

The United States of America Part I

Ediwn Erle Sparks

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by Ediwn Erle Sparks

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THE UNITED STATES OF AMERICA

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IN TWO PARTS
PART I
1783-1830

BY EDWIN ERLE SPARKS, PH. D.

PREFACE

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

The Union has been viewed from one point as originally the creature of the States, whose powers it afterward ungratefully usurped and whose intent it wilfully perverted to its own aggrandisement. It has been regarded from another viewpoint as something inherent in the soil of a new world, manifest in various colonial functions, and brought fully to life and supremacy at the time of separation from England. An effort is made in this narrative to find truth in a medium ground; to trace

the gradual evolution of a confederated republic under the laws of necessity; to acknowledge that radical departures have been made from first ideals as a result of progress; to take into constant consideration the underlying forces of heredity and environment. It will be necessary to omit many of the details commonly found in a history of the United States for the sake of considering only those centralising or decentralising factors which have aided or hindered the unification of the States. In brief, an attempt is made in these two volumes to tell the story of the United States; to show how the phrase "The United States is" has been slowly and unconsciously evolved in the process of time from the early practice of saying "The United States are."

CONTENTS

CHAPTER

- I. A UNION IN FORM ONLY
- II. THE PROBLEMS OF THE BACK LANDS
- III. THE CARE OF THE PUBLIC LANDS
- IV. FAILURE OF THE CONFEDERACY
- V. REFORMING THE NATIONAL GOVERNMENT

- VI. ADOPTING A NATIONAL CONSTITUTION
- VII. BEGINNING AN EFFICIENT GOVERNMENT
- VIII. SUMMONING THE GENII OF THE IMPLIED POWERS
- IX. NATIONAL CENTRALISATION
- X. FIRST LESSONS IN NATIONAL OBEDIENCE
- XI. NATIONAL PARTIES ON FOREIGN ISSUES
- XII. SUPPRESSING THE FRENCH SYMPATHISERS
- XIII. THE FIRST STATE PROTESTS
- XIV. THE ADVENT OF DEMOCRACY
- XV. STRICT CONSTRUCTION AN IMPOSSIBILITY
- XVI. AMERICAN NEUTRALITY LOST IN WAR
- XVII. TRANSFER OF PARTY POLICIES
- XVIII. SECTIONAL DISCORD OVER TERRITORY
- XIX. ANNOUNCEMENT OF NATIONAL INDIVIDUALITY
- XX. FULL FRUITS OF AMERICANISM

ILLUSTRATIONS

SIGNATURES TO THE DEFINITE TREATY OF 1783
Original in the Department of State.

TITLE-PAGE OF A COPY OF THE ARTICLES OF CONFEDERATION
This copy was printed in 1777.

THE OLD BLOCKHOUSE AT MACKINAC, 1780

MAP SHOWING WESTERN LAND

MAP SHOWING THE PROPOSED WESTERN STATES
From Morse's American Gazetteer.

NATHAN DANE'S DRAFT OF THE ANTI-SLAVERY CLAUSE IN THE ORDINANCE OF 1787

DR. CUTLER'S CHURCH AND PARSONAGE AT IPSWICH HAMLET, 1787
The place from which the first company started for the Ohio, December 3,
1787.

A PETITION FROM CONGRESS TO THE STATES

SIGNATURES TO AN ADDRESS OF THE INHABITANTS OF PRINCETON, NEW JERSEY

Now in the archives of the Department of State.

SIGNATURES OF DELEGATES TO ANNAPOLIS CONVENTION

MANASSEH CUTLER

COPY OF THE ARTICLES OF CONFEDERATION AND THE CONSTITUTION IN PARALLEL COLUMNS

The foot-notes show that it is an Anti-Federal print.

FIRST DRAFT OF THE CONSTITUTION OF THE UNITED STATES

LAST PAGE OF THE MINUTES OF THE OLD CONGRESS

Preserved in the archives of the Department of State.

