his appearance, rather than to alter his looks, to agree closely with a definite and commonplace type. Yet in tracing the engrossing hand of the Constitution, some logical procedure was possible. The chances were that in obtaining a penman who could deliver such a big piece of work between Saturday afternoon and Monday morning the man selected would be, necessarily, one who was well known in Philadelphia as a competent and trustworthy engrosser. The Constitutional Convention, remember, sat behind closed doors and therefore the man who was entrusted with the result of its labors must be thoroughly reliable. This narrowed the search, of course; but not enough to promise success. There were a number of such men to be found in Philadelphia in the fall of 1787; some of them had been in the employ of the Continental Congress, and all of them were skillful writers. In fact, when using their engrossing hands some of them would put modern engravers upon their mettle to match the beauty and regularity of their work. A few of these men had been clerks in the office of the secretary of Congress; some had been in the accountant's office of the Continental Treasury, and some had been in the office of the secretary for foreign affairs. One after another specimens of their penmanship were compared with that of the Constitution and, one after another all, except two, were regretfully eliminated. The two who remained as possibilities were Major John Clark, formerly one of the auditors for the Continental Army and with a proud record as a soldier; and Joseph Hardy, at one time a clerk in the Continental Treasury. The penmanship of both these men showed many little variations from the pen characteristics of the Constitution; but the writing of both agreed in one or two quirks of pen detail. Both could be located in Philadelphia in September 1787 and, over and over again an analysis of their handwriting was made in hopes of resolving the doubts, but without success. The obstacles could not be surmounted. Yet Philadelphia was the logical hunting ground, so the Philadelphia area was scrutinized again and again. At last, unexpectedly, in following an historical trail far removed from the subject of the Constitution (just as the detective in a crowded street suddenly recognizes the wanted man) the wanted handwriting blazed out like a

rocket. Never has page of any letter been turned more swiftly to the signature, and never has there been a keener disappointment, for the name signed at the end of the communication was "Thomas Mifflin." To find a mere Speaker of the General Assembly of the State of Pennsylvania, albeit also a member of the Convention, when the hope was for the engrosser of the Constitution of the United States was too much! The first reaction was one of supreme disgust. Mifflin was an erratic penman, as well as a trifle more than erratic in other ways; but any familiarity at all with his changes of pen pace forbade that he could have engrossed the Constitution. Second thought came swiftly; the clerk who wrote letters for the Speaker's signature should not be hard to find, and the search was at once narrowed to the employees of the civil government of Pennsylvania in the year 1787. Now at last, in possession of the long-sought writing and knowing whither the trail led, it was only a matter of persistence to unearth some documents which were both written and *signed* by the wanted penman.

Once again a rigid comparison and analysis was made of both the engrossed Constitution and the writings of this clerk. The dictionary definition of engrossing is that of transcribing a formal document in a bold, regular writing. This exactly and completely describes the Constitution of the United States of America. The general characteristics of slant of writing, spacing both of words, and letters within words, and the fundamental agreement of the writing of the Constitution with the more rapidly and freely written documents found, was solidly established; for though the Constitution was engrossed with a firmly guided quill, the speed with which the transcribing had to be done, permitted more of the natural pen characteristics to crop out in this engrossing than might otherwise have been the case, and the variations noted in the Constitution script from the identified writing are comparatively few and none of them significant. The agreements on the other hand are fundamental, important, and too numerous to be discounted, or ignored. The sweep and swing of the quill agree at every point; whole words are practically identical, despite differences naturally to be expected between the engrossing and the free-flowing hand of the same writer. The revealing habit of word and letter separation within the words, and the letter formations, agree to such close extent as to forbid any other conclusion than that these documents were written by one and the same man.

Jacob Shallus, a young Pennsylvania "Dutchman," was the man who engrossed the Constitution of the United States of America.

And who was Jacob Shallus? His selection for the work was logical in every way and the result certainly justified the choice. It is curiously satisfying how, once his identity was established, every detail of his life's history fell into place; it was almost like obtaining the signed confession of the wanted man after he had been run down.

When the Revolutionary War began Jacob Shallus volunteered and was appointed quartermaster of the First Pennsylvania Battalion. With that battalion he marched to Canada and shared in the terrible sufferings of Montgomery and Arnold's attempt on Quebec. With the remnants of that expedition he returned home and became a barrackmaster of the Continental Army; later he served as a deputy commissary of the State of Pennsylvania. It is evident that his integrity and ability were known from these recognitions. The hardships of the Quebec expedition left their mark on Jacob, and in 1778 he resigned from the army. The next year he joined a partnership in fitting out the privateer sloop *Retriever* to prey upon British commerce and, incidentally, to secure some tidy profits for himself. The profits evidently came, for in the tax lists of the succeeding years Jacob appears as the owner of an ever increasing amount of real estate in and around Philadelphia.

When the Revolution ended he became the assistant clerk of the Pennsylvania Assembly and held that office for many years. He was the secretary of Pennsylvania's constitutional convention in 1790, became a notary and tabellion-public shortly after engrossing the Constitution of the United States, and died near the end of President Washington's second administration at the comparatively youthful age of forty-six.

It was while Jacob was assistant clerk of the General Assembly in 1787, in the same building (the Pennsylvania State House, now known as "Independence Hall") in which the Constitutional Convention was holding its sessions, that the hurry call came from that convention for a trustworthy and dependable engrossing clerk. The need was for a speedy job and the probabilities are strong that the engrossing was done in the same building.

When the Constitution was engrossed it was not known, of course, whether it would be adopted by the people or not and, even when Shallus died, in 1796, it was by no means the firmly established set of governmental principles it has since grown to be, so there was no apparent reason for Jacob to boast of his connection with it; to him it was merely a thirty dollar or less job of engrossing.

The signed Constitution of the United States of America is now, by order of a President of the United States, on public view in the

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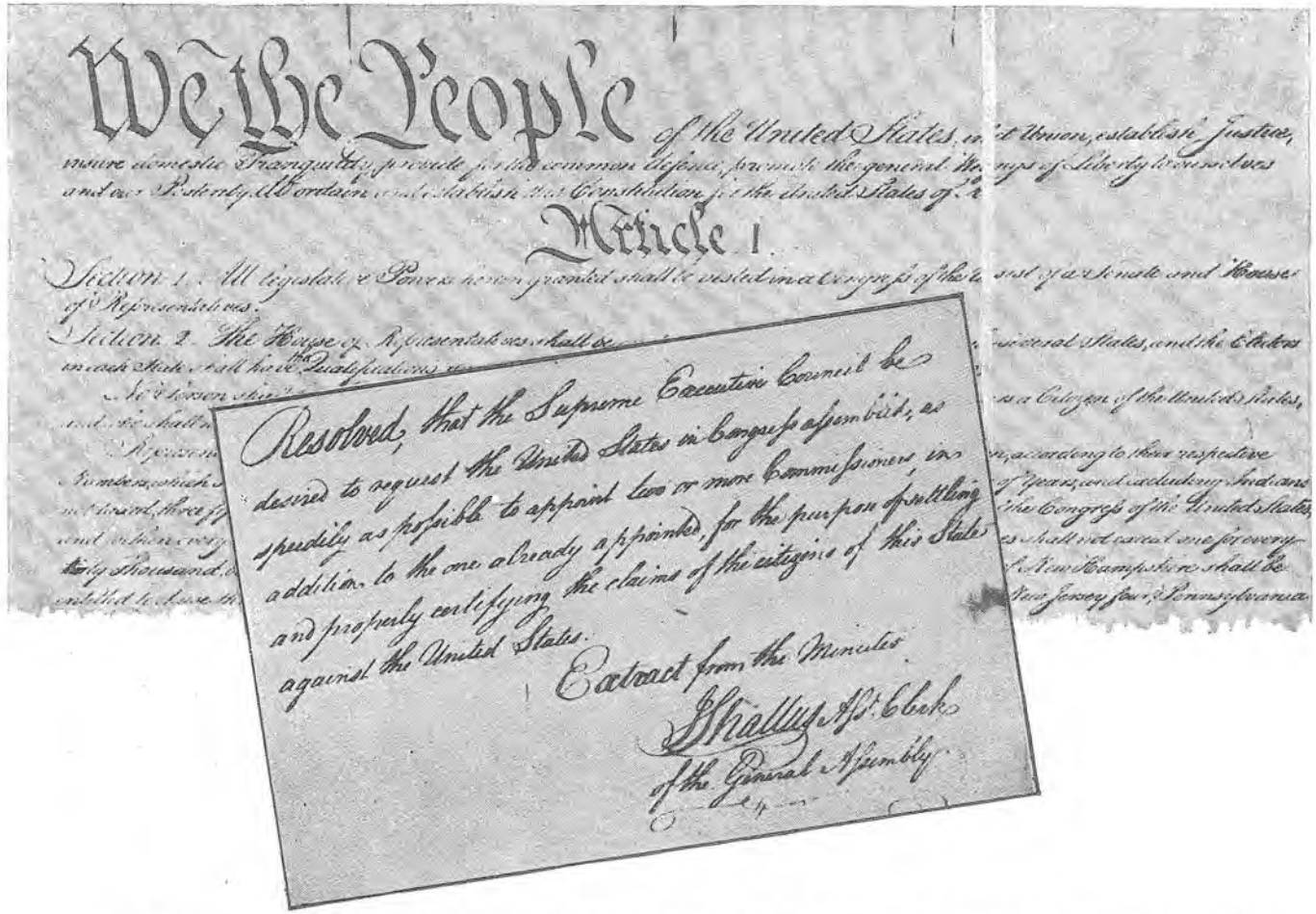

THE PENMANSHIP OF THE CONSTITUTION COMPARED WITH A LETTER WRITTEN BY JACOB SHALLUS

Library of Congress at Washington. Hundreds daily visit its bronze and marble shrine, and look with eager interest at the parchment sheets on which are inscribed our principles of government; but though the name of the engrosser is nowhere to be found thereon and though he had no part in defining those principles, yet he was one of those young men who, as soldiers, gave freely of their youth, health, and strength that they and we might live in peace and safety protected by those principles. It seems then but just that the skill and exactitude with which the Constitution is so clearly recorded, should gain for Jacob Shallus a small, but honored, place among the memories that will forever cluster around that shrine of American Liberty.

The facsimiles given opposite of Jacob Shallus's ordinary writing and the engrossed hand he used when writing the Constitution may interest the curious. It is not always easy to reproduce enough samples of writing to show agreements in so limited a space, as pairs of words do not often occur in available lines or paragraphing; but the fundamental agreement in pen-swing and pen-holding is fully shown. Note particularly the consistent agreement in the bottom level of letter combinations, despite the extra care used in engrossing the Constitution. Individual words like "State," "United States," "The," "Congress," "House," "of," and "and" show perfect agreement. Variations are more apparent than real, *e. g.*, the closed loops of all the "l's" in the Constitution and the open loops in the Pennsylvania document seem contradictory until we examine the "l's" in Shallus's signature.

Catalogue of the Loan Exhibit of Portraits

INTRODUCTION

One of the most important phases of the celebration of the Sesquicentennial of the Constitution was the loan exhibit assembled by the Commission and shown in the Corcoran Gallery of Art from November 27, 1937, to March 1, 1939. The exhibit included portraits not only of the deputies to the Philadelphia Convention of 1787 and the signers of the Declaration of Independence, but also of members of their families and associates in their great task of the formation of the Union. A few articles connected with these men were also shown.

On previous occasions, notably during the Centennial Celebration of the Inauguration of George Washington as First President of the United States in 1889, and the George Washington Bicentennial Celebration in 1932, exhibits of portraits of George Washington were held in which portraits of his associates were included. However, this most recent exhibit was unique in that it was the first exhibit of a large group of persons associated in the formation of our government. It included nearly all of the men who, by their wisdom, courage, and foresight, left a political heritage unequalled in the annals of history; and it was particularly fitting that their portraits be assembled during the celebration of the 150th year of their great work.

The Commission directed a nation-wide celebration to inculcate in the minds of the people a knowledge of the Constitution of the United States and an appreciation of its fundamental law. It is hoped that no one left the Galleries without a more intense feeling of respect for the character and accomplishments of these distinguished men.

The biographies in the catalogue here are little more than identifying notes, but in the original catalogue they were more extended, giving some account of the personality, attainment, and history of the individual, and of the history and ownership of the

portrait. However, cuts of all of the portraits in the original catalogue are included in the following pages.

The exhibit was the result of over a year's painstaking work by the Portrait Committee and the Commission's staff. The Commission acknowledges its gratitude to the many individuals, museums, historical societies and patriotic organizations who have lent portraits, and to the Portrait Committee for its invaluable assistance. The Commission is especially grateful to Mrs. McCook Knox, Chairman of the Portrait Committee, for her time and indefatigable efforts. The Portrait Committee and its chairman served without remunertion. The Commission also tenders its thanks for the invaluable assistance given by Mr. John Hill Morgan, member of the Portrait Committee from New York, now a resident of Connecticut, and by Mr. David M. Matteson, the Commission's historian, who prepared the biographical notes. The Commission also expresses its gratitude to the Director and Trustees of the Corcoran Gallery of Art for their hospitality in placing these pictures where the public could see them under the most favorable conditions.

FOREWORD TO THE ORIGINAL CATALOGUE

ANNIVERSARY celebrations of important events in our country's history not only refresh our knowledge on the subject but often bring together items of artistic value which have had much to do with stimulating interest in this side of our national life.

The Centennial of the Inauguration of Washington as First President of the United States, was observed in 1889 in New York City with much ceremony and, at that time, were brought together portraits of Washington, his Cabinet, the members of both houses of the First Congress, and those connected with the administration and with the inauguration ceremony itself. This was the first comprehensive assemblage of our early portraits and the illustrated record of this celebration, published in 1892, is one of the most valuable sources of information concerning American painting of the half century between 1775 and 1825. Each succeeding observance of important dates in our history has added something to our knowledge on this subject, and this exhibition, it is believed, will prove one of the most important ever held.

The Chairman of the Portrait Committee of the present celebration decided that it was not enough to show merely the portraits of the framers of the Constitution and the signers of the Declaration of Independence—the Declaration being the first and the adoption of the Constitution the final step in establishing a stable

form of republican government in this country—but that the portraits of the wives and families of these distinguished men should be displayed as well, to give color to the exhibit. To these have been added a few miscellaneous family belongings, such as articles of silver and pewter, silhouettes, snuff-boxes, needlework, etc., to give some slight background to the actors themselves.

It is, of course, true that all the portraits are not of the same quality. In fact as a whole the exhibit is uneven, but these paintings and personal articles are those with which these men and women lived and, when brought together in sufficient number, help to emphasize past conditions in a way that no amount of writing can make clear.

In examining any collection of early American portraits, the fact that they are uneven in quality is always evident, but it should not be forgotten that there was no school of art, as such, in North America until the Columbian Academy of Painting was opened in New York City in 1792 by Archibald Robertson and his brother; and our early painters were either visiting artists of mediocre abilities who had come to the Colonies to engage in painting as a livelihood, or were largely self-taught, or among that important group of men who studied under Benjamin West in London from 1764 almost to his death in 1820.

Of the well known artists, who came from other lands, represented in this exhibit the names of Gülager, Field, Kühn, Pelham, Pine, Ramage, Saint-Mémin, Sharples, Smibert, Theüs, Vallée, Wertmüller, and Wollaston appear.

The debt of American art to Benjamin West cannot be reiterated too often. West, born in Pennsylvania, studied in Rome and settled in England in 1763, never to return to his native land. It was to his studio that most of the young American artists of the day went for his sound instruction, and it is abundantly clear that from the return of Matthew Pratt to Philadelphia in 1766, West's influence on American art continued, through the work of his pupils, until the death of Thomas Sully in 1872.

Of the native-born who studied under West, examples of the work of Mather Brown, Ralph Earl, Malbone, Charles Willson Peale, Rembrandt Peale, Pratt, Savage, Stuart, Sully, Trumbull, and Wright are shown.

Of the native-born artists, concerning whose instruction we have little definite information, there is a portrait by Robert Feke, the most important artist born in New York. There is one by James Earl, who obtained his art education in London. There are several

by John Singleton Copley painted in this country before he went to study in Rome in 1774. John Hesselius was taught by his father, Gustavus; James Peale and Charles Peale Polk by C. W. Peale: John Wesley Jarvis was first an engraver and Ezra Ames started his artistic career as a coach painter, gilding frames, painting furniture, lettering clock faces, and decorating flags before he became a portrait painter. Chester Harding was entirely self-taught, and as to the remaining artists they received their training largely in this country.

The Director General and the Committee have exercised great care in the selection and authentication of these paintings, but have not felt it to be within their province to reject a portrait merely because there is a difference of opinion as to either subject or artist. However, in the few cases where a controversy exists, such has been generally indicated to stimulate further research.

This exhibit not only includes many famous portraits of many famous men and women, but is representative of the work of the artists of our colonial and early national periods as well.

JOHN HILL MORGAN.

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THE CITY OF WASHINGTON

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IMPORTANT NOTATION

The Director General of the United States Constitution Sesquicentennial Commission regrets that necessary condensation in all parts of this report has made it impossible to reprint the original Loan Exhibit Catalogue in full. However, the complete catalogue has been distributed to all important libraries, art institutions, and especially art galleries throughout the United States, where a copy may be consulted.

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CATALOGUE

1. JOHN ADAMS [1735–1826]. By Mather Brown [1761–1831]

In 1786 Mather Brown painted a portrait of Thomas Jefferson who had come to London to visit John Adams. Jefferson gave an order to Brown for a portrait of John Adams and the receipt for its cost, £10, is dated July 2, 1788. 34½″ x 27¼″. *Lent by The Boston Athenaeum.*

2. JAMES McCLURG [1746–1823]. Artist unknown

James McClurg was a college chum of Thomas Jefferson [No. 176] at William and Mary College. He obtained his degree in medicine at Edinburgh, Scotland, and became a prominent physician in Virginia at Williamsburg and later at Richmond. He was active during the Revolution as a high officer in the militia medical department, but his first political service was as a member of the Convention of 1787. *Lent by Hon. Thomas Ashby Wickham.*

3. MRS. DANIEL (ELEANOR CARROLL) CARROLL [1731–1763] AND DANIEL CARROLL, JR. [1752–1790]. By John Wollaston [operavit circa 1758]

Eleanor Carroll of Duddington was a first cousin of Charles Carroll of Carrollton [No. 19], the signer of the Declaration of Independence, and a second cousin of Daniel Carroll [No. 36] of Upper Marlborough. She married the latter in 1750. 49¼″ x 39½″. *Lent by The Maryland Historical Society.*

4. THOMAS MIFFLIN [1744–1800]. By Rembrandt Peale [1778–1860].

Thomas Mifflin came from a Quaker family, but neither this nor his mercantile interests prevented his political advocacy of the principles which led to the Revolution. He attended Congress (1774–75) but left to be Washington's aide and, later, quartermaster general. He attained the rank of major general before he became involved in the Conway Cabal. Congress accepted his resignation in 1779. Mifflin returned to Congress (1782–84) and was its president from December 1783 to June 1784, presiding when Washington surrendered his commission. He was an inactive member of the Convention of 1787 and was a signer of the Constitution. He was president of Pennsylvania and later he was governor under its new constitution. 22″ x 18″. *Lent by The Maryland Historical Society.*

5. CHARLES COTESWORTH PINCKNEY [1746–1825]. By James Earl [1761–1796].

Charles Cotesworth Pinckney was educated in England as a lawyer, and entered public life immediately upon his return to this country in 1769 as a South Carolina legislator. He was a line colonel and brevet general in the Revolution and was taken prisoner at Charleston. Pinckney and his three fellow delegates to the Convention of 1787 were continuous in attendance and active in the debates. He signed the Constitution as a pledge to support it, and made good his pledge in the state ratification convention. He was the Federalist candidate for Vice-President in 1800, and for President in 1804 and 1808, and he was the president-general of the Cincinnati for almost twenty years. 35″ x 29″. For portrait, see p. 777. *Lent by TheWorcester Art Museum.*

6. ALEXANDER HAMILTON [1757–1804]. By John Trumbull [1756–1843]

Alexander Hamilton was the most brilliant as well as the most versatile man of the younger generation of the formation period of our nation. He was born in the West Indies, one of the few leaders of his time born outside this country. His relationship with George Washington, which was so important in the career of both, began as the General's aide-de-camp. As a member of the Continental Congress, the Annapolis Convention, and the Convention of 1787, he advocated a strong central government; but it was in the ratification

contest, as a writer of most of *The Federalist* papers and leader of a hopeless minority in the New York convention which he miraculously converted into a majority, that he did his chief service towards the formation of the Union. As the first secretary of the treasury, he not only started and organized our essential financial stability, but was the father of one of our great political parties and the proponent of the constitutional theory on which our government rests. 29″ x 24″. For portrait, see p. 777. *Lent by The A. W. Mellon Educational and Charitable Trust.*

7. ROBERT TREAT PAINE [1731–1814]. Attributed to Edward Savage [1761–1817]

Robert Treat Paine (the first of three men of his name who were prominent in diverse ways in Massachusetts) was in the General Court of the state when sent to the Continental Congress in 1774. He signed both the Olive Branch Petition of 1775 and the Declaration of Independence. After this, he returned to public service within his state as legislator and judge. 28¼″ x 23½″. *Lent by the children of the late General Charles J. Paine.*

8. JOHN HANCOCK [1737–1793] and MRS. JOHN HANCOCK [1751–1832]. Attributed to John Singleton Copley [1738–1815]

Hancock was descended from a line of clergymen, but became the successor of his uncle, a prominent Boston merchant. He was financially independent and a prominent Whig. He was president of the Continental Congress from 1775 to 1777, and signed the Declaration of Independence as its president. His wife, Dorothy Quincy, married him in 1775, a year after Copley left for England, never to return. 88½″ x 57″. *Lent by Mrs. Woodbury Blair.*

9. PHILIP LIVINGSTON [1716–1778]. Artist unknown.

The Livingston family stands first in the number of members prominent in Revolutionary history, no fewer than eight of the family having held positions of importance. Philip Livingston was a merchant, advancing in politics to the Provincial and Continental Congresses. After signing the Declaration of Independence, he died while still a member of Congress. 29½″ x 24½″. *Lent by The Long Island Historical Society.*

10. ALEXANDER HAMILTON [1757–1804]. By John Trumbull [1756–1843]

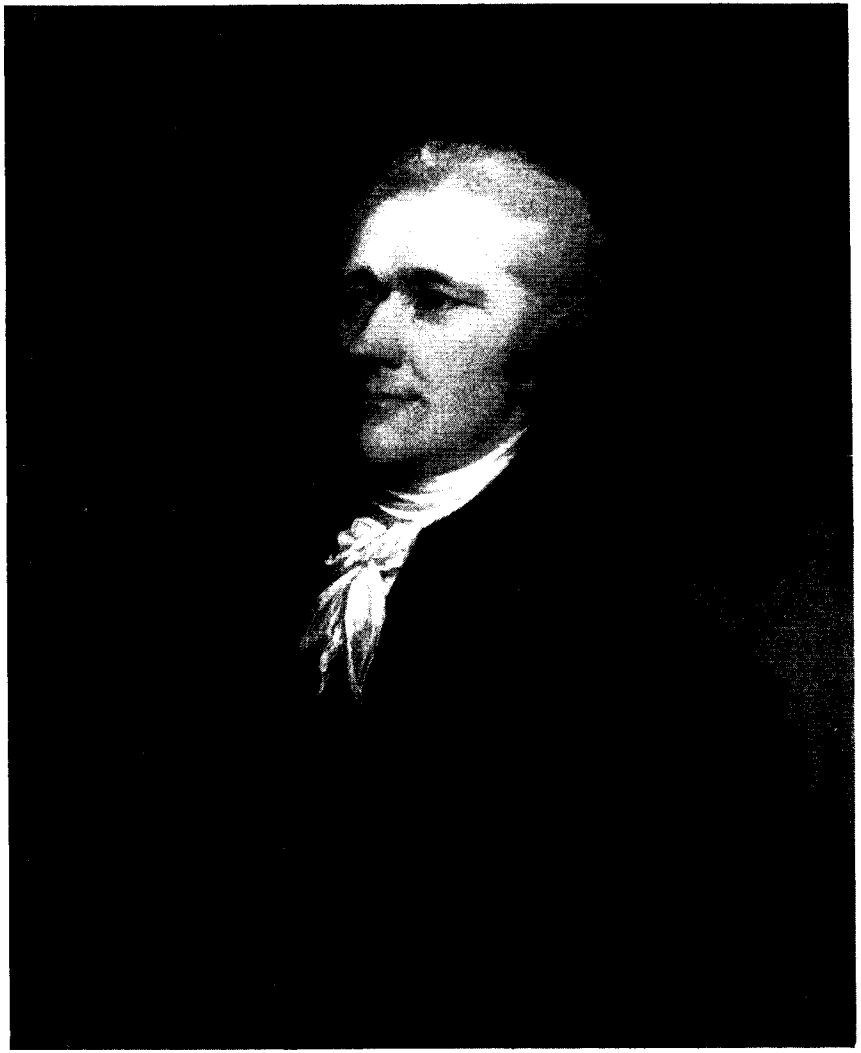
John Trumbull painted Alexander Hamilton from life in 1792 for John Jay. The Common Council of the City of New York passed on November 29, 1804, after Hamilton's death, an order to employ Trumbull "to paint a full-length likeness of the late General Hamilton." Of this New York City portrait Trumbull made eight replicas, including this one and No. 6. 29″ x 24″. *Lent by Mr. Edsel B. Ford.*

11. MRS. ALEXANDER HAMILTON [1758–1854]. By Ralph Earl [1751–1801]

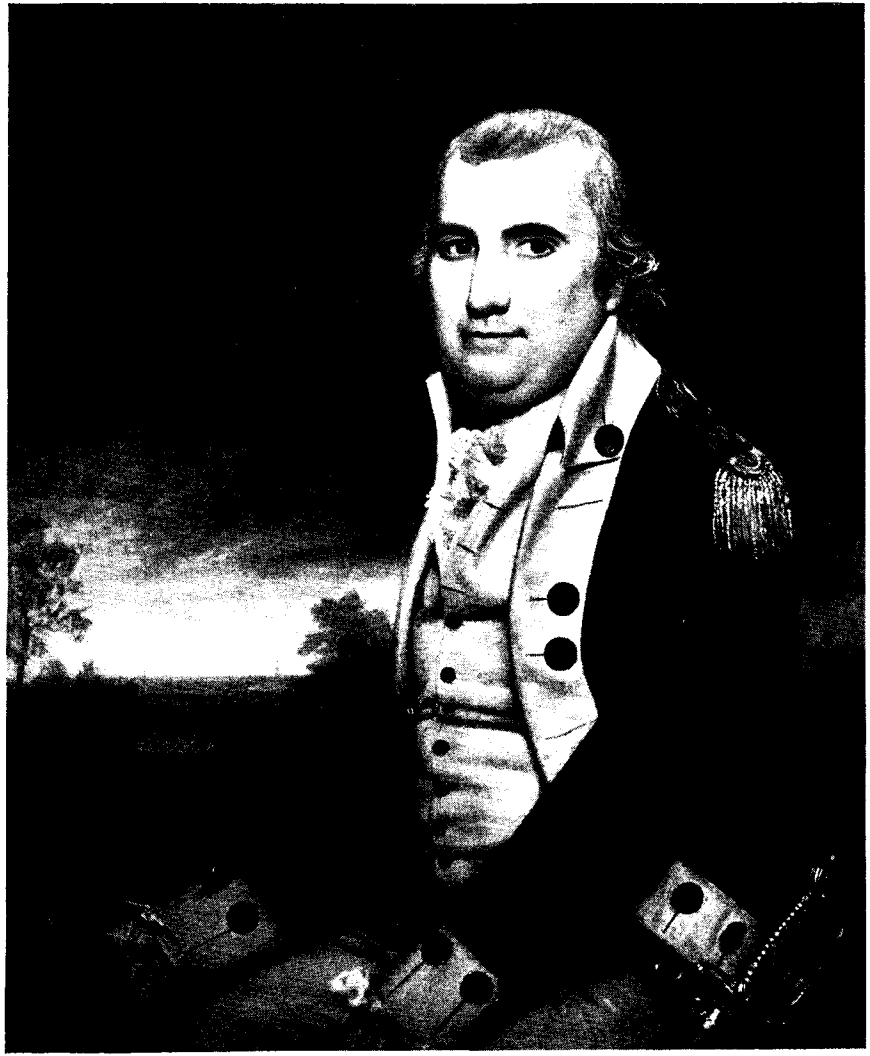
Elizabeth Schuyler was the daughter of General Philip Schuyler of Revolutionary fame She married Alexander Hamilton [No. 6] in 1783, which allied the young statesman with influential conservative families in New York. 31¾″ x 26¾″. For portrait, see p. 779. *Courtesy of The Museum of the City of New York.*

12. JOHN DICKINSON [1732–1808]. By Charles Willson Peale [1741–1827]

John Dickinson was one of the leading scholars of the Revolution. His *Letters from a Farmer in Pennsylvania* (1767) is a classic of the antebellum controversy. He attended the Stamp Act Congress of 1765 as a delegate from Pennsylvania, and drafted its resolutions. He was not in harmony with the more radical spirit of the early Continental Congress, opposed independence as premature and was dropped from the delegation before the Declaration was signed. In 1779 he returned to Congress as a delegate from Delaware, became president of that state in 1781 and of Pennsylvania in 1782. Delaware sent him to the



6 ALEXANDER HAMILTON



5 CHARLES COTESWORTH PINCKNEY

Convention in 1787, where he ranked with James Wilson and James Madison in his knowledge of the principles of government; but was less active than they in the proceedings. He signed the Constitution by proxy. During the ratification contest his *Fabius Letters* was among the outstanding arguments for adoption. 48″ x 38″. For portrait, see p. 779. *Lent by The Historical Society of Pennsylvania.*