HEADING OF THE FIRST LAW PASSED UNDER THE CONSTITUTION

FEDERAL HALL, NEW YORK CITY

THE PRESIDENTIAL MANSION, FRANKLIN SQUARE, NEW YORK CITY, 1789

CERTIFICATE OF DEBT AGAINST THE UNITED STATES

From the Manuscript Division of the Library of Congress.

A HALF-PAGE OF THE X Y Z DISPATCHES

From the original in the Department of State.

THE CITY OF WASHINGTON

From a drawing made about 1800, before the site was graded.

WESTERN ARKS AT NEW ORLEANS

From Hall's "Etchings in America."

TAKING POSSESSION OF THE LOUISIANA PURCHASE

WRITTEN LAW OF THE NORTH-WEST TERRITORY

A law passed at Vincennes, now Indiana, against gambling..

PRESIDENT JEFFERSON'S INAUGURAL ADDRESS

BLANK COMMISSION FOR PRIVATEER IN WAR OF 1812

DISLOYALTY OF NEW ENGLAND DURING THE WAR

THE PRESIDENT'S TEMPORARY RESIDENCE, 1815

MAP SHOWING ADVANCE OF POPULATION

THE CAPITOL BURNED BY THE BRITISH ARMY

From Torrey's "American Slave Trader."

WASHINGTON IRVING

From the etching by Jacques Reich.

JOHN MARSHALL

Chief Justice of the United States, 1801-1836.

WESTERN END OF THE GREAT ERIE CANAL

Drawn with the Camera Lucida for Hairs "Etchings of the West."

CHAPTER I

A UNION IN FORM ONLY

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

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

A few days after that date, John Adams, Benjamin Franklin, and John Jay wrote from Paris to the president of the Continental Congress at Philadelphia:

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

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

republic of the United States had most auspiciously begun.

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

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

Criticism of the Confederation which our fathers framed to take the place of British rule must be tempered by the reflection that the action was taken while the land was in the chaos of war. Praise is due their genius for organisation, inherited from the mother country they were warring against, which enabled them to contemplate a new form of government while engaged in dissolving the old. The Government is dead; long live the Government. According to the intention, there was to be no interregnum in which Anarchy might rear his ugly head, and destroy existing forms and instincts of government. Unfortunately a genius for undertaking a beneficent enterprise may lack opportunity of carrying it out. The war to secure the permanence of the Government they were trying to establish produced a delay in completing the frame, and allowed the individual States to assume a headway and win the people to an allegiance, which the Union has not yet fully overcome.

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

the Central Government by confederating themselves under a written document.

Great Britain, the mother country, had never possessed a written constitution, or frame of government; but the colonies were planted under written charters. Perhaps this precedent has produced the American predilection for written constitutions. Many statesmen of the colonial days had attempted a written plan of union for the colonies. Franklin had been one of these and, within three weeks after Washington took command of the American Army, Franklin presented to the Congress certain Articles of Confederation creating "The United Colonies of North America." The federation was intended to be temporary in case the colonial grievances were redressed, but otherwise permanent. The proposition was unheeded at the time but was recalled nearly a year later by one part of Richard Henry Lee's famous motion for Independence. A committee was to be appointed "to prepare and digest the form of a confederation to be entered into between these colonies." The importance of the task was indicated by the fact that the committee was composed of one member from each of the colonies represented, while the committee, appointed at almost the same time, to draw up a declaration concerning independency, had only five members. On July 12th, the former committee brought in a draft of thirteen Articles of Confederation, by common consent ascribed to John Dickinson, but evidently based on Franklin's draft of a year before. This is indicated by the style and form, although the details differ in many particulars. Eighty copies of these proposed Articles were ordered printed for the use of the members, extreme secrecy being enjoined upon all concerned.