13. BENJAMIN HARRISON, JR. [c. 1750–1799]. By Charles Willson Peale [1741–1827]

This son of a signer of the Declaration of Independence [No. 98] and brother of a President of the United States [No. 14] began his career in the counting house of Robert Morris [No. 152] in Philadelphia. 29¼″ x 24½″. *Lent by The A. W. Mellon Educational and Charitable Trust.*

14. WILLIAM HENRY HARRISON [1773–1841]. By Rembrandt Peale [1778–1860]

This son of Benjamin Harrison [No. 98], the signer of the Declaration of Independence, became an ensign in the army and governor of Indiana Territory in 1800. His defeat of the Indians at Tippecanoe in 1811 and his command during the War of 1812 made him available for the Whig candidacy for President in 1840. He died a month after his inauguration, the first President to die in office. 29″ x 24″. *Lent by Mrs. Robert Carter Randolph.*

15. JOHN HANCOCK [1737–1793]. By John Singleton Copley [1738–1815]

John Hancock, although one whose power and wealth would more naturally have made him a loyalist, became a leader in the movement for independence and control of Massachusetts. Samuel Adams [No. 22], recognizing the importance of having such a man as this on the popular side, became a determining influence in Hancock's life and was largely responsible for the course Hancock pursued. As president of the Continental Congress his bold signature on the Declaration of Independence has made his name a household word. He was governor of Massachusetts for many years, and advocated the adoption of the Constitution only after being convinced of its popularity. 49½″ x 39″. *Lent by The City of Boston and The Museum of Fine Arts.*

16. SAMUEL CHASE [1741–1811]. By John Wesley Jarvis [1780–1839]

Samuel Chase was prominent in the pre-Revolutionary history of Maryland, but is chiefly remembered as the fiery Federalist justice of the Supreme Court whom the Jeffersonians impeached but failed to convict. He was a member of the Continental Congress and signed the Declaration of Independence. He declined to attend the Convention of 1787 and opposed ratification. Washington appointed him a justice of the Supreme Court in 1796. 27½″ x 22″. *Lent by Capt. Edward Macauley, U. S. N., Ret.*

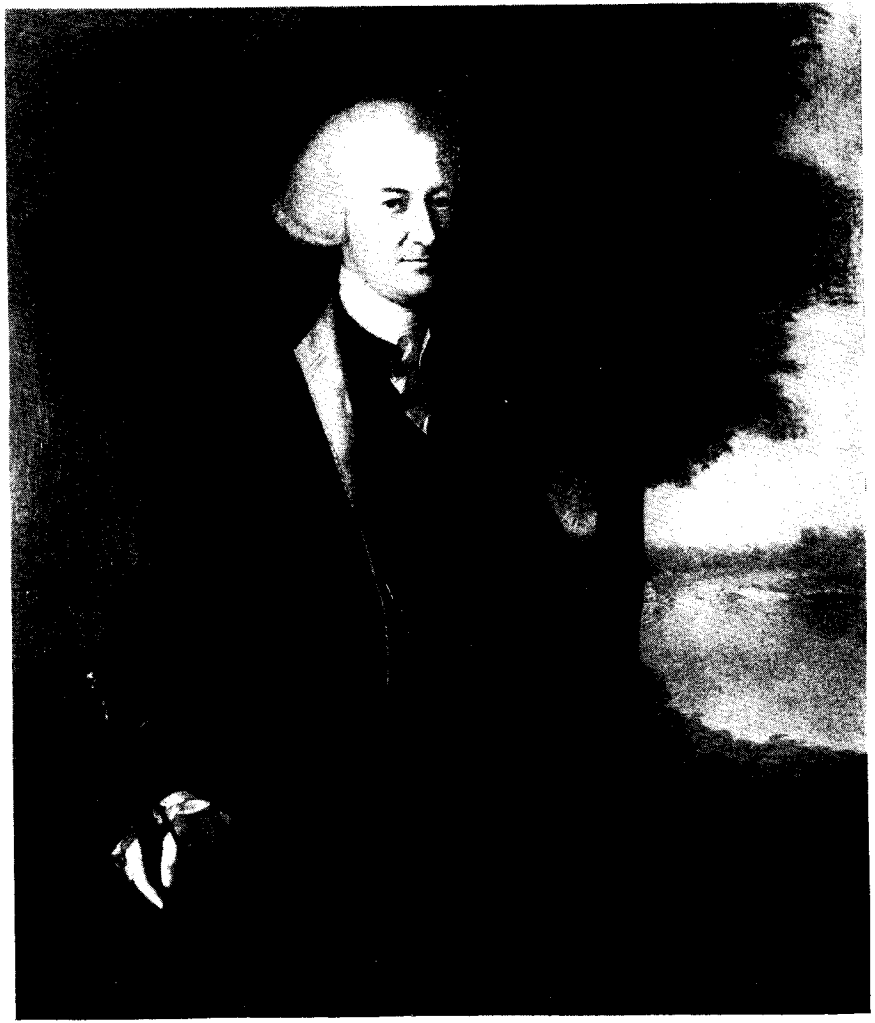
17. MRS. JAMES LATIMER [1727–1813]. By Charles Willson Peale [1741–1827]

Sarah Geddes married James Latimer in 1749. They lived in Newport, Delaware. 35″ x 26½″. *Lent by Mr. Robert C. Latimer.*

18. CHARLES CARROLL OF CARROLLTON [1737–1832]. By Thomas Sully [1783–1872]

This water color sketch was undoubtedly made as a preliminary of the painting of No. 19, which was ordered by the State of Maryland after Carroll's death and was finished in 1834. Sully had painted Carroll from life in 1826. *Lent by Mrs. John Hill Morgan.*

11 MRS. ALEXANDER HAMILTON



12 JOHN DICKINSON

19. CHARLES CARROLL OF CARROLLTON [1737–1832]. By Thomas Sully [1783–1872]

Charles Carroll, a man of great wealth, became prominent in the pre-Revolutionary contest, and from 1777 to 1800 was in the Maryland Senate. He became a delegate to Congress in time to sign the Declaration of Independence, but after its adoption. He declined appointment to the Convention of 1787, but was a senator from Maryland in 1789–1792. 92½″ x 57½″. *Lent by The State of Maryland.*

20. JAMES LATIMER [1719–1807]. By Charles Willson Peale [1741–1827]

The Latimer family had various members who were well known in Delaware's Revolutionary history. It is as president of the Delaware Ratification Convention that James Latimer has his best claim for remembrance. 35″ x 26½″. *Lent by Mr. Robert C. Latimer.*

21. THOMAS McKEAN [1734–1817]. By Gilbert Stuart [1755–1828]

Thomas McKean had the honor of being one of Delaware's signers of the Declaration of Independence and of the Articles of Confederation. The intimate relation between Delaware and Pennsylvania made it possible for McKean to be prominent in both, and while serving Delaware in a legislative capacity he was chief justice of Pennsylvania. In 1781 he was president of Congress. He strongly advocated Pennsylvania's ratification and ended his career as governor of that state. Panel, 27½″ x 22½″. *Lent by Mr. John Hill Morgan.*

22. SAMUEL ADAMS [1722–1803]. By John Singleton Copley [1738–1815]

Samuel Adams was for New England the great protagonist of liberty, occupying there a position similar to that of Patrick Henry in the South. His stirring appeals and practical measures to break down British control culminated with his signing the Declaration of Independence. More perhaps than any other man he had forced that Declaration. He was not a constructive statesman and gave his support to the Constitution reluctantly. 50⅛″ x 40¼″. *Lent by The City of Boston and The Museum of Fine Arts.*

23. THOMAS McKEAN [1734–1817]. By James R. Lambdin [1807–1889]

This copy of the Stuart portrait [No. 21] was presented to The Historical Society of Pennsylvania by the artist in 1852. It is on canvas while the original is on wood. 29½″ x 24¼″. *Lent by The Historical Society of Pennsylvania.*

24. MRS. JAMES DUANE [1738–1821]. By Ralph Earl [1751–1801]

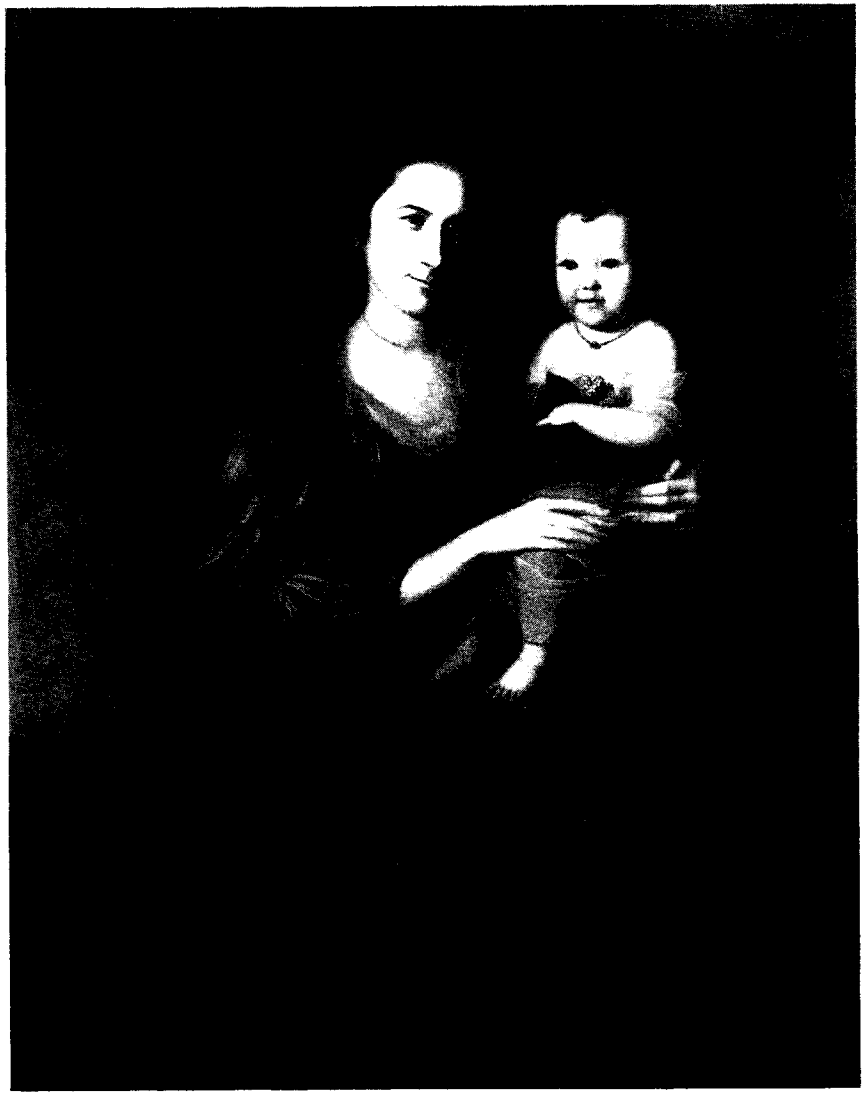
Maria (or Mary) Livingston married James Duane in 1759. She was a daughter of Robert, third lord of the Livingston Manor, a second cousin of Chancellor Robert R. Livingston [No. 218], and a niece of Philip Livingston [No. 9], signer of the Declaration of Independence, and of William Livingston, signer of the Constitution. 29″ x 23½″. *Lent by Messrs. W. R. Galt Duane and Robert Livingston Duane.*

25. MRS. JOHN DICKINSON [1740–1803] AND CHILD. By Charles Willson Peale [1741–1827]

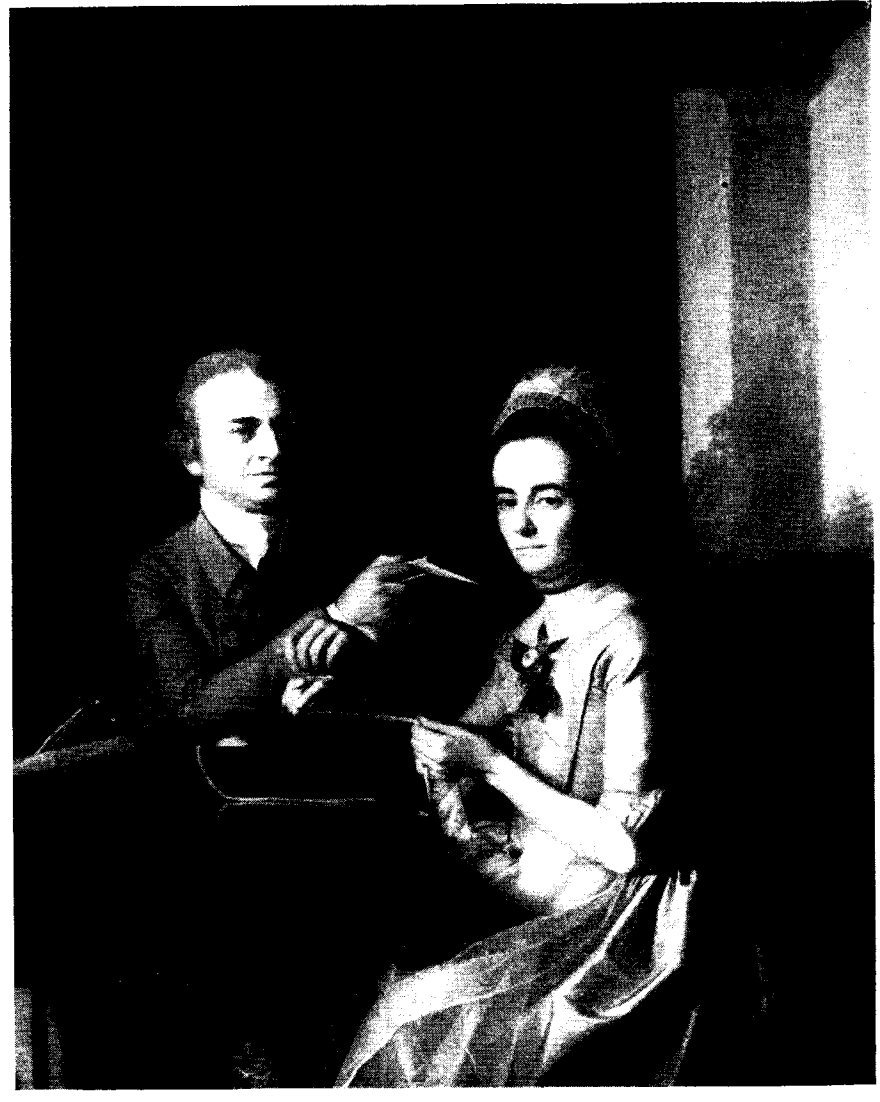
Mary Norris, of a prominent Quaker family of Philadelphia, married John Dickinson the signer of the Constitution [No. 12] in 1770. The child in this picture is Sally N. [1771–1855]. 48″ x 39″. For portrait, see p. 781. *Lent by The Historical Society of Pennsylvania.*

26. RUFUS KING [1755–1827]. By Gilbert Stuart [1755–1828]

Rufus King served as a connecting link between the first and second generations of statesmen of the Union. He was a friend and co-worker of George Washington, John Adams, Alexander Hamilton, John Jay, Benjamin Franklin, Thomas Jefferson, and James Madison, and he lived to serve in Congress with Daniel Webster, Henry Clay, John C. Calhoun, Thomas



25 MRS. JOHN DICKINSON AND CHILD



41 THOMAS MIFFLIN AND WIFE

Hart Benton, and Andrew Jackson. He was in the Continental Congress from 1784 to 1787. His service in the Convention of 1787 was notable, for he was a member of the Committee of style, signed the Constitution, and upheld it in the Massachusetts convention. Moving to New York, he became a senator, minister to Great Britain, and Federalist candidate for Vice President and President. After this he was once more in the Senate and again minister to Great Britain. 29½″ x 24½″. For portrait, see p. 783. *Lent by Miss Edith Gibb McLane.*

27. JAMES DUANE [1733–1797]. By John Trumbull [1756–1843]

On January 4, 1806, John Trumbull informed the Common Council of the City of New York that he had completed the portrait of Duane which still hangs in the City Hall. This was undoubtedly painted from the Pine original [No 33]. 30″ x 24″. *Lent by The City of New York.*

28. MRS. WILLIAM GREENE [1698–1777]. By John Smibert [1688–1751]

Catherine Greene married in 1719 her second cousin, William [No. 32], who was for twelve years colonial governor of Rhode Island.

This portrait was painted in 1734 and it is one of the few which John Smibert signed and dated. 29½″ x 24½″. *Lent by Senator Theodore Francis Green.*

29. MARTHA JEFFERSON RANDOLPH [1772–1836]. By Thomas Sully [1783–1872]

Mrs. Randolph, daughter of Thomas Jefferson [No. 176], was with her father while he was in France. She was educated there in a convent. Just before her father took up his duties as Washington's secretary of state she married, but continued to reside at her father's Monticello estate. She was only occasionally at the White House during Jefferson's Presidency. 28½″ x 24½.″ *Lent by Mr. Burton R. Randall.*

30. GEORGE CLINTON [1739–1812]. By Ezra Ames [1768–1836]

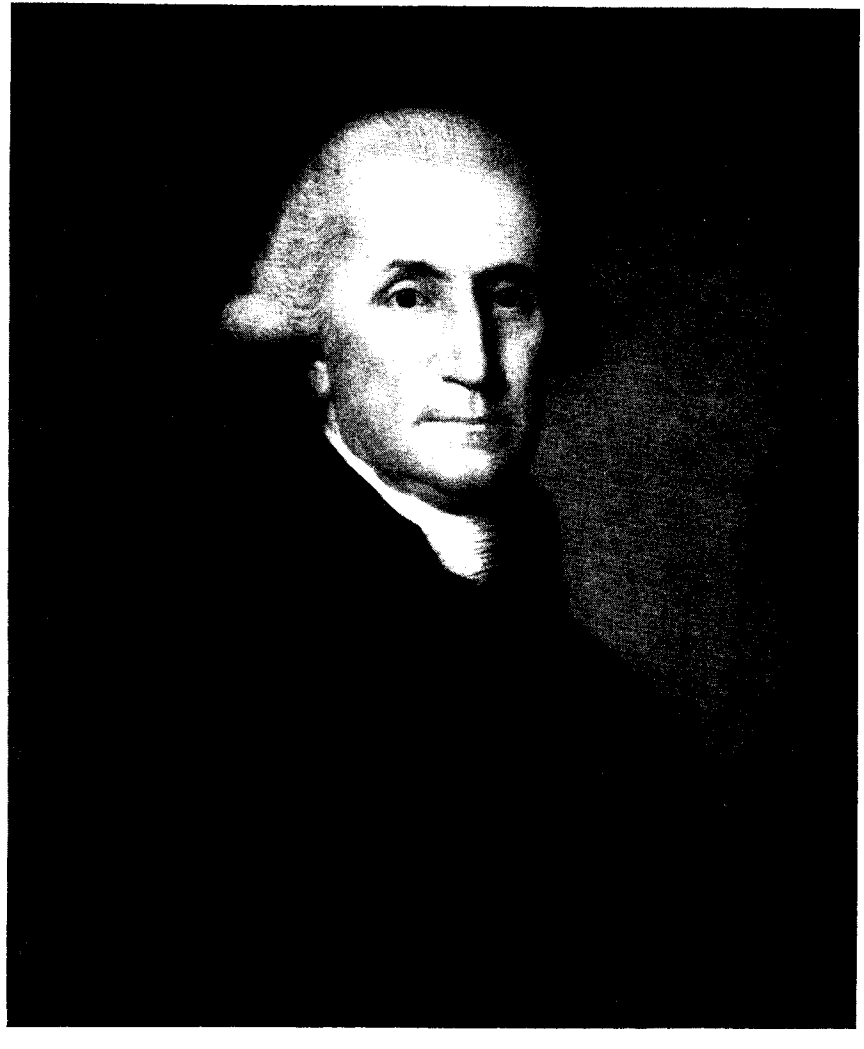
George Clinton was a radical supporter of the Revolutionary movement, a member of the Continental Congress in 1775, and a brigadier general of the Continental Army; but his preeminent service during the Revolution was as governor of New York, which office he held continuously from 1777 to 1795, being one of the three great war governors upon whom Washington especially relied. He denounced ratification but became, in 1805, Vice President under the system of government he had opposed. 95¼″ x 70½″. *Lent by The State of New York.*

31. MARTHA JEFFERSON RANDOLPH [1772–1836]. By Thomas Sully [1783–1872]

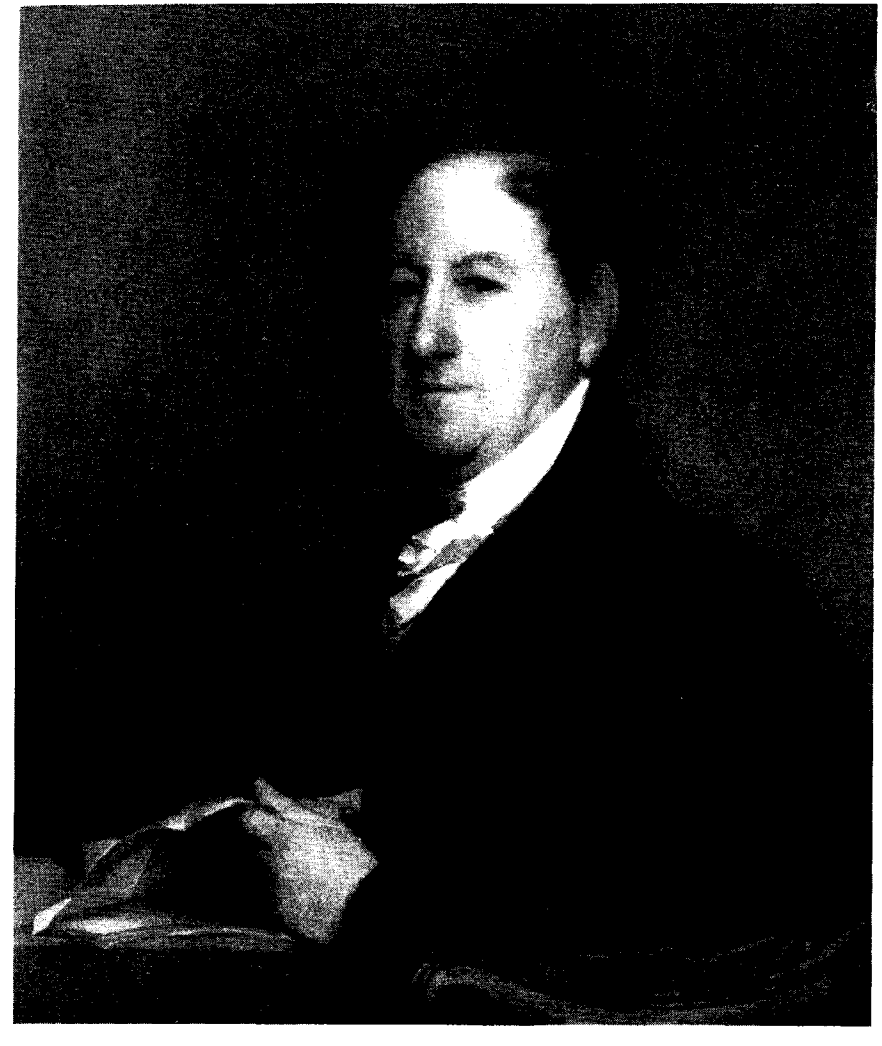
When Mrs. Randolph was visiting her daughter, Mrs. Nicholas Philip Trist (Virginia Jefferson Randolph), in Washington, D. C., Mrs. Trist had Thomas Sully paint this portrait of her mother. It is therefore the original, from which other members of the family ordered Sully to make replicas [compare with No. 29]. 28¾″ x 24¾″. *Lent by Mrs. Charles B. Eddy.*

32. WILLIAM GREENE [1696–1758]. By Peter Pelham [1684–1751]

William Greene was of the third generation from the founder of this famous Rhode Island family, and was also descended from Samuel Gorton. He was governor for many years. His son William, as governor for eight years was one of the important civil officials of the Revolutionary period. A grandson was United States senator. General Nathanael Greene was his second cousin once removed. 29″ x 24¼″. *Lent by Mrs. Edith Roelker Curtis.*



35 GEORGE WASHINGTON



26 RUFUS KING

33. JAMES DUANE [1733–1797]. By Robert Edge Pine [1730–1788]

James Duane was one of New York's most prominent attorneys when the Revolutionary crisis began. Naturally conservative, he was yet an important member of Congress from 1774 to 1783, but was not present during the period when the Declaration of Independence was adopted and signed. He was a consistent supporter of Washington's military policies and his firm friend. He was mayor of New York City from the time of the British evacuation until Washington appointed him a district judge in 1789. In the New York contest for ratification he was one of Hamilton's greatest lieutenants. 35″ x 25½″. *Lent by Messrs. W. R. Galt Duane and Robert Livingston Duane.*

34. JOHN MASON [1767–1849]. Artist unknown

John Mason, son of George Mason [No. 121], was a merchant in France, 1788–91, and later conducted a business in the District of Columbia in connection with his French establishment. He was a general staff officer in the War of 1812, and Analostan Island, now a memorial to Theodore Roosevelt, was part of his estate. 35½″ x 27½″. *Lent by Mr. Philip Dawson.*

35. GEORGE WASHINGTON [1732–1799]. By Adolf Ulric Wertmüller [1751–1811]

Wertmüller, Swedish court painter, visited America in 1794, and was given sittings by Washington. The inventory of his estate says that the painting was "not finished." 24″ x 20½″. For portrait, see p. 783. *Lent by The Historical Society of Pennsylvania.*

36. DANIEL CARROLL OF UPPER MARLBOROUGH [1730–1796]. By John Wollaston [operavit circa 1758]

Daniel Carroll of Upper Marlborough and Charles Carroll of Carrollton [No. 19] were second cousins, but this was on the female side. As a delegate from Maryland to the Continental Congress he signed the Articles of Confederation on March 1, 1781. He attended the Convention of 1787, signed the Constitution, and fully approved of its principles. He was a representative in the First Congress, and one of the commissioners to lay out the District of Columbia. He was an uncle by marriage of Daniel Carroll of Duddington, a property owner there, and brother of John Carroll, the first Roman Catholic bishop in the United States. He is often confused with his nephew. 49″ x 39″. For portrait, see p. 785. *Lent by The Maryland Historical Society.*

37. PHILIP VAN CORTLANDT [1749–1831]. By Adolf Ulric Wertmüller [1751–1811]

Philip Van Cortlandt's father, Pierre, the first lieutenant governor of the State of New York, was related to the other great colonial families of De Peyster, Livingston, Van Rensselaer, and Schuyler. The son commanded a New York regiment in the Continental Army and was a Federalist in the state's ratification convention. He became a follower of Jefferson and a member of Congress. 23½″ x 19½″. *Lent by The A. W. Mellon Educational and Charitable Trust.*

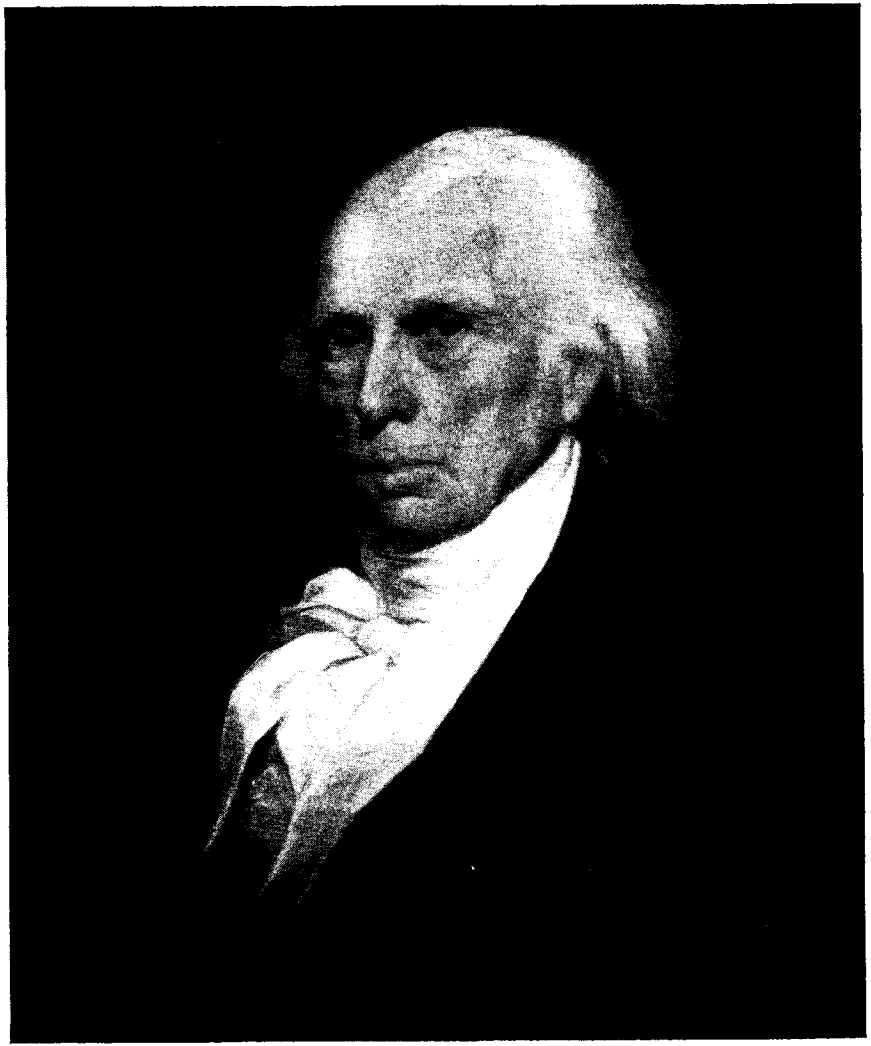
38. MRS. JOHN MASON [1775–1858]. Artist unknown

Anna Maria Murray of Annapolis, daughter of Dr. James Murray, married General John Mason [No. 34] after 1791. 36″ x 28″. *Lent by Mr. Philip Dawson.*

39. MRS. GEORGE BRAXTON [1734–1799]. Artist unknown

Mary Blair, sister of John Blair [No. 110], a signer of the Constitution, married the brother of Carter Braxton [No. 103], a signer of the Declaration of Independence, in 1753. he was married twice afterwards—to Robert Burwell in 1774, and to R. Prescott in 1792. he was considered one of the belles of Philadelphia. 35″ x 28″. *Lent by Mrs. Parker Campbell Wyeth.*

36 DANIEL CARROLL



40 JAMES MADISON

40. JAMES MADISON [1751–1836]. By Asher Brown Durand [1796–1886]

James Madison, like Thomas Jefferson, lived for many years after his retirement from public life, emerging only in 1829 to attend the constitutional convention of Virginia and share honors there with other such political veterans as James Monroe and John Marshall [No. 125]. His greatest work after retirement was to prepare for publication his Notes of Debates in the Constitutional Convention of 1787. These notes were purchased by Congress after his death, and issued as the great source of information on the Convention of 1787, in the meetings of which Madison performed his greatest public service. 20″ x 24″. For portrait, see p. 785. *Lent by The New York Historical Society.*

41. THOMAS MIFFLIN [1744–1800] and MRS. MIFFLIN [1747–1790]. By John Singleton Copley [1737–1815]

John Singleton Copley traveled around the colonies considerably in the years before 1774, when he left for England. This picture of Mifflin and his wife was painted during their early married life.

Sarah, daughter of Morris Morris, married Thomas Mifflin in 1767. Their daughter married Joseph Hopkinson, son of Francis [No. 169] and author of "Hail, Columbia." 60″ x 47″. For portrait, see p. 781. *Lent by The Historical Society of Pennsylvania.*

42. DOLLY MADISON [1768–1849]. By Rembrandt Peale [1778–1860]

Dolly Madison was, as wife and widow of James Madison [No. 128], the great social leader of her day. She was connected through her sister with the Washington family, and married Madison as her second husband in 1794. As Thomas Jefferson [No. 176] was a widower, she was in effect "First Lady" under his administration, as well as when her husband was President. After Madison's death she returned to Washington and resumed her noted position in society, sharing honors with the widow [No. 11] of her husband's great political friend and enemy, Alexander Hamilton [No. 6]. 28½″ x 23½″. *Lent by The New York Historical Society.*

43. GEORGE BRAXTON [1734–1761]. Artist unknown

This brother of Carter Braxton [No. 103], the signer of the Declaration of Independence, was the third of his name in Virginia. He was a planter and a member of the House of Burgesses. He married Mary Blair [No. 39], the sister of John Blair [No. 110], the signer of the Constitution. *Lent by Mrs. Parker Campbell Wyeth.*

44. LOWESTOFT PLATE WITH THE CHASE-TOWNLEY COAT-OF-ARMS

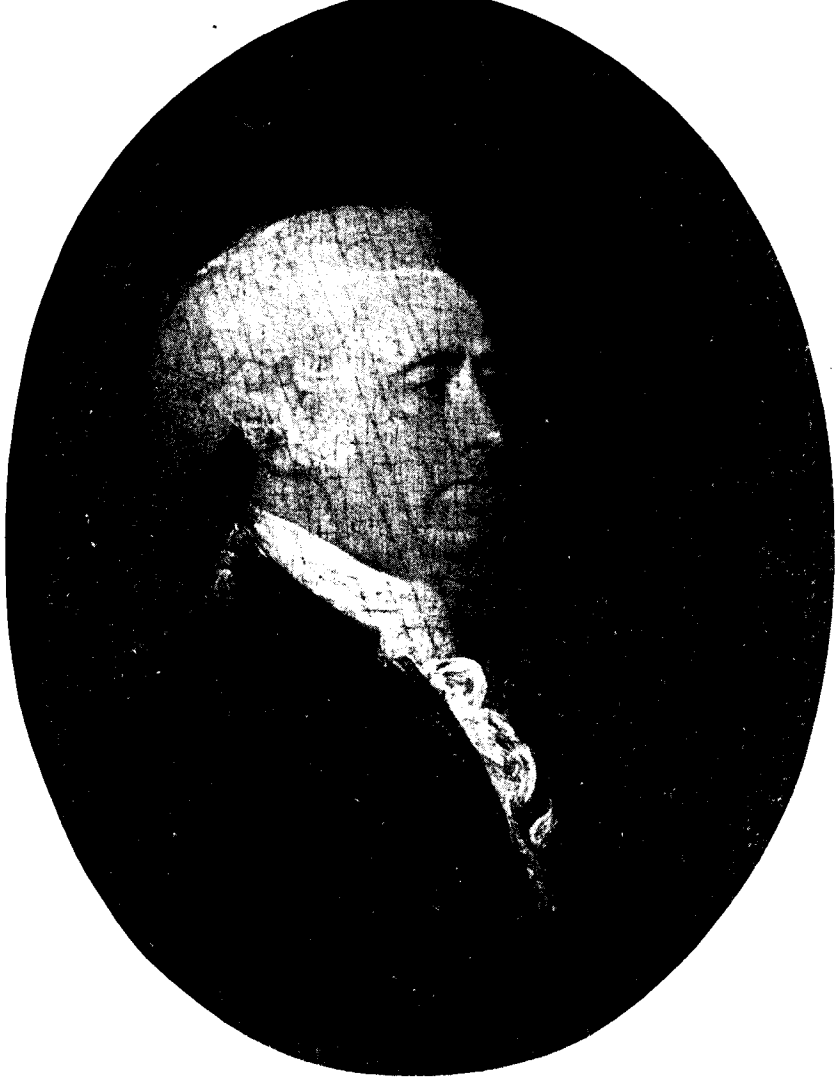
This plate was used in the old Samuel Chase home in Annapolis, Maryland. *Lent by The Maryland Historical Society.*

45. JOHN LANSING [1754–1829]. By John Ramage [1748–1802]

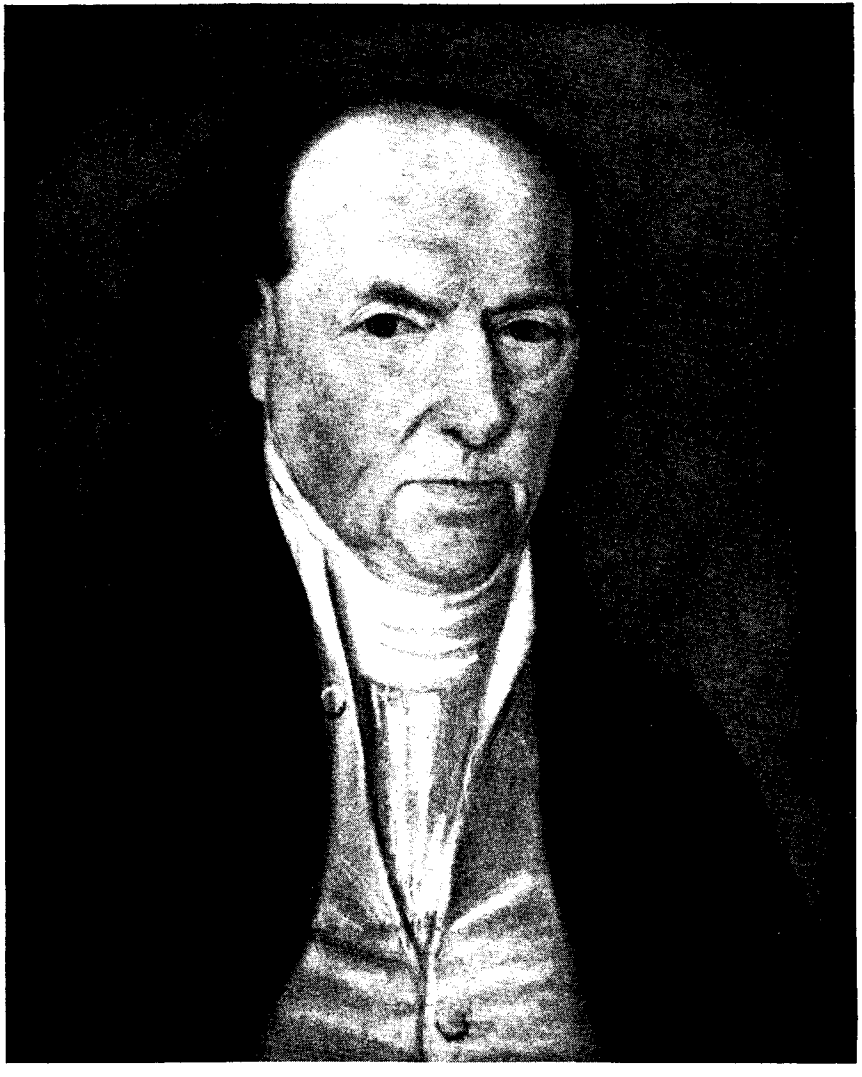
John Lansing's chief importance as a national figure was as a follower of Governor George Clinton of New York in opposition to the establishment of a central government. He and Robert Yates, as deputies to the Convention of 1787, opposed the centralizing principles of Hamilton, the state's third deputy, and by departing on July 10, left the state without a vote in the Convention. He was a leading opponent of ratification. Miniature. *Lent by Miss Clarisse H. Livingston.*

46. THOMAS JEFFERSON [1743–1826]. By Thomas Sully [1783–1872]

This sketch was made in 1822, as a study for the portrait now at West Point. *Lent by Mr. John Hill Morgan.*



95 JOHN RUTLEDGE



110 JOHN BLAIR

47. ABRAHAM CLARK [1726–1794]. By James Peale [1749–1831]

Abraham Clark's democratic attitude gave him many years of public service, and his support of the Revolution was natural. He was sent to the Continental Congress in 1776 to carry out New Jersey's instructions for independence. He was a signer of the Declaration of Independence. He went to the Annapolis Convention, and was appointed to the Convention of 1787, but did not attend. Clark opposed the Constitution because of the initial lack of a Bill of Rights. Miniature. *Lent by Mr. Henry C. Edgar.*

48. SNUFF BOX

This silver plated snuff box was the property of Thomas Jefferson [No. 176]. *Lent by The Historical Society of Pennsylvania.*

49. CHARLES CARROLL OF CARROLLTON [1737–1832]. By Chester Harding [1792–1866]

This miniature was painted when Charles Carroll was advanced in years and reverenced as the last survivor of the signers of the Declaration of Independence. He had retired from public service in 1800, but continued to be a prominent Federalist and interested in economic development. *Lent by Mr. Robert Garrett.*

50. GEORGE WALTON [1741–1804]. By Charles Willson Peale [1741–1827]

Moving to Savannah from Virginia in 1769, Walton was soon involved in the patriotic movement and a leader in the organization of the Revolutionary government there. He entered the Continental Congress in 1776 and remained into 1781, except that he was not present in 1779, being governor for a few months in 1779–80. He advocated independence and signed the Declaration, and served on important committees. Miniature. *Lent by the late Mr. Francis P. Garvan.*

50a. SAMUEL HUNTINGTON [1731–1796]. By Edward Greene Malbone [1777–1807]

Huntington entered the Continental Congress in 1775, and remained an active member until 1781. He was a signer of the Declaration of Independence and president of Congress from September 1779 to July 1781, thereby being the first head of the "United States in Congress assembled" under the Articles of Confederation. He was governor of Connecticut for eleven years and died in office. Miniature. *Lent by Mrs. Robert Malcolm Littlejohn.*

51. MIRROR KNOB DEPICTING GOUVERNEUR MORRIS [1752–1816].

Lent by Mr. Erskine Hewitt.

52. THOMAS HANCOCK [1703–1764]. By John Singleton Copely [1738–1815]

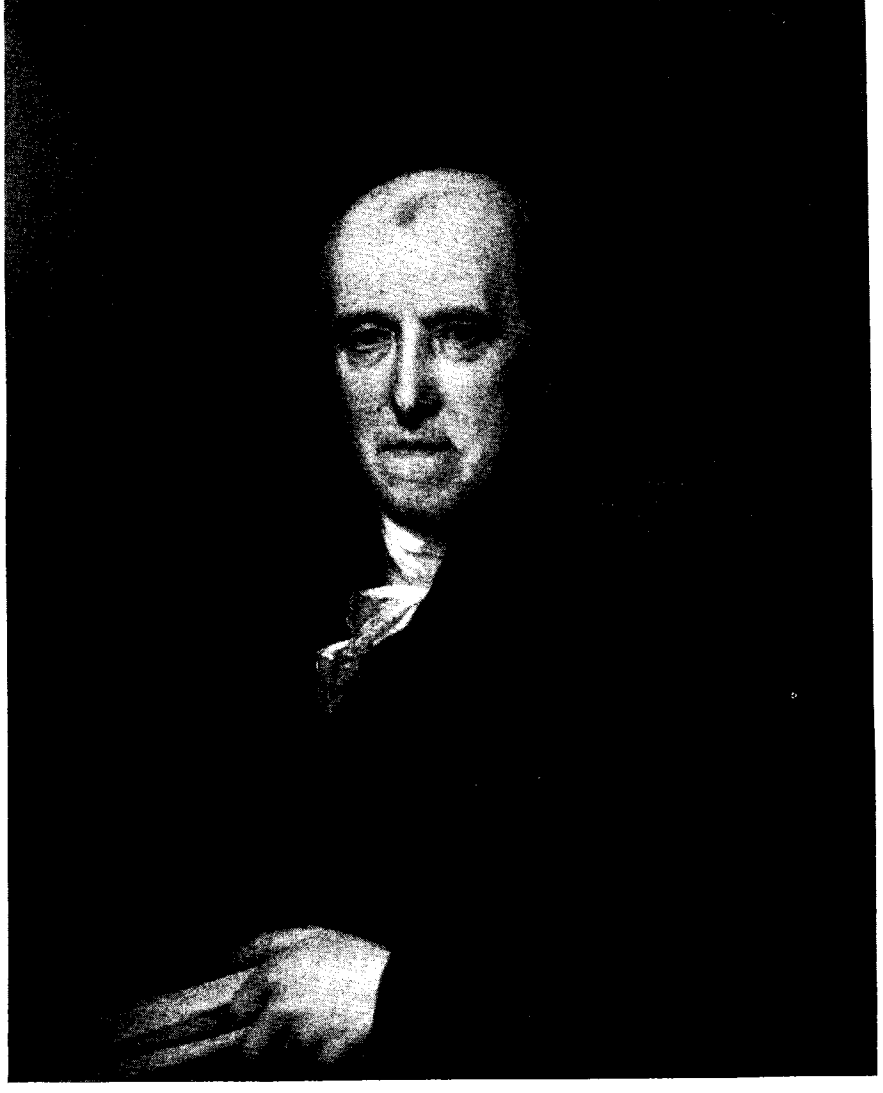
Thomas Hancock was an eminent merchant of Boston, chiefly remembered because he passed on his wealth to his nephew John Hancock (No. 15), to whom it was a stepping stone to prominence in Revolutionary events.

This small bracelet miniature was set in gold by Paul Revere. *Lent by Mr. A. Clarke Walling.*

53. ARTHUR MIDDLETON [1742–1787]. Artist unknown

Arthur Middleton was in the South Carolina legislature in the preliminary years of the Revolution, and was an author of the state constitution. His service in the Continental Congress coincided with the movement for independence. He signed the Declaration of Independence. Silhouette. *Lent by Mr. Erskine Hewitt.*

109 MRS. JOHN BLAIR



130 JARED INGERSOLL

54. SPECTACLES

These spectacles belonged to Josiah Bartlett [No. 178] of New Hampshire, who signed the Declaration of Independence. *Lent by Mrs. R. Grace Bartlett.*

55. SILVER SUGAR BOWL

This bowl, made by Samuel Taylor, London, 1766, was owned and used by William Paca [No. 165]. *Lent by Mrs. Miles White, Jr.*

56. GEORGE WASHINGTON [1732–1799]. Artist unknown

The owner makes the following statement concerning this miniature: "It is unsigned and resembles a miniature done by Robert Field the year after the death of Washington, which is now in the Metropolitan Museum in New York. However, an expert opinion says the technique is not that of Field." *Lent by Miss Christina L. Macomb and Miss Nannie R. Macomb.*

57. ELEANOR (NELLIE) PARKE CUSTIS [1779–1852]. By Charles Peale Polk [1767–1822].

All of Martha Washington's children and grandchildren had Parke as a middle name. On the death of their father, Nellie and her brother, George Washington Parke Custis, became members of Washington's family, but were not adopted. On Washington's last birthday Nellie married his nephew, Lawrence Lewis. Miniature. *Lent by Mrs. Miles White, Jr.*

58. GEORGE WASHINGTON [1732–1799]. By John Ramage [c. 1748–1802]

George Washington had been President for six months before he wrote in his diary on October 3, 1789, "Sat for Mr. Ramage near two hours to-day, who was drawing a miniature picture of me for Mrs. Washington." There are three miniatures of Washington by Ramage but there is no proof as to which was made from life. *Lent by Mr. Erskine Hewitt.*

59. JOHN HART [1711?–1779]. By Herman F. Deigendesch [1858–1921]

John Hart was essentially a representative of the common people, a farmer, justice of the peace, and member of the New Jersey legislature. He was sent to the Continental Congress in June 1776, as one of the new delegation authorized to support independence, for which he voted and signed the Declaration. Miniature. *Lent by The Historical Society of Pennsylvania.*

60. LEWIS MORRIS [1752–1824]. By Edward Greene Malbone [1777–1807]

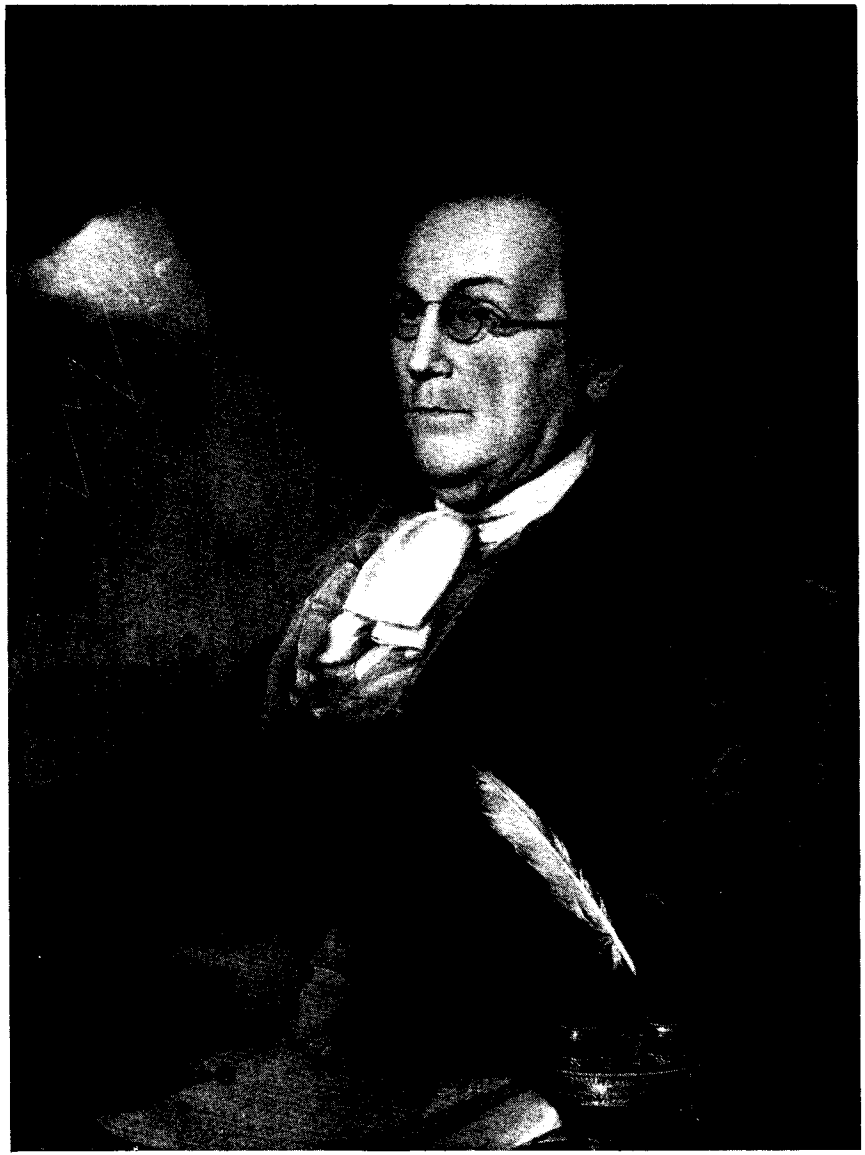
Colonel Lewis Morris, oldest son of Lewis Morris [No. 184], the signer of the Declaration of Independence, reached his rank in the Revolution, serving on the staff of Sullivan in the Iroquois campaign and on that of Greene in the South. Miniature. *Lent by Mr. Lewis Gouverneur Morris and family.*

61. LEWIS MORRIS [1726–1798]. By Charles Fraser [1782–1860]

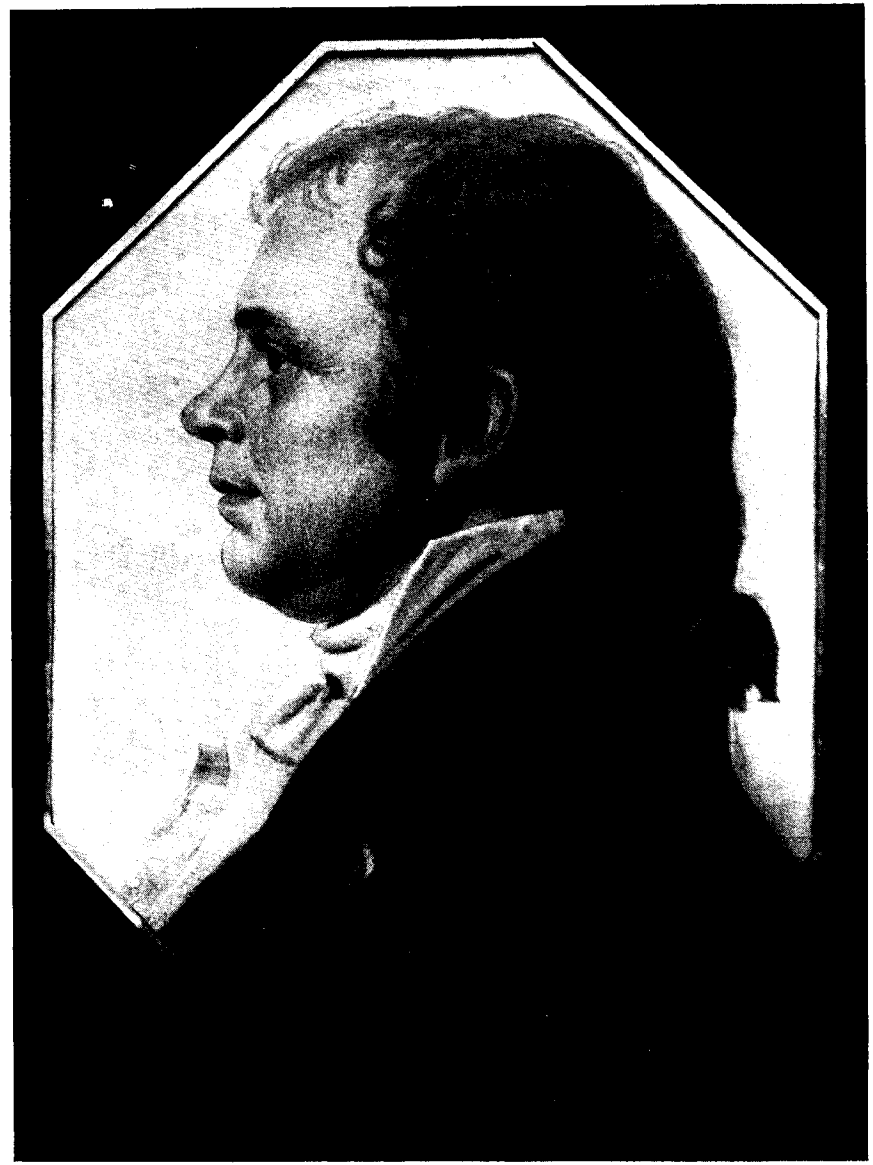
This is probably a copy of a portrait from life. This miniature is of an older man than No. 184. *Lent by Mrs. Marion Eppley.*

62. ROBERT MORRIS, JR. [1769–1805]. By Arlaud.

Robert Morris sent his two sons, Robert and Thomas, to Europe in 1781 to be educated, De Grasse taking them as far as the West Indies when he left our country after the siege of Yorktown. Robert, Jr., returned after 1787 and married Anna Shoemaker in 1796. He was a lawyer. Miniature. *Lent by Col. Robert Morris.*



137 BENJAMIN FRANKLIN



139 JAMES McHENRY

63. LUTHER MARTIN [1748–1826]. By Robert Field [c. 1769–1819]

Famous as a lawyer, Luther Martin's public service was chiefly that of attorney general of Maryland. He was a member of the Convention of 1787, where he was distinguished for his opposition to all plans for a stronger central government. He continued his opposition during the ratification contest, but later his dislike of Jefferson drove him into the Federalist party. Miniature. *Lent by Mr. John W. Garrett.*

64. MARIA MARTIN [1784–c.1810]. By Robert Field [c. 1769–1819]

Luther Martin's older daughter married Lawrence Keene, a naval officer, in 1808. He resigned a year later and soon died. Miniature. *Lent by Mr. John W. Garrett.*

65. SPECTACLE CASE

This silver spectacle case belonged to and was used by Thomas Jefferson [No. 176]. *Lent by Mrs. Charles B. Eddy.*

66. WILLIAM JACKSON [1759–1828]. By John Trumbull [1756–1843]

William Jackson saw service during the Revolution, especially as Lincoln's aide in the southern campaign. He was appointed secretary of the Convention of 1787, in which position he gave inadequate service, perhaps because more interested in his private notes of the debates. The notes are now lost. Miniature. *Lent by The Historical Society of Pennsylvania.*

67. ROBERT MORRIS [1734–1806]. Artist unknown

Miniature. *Lent by Mrs. Alba Davis Walling.*

68. THOMAS HEYWARD, JR. [1746–1809]. By Philip A. Petticolas [1760–1843]

Thomas Heyward was of a prominent South Carolina family of planters. He studied law at the Middle Temple, London, and on his return to this country he took part in the political preliminaries of the Revolution. He went to Congress in 1775, and was a signer of the Declaration of Independence. Miniature. *Lent by Mr. Erskine Hewitt.*

69. SILVER URN.

This urn was owned by John Rutledge [No. 95], signer of the Constitution from South Carolina. It bears the Rutledge coat-of-arms and was made by Charles Wright in London, 1769. *Lent by Mrs. Breckinridge Long.*

70. PAIR OF SILVER CANDLESTICKS

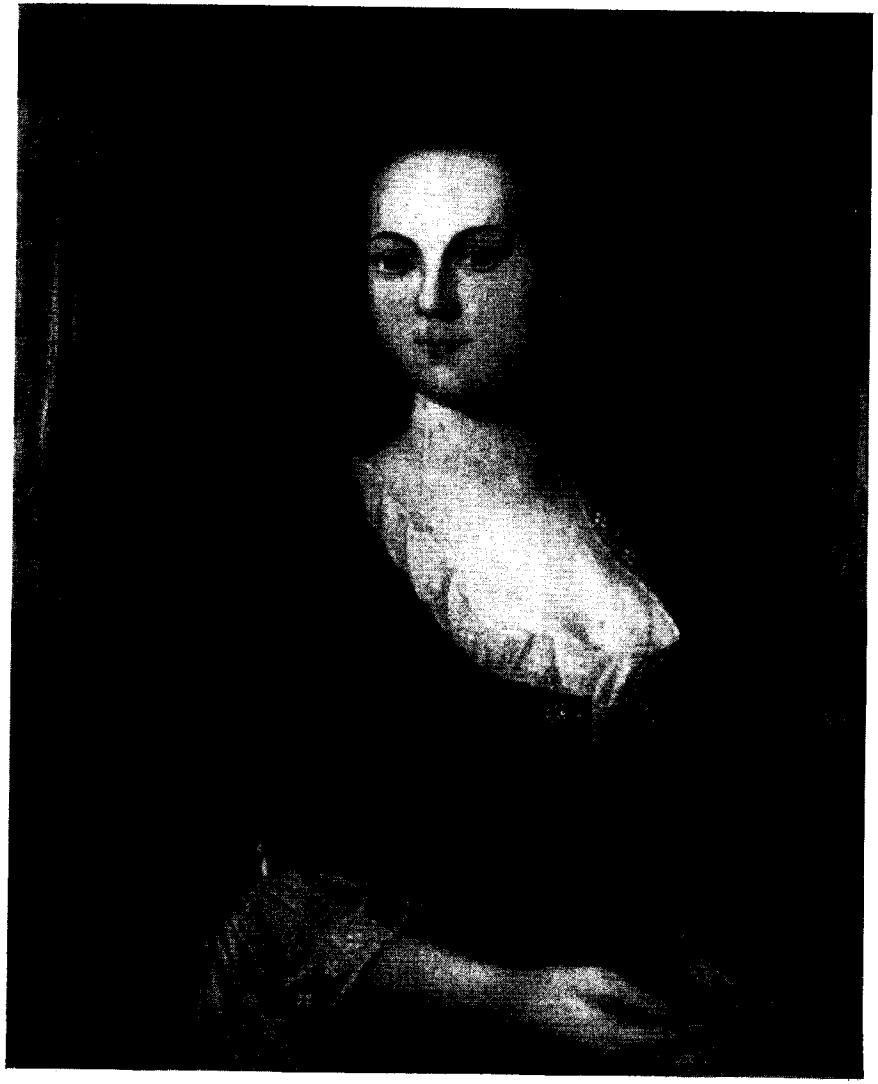
These two candlesticks, owned by John Hancock [No. 15], are English silver, made in London, 1745, and have the date letter "K" on a shield. The maker was Thomas Rush, Aldergate Street. The candlesticks also have the Hancock crest. *Lent by Maj. Gist Blair.*

71. SILVER CHOCOLATE POT

This chocolate pot, made by Peter Archambo in London, 1733, was owned and used by William Paca [No. 165]. *Lent by Mrs. Miles White, Jr.*