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

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

As implied in the name, this Continental Congress had been called together originally as a consulting body for the thirteen distinct

colonies. When the war forced the second session into making laws, the name should have been changed to "Parliament"; but, in the chaotic condition of affairs and the very gradual assumption of sovereignty, a change in name went by default. Although the Congress became a parliament in form, its members never so regarded it. They still served their sovereign States in a national body, consulting and providing for the common defence. They had no desire to make a modern union at the time they formed the Confederation. This is evidenced by the preliminary statement of the Articles that each State retained its sovereignty, freedom, and independence. In this view, "a firm league of friendship," the phrase used to describe the nature of the Confederation, is exact and appropriate. It formed a league of individual units, such as the separate colonies had been, "binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever."

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

In voting in Congress, each State was given one vote, being considered a unit. In declaring assessments, Congress dealt with the individual States and not the people. Congress was authorised to make an estimate of the value of land and improvements in each State for proportioning expenses; but the matter was left to the States and never done. In an elaborate plan for adjudication between States in the numerous boundary disputes, Congress again dealt with the States as units. The central authority would nowhere come into contact with citizens of the States. It had no way of gaining their respect, their gratitude, or their allegiance. It apparently dealt with them in the provision guaranteeing citizens of each State all their rights in the several States; but if a State transgressed on the rights of citizens of another State, the Confederation could only complain and protest. It had no power of punishment or coercion.

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

Virginia's assertion that the "South Sea" mentioned in her charter as her western limits entitled her to the land as far west as the Pacific, if British authority should ever extend so far, was declared

preposterous by delegates from other States who looked upon the land between the Alleghenies and the Mississippi as a valuable common asset, if the war should terminate favourably to their cause.

"Every gentleman," said Wilson, of Pennsylvania, in debate, "has heard much of the claims to the South Sea. They are extravagant. The grants were made upon mistake. They were ignorant of geography. They thought the South Sea within one hundred miles of the Atlantic Ocean. It was not conceived they extended three thousand miles. Lord Camden considers the claims to the South Sea as what can never be reduced to practice. Pennsylvania has no right to interfere in these claims, but she has a right to say that she will not confederate unless those claims were cut off."

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

Since the Congress in this new form was to be the sole visible agency of the National Government, possessing the legislative, the executive, and even such judicial powers as the Confederation possessed, representation in it had to be most carefully considered. The committee had provided that in determining questions the present method should be continued which allowed each State to have one vote; and in vain did the advocates of representation according to population plead against it. Franklin pointed to the effects of unequal representation in England and begged that the new Government might be started aright. "Let the smaller colonies give equal money and men," said he, "and then have an equal vote." His fellow-delegate from Pennsylvania, Dr. Rush, added the voice of prophecy when he declared that the States ought to represent the whole people; and that each State retaining one vote would tend to keep up colonial distinctions.

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

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

The advocates of equal State representation had the advantage of precedent and of present practice. The large States had won in retaining their claims to the western lands. It was now the turn of the small States. In the final vote on representation, the four large States of Virginia, Massachusetts, Maryland, and Pennsylvania, containing over one-half the entire population of the thirteen States, were outvoted by the five small States of New Hampshire, Rhode Island, New Jersey, Delaware, and Georgia. The State and not individual voting was to continue in Congress. The medium-sized States of Connecticut, New York, and the two Carolinas, showed a "disinterested coolness" in the matter. Few took so gloomy a view of such an arrangement as did John Adams, who predicted that within ten years the Articles would be found as

weak as a rope of sand in holding the people together.

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

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

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

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

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

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

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

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

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

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

[Illustration: TITLE-PAGE OF A COPY OF THE ARTICLES OF CONFEDERATION. This copy was printed in 1777, the year the articles were proposed by the Continental Congress to the several States to be ratified.]

Compared with the present National Government, which a different plan and a liberal interpretation for a century have conspired to bring about, the Articles of Confederation presented some strange anomalies of administration. The Federal Government could declare war, but could not enlist soldiers. It could only call upon each State to furnish its proportion. If, as was likely to happen, any particular portion of the country was threatened by an enemy, Congress might call for an extra number of soldiers; but the State Legislature might judge how many

could safely be spared from the service of the State. The National Government could not even appoint its own officers below the rank of colonel. It could make peace, but, in order to secure a successful end to a war, it could not collect a dollar for expense, except as each State graciously consented to pay its share. It could make a treaty with another sovereign, but could not compel its own subjects to obey the terms of the treaty. It could send an ambassador to a foreign Court, but had to turn to the States for money to pay his salary. It could regulate prizes and subdue piracies on the high seas, but had no control over goods entering its own ports. At the close of the war, it could gratefully vote a monument to General Washington to be erected at the seat of government, but could not secure enough money to erect it.

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

With such false conceptions of the relations between individualism and unionism, with a national frame foredoomed to failure, with the distracting situations of the war still upon them, the people of the United States attempted in 1783 to take that stand among the nations which they declared God had given them. At once they came into contact with the habits and precedents of old and well-established governments. Diplomacy is not a game for amateurs. Fortunately a decade was to elapse before a European crisis would call attention to the new-comer as a possible pawn in the game. Their first introduction in the character of solicitors for aid had not been auspicious. The process of securing this aid had gained for them a treaty with France and indirectly with Holland; but Spain, more suspicious of the new nation because of the proximity of her Floridas and Louisiana to them, still dallied with their advances. England, compelled to make a treaty to close the war, refused to do more. Sweden, Prussia, and Morocco were of insufficient maritime importance to make the treaties with them a cause for rejoicing.

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

John Adams, conscious of his prominent part in the rebellion, militant in his ideas of republicanism, elbowed his way into the Court of St. James as the first representative of the former British possessions.

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

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

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

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

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

Mrs. John Adams, exchanging the social station accorded her in Braintree, Massachusetts, for the diplomatic colony at London, found herself of little service in aiding her husband's social standing. She shared his Americanism. She wrote home that she had never seen an assembly room in America which did not exceed that at St. James in point of elegance and decoration, and that the women of the Court, in all their blaze of diamonds set off with Parisian rouge, could not match the blooming health, the sparkling eye, and modest deportment of the dear girls of her native land. When presented to the King, she declared that her reception stung her like an adder, although His Majesty was kind enough to salute her cheek. She thought Queen Charlotte rather embarrassed and Mrs. Adams confessed to a disagreeable feeling. Yet the Queen simply inquired whether Mrs. Adams had gotten into her new house and how she liked it. Years after, Mrs. Adams confessed that the humiliation of Queen Charlotte was no sorrow for her. Three years of neglect could not be readily forgotten or forgiven.

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

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

Fully three-fourths of all shipping to be seen in American ports flew the British flag; yet American vessels could bring only American goods into British ports. American ships were positively forbidden to trade in the British West Indies, and American vessels sold in England could not be used in British colonial trade. Under these circumstances, John Adams became convinced that nothing but a complete change in the form of the American National Government, giving over the control of commerce into the hands of the Confederation, would be of avail in bringing Britain to terms. As the end of her husband's mission drew nigh, Mrs. Adams declared that she would quit Europe with more pleasure than she came to it, and uncontaminated, she hoped, with its manners and its vices. She attributed the ill success of her husband's efforts to the lack of concord at home; to the debts which her countrymen had contracted in Europe and were unable to pay; to the expectation in England that prohibitory acts and heavy duties would bring the Americans back to British allegiance; and to the calumnies circulated by the Tory refugees in England. Their departure was marked, in the opinion of John Adams, by a dry decency and a cold civility, which made him feel, in breathing the air of his own country again, as if he had just escaped from prison.

CHAPTER II

THE PROBLEMS OF THE BACK LANDS

The ease with which the American domain had been permitted to extend to the Mississippi in the peace negotiations with Great Britain did not mean a freedom from future anxiety concerning the "back lands," lying to the west of the thirteen States. The entire domain contained about 827,000 square miles, inhabited by about three million people, very unequally distributed. Population was most dense near the coast and gradually shaded off toward the interior. The front wave of civilisation may be located by an irregular line passing through central New Hampshire, skirting Lake Champlain, narrowing down to the Mohawk valley, and across north-western New Jersey, whence it turned due west across the mountains in a long arm reaching to Pittsburg. Retreating to the Shenandoah valley, it descended to central Georgia and thence to the sea. An "island" of people was to be found in central Kentucky and another in north-central Tennessee. A great tract of vacant but desirable land, comprising probably three-fourths of the domain, stretched from within two hundred miles of the seacoast to the distant

Mississippi River. Barring a few French villagers, it was inhabited only by savage men and beasts.