72. CORNELIA JEFFERSON RANDOLPH [1799–1871]. Terra cotta bust—artist unknown

Cornelia Jefferson Randolph was born at Monticello, spent most of her life, unmarried, with her grandfather, Thomas Jefferson [No. 176], at that place, and is buried there. She was the fifth child of Martha Jefferson [No. 31] and Thomas Mann Randolph. *Lent by Mrs. Page Taylor Kirk.*



123 MRS. GEORGE MASON

154 MRS. ROBERT MORRIS

73. CATHARINE FLOYD [c. 1765–?]. By Charles Willson Peale [1741–1827]

The story of this miniature is that it was exchanged with one of James Madison [No. 75] when they were engaged. This happened when she was about sixteen years of age, and was with her father William Floyd [No. 114] at Philadelphia. She broke the engagement and the miniature was returned. *Lent by Mrs. E. W. Hall.*

74. WILLIAM FLOYD (1734–1821). By James Peale [1749–1831]

This miniature, and the companion one of his first wife [No. 76], were probably painted at Philadelphia during Floyd's attendance on the Continental Congress. *Lent by Mrs. Alba Davis Walling.*

75. JAMES MADISON [1751–1836.] By Charles Willson Peale [1741–1827]

The story of this miniature is given with that of Catharine Floyd [No. 73]. Madison did not marry until at least eleven years after the incident. *Lent by Mr. Albert E. Leeds.*

76. MRS. WILLIAM FLOYD [1740–1781]. By James Peale [1749–1831]

Hannah Jones of Southampton, Long Island, married William Floyd [No. 114] in 1760. In the Floyd genealogy her name is given as Isabella. She was the mother of Catharine [No. 73]. Miniature. *Lent by Mrs. Alba Davis Walling.*

77. CHARLES CARROLL [1775–1825]. Copperplate by C. B. J. de Saint-Memin [1770–1852]

This copperplate engraving of Charles Carroll of Homewood was made in the same manner as that of Richard Bassett [No. 86]. Carroll was the son of Charles Carroll of Carrollton [No. 19]. *Lent by The Baltimore Museum of Art.*

78. FRANCIS SCOTT KEY [1779–1843]. Attributed to Philip A. Petticolas [1760–1843]

This miniature was painted when Francis Scott Key was sixteen years of age. He practiced law in Maryland and in the District of Columbia and his one claim to inclusion in this exhibition lies in his having written the national song which remains forever associated with the national flag. *Lent by The Maryland Historical Society.*

79. JOHN HANDY [1755–1828]. By Edward Greene Malbone [1777–1807]

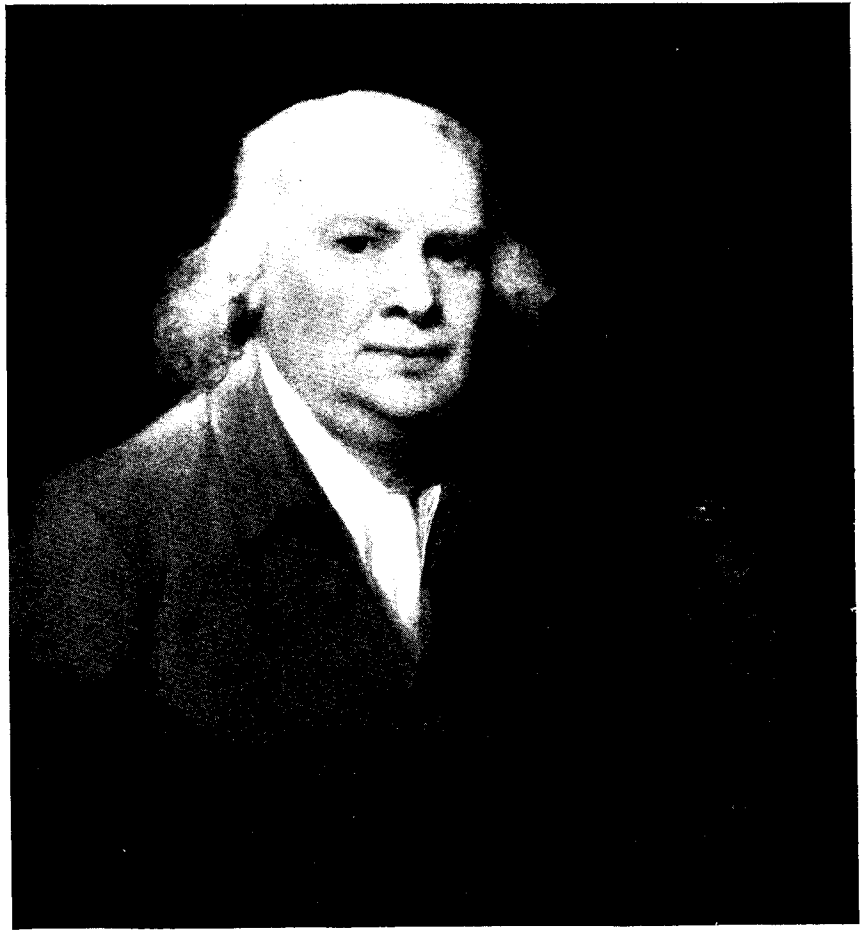
Major John Handy was a major in the Rhode Island state troops during the Revolution. He is credited with having read the Declaration of Independence before the State House at Newport on July 20, 1776, and again on July 4, 1826. Miniature. *Lent by Mr. Charles H. Russell.*

80. HENRY MARCHANT [1741–1796]. By John Singleton Copley [1738–1815]

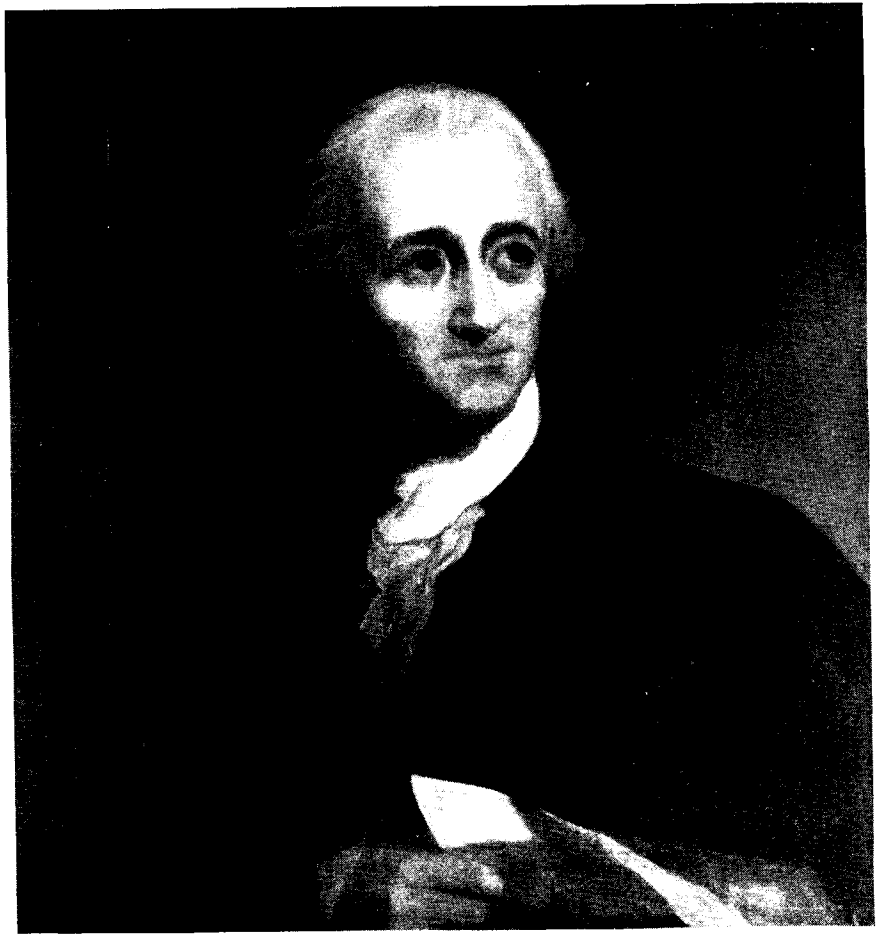
Henry Marchant was attorney general of Rhode Island in 1770–77 and was in the Continental Congress in 1777–79. He was a Federalist; and as a member of the General Assembly of the state from 1784 on, he was prominent in the long contest to bring Rhode Island into the new Union, and a leader in the ratification convention. Miniature; oil on copper. *Lent by Miss Alice Clarke.*

81. DOLLY MADISON [1768–1849]. Attributed to James Peale [1749–1831

This miniature was probably painted while her husband, James Madison (No. 128), was President. For portrait, see p. 813. *Lent by Mrs. John Hill Morgan.*



152 ROBERT MORRIS



205 GEORGE READ

82. MRS. HENRY MARCHANT [1736–1819]. By John Singleton Copley [1738–1815]

Rebecca Cooke of Newport, Rhode Island, married Henry Marchant in 1765. Miniature; oil on copper. *Lent by Miss Alice Clarke.*

83. SARAH BROOM [1779–?]. By James Peale [1749–1831]

Sarah Broom was the sixth child of Jacob Broom of Delaware, signer of the Constitution. She married Jacob Brinton and later James Roberts. Miniature. For portrait, see p. 813. *Lent by Mrs. Henry H. Silliman.*

84. SILVER KNITTING NEEDLE SHEATH

This belonged to Ann Broom [No. 85]. *Lent by Mrs. Theodore Jones.*

85. ANN BROOM [1775–1824]. By James Peale [1749–1831]

The oldest daughter and fourth child of Jacob Broom, the signer of the Constitution, married John Littler [No. 87] in 1794. Miniature. For portrait, see p. 813. *Lent by Miss Elizabeth Waters.*

86. RICHARD BASSETT [1745–1815]. Copperplate by C. B. F. de Saint-Mémin [1770–1852]

Though Bassett had some slight military service during the Revolution, his career was essentially that of a statesman and jurist. For ten years he was active in the Delaware government; then as a member of the Annapolis Convention, the Convention of 1787, and the ratification convention of his state, he was prominent in the formation of the Union. He was one of Delaware's first senators. 2⅝″ x 2⅝″. *Lent by The Baltimore Museum of Art.*

87. JOHN S. LITTLER [1773–1806]. By James Peale [1749–1831]

John Littler, who in 1794 married Ann Broom [No. 85], daughter of Jacob Broom, signer of the Constitution, died in Maysville, Kentucky. Miniature. *Lent by Mrs. Theodore Jones.*

88. CHARLES COTESWORTH PINCKNEY [1746–1825]. By Charles Fraser [1782–1860]

When this miniature was painted, Charles Cotesworth Pinckney had retired from public service except as a hopeless Federalist candidate for the Presidency. He continued to practice law in Charleston and to enjoy his eminence as president general of the Society of the Cincinnati. His family of daughters left no descendants. *Lent by Miss Josephine Pinckney.*

89. SNUFF BOX

This tortoise shell snuff box with silver inlay was owned by Henry Laurens [No. 213]. *Lent by Mrs. Breckinridge Long.*

90. PEWTER PITCHER

This pitcher was owned and used by Josiah Bartlett [No. 178]. *Lent by Mrs. R. Grace Bartlett.*

91. PAIR OF SILVER SHOE BUCKLES

These shoe buckles were worn by James Wilson [No. 92]. *Lent by Mrs. Robert M. Chester and Miss Emily Hollingsworth Murray.*

172 DANIEL OF ST. THOMAS JENIFER

157 WILLIAM FEW

92. JAMES WILSON [1742–1798]. Artist unknown.

Essentially a jurist, James Wilson was a predecessor of John Marshall [No. 125] in the development of American constitutional law. He served in the Continental Congress at various times, and signed the Declaration of Independence. As a deputy in the Convention of 1787, Wilson was among the most important, and probably more responsible for the work of the Committee of Detail than any other member. He signed the Constitution and was its chief advocate in Pennsylvania's early ratification. His appointment as a justice of the Supreme Court fulfilled a general expectation. Miniature. For portrait, see p. 815. *Lent by Mrs. T. H. Montgomery, Jr.*

93. MOURNING BROOCH

This brooch was made for James Wilson [No. 92] at the time of the death of his first wife, Rachel Bird. *Lent by Miss Emily Hollingsworth Murray.*

94. WILLIAM BLOUNT [1749–1800]. Attributed to Charles Willson Peale [1741–1827]

William Blount's chief public service was as governor of the Territory South of the Ohio, which became Tennessee in 1796. His service in the Continental Congress (1782–83, 1786–87) was the forerunner to his membership in the Convention of 1787. He took no active part in the discussions and signed the Constitution merely as an attestation of its unanimous approval by the states present, but he advocated it in the second North Carolina Ratification Convention. Miniature. For portrait, see p. 813. *Lent by Mr. Edward R. Pool.*

95. JOHN RUTLEDGE [1739–1800]. By John Trumbull [1756–1843]

John and Edward Rutledge [No. 195], who were brothers, share the honor of signing the two great American state papers; John the Constitution, and Edward the Declaration of Independence. Both were trained as lawyers in the Middle Temple of London. John, the elder, was a member of the Stamp Act Congress. Later, both were in the Continental Congress, but John left to help organize South Carolina as a state, becoming its governor later. As a deputy to the Convention of 1787 he was chairman of the committee of detail, and was interested equally in a workable central government and in securing concessions for the South which he deemed necessary to secure ratification. He was a justice of the Supreme Court but never attended a term, and a chief justice whom the Senate rejected. Miniature. For portrait, see p. 787. *Lent by Mr. James Rose Rutledge.*

96. JOHN RUTLEDGE [1766–1819]. By Charles Fraser [1782–1860]

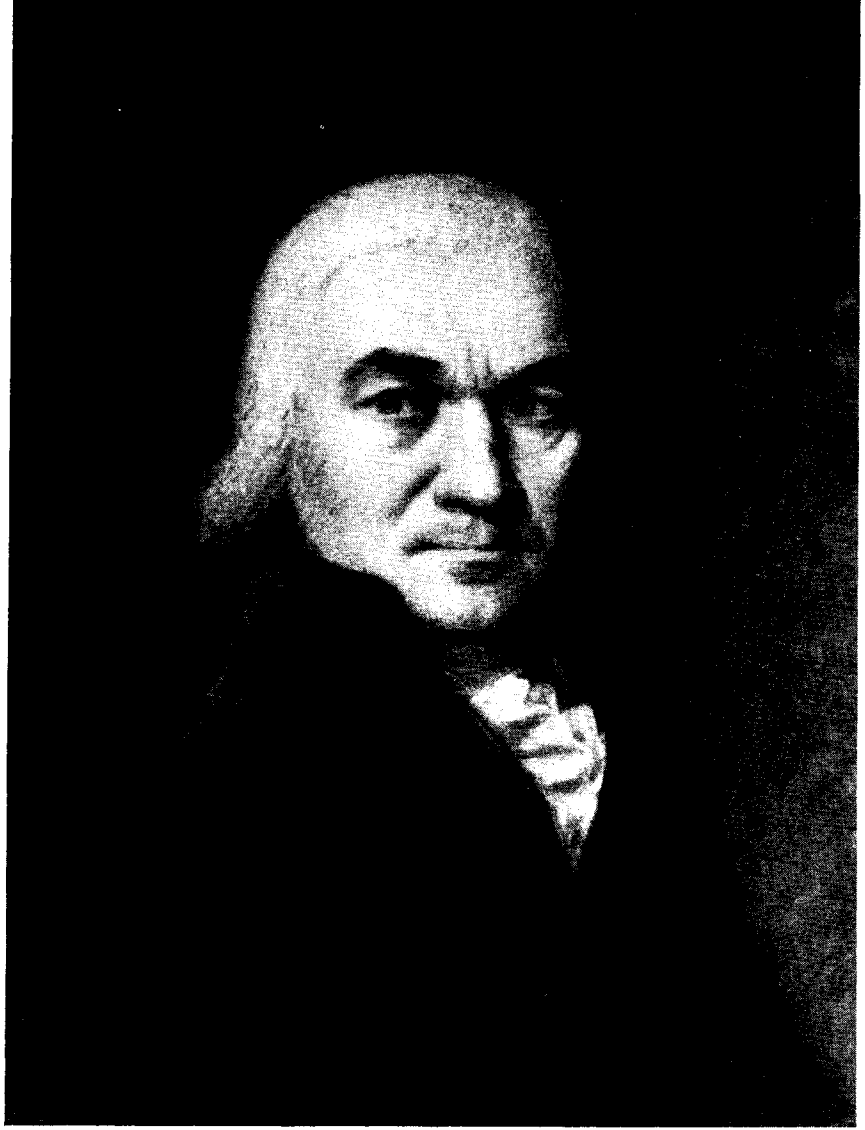
General John Rutledge, son of John Rutledge [No. 95], the signer of the Constitution, obtained his rank in the South Carolina militia. He was a lawyer, and Federalist member of Congress in 1797–1803. Miniature. *Lent by Miss Kate W. Rutledge.*

97. MRS. JOHN RUTLEDGE [1777–1852]. By Edward Greene Malbone [1777–1807]

Sarah Motte Smith, daughter of the Reverend Robert Smith, first Episcopal Bishop of South Carolina, married the son of John Rutledge the signer in 1791. Miniature. *Lent by Miss Kate W. Rutledge.*

98. BENJAMIN HARRISON [c. 1726–1791]. Artist unknown

This father of one President [No. 14] and great-grandfather of another began his public career in the Virginia House of Burgesses in 1749, and continued in it most of his life. He was, however, in the early Continental Congress, signed the Declaration of Independence, and was also governor of his state. He was an Antifederalist in the ratification convention. Miniature. *Lent by Mrs. Edith Harrison Taylor.*



142 OLIVER ELLSWORTH

180 ABRAHAM BALDWIN

99. SARAH LEE [1775–1837]. Artist unknown

This daughter of Richard Henry Lee [No. 199] was his seventh child. She married her second cousin, Edmund Jennings Lee [No. 100] about 1796. Miniature. *Lent by Mrs. David Milton French.*

100. EDMUND JENNINGS LEE [1772–1843]. Artist unknown

Edmund Jennings Lee was a much younger brother of Light Horse Harry Lee, and therefore an uncle of Robert E. Lee. He married his second cousin, Sarah Lee, the daughter of Richard Henry Lee [No. 199], about 1796. He was a prominent Episcopal layman. Miniature. *Lent by Mrs. David Milton French.*

101. JOHN FRANCIS MERCER [1759–1821]. By Robert Field [c. 1769–1819]

John Francis Mercer was an aide of General Charles Lee in the Continental Army, and later, as a militia officer, commanded a corps at the siege of Yorktown. He was in the Continental Congress (1783–84) from Virginia, then, moving to Maryland, a deputy to the Convention of 1787. He attended but briefly and continued his opposition in the state's ratification convention. Later he was in Congress and governor. Miniature. For portrait, see p. 813. *Lent by Mr. William R. Mercer.*

102. EMILIA GWINNETT [1741–1807]. Artist unknown

Emilia Gwinnett was the sister of Button Gwinnett, signer from Georgia of the Declaration of Independence, of whom there is no portrait. Silhouette. *Lent by Mr. Charles Francis Jenkins.*

103. CARTER BRAXTON [1736–1797]. Artist unknown

Carter Braxton began his political career in the colonial House of Burgesses of Virginia. He was in the Continental Congress in 1776, and a signer of the Declaration of Independence. His later service in the Virginia legislature was continuous for many years. Miniature. *Lent by Miss Annie M. Braxton.*

104. SILVER URN

This urn belonged to Samuel Chase [No. 16], the signer of the Declaration of Independence from Maryland. *Lent by Mrs. Herbert Seymour Howard.*

105. CUP AND SAUCER

This cup and saucer belonged to a set presented to George Washington [No. 209] by the Comte de Custine in 1782. The china was made on the count's estate near Paris. *Lent by Miss Christina L. Macomb and Miss Nannie R. Macomb.*

106. SILVER SALT CELLARS

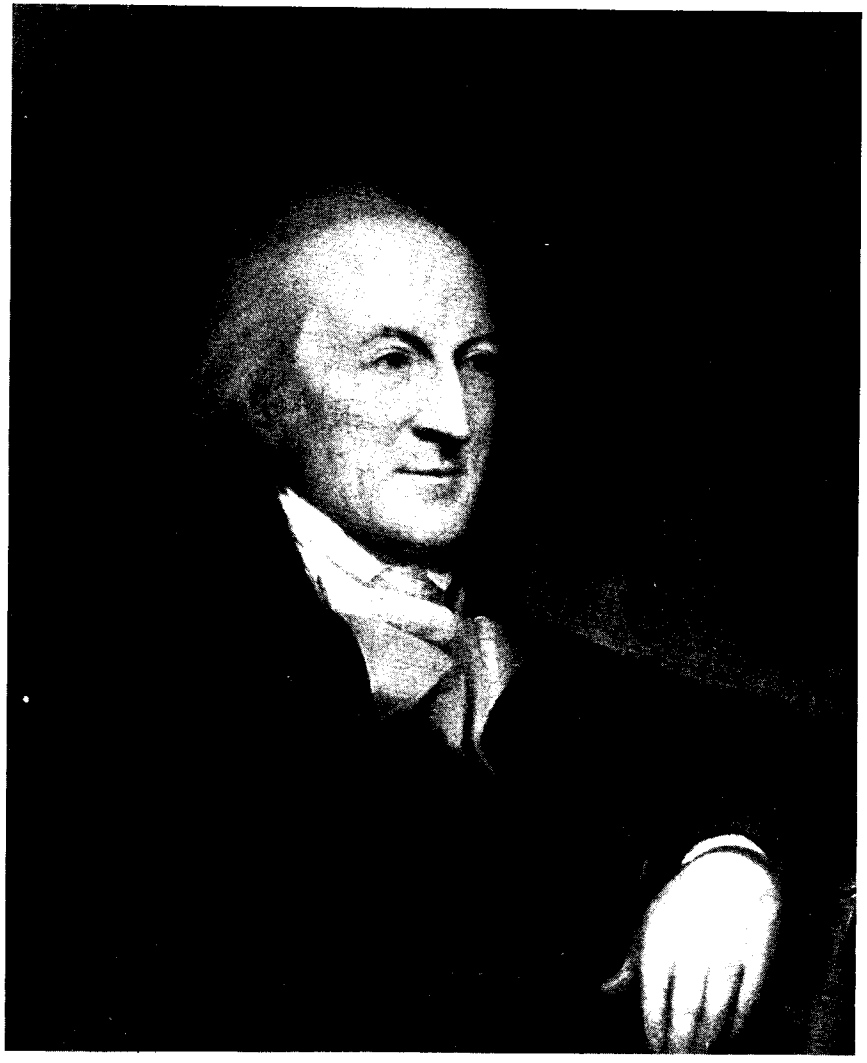
This pair of silver salt cellars was used and owned by Samuel Chase [No. 16], the signer of the Declaration of Independence. *Lent by Mrs. Herbert Seymour Howard.*

107. SILVER DRINKING CUP

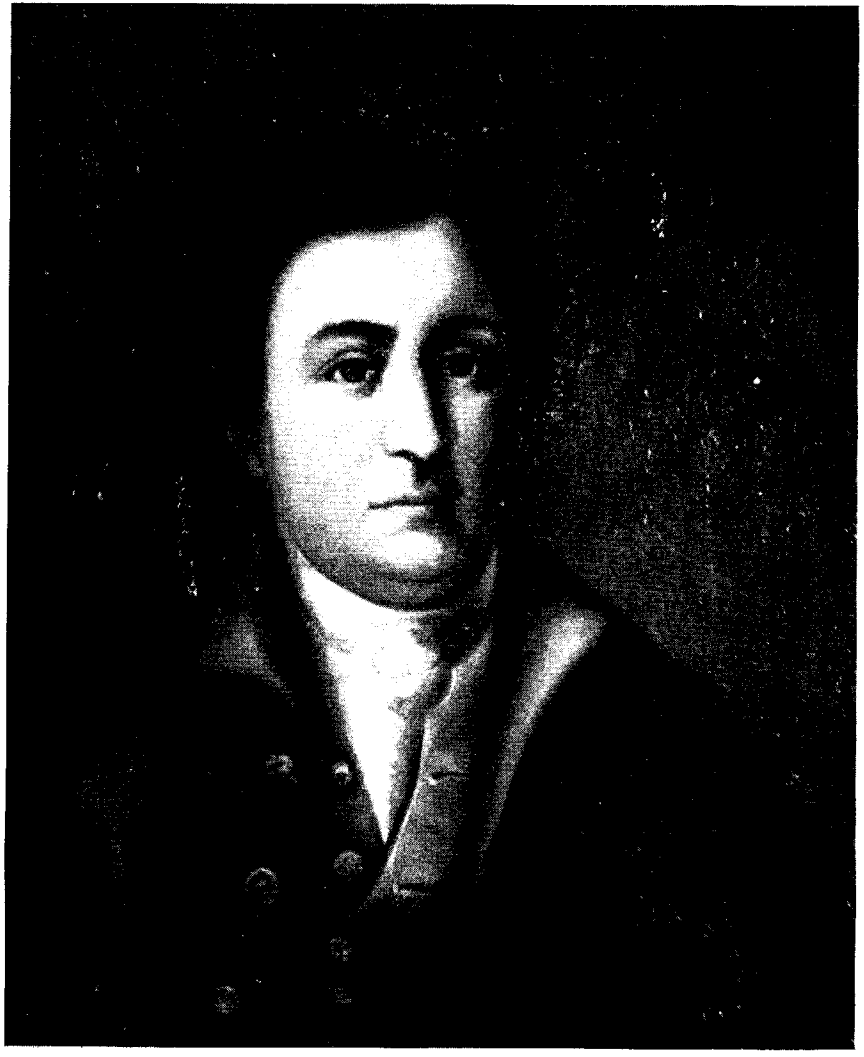
Thomas Jefferson [No. 176] was presented with this silver drinking cup by his intimate friend, George Wythe [No. 224]. This silverware is of a rare Italian make by L'Tellier. *Lent by Mrs. Harry R. Burke and Miss Ellen Coolidge Burke.*

108. SILVER URN

This silver urn belonged to John Langdon, signer of the Constitution, and his wife, Elizabeth Sherburne. *Lent by Mrs. John G. M. Stone.*



171 GEORGE CLYMER



202 EDMUND RANDOLPH

109. MRS. JOHN BLAIR [?–1792]. Artist unknown

The maiden name of the wife of John Blair [No. 110], the signer of the Constitution, was Jean Balfour. The artist of this portrait may have been Cosmo John Alexander. 35½″ x 27½″. For portrait, see p. 789. *Lent by Mr. H. K. D. Peachy.*

110. JOHN BLAIR [1732–1800]. Artist unknown

Blair, a grand-nephew of the founder of William and Mary College, began his public career as representative of the college in the Virginia House of Burgesses, and as a participator in the establishment of his state government. He was a lawyer, judge of the Virginia Court of Appeals, deputy to the Convention of 1787, and signer of the Constitution. In 1789 Washington appointed him as one of the first justices of the Supreme Court.

This pastel is somewhat similar to the work of William Williams [1759–1823]. 17½″ x 13½″. For portrait, see p. 787. *Lent by The Dr. Blair Spencer Estate.*

111. GEORGE WASHINGTON [1732–1799]. By Christian Gülager [1762–1827]

This portrait was made during the President's New England tour in 1789. Gülager made a sketch in Boston and had a sitting in Portsmouth. The portrait was intended for Faneuil Hall but was not accepted. 29″ x 24″. *Lent by The Massachusetts Historical Society.*

112. THOMAS LYNCH, JR. [1749–1779]. Artist unknown

Thomas Lynch, like his father, was a firm supporter of the cause of the colonies against the British oppression. Though instructed at Eton, Cambridge, and the Middle Temple at London, he preferred to be a planter rather than a lawyer. He also followed his father into politics and succeeded him in 1776 as delegate to the Continental Congress, voting for independence and signing the Declaration. Poor health forced him to resign soon after. He was lost at sea. 17¼″ x 12½″. *Lent by Mr. Charles Francis Jenkins.*

113. MARGARET MARIA LIVINGSTON [1783–1818]. By Edward Greene Malbone [1777–1807]

This daughter of Chancellor Robert R. Livingston [No. 218] and Mary Stevens married a third cousin, Robert L. Livingston [1775–1843] in 1799, who was one of the chancellor's private secretaries during the French mission. The other private secretary was Edward P. Livingston, also the chancellor's son-in-law, and a grandson of Philip Livingston [No. 9], signer of the Declaration of Independence, a brother of Christina Livingston [No. 167], and a third cousin of his wife, the chancellor's daughter Elizabeth. He was also second cousin of his brother-in-law, the above Robert L. Livingston. 12¾″ x 9½″. *Lent by The A. W. Mellon Educational and Charitable Trust.*

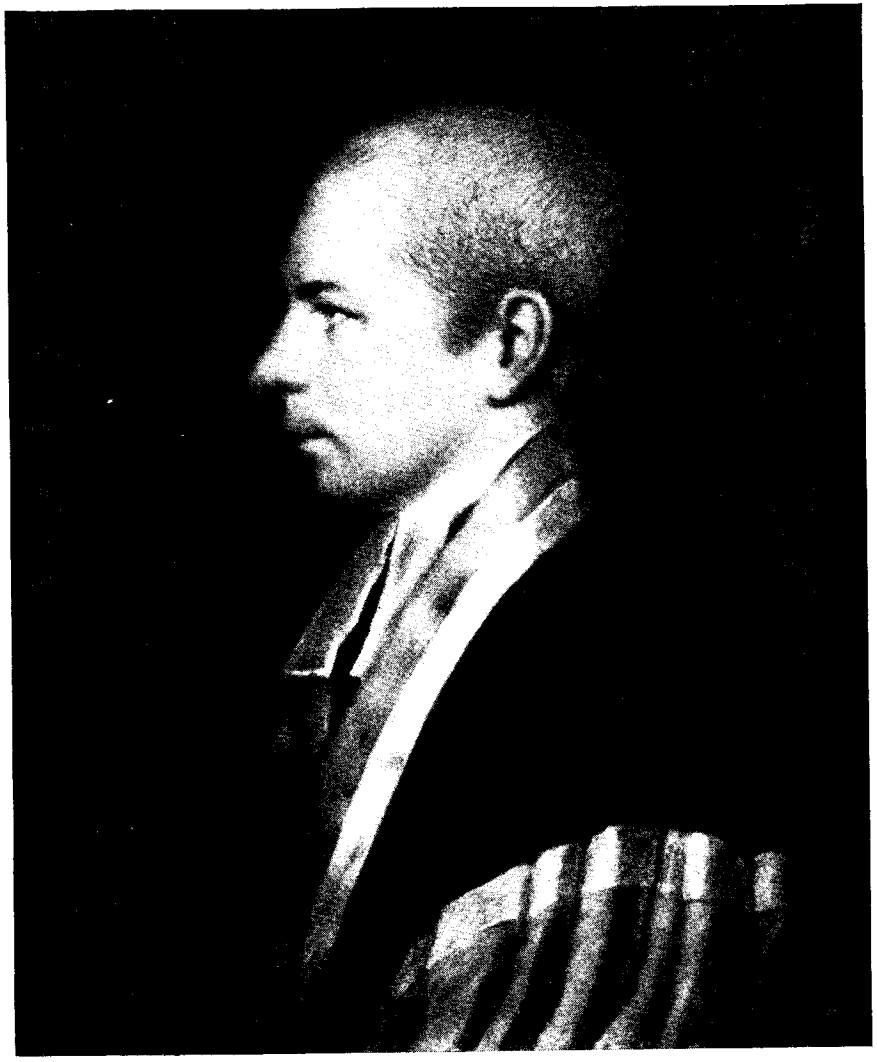
114. WILLIAM FLOYD [1734–1821]. By Ralph Earl [1751–1801]

William Floyd is chiefly remembered as a signer of the Declaration of Independence from New York. He was prevented from voting for the adoption of the Declaration, however, because of a lack of state instructions. He had a long and useful service in the Continental Congress from 1774 to 1777, and in 1779–83, where he was a committee worker rather than active in the sessions. He attended the First Congress under the Constitution. 47″ x 35½″. *Lent by Mrs. John T. Nichols.*

115. BENJAMIN FRANKLIN [1706–1790]. By Louis Carrogis de Carmontelle [1717–1806]

Several of the Franklin portraits, including this one, which was brought to this country in 1927 from a French collection, were painted during the years of his great service as commissioner and minister plenipotentiary in France, a service as necessary in the cabinet to the success of the Revolution as was Washington's in the field. The shrewd common sense of his diplomacy and his great popularity in France brought about the alliance, as well as

141 NATHANIEL GORHAM



146 WILLIAM PATERSON

the financial and military aid, without which the Revolution would have failed. Pastel, 12″ x 7½″. *Lent by The Hon. Herbert Hoover.*

116. THOMAS RUSSELL GERRY [1794–1845]. By Nathaniel Jocelyn [1796–1881]

Thomas Russell Gerry was the son of Elbridge Gerry [No. 173], signer of the Declaration of Independence and deputy to the Convention of 1787 from Massachusetts. He was graduated from Harvard in 1814, entered the navy immediately after, and resigned as lieutenant in 1833. Later his family was prominent in New York social life. *Lent by Mr. Thomas Gerry Townsend.*

117. JAMES GERRY [c. 1796–1854]. By Gilbert Stuart [1755–1828]

James Gerry, the son of Elbridge Gerry [No. 173], the signer of the Declaration of Independence, entered the navy in 1815, as had his brother Thomas [No. 116] the year before. He was lost at sea while in command of the sloop-of-war "Albany." 27″ x 22½″. *Lent by Mr. Thomas Gerry Townsend.*

118. MRS. CHARLES THOMSON [1728–1807]. Artist unknown

Hannah Harrison, the second wife of Charles Thomson [No. 120], secretary of the Continental Congress throughout its existence, married him in 1774 just before he began his service as secretary. She was an heiress with an estate, "Harriton," near Philadelphia, to which they retired after 1789. She was a cousin of Mrs. John Dickinson [No. 25]. 29″ x 24½″. *Lent Mrs. Paul W. Bartlett.*

119. MARY HOPKINSON MORGAN [1742–1785]. By Benjamin West [1738–1820]

Mrs. Morgan was the daughter of Thomas Hopkinson [No. 122] and sister of Francis Hopkinson [No. 169], the signer of the Declaration of Independence. She married Dr. John Morgan [1735–1789] in 1765. He was director general of hospitals during the Revolution, and a founder of the medical school of the University of Pennsylvania. 51″ x 37½″. *Lent by The National Collection of Fine Arts.*

120. CHARLES THOMSON [1729–1824]. Artist unknown

Throughout its fourteen years of rule, beginning on September 5, 1774, the Continental Congress had only one secretary, which position Charles Thomson held. He passed into the custody of President Washington the records of the old government, including the original Declaration of Independence, Articles of Confederation, and the Constitution, the three documents of our national history which justify the title "Signer" to those who placed their signatures on them. In appreciation of his unique services, the First United States Congress made him its messenger to notify Washington of his election as President. 29¼″ x 25″. *Lent by Mrs. Paul W. Bartlett.*

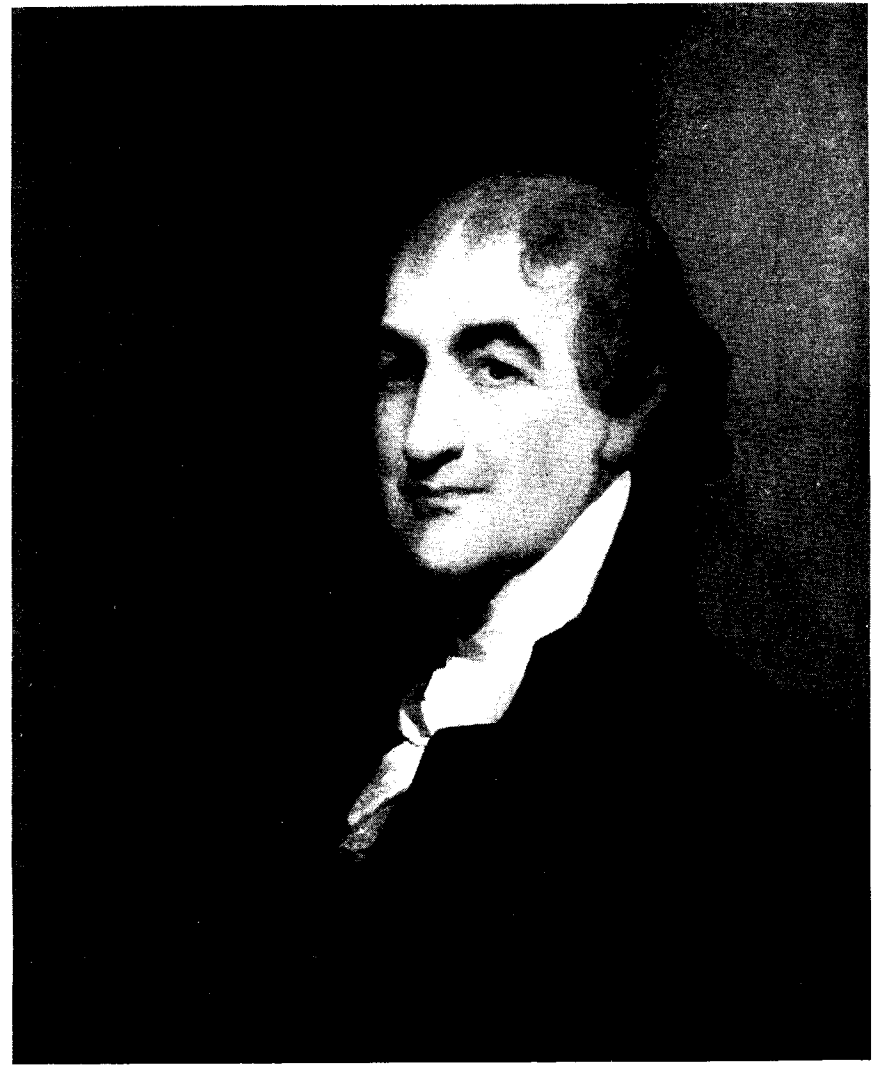
121. GEORGE MASON [1725–1792]. By D. W. Boudet. Early copy made from the original portrait by John Hesselius [1728–1778]

No other statesman of the Revolutionary period held so few official positions. Trained in public law, he never practised, but devoted himself to his plantation and to political science. He was a leader in the Virginia provincial conventions of 1775 and 1776, and the author of the state's bill of rights and much of her first constitution. He attended the Mt. Vernon conference in 1785 that was one of the origins of the Convention of 1787, at which he was an active deputy. He refused to sign the Constitution and opposed it in the ratification convention. 28¾″ x 24″. For portrait, see p. 815. *Lent by Mr. S. Cooper Dawson.*

122. THOMAS HOPKINSON [1709–1751]. By Robert Feke [1705–1750]

Thomas Hopkinson was of English birth and he came to Philadelphia about 1731. There he rose rapidly as a lawyer and judge, and was prominent in matters of electrical

159 WILLIAM SAMUEL JOHNSON



156 CALEB STRONG

experiments, social advancement, and education. His son, Francis [No. 169], was a signer of the Declaration of Independence, and a poet and musician; and his grandson, Joseph, was the author of "Hail, Columbia!" 48½″ x 39″. *Lent by The National Collection of Fine Arts.*

123. MRS. GEORGE MASON [1734–1773]. By D. W. Boudet. Early copy made from the original portrait by John Hesselius [1728–1778]

Anne, the daughter of William Eilbeck, a planter and merchant in Charles County, Maryland, married George Mason [No. 121] in 1750. 28¾″ x 24″. For portrait, see p. 793. *Lent by Mr. S. Cooper Dawson.*

124. MRS. NICHOLAS DAWSON [1839–1913]. By George P. A. Healy [1813–1894]

Virginia Cooper was the daughter of General Samuel Cooper, adjutant general of the Confederate Army, and Sarah Maria Mason, granddaughter of General John Mason [No. 34], and great-granddaughter of George Mason [No. 121], a deputy to the Convention of 1787 from Virginia. 26¼″ x 21½″. *Lent by Mr. Philip Dawson.*

125. JOHN MARSHALL [1755–1835]. By James Reid Lambdin [1807–1889]

John Marshall's fame rests upon his unparalleled service as chief justice of the United States and main founder of the American school of constitutional law in accordance with the principles which he shared with his friends, George Washington [No. 209] and Alexander Hamilton [No. 6]. A young officer of brief service in the Revolution, he had become a rising lawyer in Richmond when called to his first eminent public service as a lieutenant of Madison in the Virginia Ratification Convention. Later he became the Federalist leader in Virginia, served in the XYZ Mission, and was in Congress when John Adams made him secretary of state in 1800. One of Adams' last important acts was to make Marshall chief justice, which position he held for thirty-four years. 34¾″ x 27¾″. *Lent by The A. W. Mellon Educational and Charitable Trust.*

126. MRS. HECTOR SCOTT [1782?–1856]. Artist unknown

Juliet, daughter of Luther Martin, married a New York merchant. About 1836 the family moved to Detroit, where Mrs. Scott established a very successful and fashionable school, which was continued after her death by her daughters.

Faintly visible on the front of the pastel can be seen part of the artist's signature, John Vangen—(Vanderlyn?) 1838. *Lent by The Protestant Children's Home of Detroit.*

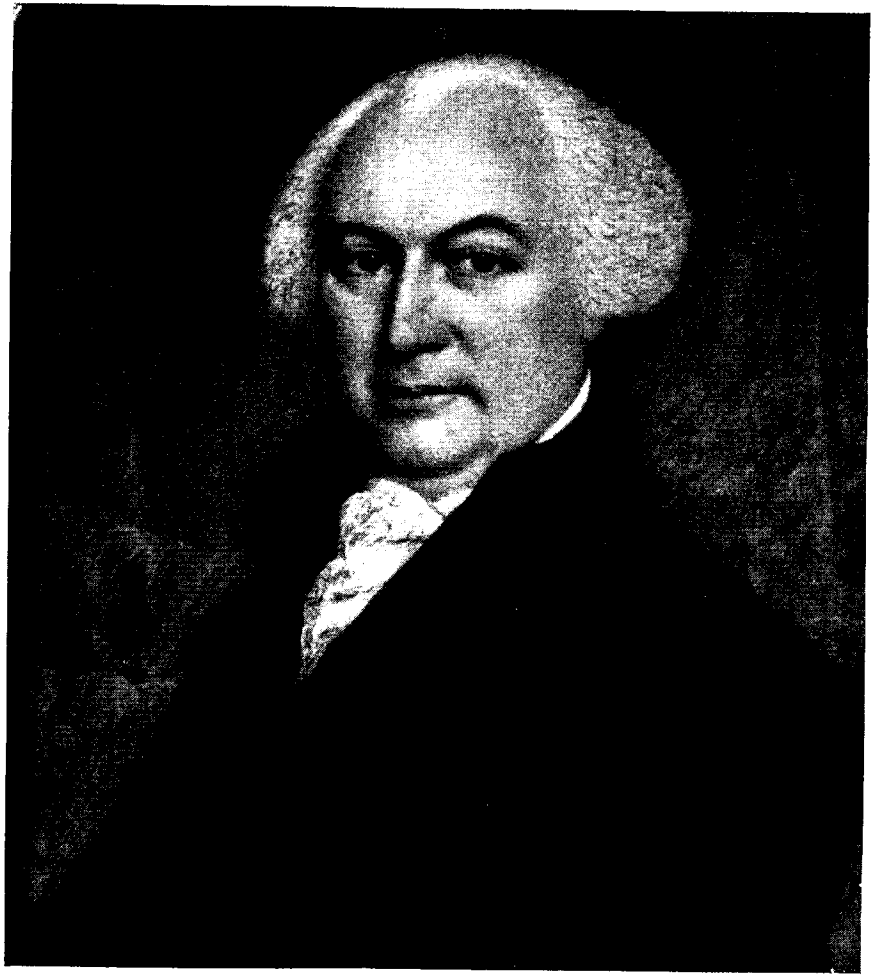
127. MARY RANDOLPH KEITH MARSHALL [1737–1809]. Artist unknown

Through this lady, his mother, Chief Justice John Marshall [No. 125] traced his descent to William Randolph, a great-great-grandfather, who was also the great-grandfather of Thomas Jefferson, and the progenitor of other famous Virginians, including Light Horse Harry Lee and his son, Robert E. Lee. 26″ x 21″. *Lent by Mr. William Marshall Bullitt.*

128. JAMES MADISON [1751–1836]. By Gilbert Stuart [1755–1828]

Political life was more a profession to Madison than to any of his contemporaries; it was his study as well as his career. He was first a Virginia legislator and then in the Continental Congress. He was constant in his urging of a more powerful national government, and he was a leader in the movement for the Constitutional Convention. Because he was the main author of the "Virginia Plan" which became the basis of the new Constitution, and because of his eminence in the Convention, he is known as the "Father of the Constitution." The notes of debates which he took are the chief source of our knowledge of the working of the Convention. He and Hamilton [No. 6] were outstanding leaders in the

148 WILLIAM RICHARDSON DAVIE



145 GOUVERNEUR MORRIS

ratification contest, not only as authors with Jay of *The Federalist*, but also as defenders of the document in their state ratification conventions. He was the Federalist floor leader of the First Congress, but sided with Jefferson [No. 176] in opposition to Washington's administration and the Hamiltonian principles which dominated it. He was secretary of state under Jefferson, whom he succeeded as President, 1809–17. After his two terms as President he returned to Virginia and lived in retirement until his death in 1836, being the last survivor of the Convention of 1787. 38½″ x 30½″. *Lent by Mr. Herbert L. Pratt.*

129. ANNA MARTHA SCOTT [1815?–1858]. Artist unknown

Daughter of Hector and Juliet (Martin) Scott [No. 126] and granddaughter of Luther Martin. Pastel. *Lent by the Protestant Children's Home of Detroit.*

130. JARED INGERSOLL [1749–1822]. By Charles Willson Peale [1741–1827]

Jared Ingersoll was abroad during part of the Revolution, and upon his return to Philadelphia he became prominent as a lawyer and an active advocate of a strong central government. Pennsylvania selected him as a deputy to the Convention of 1787. He signed the Constitution but took no part in the debates. In the campaign of 1812 he was the Federalist candidate for Vice President. 27½″ x 22½″. For portrait, see p. 789. *Lent by Mrs. Charles Edward Ingersoll.*

131. JOHN MARSHALL [1755–1835]. By John B. Martin [1797–1857]

John B. Martin was self-taught, and was primarily an engraver. He worked in Richmond, Virginia, and painted four portraits of the Chief Justice. The purchase of this one was authorized by Congress in 1890, $1,000 being appropriated for it. 29½″ x 24¼″. *Lent by The Supreme Court of The United States.*

132. MARY STOCKTON HUNTER [1761–1846]. Artist unknown

Richard Stockton, the father of Mrs. Hunter, was a New Jersey delegate to the Continental Congress who arrived just in time to vote for independence and become a Signer The daughter married the Reverend Andrew Hunter [1752–1823]. 28″ x 24″. *Lent by Mrs. L. Wardlaw Miles.*

133. BENJAMIN FRANKLIN [1706–1790]. By Joseph Wright [1756–1793]

This painting, like the pastel by Carmontelle [No. 115], belongs to the French period of Benjamin Franklin's career. Joseph Wright went to Paris in 1782 and there painted the likeness from life. This is a replica. It resembles the portrait of Franklin by the French artist Duplessis. 30″ x 24″. *Lent by The Corcoran Gallery of Art.*

134. BENJAMIN FRANKLIN [1706–1790]. Needlework picture by Mrs. Crosby K. Haines

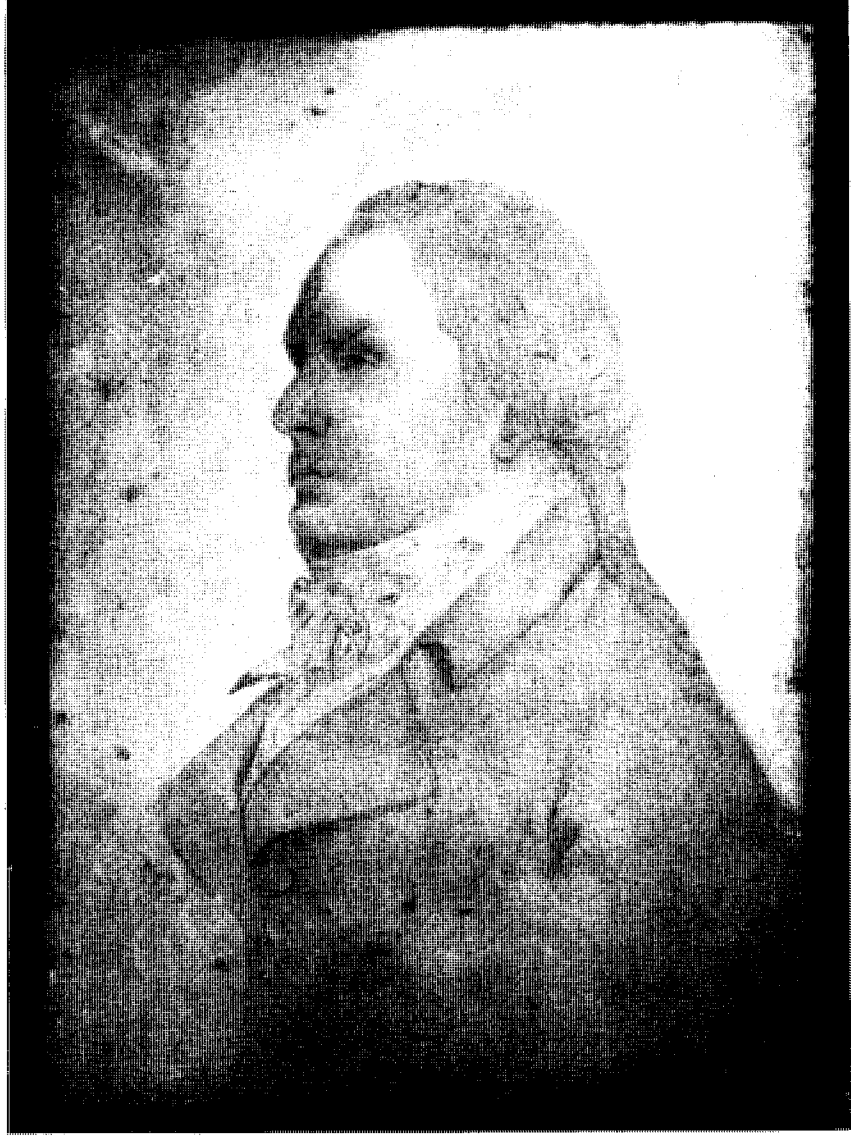
This was worked in Lowell, Massachusetts, in 1850–1851. *Lent by The New Hampshire Historical Society.*

135. BENJAMIN FRANKLIN [1706–1790]. By Robert Feke [1705–1750]

Franklin was about forty-two years of age when this first of his known portraits was painted. He was already a chief citizen of Pennsylvania, and known throughout the colonies; but he had not as yet acquired the foreign reputation that made him later the first American to make a real impression on Europe. 49½″ x 39¼″. *Lent by Harvard University.*

136. MRS. BENJAMIN FRANKLIN [1705–1774]. By Matthew Pratt [1734–1805]

Deborah Read became the wife of Benjamin Franklin [No. 137] by common-law marriage in 1730. Distinctly a homebody, she did not accompany her famous husband on either



174 NICHOLAS GILMAN

173 ELBRIDGE GERRY

of his long agencies in England, and died when he had been absent ten years on the second one. 29″ x 24.″ *Lent by Miss Helen H. Hodge.*

137. BENJAMIN FRANKLIN [1706–1790]. By Charles Willson Peale [1741–1827].

Except for Benjamin Franklin, scarcely any of the statesmen of the formative period became prominent before the pre-Revolutionary struggle; even Washington's reputation before that had been essentially a military one. Franklin was the connecting link here, just as Rufus King [No. 26] was between the first and second generations of national leaders. Printer, famous throughout the colonies for his Poor Richard's Almanack, leader of the popular party in Pennsylvania politics, philanthropist, scientist, and colonial unionist, he was from 1764 to 1775 the agent of Pennsylvania and other colonies at London, and the spokesman there of the American cause. Returning with the outbreak of hostilities, he entered the Continental Congress in 1775 and remained until sent to France as envoy in October 1776. He was of the committee to frame the Declaration of Independence, and also prominent in planning the Articles of Confederation. In France, he secured the all-essential alliance and military and financial aid, and negotiated the treaty of peace with Great Britain. Returning to America, he crowned his fame by service as president of his state, and as the sage of the Convention of 1787, being one of the six men who signed both the Declaration of Independence and the Constitution.

This portrait was made at the time of the convention. 35″ x 27″. For portrait, see p. 791. *Lent by The Historical Society of Pennsylvania.*

138. PLASTER STUDY OF BENJAMIN FRANKLIN [1706–1790]. By Paul Wayland Bartlett [1865–1925]

This is a plaster sketch of a heroic statue of Benjamin Franklin which was to have been placed in several of the important publishing centers in our country. A modified working model was finished, but the untimely death of the artist put an end to the project. *Lent by Mrs. Paul W. Bartlett.*

139. JAMES McHENRY [1753–1816]. By C. B. F. de Saint-Mémin [1770–1852]

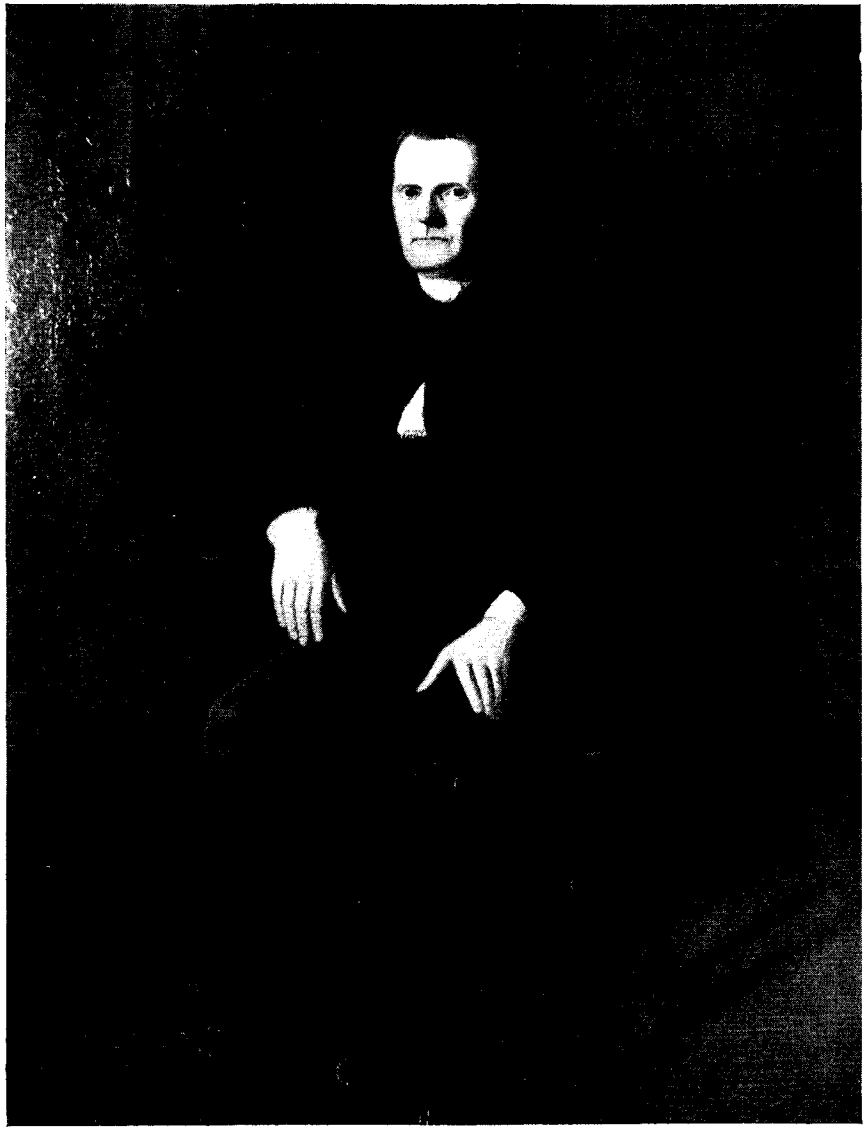
James McHenry was educated as a physician but the best years of his life were devoted to public affairs. After army service, he became a delegate to the Continental Congress, and was a deputy for Maryland in the Convention of 1787. Although present only part of the time, he kept valuable notes, approved and signed the Constitution, and upheld it in the ratification contest of his state. Washington made him secretary of war in 1796, and Adams continued him in the office until 1800. 19½″ x 13¾″. For portrait, see p. 791. *Lent by Mrs. James Bruce.*

140. CONGRESS VOTING INDEPENDENCE. By Robert Edge Pine [1730–1788], and finished by Edward Savage [1761–1817]

Pine's object in coming to this country from England in 1784 was to paint a series of historical canvases portraying the principal events of the Revolution, as well as portraits of the eminent men of the new republic. So far as is known the only canvas begun by Pine to carry out his purpose was "Congress voting Independence, July 4, 1776." This was unfinished at his death and Savage completed and engraved it. As Pine occupied a room in the State House, where the Declaration was adopted, this canvas, in the architectural details of the room, presents the background of the event probably more accurately than Trumbull's. 19″ x 26¼′. *Lent by The Historical Society of Pennsylvania.*

141. NATHANIEL GORHAM [1738–1796]. By James Sharples [c. 1751–1811]

Gorham was a merchant and a member of the Massachusetts constitutional convention and legislature. He sat in the Continental Congress, and was its president in 1786. As a



191 ROGER SHERMAN

219 CHARLES PINCKNEY

member of the Convention of 1787 he presided over the committee of the whole, was active in debate and committee work in support of a strong government, and signed the Constitution, which he advocated in his state's ratification convention. Pastel. For portrait, see p. 803. *Lent by Miss Louisa B. Stevens.*

142. OLIVER ELLSWORTH [1745–1807]. By James Sharples [c. 1751–1811]

This portrait would appear from its vitality and ruggedness of expression and handling to be undoubtedly done from life, and its history indicates that it passed immediately into the possession of the Ellsworth family. Pastel, 9″ x 7″. For portrait, see p. 799. *Lent by The Ellsworth Homestead, Connecticut D. A. R.*

143. WAX PORTRAIT OF GEORGE WASHINGTON [1732–1799]

Signed and dated, "G. Rouse Sclp. Gen. George Washington 1797." 10½″ x 8½″. *Lent by Mrs. Walter E. Edge.*

144. GEORGE WASHINGTON [1732–1799]. By James Sharples [c.1751–1811]

It has been stated that this portrait was given to James McHenry by Washington, and passed to the Hoffman family. Pastel, 9″ x 7″. *Lent by Mr. Luke Vincent Lockwood.*

145. GOUVERNEUR MORRIS [1752–1816]. By James Sharples [c. 1751–1811]

Morris began his political career in the New York Provincial Congress, whence he advanced to the Continental Congress, 1778–79. There he did notable service and signed the Articles of Confederation. He transferred his residence to Pennsylvania and became the assistant superintendent of finance under Robert Morris [No. 152, no relative], and sat for Pennsylvania as a delegate to the Pheadelphia Convention of 1787. He was active in the debate on the promotion of measures for an efficient government, and his outstanding service is the responsibility for the final wording of the Constitution, which in its conciseness and lucidity is one of the best state papers of history. He was in Europe for many years, partly as Washington's unofficial agent, and partly as minister to France during the stirring days of the French Revolution. His political career ended with a brief term as senator from New York.