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

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

Instead of vacating, the troops went out from some of the forts and built additional new posts on American soil. "The Great Father across the Waters," said a chief, when returning an unsigned treaty to Col. Harmar, "has not given this country over to the Thirteen Fires." Knowing the former predilection of the Indians for the French, the services of Lafayette were enlisted, prior to his return to France, in addressing a council on the frontier of New York to enlighten the natives concerning their new allegiance. It was felt that all efforts would be of no avail until the British were removed. To all American protests, the British Government replied that the posts would not be evacuated until the Americans had fulfilled their part of the treaty concerning the debts owed to British merchants.

[Illustration: THE OLD BLOCKHOUSE AT MACKINAC, 1780]

At the beginning of the Revolutionary War, large sums had been due British exporters and factors by American planters and traders, because of the commercial system in vogue at that time. The war gave excuse to unscrupulous debtors to withhold payment. Associations were formed in many communities to adopt this form of retaliation, although discountenanced by the better classes. At the close of the war, it was said that there was not sufficient money in circulation to discharge these long-due obligations. Jefferson estimated the debts due British merchants in Virginia alone at thirty times the amount of money in circulation in the State. Many States had passed stay laws against executions to recover such debts and had thrown other legal obstructions in the way of the British creditors. Claim was made not only for the

original amount of the debts, but for back interest as well. The American merchants rejoined that they could pay neither principal nor interest until they had been compensated for their slaves carried away by the British Army and the Tories at the end of the war and contrary to the terms of the treaty of peace. The labour of these slaves, they said, would enable them to pay the debts.

Undoubtedly American statesmen wished to sustain inviolate the provisions of the treaty, not only by preventing the States from interfering with the collection of valid debts, but also by protecting the Loyalists or Tories, as the treaty demanded. The English negotiators, having small experience with a Confederation, supposed that the clause in the treaty binding Congress to recommend actions to the several State Legislatures was equivalent to a warrant. It was agreed that the privilege should be granted to any person to go into and remain twelve months in any part of the United States to regain his property by law. The treaty provided further that Congress would recommend to the States the restoration of all property to former owners upon payment of the bona fide price which the present possessors paid for it after confiscation. The treaty also implicitly promised that there should be no more confiscations or prosecutions. The several provisions for the alleviation of these Loyalists indicate slightly the misfortunes into which their action brought them. Their treatment both officially and by the mob has been described by some foreign writers as the darkest page in American history. But they had choice of sides in the issue. Granted that they supposed they were right in upholding government against rebellion; yet the law of consequences accepts no excuse for over-conservatism. He who fails to keep step with the march of events falls behind and suffers the consequences. The Loyalists were on the losing side and suffered the common fate of the conquered.

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

Nor was the impotence of the new nation exhibited toward England only in the western country. Because it drained almost the whole of the great inland valley, forming with its tributaries a network of ready-made highways, the Mississippi River assumed an importance to the trans-Alleghanian settlers which is lost in these days of artificial means of transportation. As Madison once said, "It is the Hudson, the Delaware, the Potomac, and all the navigable waters of the Atlantic States formed into one stream." It is true that the freedom of navigating the Great Lakes and the St. Lawrence was secured to these western people by the Treaty of 1783, but these ways to the sea were closed by ice during a portion of the year and were impeded by falls. The lower Mississippi, on the other hand, had neither of these obstructions to navigation. Near its mouth was the city of New Orleans, where ocean vessels lay ready to receive western products. The current made easy the voyage thither. For twenty years the traditionally easy-going Spaniard had held the mouth of the river, placing severe restrictions upon foreign traders, but too indolent to enforce them.