Sharples and his wife Ellen made several pastel portraits of Morris. It is almost impossible, however, to determine which one is the original. 9½″ x 7¼″. For portrait, see p. 807. *Lent by Mr. John S. Turnbull.*

146. WILLIAM PATERSON [1745–1806]. By James Sharples [c. 1751–1811]

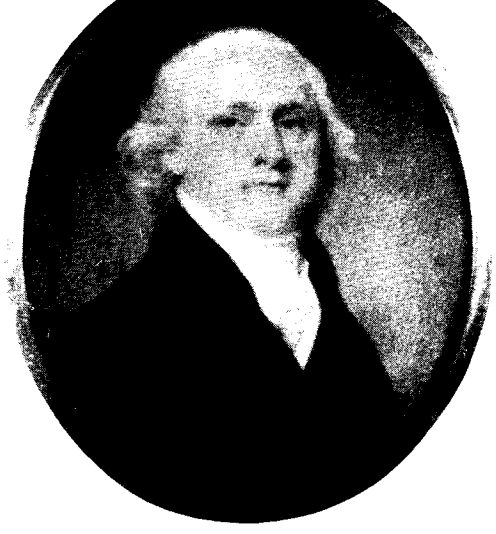
William Paterson, a lawyer, was one of the eight deputies in the Convention of 1787 who were born abroad. His outstanding service in the convention was to introduce the "New Jersey Plan" of the small-state delegations. He left the convention and returned only to sign the Constitution. He was a first New Jersey senator, but resigned to become governor of his state. In 1793 Washington made him a justice of the Supreme Court. Pastel, 9″ x 7″. For portrait, see p. 803. *Lent by Mr. J. Lawrence Boggs.*

147. OLIVER ELLSWORTH [1745–1807]. By James Sharples [c. 1751–1811]

Ellsworth began his national career by membership in the Continental Congress, 1777–1783. Although prominent in the Convention of 1787, he left before the signing, but strongly advocated adoption during the ratification contest in his state. He was a senator from Connecticut from 1789 until appointed chief justice of the United States in 1796, and was

94 WILLIAM BLOUNT

81 MRS. JAMES (DOLLY) MADISON



101 JOHN FRANCIS MERCER

83 SARAH BROOM

85 ANN BROOM

the main author of the act establishing the national judiciary. He went to France on a special mission, and resigned from the bench before his return in 1801.

The probability is that Sharples executed this replica immediately after completing No. 142. Pastel, 9¾″ x 7¾″. *Lent by Mr. Roland Gray.*

148. WILLIAM RICHARDSON DAVIE [1756–1820]. By Giles Louis Chrétien [1754–1811]

A consistent Federalist, Davie began his career by brilliant service in the southern campaign of the Revolution and closed it by declining Madison's offer of a major generalship in the War of 1812. Between these two events, he practised law, served in the North Carolina legislature and in the Convention of 1787, was governor of North Carolina, envoy abroad, and a founder of the University of North Carolina. Although he left the convention in August, he was prominent in the ratification contest in his state. 17½″ x 14″, oval. For portrait, see p. 807. *Lent by The University of North Carolina.*

149. MOUNT VERNON. By J. Weiss

This oil painting of Washington's home is signed by the artist and dated 1797, the year Washington resumed his residence at the estate after serving his second term as President of the United States.

Almost nothing is known about this artist except that he painted several pictures of southern estates. *Lent by Mrs. Breckinridge Long.*

150. OLIVER WOLCOTT, JR. [1760–1833]. By Gilbert Stuart [1755–1828]

Oliver Wolcott's father was prominent in Connecticut during the Revolution, a signer of the Declaration of Independence, active as a state brigadier general, and lieutenant governor. He was governor when he died. The son was also governor, but is nationally eminent as the second secretary of the treasury, succeeding Hamilton and carrying out his financial policies as well as following him politically. 27″ x 23″. *Lent by The Gallery of Fine Arts, Yale University.*

151. MRS. SAMUEL CHASE [1743–c.1778] AND HER DAUGHTERS. By Charles Willson Peale [1741–1827]

Anne Baldwin married Samuel Chase [No. 16] of Maryland, signer of the Declaration of Independence, in 1762, by whom she had two sons and two daughters. 48½″ x 36″. *Lent by The Maryland Historical Society.*

152. ROBERT MORRIS [1734–1806]. By Gilbert Stuart [1755–1828]

Robert Morris was one of the eight members of the Convention of 1787 who were not native Americans. A power in the mercantile life of Philadelphia, he was yet active in the preliminary resistance to the British demands. His financial ability was a mainstay of the Revolutionary cause both in and out of the Continental Congress. He opposed independence, but signed the Declaration, and later the Articles of Confederation. When the Confederation was organized he became superintendent of finance; but his reforms were hampered through the weakness of the instruments with which he had to work, and he resigned in 1784. Although he was an inactive deputy to the Convention of 1787, he signed the Constitution, being one of two who endorsed the three great documents. He was one of his state's first senators. 28½″ x 23½″. For portrait, see p. 795. *Lent by Col. Robert Morris.*

153. HESTER MORRIS [1774–1817] AND MARIA MORRIS [1779–1852]. By Gilbert Stuart [1755–1828]

Hester and Maria Morris were the daughters of Robert Morris [No. 152] and of Mary White, sister of Bishop William White. Hester married James Markham Marshall [1764–1848], brother of Chief Justice John Marshall, [No. 125] in 1795. He was a judge in the

121 GEORGE MASON

92 JAMES WILSON

District of Columbia, 1801–03. Maria married Henry Nixon [1776–1840] in 1802. His father, John Nixon, read the Declaration of Independence at the Philadelphia celebration on July 8, 1776. Both the father and son were president of the Bank of North America, which Robert Morris founded. 36½″ x 50″. *Lent by Col. Robert Morris.*

154. MRS. ROBERT MORRIS [1749–1827]. By Gilbert Stuart [1755–1828]

Mary White, sister of Bishop William White of Philadelphia, married Robert Morris [No. 152] in 1769. Three of their seven children, Robert [No. 62] and Hester and Maria [No. 153], are shown here. The position of her husband and brother made her preeminent in Philadelphia society, and she was a close friend of Mrs. Washington. Only the face of this picture is finished. 26″ x 21″. For portrait, see p. 793. *Lent by The New York Public Library.*

155. SAMUEL CHASE [1741–1811]. By Charles Willson Peale [1741–1827]

Peale in 1773 painted a portrait of Samuel Chase, which is probably this one, and he made a copy in 1818. No. 16 shows Chase as an older man. 48″ x 35″. *Lent by The Maryland Historical Society.*

156. CALEB STRONG [1745–1819]. By Gilbert Stuart [1755–1828]

Until appointed a deputy to the Convention of 1787, Strong's duties had been within Massachusetts, a Federalist from the radical western section. He took no prominent part in the proceedings of the convention and left it in August, but he had shown his advocacy of an efficient government. He was a leader for ratification by his state and did good service as a Federalist senator until 1796. He was governor 1800–07, and again in 1812–16, when he opposed the War of 1812. 25¾″ x 21¼″. For portrait, see p. 805. *Lent by Mr. Frederick S. Moseley.*

157. WILLIAM FEW [1748–1828]. By Carl Ludwig Brandt [1831–1905] after John Paradise [1785–1833]

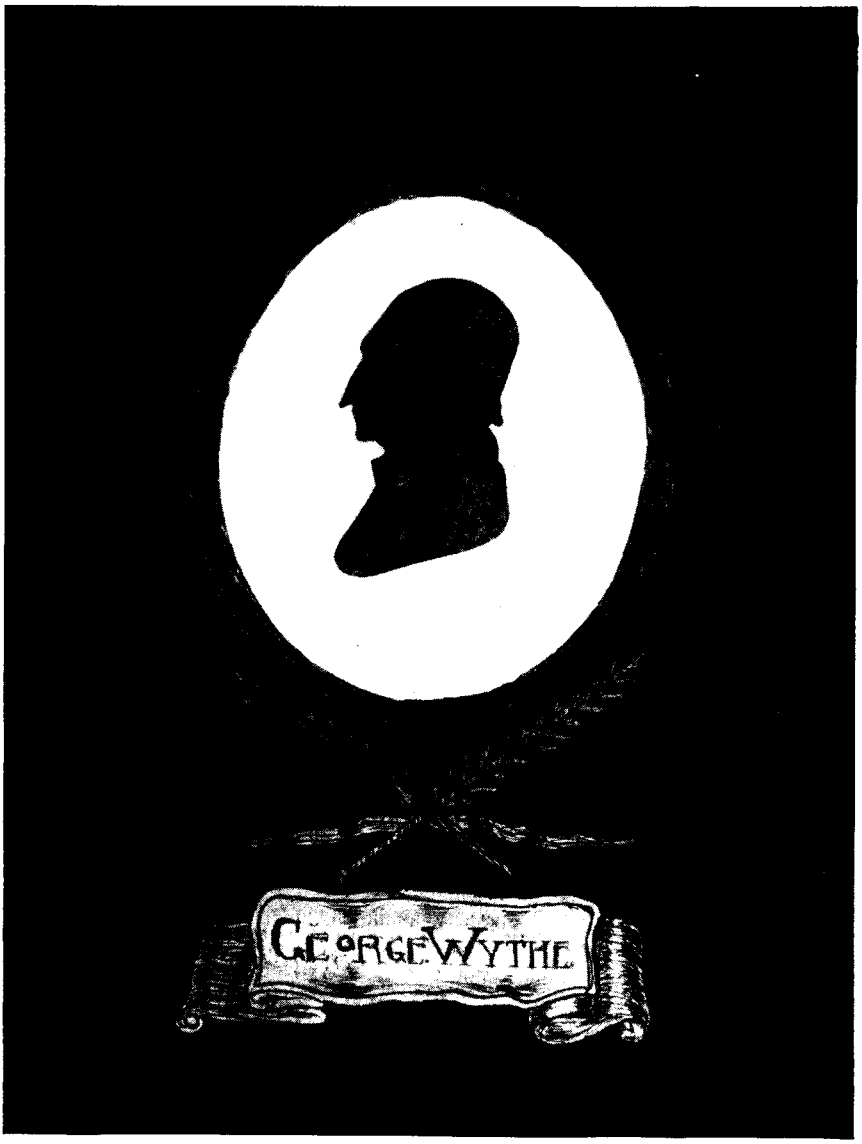
The migratory instinct of Americans is well illustrated in William Few's career. His father, a Quaker, moved from Pennsylvania to Maryland, where he married a Catholic. He later became a Methodist, moved to North Carolina and finally to Georgia. William Few was born in Maryland, became a colonel during the Revolution and was a delegate to the Continental Congress. He was one of Georgia's two signers of the Constitution and he was an advocate in the convention of a real national government. He was also a member of the ratification convention of his state and one of her first senators. He finished his Georgia career as a state judge. He then moved to New York City, where he became a legislator again, inspector of state prisons, alderman, and president of a bank. 26¼″ x 21½″, oval. For portrait, see p. 797. *Lent by The New York Eye and Ear Infirmary.*

158. WILLIAM FEW [1748–1828]. Artist unknown

Not long ago this portrait was discovered in an antique shop in Washington, D. C., and has been accepted by the University of Georgia as a portrait of William Few. 29″ x 24½″. *Lent by The University of Georgia.*

159. WILLIAM SAMUEL JOHNSON [1727–1819]. By John Wesley Jarvis [1781–1839]

William Samuel Johnson was living in retirement in his native town of Stratford, Connecticut, when this picture was painted in 1814. Johnson's last eminent service, that of first president of Columbia College, ended with his retirement in 1800. His father was the first president of King's College, which name was changed to Columbia after the Revolution. 33¼″ x 26½″. For portrait, see p. 805. *Lent by Columbia University.*



224 GEORGE WYTHE

160. "SIGNING OF THE CONSTITUTION." By Junius Brutus Stearns [1810–1885]

This painting, signed "Stearns 1856," was exhibited at the Metropolitan Opera House during the loan exhibit in 1889, in commemoration of the Centennial of the Inauguration of George Washington as President of the United States.

President Roosevelt selected this painting as the basis for the engraving of the special United States three-cent stamp issued on September 17, 1937, for the 150th Anniversary of the Signing of the Consitution. *Lent by a Private Collector, Courtesy of the Robert Fridenberg Galleries, New York City.*

161. WILLIAM SAMUEL JOHNSON [1727–1819]. By Gilbert Stuart [1755–1828]

Johnson, a Yale graduate and lawyer, was in the Connecticut colonial legislature and was colonial agent in England, where he received the Doctor of Laws degree from Oxford University. His lukewarmness toward the Revolutionary movement brought him under suspicion at the time, but his eminence sent him to the Convention of 1787. There he was a leader in the movement for the protection of small states which resulted in the Connecticut Compromise, the adoption of which made him an ardent Federalist. He was a member of the committee of style, which was largely responsible for the wording of the Constitution. He was made President of Columbia College in 1787 and was one of Connecticut's first senators (1789–91). 35½″ x 27½″. *Lent by Mrs. Jonathan Bulkley.*

162. THOMAS JEFFERSON [1743–1826]. By Thomas Sully [1783–1872]

This portrait, purchased by the government in 1874, represents Thomas Jefferson in his old age. He was distressed by financial losses, but was nevertheless cheered by the knowledge that the democratic principles as set forth in the Declaration of Independence, of which he was the protagonist, had become permanently a fundamental element of the American polity. When he and John Adams died on July 4, 1826, only Charles Carroll [No. 19] remained alive of the signers of the Declaration of Independence, and Carroll had not voted for its adoption.

This replica is probably the one that the artist painted in 1856 for his own collection, after the original he made in 1821 at Monticello. 28½″ x 23½″. *Lent by The United States Government.*

163. THOMAS HEYWARD, JR. [1746–1809]. By Jeremiah Theüs [1719–1774]

Like members of other wealthy plantation families in South Carolina, Thomas Heyward was prepared at the Middle Temple of London for a legal career. He became absorbed in Revolution politics on his return from England and was made a member of the Continental Congress in time to vote for the Declaration of Independence, which he signed. 29″ x 24″. *Lent by Mrs. Alice Huger Hawkins.*

164. DANIEL JENIFER [1727–1795]. Attributed to John Hesselius [1728–1778]

The subject of this portrait was the brother of Daniel of St. Thomas Jenifer [No. 172], the signer of the Constitution. He was a county judge in Maryland, and was commonly called Squire Jenifer. 48″ x 38″. *Lent by Mrs. Lillie P. C. Mitchell.*

165. WILLIAM PACA [1740–1799]. By Charles Willson Peale [1741–1827]

William Paca received his legal training in Annapolis, Maryland, and at the Middle Temple in London. His career began in the Maryland legislature at twenty-eight years of age, acting in opposition to the policy of the Proprietary, and later to British rule. He entered the Continental Congress in 1774, signed the Declaration of Independence, and remained in active service until 1779. He was chief justice of the supreme court of Mary-

land, third governor of the state, and a member of the ratification convention. Washington made him district judge for Maryland. 27¾″ x 23″. *Lent by The State of Maryland.*

166. JAMES HOPKINSON [1769–1775]. By Francis Hopkinson [1737–1791]

Several of the portraits by Hopkinson have survived, including that of himself [No. 169] and this one of his infant son. Pastel, 16¾″ x 12¾″. *Lent by The Maryland Historical Society.*

167. CHRISTINA LIVINGSTON [1774–1841]. By C. B. F. de Saint-Mémin [1770–1852]

This granddaughter of Philip Livingston [No. 9], signer of the Declaration of Independence, was the daughter of Philip P. Livingston and Sarah Johnson. This portrait was made after she married John Navarre Macomb in 1797. 19″ x 14″, oval. *Lent by Miss Christina L. Macomb and Miss Nannie R. Macomb.*

168. HENRY LAURENS [1724–1792]. By John Singleton Copley [1738–1815]

This portrait, like No. 213, was painted while Laurens was in England toward the end of the Revolution. Mrs. Bagwell of Ireland sold it to the late T. B. Clark in 1920, from whose estate the late Honorable Andrew W. Mellon obtained it. 53½″ x 40″. *Lent by The A. W. Mellon Educational and Charitable Trust.*

169. FRANCIS HOPKINSON [1737–1791]. Self portrait

Francis Hopkinson was one of the most versatile of the men prominent during the Revolution period, as a lawyer, statesman, artist, poet, musician, author, and man of general culture. His songs, poems, and satires had made him well known previous to the Revolution. He was appointed as one of the New Jersey delegates to the Continental Congress in time to vote for and sign the Declaration of Independence. He was active in the cause of the new Constitution, and his poem of "The New Roof" became a veritable theme song of the ratification contest. He was director of Philadelphia's great celebration of July 4, 1788. Washington appointed him district judge for Pennsylvania.

Hopkinson made this pastel of himself from a portrait by Pine. *Lent by The Maryland Historical Society.*

170. CHARLES CARROLL OF CARROLLTON [1737–1832]. By C. B. F. de Saint-Mémin [1770–1852]

Notes and engravings left by the artist show that he drew this portrait of Carroll, the signer of the Declaration of Independence from Maryland, in 1804, four years after Carroll had retired from public life. It is the only profile life portrait of the Signer known to exist, all the other paintings of him are full face, concealing his weakest feature, his chin. 20¼″ x 14½″. *Lent by The Maryland Historical Society.*

171. GEORGE CLYMER [1739–1813]. By Charles Willson Peale [1741–1827]

George Clymer was one of the six men who signed both the Declaration of Independence and the Constitution. Like Robert Morris [No. 152], another Philadelphia merchant, he was an early and ardent patriot. Although not a member of the Continental Congress until after the adoption of the Declaration of Independence, he signed it with the others in August. His attendance in Congress was useful, especially on boards and committees. His financial ability was particularly valuable in the Convention of 1787 and during his term in the First House of Representatives. 27″ x 21¾″. For portrait, see p. 801. *Lent by The Pennsylvania Academy of Fine Arts.*

172. DANIEL OF ST. THOMAS JENIFER [1723–1790]. Attributed to John Hesselius [1728–1778]

Although he was an agent of the Maryland Proprietary, Jenifer took up the Revolutionary cause actively, and was a friend of George Washington. His service as a member of

the Continental Congress began in 1779 and continued until 1782. In 1785 he represented Maryland as a special commissioner to settle with Virginia the jurisdiction and control of these two states over the Potomac River navigation. This meeting was one of the preliminaries of the Convention of 1787. He attended the convention as a deputy from Maryland and supported the plan for a more perfect union. He signed the Constitution. 48″ x 38″. For portrait, see p. 797. *Lent by Mrs. Lillie P. C. Mitchell.*

173. ELBRIDGE GERRY [1744–1814]. Artist unknown

This sepia portrait of Gerry was drawn after the original by John Vanderlyn, which he made in 1798, while he was a young American artist studying in Paris and Gerry was a member of the XYZ Mission there.

Had Gerry seen fit to sign the Constitution he would have shared with Roger Sherman [No. 194] and Robert Morris [No. 152] the honor of having placed his signature on all three of the fundamental documents of early American government. He was an early follower of Samuel Adams [No. 22], who was his colleague in the General Court of Massachusetts and in the Continental Congress. In the Convention of 1787 he was prominent but changeable in his attitude and continued in opposition during the ratification contest. He was a representative in Congress for four years, a member of the famous XYZ Mission, and then, as a supporter of Jefferson he became governor of his state, and finally Vice President at the time of his death. 6½″x 4½″. For portrait, see p. 809. *Lent by Mr. Thomas Gerry Townsend Phillips.*

174. NICHOLAS GILMAN [1755–1814]. Artist unknown

Nicholas Gilman is one of the few prominent men of the period of the formation of the Constitution who seem to have had no regular occupation. He served in the Revolutionary Army and then took up local politics. Belatedly, New Hampshire sent him as a delegate to the Convention of 1787, where he took his seat two months after the session began and after most of the problems had been solved. He was a signer and a strong supporter of the Constitution during the ratification contest. He became one of New Hampshire's first representatives in Congress and later a senator. 7½″ x 5½″. For portrait, see p. 809. *Lent by Mrs. Winthrop Whitney Adams.*

175. MRS. ALEXANDER HAMILTON [1757–1854]. By Martin

This drawing of Mrs. Hamilton made in 1851 was that of the only surviving "great lady" of the first period of our national history. Mrs. Madison, who had shared the honors with her for many years, had died in 1849. 24″ x 18″, oval. *Courtesy of The Museum of the City of New York.*

176. THOMAS JEFFERSON [1743–1826]. By Robert Field [c. 1769–1819]

This is an unfinished water color on paper probably painted in 1797 in Philadelphia.

Jefferson's membership in the Virginia House of Burgesses from 1769, and prominence in the Provincial Convention, made natural his appointment to the committee of the Continental Congress to draft the Declaration of Independence. After being governor of Virginia, he was sent to France by Congress in 1784. He remained there until the end of 1789, which absence precluded his participation in the formation of the Constitution. He was secretary of state under Washington until 1794, Vice President under Adams, and the third President of the United States. He lived thereafter for a quarter of a century at Monticello, and was recognized as the political sage of the period. He and John Adams died on the fiftieth anniversary of the adoption of the Declaration of Independence. 8¾″ x 13″. *Lent by The New York Historical Society.*

177. JOSIAH BARTLETT MEMORIAL

This is a memorial painting in water color in memory of Josiah Bartlett [1801–1802], the grandson of Josiah Bartlett [No. 178], the signer of the Declaration of Independence. *Lent by The New Hampshire Historical Society.*

178. JOSIAH BARTLETT [1729–1795]. By John Trumbull [1756–1843]

Josiah Bartlett, a New Hampshire physician, was a member of the Continental Congress, 1774–76 and 1778–79. He signed both the Declaration of Independence and the Articles of Confederation. He was chief justice of his state, a member of the ratification convention, and later governor. Pencil drawing. *Lent by The New Hampshire Historical Society.*

179. PRINTED REPORT OF THE COMMITTEE OF STYLE

These four sheets are the printed report of the Committee of Style and Arrangement, of the Convention, with Abraham Baldwin's manuscript notes made on the floor of the Convention of the last-minute changes which fixed the final form of the Constitution of the United States. Several other copies of this printed report with emendations and marginal notes have survived, including Washington's, Brearley's, and Madison's. *Lent by The Georgia Historical Society.*

180. ABRAHAM BALDWIN [1754–1807]. By Emanuel Leutze [1816–1868]

Abraham Baldwin was born and educated in Connecticut, but his political service was in and from Georgia. He was a clergyman, tutor at Yale, an army chaplain, a lawyer in the South, founder and first president of the University of Georgia, and originator of the educational system of that state. His public career began in the legislature, then he was in the Continental Congress, a member of the Convention of 1787, and a signer of the Constitution. He was a representative and senator from Georgia from the beginning of the new government until his death. Sepia drawing, 9″ x 7″. For portrait, see p. 799. *Lent by The Historical Society of Pennsylvania.*

181. GUNNING BEDFORD, JR. [1747–1812]. Attributed to Charles Willson Peale]1741–1827]

Gunning Bedford, Jr., was a classmate of James Madison at the College of New Jersey, now Princeton University, and served with him in the Continental Congress and as a member of the Annapolis Convention. Delaware also chose him as a deputy to the Convention of 1787 and as a member of the ratification convention. Convinced by the Connecticut Compromise that the small states would prosper under the new government, he gave it active support and signed the Constitution. Washington appointed him district judge for Delaware. 34¼″ x 26¼″. *Lent by The United States Government.*

182. GUNNING BEDFORD, SR. [1720–1802]. By Charles Willson Peale [1741–1827]

The father of Gunning Bedford, Jr. [No. 181], signer of the Constitution, was an architect in Philadelphia, and a captain during the French and Indian War. He held the offices of commissioner of taxes, measurer of grains, and alderman of the city. He erected the triumphal arch for the ratification celebration in Philadelphia on July 4, 1788. 30½″ x 26½″. *Lent by Miss Elizabeth G. McIlvain.*

183. ELLEN WAYLES RANDOLPH [1796–1876]. Artist unknown

This daughter of Martha Jefferson Randolph [No. 31] and granddaughter of Thomas Jefferson [No. 176] married Joseph Coolidge [1798–1879] of Boston in 1825. Her husband's uncle was Charles Bulfinch, one of the architects of the National Capitol. 16¼″ x 13¼″. *Lent by Mrs. Charles B. Eddy.*

184. LEWIS MORRIS [1726–1798]. By John Wollaston [operavit circa 1758]

Lewis Morris, the elder half-brother of Gouverneur Morris [No. 145], shared in the latter's Revolutionary principles, which were also those of another brother, Richard. A fourth brother became a loyalist and a British major general. Lewis was the last patroon of the Morrisania Manor of New York. He entered the Continental Congress in 1775, but at the time of the voting for independence he was in the field as a militia general. However, he returned to Congress in time to sign the Declaration of Independence. He was a promi-

nent supporter of Hamilton [No. 6] in the New York Ratification Convention. 30⅛″ x 25¼″. *Lent by The A. W. Mellon Educational and Charitable Trust.*

185. ELIZABETH (BETTY) WASHINGTON LEWIS [1733–1797]. By John Wollaston [operavit circa 1758]

George Washington's sister became the second wife of Fielding Lewis, his first wife having been Catherine Washington, who was Betty's first cousin. Their home was in Fredericksburg, Virginia, and it is now preserved as a local shrine under the name of "Kenmore," where this picture hangs. Her mother, Mary Ball Washington, also spent her last years in that town. Mrs. Lewis is said to have much resembled her distinguished brother. 48½″ x 38½″. *Lent by The Kenmore Association.*

186. NICHOLAS PHILIP TRIST [1800–1874]. By John Neagle [1799–1865]

Nicholas Philip Trist studied law in Thomas Jefferson's office and married his granddaughter, Virginia Jefferson Randolph, who was the sister of Cornelia Jefferson Randolph [No. 72] and Ellen Wayles Randolph [No. 183]. Trist was a friend of President Jackson who made him consul at Havana. As chief clerk of the State Department under Polk he negotiated the treaty of Guadalupe Hidalgo, 1848, which ended the Mexican War. 15½″ x 12¾″. *Lent by Mr. Gordon Trist Burke.*

187. MRS. LEWIS MORRIS [1727–1794]. By John Wollaston [operavit circa 1758]

Mary, daughter of Jacob Walton, one of the most affluent of early New York merchants, married Lewis Morris [No. 184], signer of the Declaration of Independence, in 1749. 29″ x 24½″. *Lent by The A. W. Mellon Educational and Charitable Trust.*

188. GEORGE ROSS [1730–1779]. Artist unknown

Known chiefly as a signer of the Declaration of Independence, though not present when it was adopted, Ross also served his colony and state honorably in various other positions which his legal and political ability brought to him. George Read [No. 205] was a brother-in-law.

The owner of this portrait states that some attribute it to John Hesselius. 25″ x 22½″. *Lent by The Hon. Richard S. Rodney.*

189. GEORGE ROSS [c.1680–1754]. Artist unknown

TheReverend George Ross, father of George Ross [No. 188], signer of the Declaration of Independence, was graduated from the University of Edinburgh in 1700, took orders in the Church of England, and came to America as a missionary. 43″ x 34″. *Lent by The Hon. Richard S. Rodney.*

190. GEORGE BRAXTON [c.1705–1779?]. Artist unknown

This George Braxton was the second of his name in Virginia. He was the father of Carter Braxton [No. 103], the signer of the Declaration of Independence, and of George Braxton [No. 43]. He was a member of the House of Burgesses, as were also his father and sons. 31½″ x 23¾″. *Lent by Mrs. Parker Campbell Wyeth.*

191. CHARLES CARROLL [1702–1782]. By John Wollaston [operavit circa 1758]

The father of Charles Carroll of Carrollton [No. 19] was a man of much wealth and private influence. He was a friend and occasionally a host to George Washington. 50″ x 40″. *Lent by Mrs. M. P. Fisher.*

192. NATHANIEL GORHAM [1738–1796]. Artist unknown

This portrait of Nathaniel Gorham, a deputy to the Convention of 1787 and signer of the Constitution, has always been in the possession of the Gorham family, and by tradition is attributed to John Singleton Copley. 25″ x 21″. *Lent by Mr. Nathaniel Gorham.*

193. DR. GUSTAVUS BROWN [1689–1762]. Attributed to John Hesselius [1728–1778]

Dr. Gustavus Brown was born in Scotland and came to Maryland in 1708. He was of importance both as a physician and as a man of affairs in Charles County. Margaret Black [No. 196] was his second wife. 29½″ x 24½″. *Lent by The Baltimore Museum of Art.*

194. ROGER SHERMAN [1721–1793]. By Ralph Earl [1751–1801]

Roger Sherman was a Connecticut shoemaker who became a prominent lawyer, judge, and statesman. He was the only man except Robert Morris [No. 152] who signed the Declaration of Independence, the Articles of Confederation, and the Constitution. Sherman was a member of the committees to draft the Declaration and the Articles, and he also signed the Articles of Association in 1774. His service in the Continental Congress was long. Although a proposer of the "Connecticut Compromise" in the Convention of 1787, he was otherwise a good nationalist and advocate of ratification. Sherman was a Federalist senator at the time of his death. 63½″ x 48½″ For portrait, see p. 811. *Lent by The Gallery of Fine Arts, Yale University.*

195. EDWARD RUTLEDGE [1749–1800]. Attributed to Charles Fraser [1782–1860]

Like his older brother, John [No. 95], Edward Rutledge studied law at the Middle Temple in London. He began his public career by attending the Continental Congress in 1774 as a delegate from South Carolina, voting for and signing the Declaration of Independence. He was a leading conservative and Federalist, and governor when he died. Charles Cotesworth Pinckney [No. 5] and Arthur Middleton [No. 53] were his brothers-in-law. 23¾″ x 21¾″. *Lent by Dr. Henry Laurens.*

196. MRS. GUSTAVUS BROWN. Attributed to John Hesselius [1728–1778]

Margaret Black, who was the widow of George Boyd, married Dr. Brown about 1746. She was the mother-in-law of Thomas Stone [No. 216] and this portrait and the companion one of her husband [No. 193] remained on the walls of Thomas Stone's house until recently. 29½″ x 24½″. *Lent by The Baltimore Museum of Art.*

197. MRS. CHARLES CARROLL [1709–1761]. By John Wollaston [operavit circa 1758]

Elizabeth Brooke Carroll, the mother of Charles Carroll of Carrollton [No. 19], was a near relation of her husband [No. 191] on the female side. Chief Justice Roger Brooke Taney was descended from her father's half-uncle. 49½″ x 37½″. *Lent by Mrs. John Engalitcheff, Jr.*

198. THOMAS NELSON [1738–1789]. By Mason Chamberlin [operavit circa 1760–1787]

Nelson was one of Patrick Henry's chief supporters in the movement for independence, which Henry sponsored in Virginia. As delegate to the Continental Congress he took the Virginia resolution to Philadelphia. He was a signer of the Declaration, and governor of Virginia during the time of the Yorktown campaign, in which he was active as commander of the militia. 29¼″ x 24¼″. *Lent by Dr. John Randolph Page.*

199. RICHARD HENRY LEE [1732–1794]. By Charles Willson Peale [1741–1827]

Lee was probably the most prominent member of his generation of that famous family. In the House of Burgesses of Virginia he became a leading agitator for colonial rights. He was a member of the Continental Congress, 1774–79, introducing the resolution for independence, and signing the Declaration of Independence as well as the Articles of Confedera-

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tion. He returned to Congress in 1784 and was president of it. As a member of the Congress he wished amendments made to the Constitution before it was referred to the states for ratification. He later wrote a series of strong Antifederalist papers, but was one of the state's first senators. 30″ x 24½″. *Lent by The Rev. Edmund J. Lee.*

200. BENJAMIN RUSH [1745–1813]. Attributed to John Neagle [1799–1865]

Philadelphia was the home of the most prominent physicians of the Revolutionary time, and Benjamin Rush was eminent among them. He was also a leader in the culture and social advancement of the city. His service in the Continental Congress was brief, but it enabled him to share with his father-in-law, Richard Stockton, the honor of signing the Declaration of Independence. *Lent by The University of Pennsylvania.*

201. ELEANOR [NELLY] ROSE CONWAY MADISON [1732–1829]. By Charles Peale Polk [1767–1822]

The mother of President Madison [No. 128] bore ten children, of whom the President was the oldest. She lived for twelve years after her son had retired from the Presidency, receiving the loving care of her daughter-in-law, the redoubtable Dolly Madison [No. 42]. 59″ x 40″. *Lent by The Maryland Historical Society.*

202. EDMUND RANDOLPH [1753–1813]. Artist unknown

Although his father remained a loyalist, Edmund Randolph followed his uncle, Peyton Randolph, into patriotic politics. He was for a short time an aide to Washington at the siege of Boston, and then a member of the famous Virginia Convention of 1776. He was the first attorney general of Virginia, in the Continental Congress 1779, 1781–82, and governor. While governor he was also a member of the Convention of 1787. Randolph introduced the "Virginia Plan" to the convention and supported the principles of a firm government. He refused to sign the Constitution, but strongly advocated it in his state's ratification convention and became the first United States attorney general. He was a supporter of Jefferson in the Cabinet and succeeded him as secretary of state. This appointment was Washington's last effort to continue a nonpartisan administration. 25″ x 20½″. For portrait, see p. 801. *Lent by The Virginia Historical Society.*

203. CHARLES CARROLL [1660–1720]. By Justus Engelhardt Kuhn [?–1715]

Charles Carroll, who came to Maryland in 1688, was the first of the four generations of that name. A friend of Lord Baltimore, he served the interests of the Proprietary as attorney general, register of the land office, and receiver general. 31″ x 25½″, oval. *Lent by Mr. Philip A. Carroll.*

204. THE DEPARTURE OF CHARLES CARROLL OF HOMEWOOD [1775–1825], son of Charles Carroll of Carrollton. By Robert Edge Pine [1730–1788]

The heads of the principal subjects in this large family group have been painted on separate canvases and inserted into the large canvas. Charles Carroll left for Europe to attend the Jesuit schools of France when he was ten years of age and this painting depicts his embarkation from the family home at Annapolis. He did not return until 1794. 59½″ x 79″. *Lent by Mr. Philip A. Carroll.*

205. GEORGE READ [1733–1798]. Artist unknown

George Read's service, unlike that of his compatriots John Dickinson [No. 12] and Thomas McKean [No. 21], was entirely in connection with Delaware. He was a conservative Whig, and in the Continental Congress he refused to vote for independence, but later signed and firmly supported the Declaration. He presided over the first Delaware constitutional convention and was vice president of the state. His attendance at the Annapolis Con-

vention of 1786 was a prelude for his service in the Convention of 1787, where he was a small-state man until after the Compromise, and then a firm advocate of the new plan, which he signed and promoted through Delaware's ratification of it. He was a Federal senator and from 1793 on chief justice of the highest state court. George Ross [No. 188] was his brother-in-law.

The portrait has been ascribed to Gilbert Stuart, but was more likely by or after R. E. Pine. It has been much restored. 25″ x 22½″. For portrait, see p. 795. *Lent by The Hon. Richard S. Rodney.*

206. MRS. CHARLES CARROLL [1679–1742]. By Justus Engelhardt Kuhn [?–1715]

Eleanor Darnall married Charles Carroll [No. 203], the first of that branch of the Maryland Carrolls, in 1694. It was through her that Charles Carroll of Carrollton [No. 19], her grandson and signer of the Declaration of Independence, was a second cousin of Daniel Carroll [No. 36], signer of the Constitution, though Daniel's wife [No. 3] was a first cousin of Charles. 31″ x 25½″, oval. *Lent by Mr. Philip A. Carroll.*

207. JAMES MADISON, SR. [1723–1801]. By Charles Peale Polk [1767–1822]

The father of the fourth President of the United States [No. 128] should not be confused with his cousin, James Madison, the president of William and Mary College and first Bishop of Virginia. The subject of this portrait was a planter of "independent and comfortable circumstances," one who took little part in public affairs other than those of Orange County, Virginia—as vestryman of his parish and county lieutenant. 59″ x 40″. *Lent by The Maryland Historical Society.*

208. GEORGE WASHINGTON [1732–1799]. By Charles Willson Peale [1741–1827]

John Quincy Adams, when secretary of state, purchased this portrait for the sum of $150 from a gentleman in Washington. Charles Willson Peale identified it as having been executed by himself and "sold in Baltimore to the father of John Quincy Adams' wife a score of years ago," also expressing to the secretary the gratification he would feel in this work finding a secure haven as a government possession. 29″ x 24″. *Lent by The Department of State.*

209. GEORGE WASHINGTON [1732–1799]. By Gilbert Stuart [1755–1828]

From the beginning of the French and Indian War until his death, George Washington's personality is vivid in our history, an unavoidable element, whether the consideration be military or civil, social, economic, or political. In the agitation which preceded the Convention of 1787, in the convention itself, in the ratification contest which followed, and in the successful operation of the new government, his influence is as preeminent as it was in the military operations which made effective the words of the Declaration of Independence. 28¾″ x 23½″. *Lent by The United States Government.*

210. GOUVERNEUR MORRIS [1752–1816]. By Ezra Ames [1768–1836]

Gouverneur Morris lived for thirteen years after his retirement from public life in 1803, a pessimistic Federalist, but interested in economic advancement and especially in the plans for the Erie Canal. 35″ x 27″. *Lent by The New York Historical Society.*

211. MRS. WILLIAM SAMUEL PEACHY [1764–1836]. Artist unknown

Mary Monro Cary was the daughter of Sarah Blair Cary, and niece of John Blair [No. 110], the signer of the Constitution. She married William Samuel Peachy [1763–1802] in 1787.

The family tradition has been that this portrait was painted by Rembrandt Peale. 27″ x 22″. *Lent by Mr. H. K. D. Peachy.*

212. WILLIAM WHIPPLE [1730–1785]. By Ulysses D. Tenney [1826–1918]

William Whipple was first a mariner and continued the salty flavor of his career as a merchant at Portsmouth. His prominence in the early protests and actions of the colony against Great Britain sent him to the Continental Congress in July 1776. He voted for and signed the Declaration of Independence and remained active in Congress until 1779. He was especially interested in naval matters and in the espousal of nationalism. This painting was copied from an original miniatue by John Trumbull. 44″ x 36″. *Lent by The New Hampshire Society of The Colonial Dames of America.*

213. HENRY LAURENS [1724–1792]. By John Singleton Copley [1738–1815]

The Laurens family was representative of the Huguenots whom Louis XIV drove into exile, and this scion of it possessed the sturdy traits of that people. He was a gentleman-merchant, with experience gained by three years of residence in London. Later he became mainly a planter. From 1757 on he was usually in some public position. He was in the Continental Congress in 1777 and served for more than a year as its president. He consistently supported Washington, especially against the Conway Cabal, which he helped to expose. Congress sent him abroad in 1780, but he was captured and imprisoned in the Tower of London, threatened with death as a traitor, but finally exchanged for Lord Cornwallis. He was one of the American negotiators of the treaty of peace. Although appointed a deputy to the Convention of 1787, ill health prevented his acceptance. 29½″ x 24½″. *Lent by The United States Government.*

214. THOMAS STONE [1743–1787]. By John Beale Bordley [1800–1882]

The State of Maryland ordered this portrait in 1835. The artist copied Stone's head from the original portrait attributed to Robert Edge Pine [No. 216]. The rest of the composition was planned by Bordley himself. 92¾″ x 58″. *Lent by The State of Maryland.*

215. JOHN WITHERSPOON [1723–1794]. By Charles Willson Peale [1741–1827]

Witherspoon came to America with a Scottish college education. He was one of the few prominent clergymen active in patriotic politics. He came to this country in 1768 to serve as president of the College of New Jersey [later Princeton], the leading Presbyterian institution in the colonies. New Jersey sent him to the Continental Congress to vote for and sign the Declaration of Independence, where he continued to represent his state with intermissions until 1782. He was a member of the state convention to ratify the Constitution. 29″ x 24″. *Lent by Princeton University.*

216. THOMAS STONE [1743–1787]. Attributed to Robert Edge Pine [1730–1788]

Thomas Stone was in the Continental Congress from 1775 to 1776 and in 1781 and 1784, as a delegate from Maryland. He was a member of the committee which framed the Articles of Confederation and also voted for and signed the Declaration of Independence. He was one of the Maryland commissioners who in 1785 reached an agreement at Mount Vernon with the Virginia representatives on the jurisdiction over the Potomac River, which was one of the preliminaries of the call of the Convention of 1787. 25¾″ x 20½″. *Lent by The Baltimore Museum of Art.*

217. MRS. ROBERT ANDREWS [1758–1820]. Artist unknown

Mary Blair, daughter of John Blair [No. 110], the signer of the Constitution, was the second wife of Robert Andrews, who was a professor at William and Mary College and a member of the Virginia Ratification Convention. 27″ x 22″. *Lent by Mr. H. K. D. Peachy.*

218. ROBERT R. LIVINGSTON [1746–1813]. By Gilbert Stuart [1755–1828]

Livingston was one of the framers of the Declaration of Independence but did not sign it, and was, after important services in the Continental Congress, the first secretary for foreign affairs, organizing that department. As chancellor of the State of New York, he administered the oath to George Washington as first President of the United States. As minister to France, 1801–04, he negotiated the Louisiana Purchase Treaty, which doubled the area of the United States. 35¼″ x 27″. *Lent by Mr. Dexter Clarkson Hawkins.*

219. CHARLES PINCKNEY [1757–1824]. Artist unknown

Pinckney was educated for the law. South Carolina sent him to the Continental Congress in 1784–87, and he was one of the youngest members of the Convention of 1787. His "Plan" was evidently the source of much of the accomplishment of the committee of detail. He actively engaged in the debates for a strong government and the protection of slavery. He signed the Constitution and supported ratification by his state. Later he was governor, senator, minister abroad, and representative. Autograph silhouette. For portrait, see p. 811. *Lent by Miss Josephine Pinckney.*

220. JOHN ADAMS [1735–1826]. By Thomas Sully [1783–1872]

Because of Adams' share in the struggle for colonial rights it was natural that he should be a delegate from Massachusetts to the Continental Congress in 1774. He was a member of the committee that drafted the Declaration of Independence. He was in Europe most of the time from 1778 to 1788; at Paris as a commissioner, at The Hague as minister plenipotentiary, and in 1785 he became the first United States minister to England. He was the first Vice President of the United States and the second President. Adams died, as did Jefferson, on the fiftieth anniversary of the adoption of the Declaration of Independence. Wash drawing. *Lent by Mr. Erskine Hewitt.*

221. MARY VINING [1756–1821]

Photograph made from an original pen drawing by Major John André.

Mary Vining, the Revolutionary belle in Delaware, is held in memory with her cousin, Caesar Rodney, the intrepid patriot and Signer, and General Anthony Wayne, to whom she became engaged. *Lent by Mrs. Henry Ridgely.*

222. JOHN MARSHALL [1755–1835]. By William H. Brown [1808–1882]

Brown was a famous silhouettist, one who specialized in full-length likenesses. This one of the Chief Justice was cut not earlier than 1828. Brown published it in his *Portrait Gallery of Distinguished American Citizens* (1845), as one of twenty-seven plates. W. W. Story is said to have used this silhouette while modeling the statue of Marshall which is located below the terrace of the Capitol in Washington. *Lent by The Supreme Court of The United States.*

223. GEORGE WASHINGTON [1732–1799]. By Jean François Vallée [operavit 1785–1815]

Vallée, who came to the United States from France to start a cotton mill near Alexandria, Virginia, cut this silhouette of George Washington in 1795. *Lent by Mr. Erskine Hewitt.*

224. GEORGE WYTHE [1726–1806]. By a member of the Peale Family

George Wythe was a lawyer, judge, legislator, and professor of law at William and Mary College. He was a member of the Virginia House of Burgesses, and he disclosed his political attitude in the Stamp Act agitation by his fearless boldness in stating colonial rights. He was in the Continental Congress 1775–76, and signed the Declaration of Independence, although absent when it was voted. He became chancellor of Virginia in 1778. As a delegate to the Convention of 1787 he shared in the final shaping of the "Virginia Plan," but left the convention on June 4. He was a member of the ratification convention of

Virginia. Silhouette. For portrait, see p. 817. *Lent by The Wythe House, Williamsburg, Virginia.*

225. SKETCH OF MEADOW GARDEN. By Lucy C. Hillyer

Meadow Garden was the home of George Walton [No. 50], a signer of the Declaration of Independence from Georgia. Walton died at Meadow Garden. Water color. *Lent by The Augusta Chapter, D. A. R.*

226. SKETCH OF MEADOW GARDEN. By Miss F. H. Storrs

This second water color painting of George Walton's home in Augusta, Georgia, was made after it had been restored by The Daughters of the American Revolution. *Lent by The Augusta Chapter, D. A. R.*

227. MONTICELLO. By Martha Jefferson Trist [1826–1915]

This water color of Monticello, the home of Thomas Jefferson [No. 176], was painted by Martha Jefferson Trist, the great-granddaughter of Jefferson and daughter of N. P. Trist [No. 186]. She was born at Monticello two months before her great-grandfather died. *Lent by Mr. Gordon Trist Burke.*

228. HOME OF JOHN DICKINSON. By Albert Kruse

"Kingston-upon-Hull," where John Dickinson [No. 12], "The Penman of the Revolution," wrote the *Letters from a Farmer*, was built about 1740 by his father, Samuel Dickinson, a judge in Kent County, Delaware, who had moved from Maryland a few years earlier, bringing with him John, then a small boy. Pencil sketch. *Lent by Miss Jeannette Eckman.*

229. JOHN MASON'S HOUSE

This is a color sketch of the house of John Mason [No. 34], on Analostan Island. The island was granted to George Mason (probably John Mason's grandfather) by Lord Baltimore. George Mason [No. 121] willed it to his son John, who probably built the house about 1792. It was burned in 1869. The island is now a memorial to Theodore Roosevelt. *Lent by Mr. S. Cooper Dawson.*

230. SAMPLER

This sampler was made by Ann Taylor, the daughter of the Reverend John Taylor of Milton, Massachusetts, and mother of Nicholas Gilman [No. 174], the signer of the Constitution. *Lent by The Society of The Cincinnati in The State of New Hampshire.*

Constitution Cartoons

INTRODUCTION

THE PICTURE as an expression of an idea is older than the written word. Despite the tremendous power of the latter, pictures continue to have an important share in the dissemination of ideas. Words and pictures, in fact, play different roles. Words create complex arguments and comprehensive developments, express philosophies and build the political structures of national life, as does the Constitution of the United States. Pictures, specifically cartoons, on the other hand, set forth a situation, a completed development, in a single vivid flash.

"One picture is worth one thousand words," said Confucius centuries ago; and present conditions indicate that this is true today; for the picture is increasingly prevalent. Newspapers, for instance, used to be composed of almost solid print, lightened by an infrequent cut. Today the newspaper appears to be at least half pictures; and some of our most popular magazines are little more than picture books. The appeal of a picture is universal; its attack or defense is more direct, its presentation, necessarily limited, is hence more easily comprehended.

Although this applies to all pictures, whether they are photographs or are the creations of artists, the latter are the more powerful, for they can depict the unseen realities as well as those which are visible. Hence, the cartoon is specially strong as a partisan political medium, often employing satire and caricature. Distortion is commonly associated with cartoons: overemphasis to enforce the salient aspect. Although a cartoon may include caricature, the two are different. The caricature deals with individuals, while the cartoon deals with situations. Each is found frequently in its "pure" state, as well as in combination with the other. Generations of Americans have received their political education largely through the medium of both, which remain powerful weapons, and, at the same time, preserve the individuality of the cartoonist in his association with his particular newspaper.

The cartoon in its "pure" state has the greater value for arousing recognition of fundamental principles in national life. This was exemplified in the early days of the United States by two famous cartoons; one depicted a divided snake with the slogan "Join or Die"; the other represented the raising, state by state, of the pillars under the New Roof of the Constitution, which so vividly illustrated the contest for ratification.

It was inevitable that the cartoonists should have their very important

share in emphasizing the Sesquicentennial of the Constitution; so much so, that any account of that commemoration would be incomplete that did not include examples of their art, in which they have expressed not only their personal sentiments, but also what they imagine the Constitution means to the average citizen. The selection given here is intended to show both the range and the limitation, especially how instinctive it was, particularly against the background of European conditions, to call attention to the Constitution as a strong barrier or fortress of civil rights and a beacon of continued enlightenment.

SOL BLOOM,
Director General.

CONSTITUTION CARTOONS

STILL CROSSING THE DELAWARE!

COLLECTED BY SOL BLOOM

Director General, United States Constitution Sesquicentennial Commission

THE CONSTITUTION AND CONSTITUTION CARTOONS

INTRODUCTION

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SOL BLOOM,
Director General, United States Constitution Sesquicentennial Commission.
Washington, D. C.

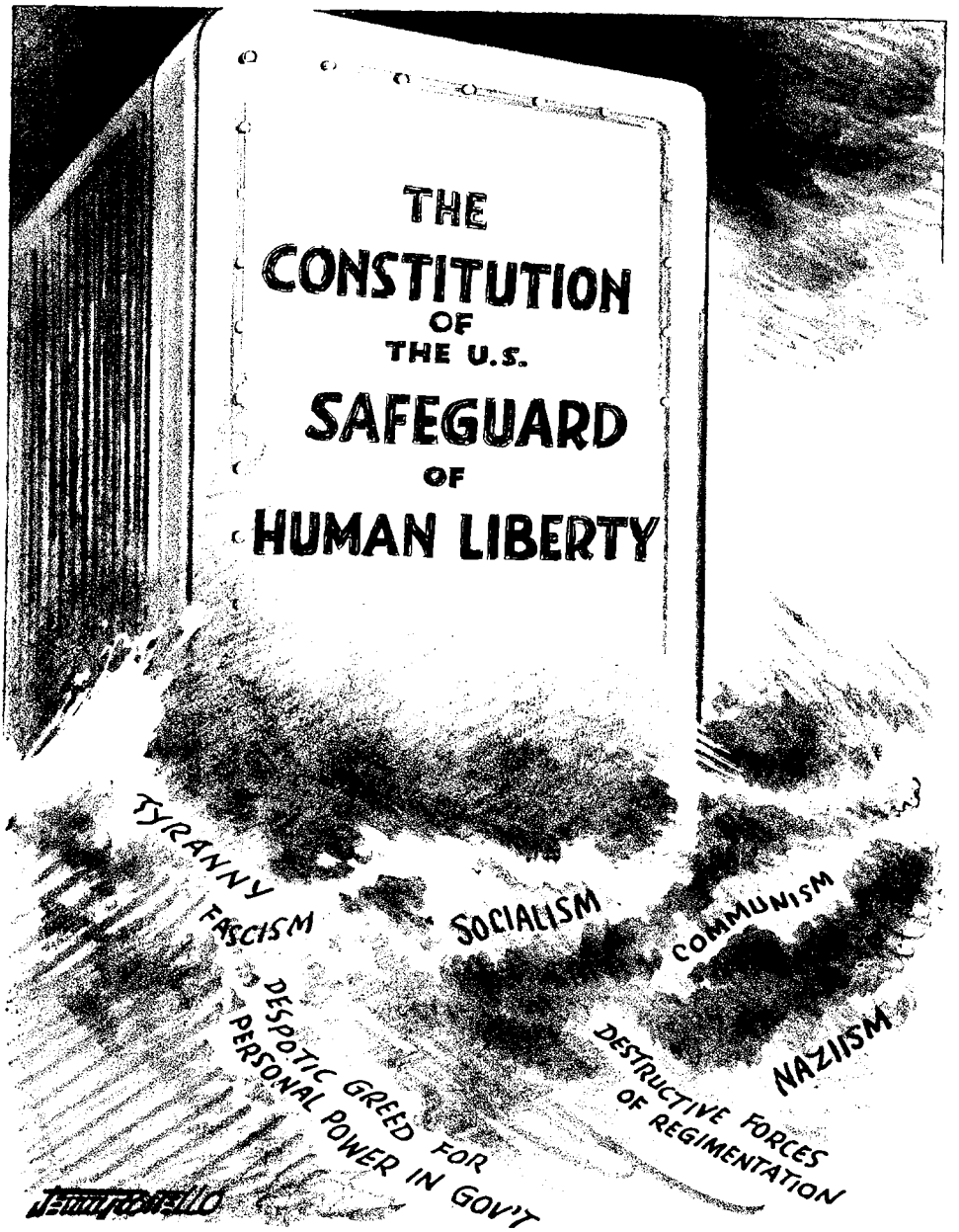
THE GUIDING LIGHT

From the *Philadelphia Evening Public Ledger*

REDEDICATION!

-IN LOS ANGELES EXAMINER - DEC. 15, 1938.

-PRESENTED TO THE HON. SOL BLOOM



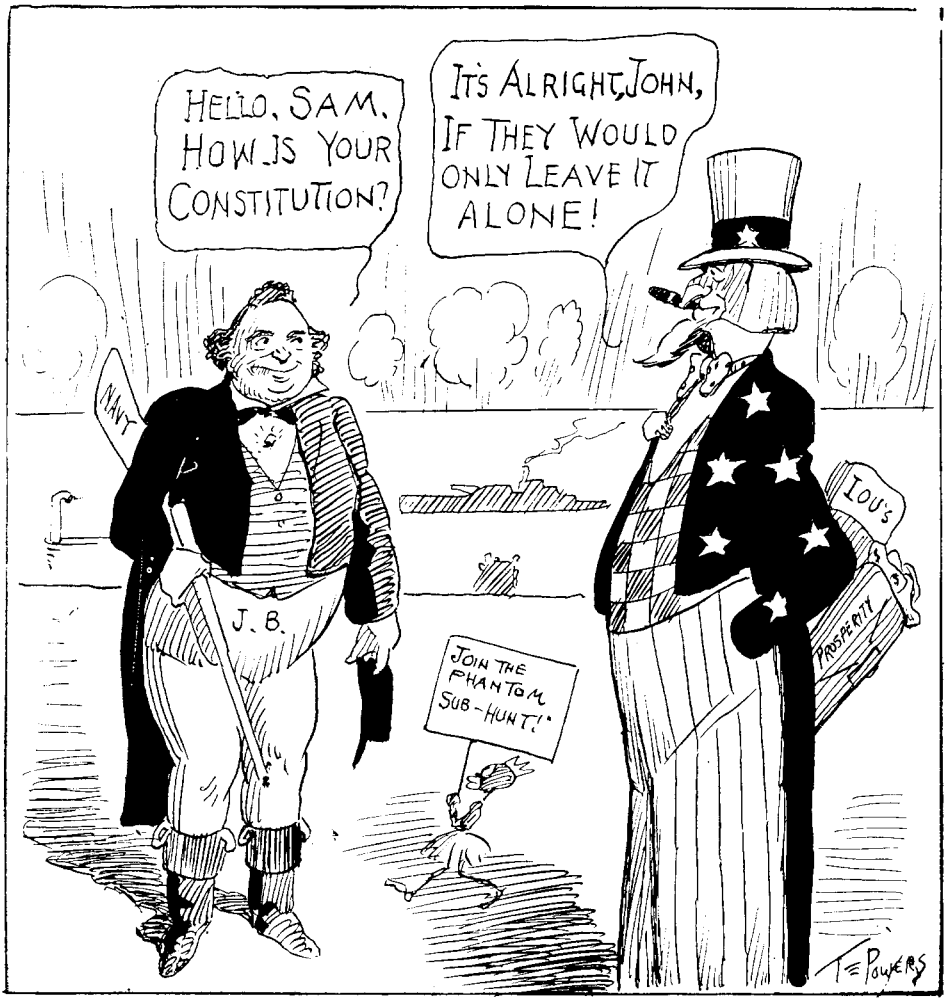
From the *Albany News*

HE'LL OUTLIVE THEM ALL

From the *Chicago Herald and Examiner*

STILL SOLID AS A ROCK

PEACE AND QUIET RECOMMENDED



From the *New York Journal-American*

FOR 150 YEARS!

From the *San Francisco Chronicle*

From the *Los Angeles Times*

From the *St. Louis Star Times*

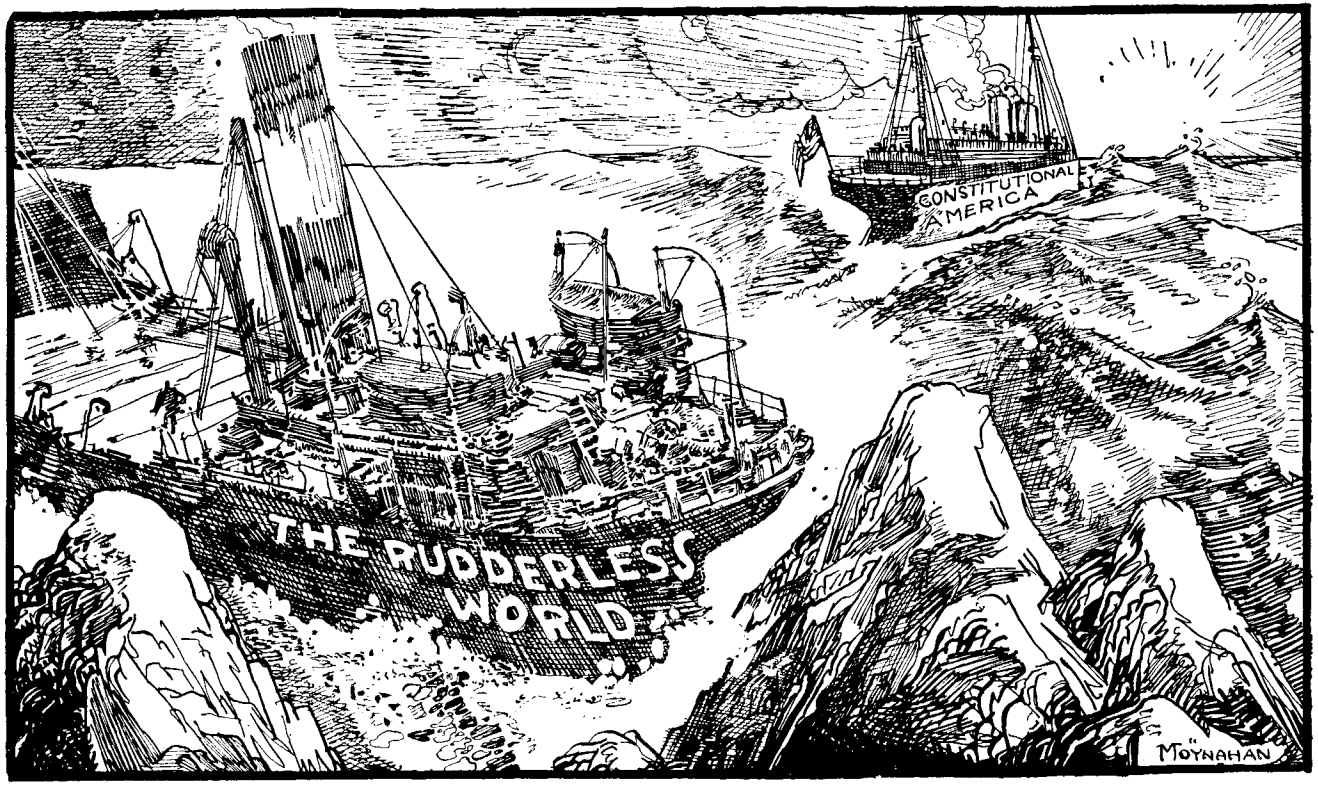
From the *Akron Beacon Journal*

MANY HAPPY RETURNS OF THE DAY

From the *Boston Post*


SEPT. 17, 1787
AMERICAN LIBERTY
CONSTITUTION WEEK
SEPT. 17, 1937
BRESSLER
Bressler Editorial Cartoons

SAIL ON!



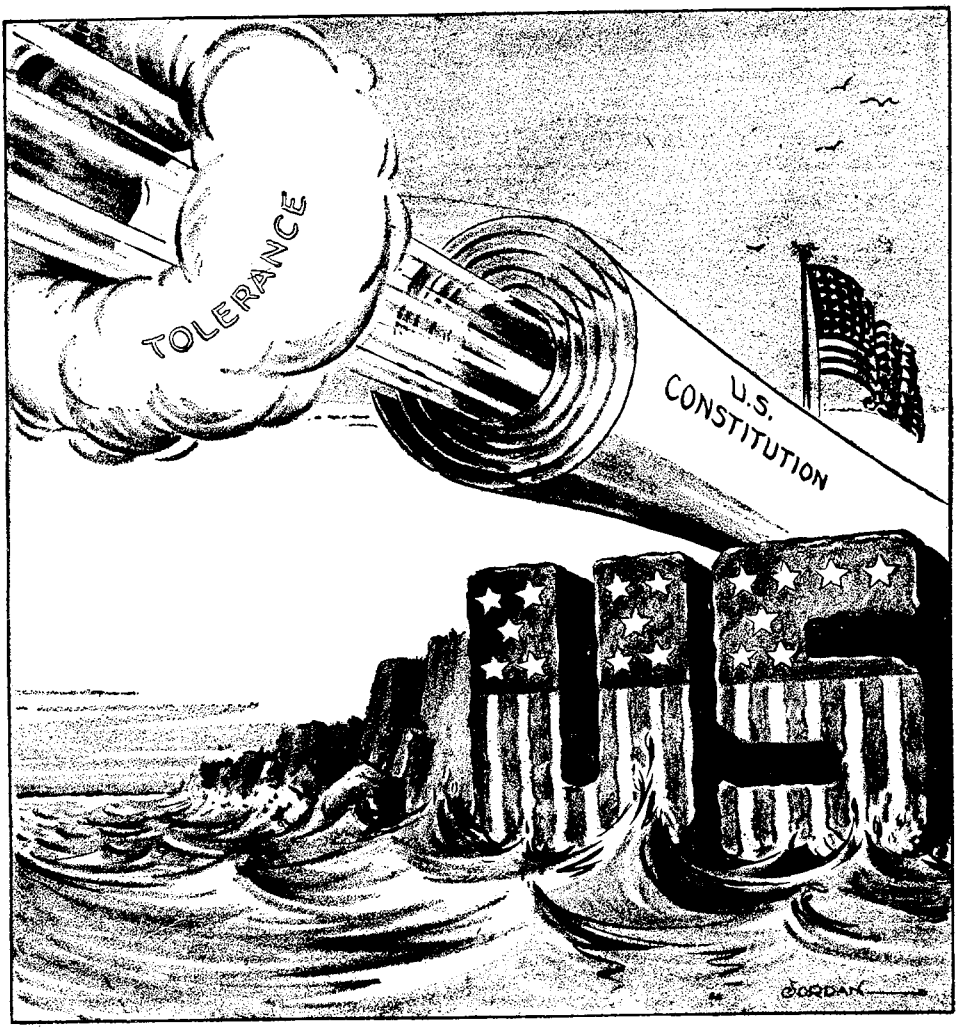
From the *Boston American*

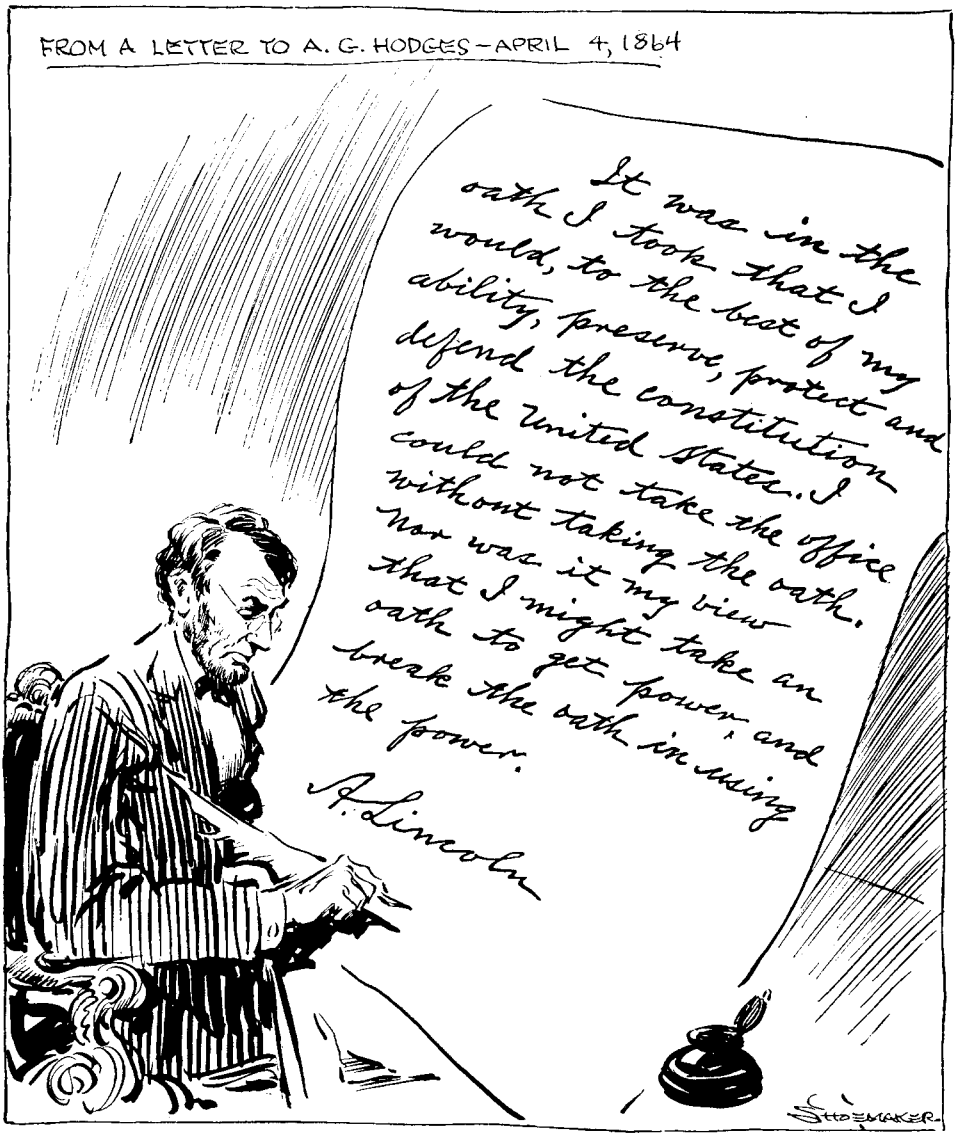
AGAINST A SEA OF ENEMIES

From the *San Francisco Monitor*

From the *Boston Record*

THE SHOT HEARD ROUND THE WORLD TODAY



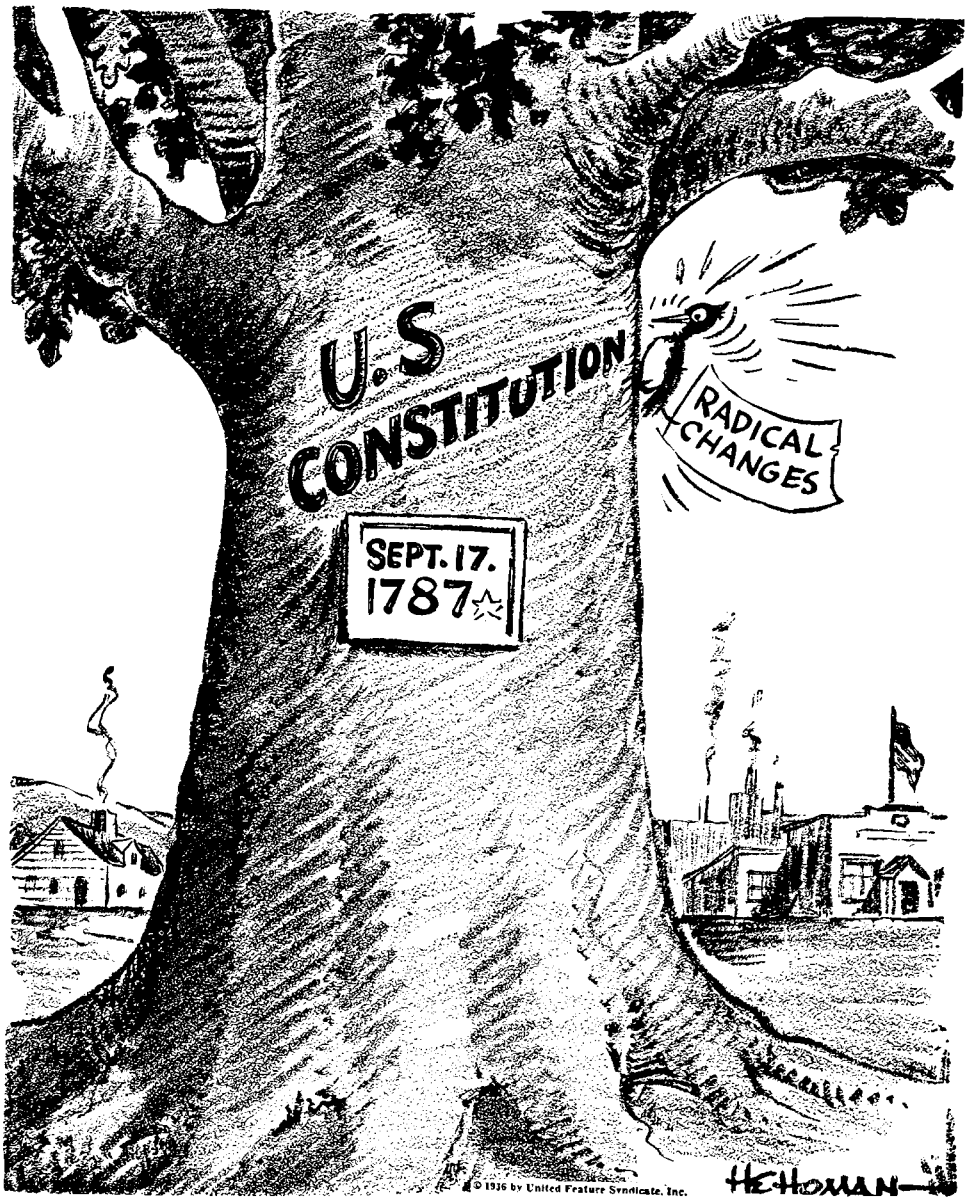


From the *Chicago Daily News*

TRINITY OF NATIONAL STRENGTH

From the *Chicago Tribune*

STURDY OAK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1787
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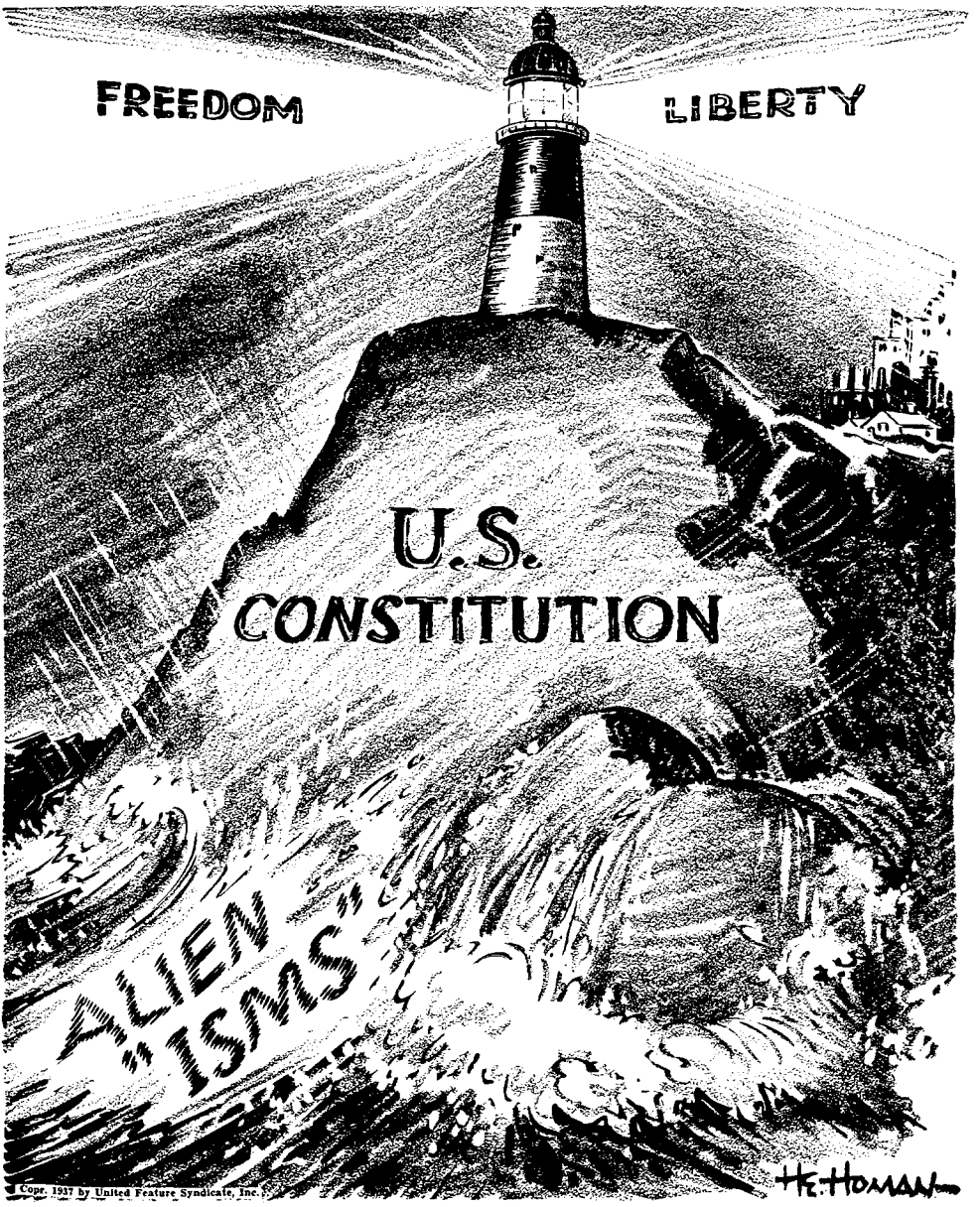
HEHOLMAN

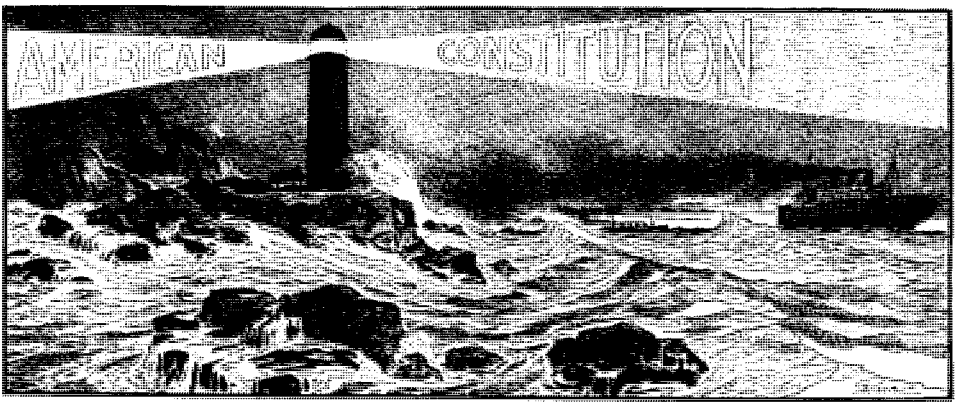
BUILDED ON A ROCK



THE HOBNAILED HEEL!

From the *Washington Herald*

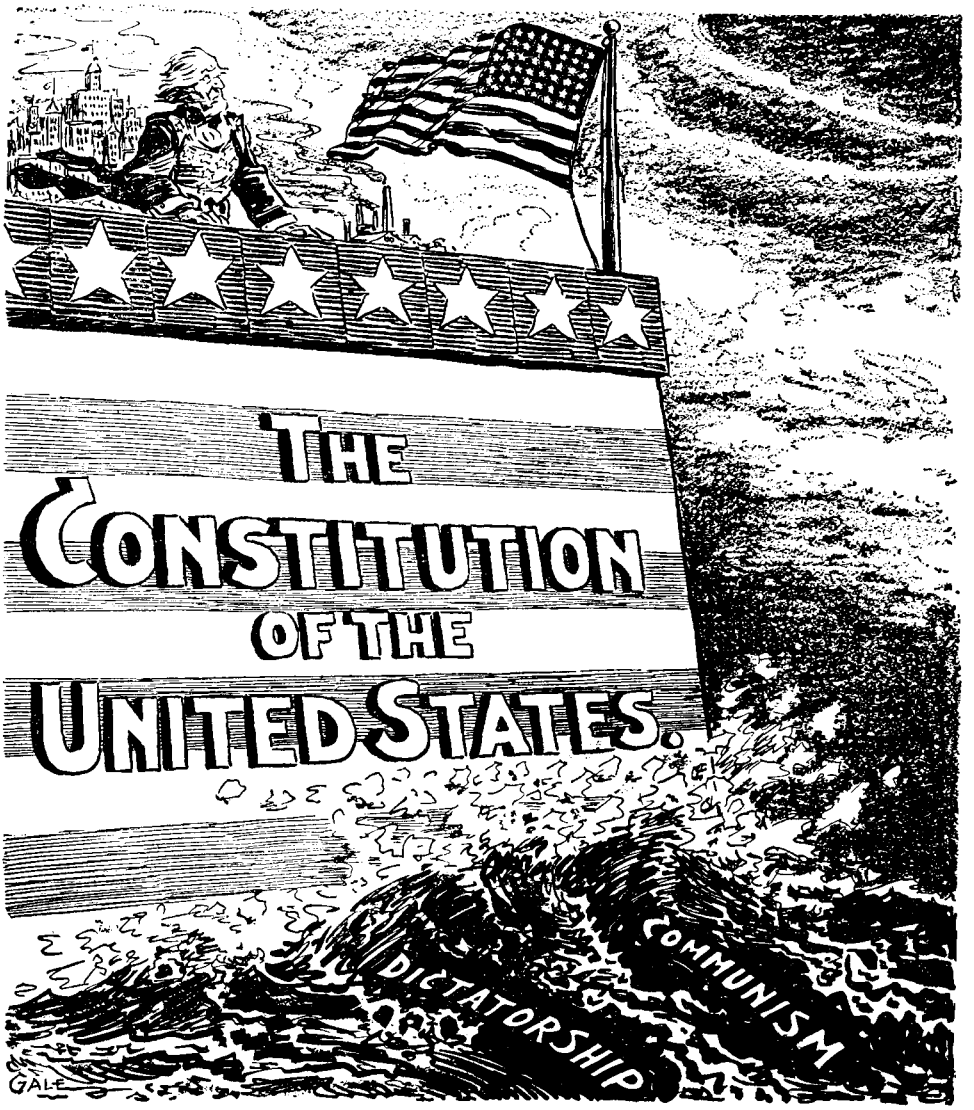
DON'T DIM THAT LIGHT



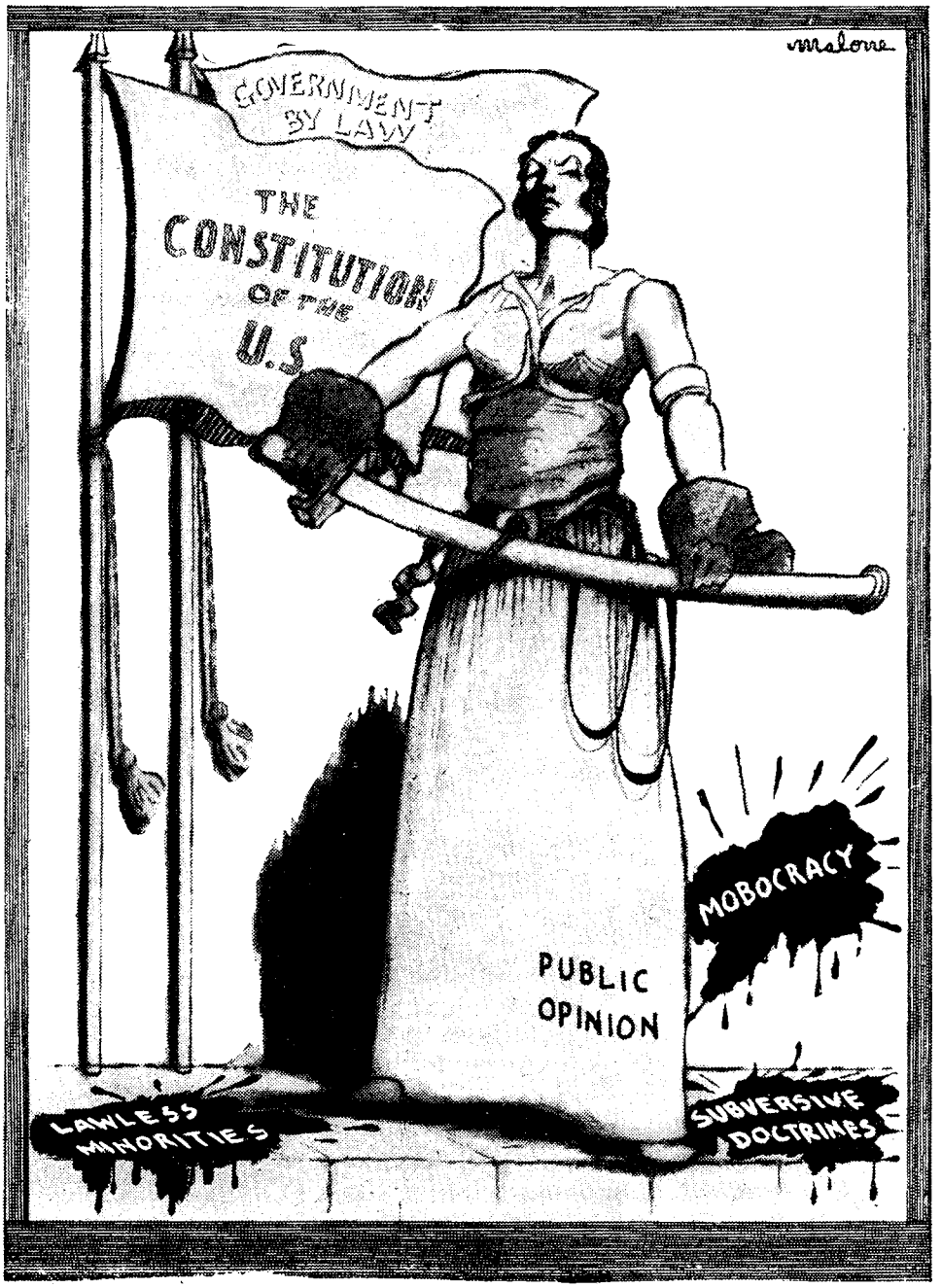
From the *New York Mirror*

THE WORD TO THE WISE—

From the *Chicago Examiner*



From the *Los Angeles Examiner*

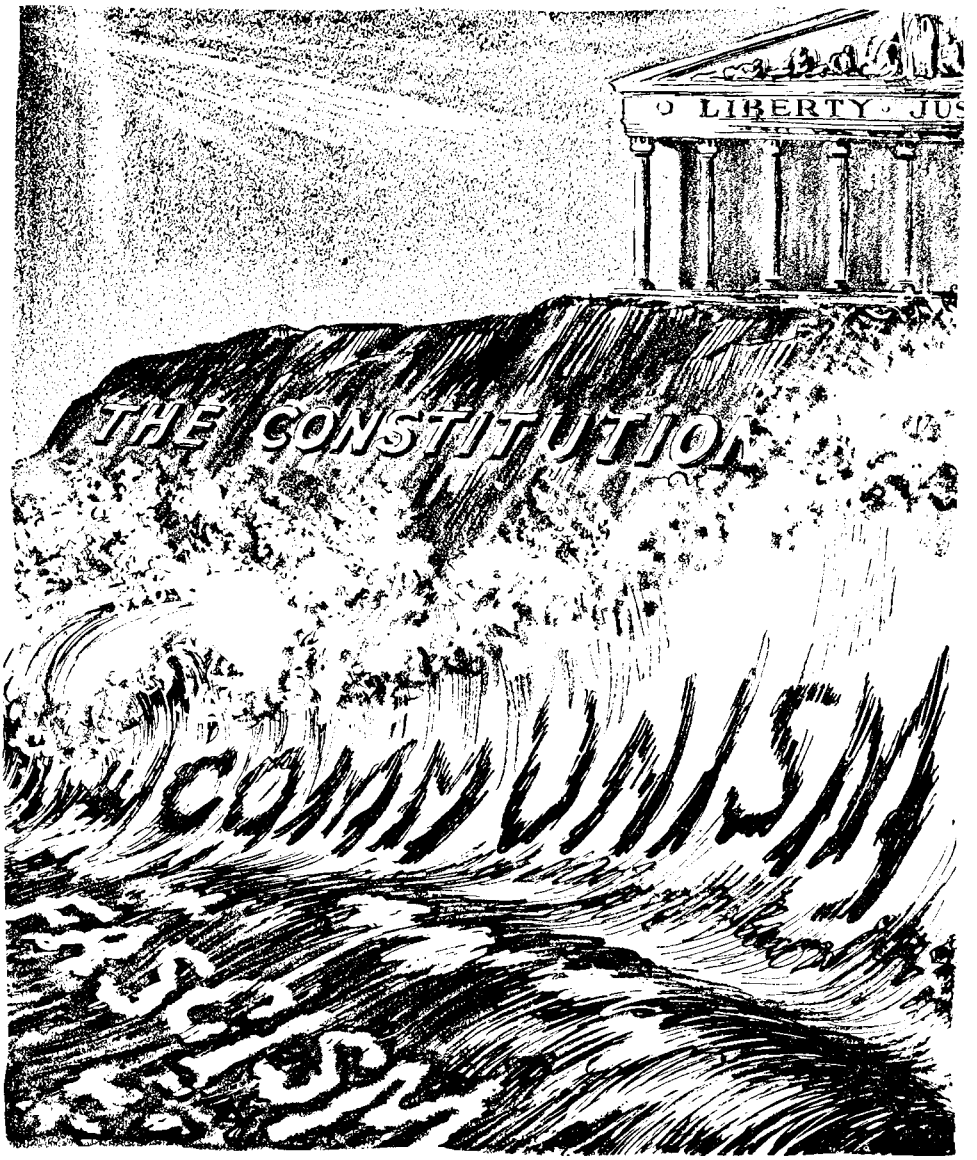


From the *New York American*

HIS DAILY CONSTITUTIONAL

From the *Chicago Tribune*

222964—40——55

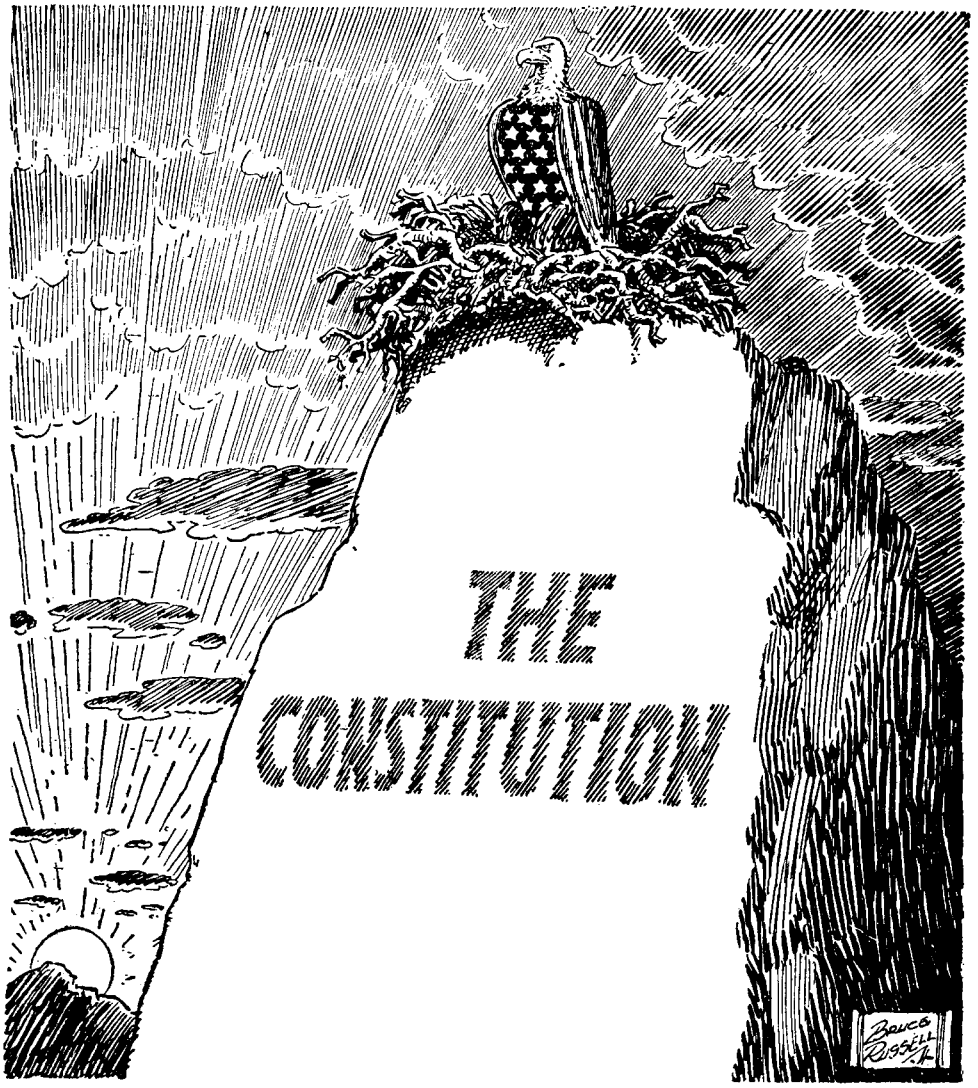


From the *Sacramento Bee*

FIRST LINE OF DEFENSE

From the *Chicago Tribune*

From the *Chicago Tribune*


THE
CONSTITUTION
BRUCE RUSSELL

OUR BODYGUARD IS STILL ON THE JOB

From the *Chicago Tribune*

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