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

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

Complaints of some of these seizures officially reached Congress. Countless tales of other infringements upon American rights on the lower Mississippi were told among the settlers along the western slope of the Alleghanies, arousing them to the conviction that they were being sacrificed by the commercial interests of the Atlantic plain who wished to preserve a profitable trade with Spain. Gardoqui had arrived at the seat of government in 1785 as the first representative of the

Spanish King. He was determined, as he said, to make the lower Mississippi a "bone of contention" in negotiating the long-delayed treaty with the United States. Not much agitation on his part was necessary. The western people were wrought up to the determination to take matters into their own hands, if necessary, to procure an outlet to Europe for their goods. The rumour that Jay, Secretary of Foreign Affairs, had approved to Congress the suggestion of Gardoqui, that the river be closed for ten years as the price of a commercial treaty, drove them to the point of forcible resistance. The Spanish also continued to occupy posts on the American side of the Florida boundary line, but this was a grievance only as they were accused of arousing the Indians to hostility against American settlers. In truth, these western pioneers formed a long arm of people thrust out between Indians under British dominance on the north and Indians under Spanish control on the south.

Believing themselves outside the pale of eastern protection, the western people entertained various projects for self-preservation. George Rogers Clark, whose daring Virginia expedition into the Illinois country had gained him fame in the Revolutionary days, placed himself at the head of a volunteer company which called itself the "Wabash regiment," and had been recruited in Kentucky for an expedition against the Shawnee Indians. Clark had degenerated through intemperance into a kind of border freebooter. Turning his troops from the original purpose, he seized the goods of the Spanish traders at Post Vincennes as a retaliation upon the Spanish, and prepared to descend upon New Orleans. Congress was compelled to take strong measures for disbanding his followers and making amends to Spain. A short time after, another Kentuckian was at Vincennes organising men to drive out the Spanish and make a settlement at Natchez, presumably inside the limits of Georgia. "Ireland is a free country to what this will be when its navigation is entirely shut," he wrote to the governor of Georgia in unfolding his scheme. An emissary was sent through the Illinois French settlements to describe the Spanish outrages on the lower Mississippi. Seditious papers were circulating in Kentucky and in the revolutionary State of Franklin. "In case we are not countenanced," said one of these documents, "and succoured by the United States, our allegiance will be thrown off and some other power applied to. Great Britain stands ready with open arms to receive and support us." One adventurer assured Gardoqui that fifty thousand men would be in arms in the western country to get their commercial rights.

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

European strategists made ready use of the isolated condition of the western people, not always with the object of absorbing them, but

rather of using them in the great game of territorial acquisition played so many times on the American board. For instance, in 1787, the French Minister to the United States forwarded to his Government a document presented to him, evidently by a native of France residing in America, which described the extent of the Mississippi valley and the dissatisfaction of its inhabitants. The paper asserted that the people beyond the mountains

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

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

The extent to which the western people were prepared to go in the Confederation days was a matter of much dispute, and was aired fully in the course of time by controversies in Kentucky politics. But their hardihood and capacity for achievement have never been questioned. They were qualified by nature to insist upon their rights even if such insistence embarrassed the foreign negotiations of the home Government. Bred in the rural districts of Virginia and the Carolinas, accustomed to solitude and privations, depending upon their rifles for food and largely for dress, they felt no ties binding them to home and the old life when once they had crossed the mountains. They were self-dependent in nearly every particular except arms and ammunition. Carrying the organising instinct of their English forefathers, they set up local government as rapidly as their numbers warranted. To be held as colonists by the States to the eastward of the mountains was contrary to that spirit of inherited freedom which had already made those States out of colonies. Just at the dawn of the Revolution the colonisation of the far-famed "blue grass" region of Kentucky had begun, when Daniel Boone led the Transylvania Company from North Carolina to found Boonesboro. Although the independent government which this company erected was suppressed by the governors of Virginia and North Carolina, the movement could not be stayed. A few years later, these Kentuckians, increased in numbers by the enormous migration thither, were holding secession conventions which Virginia thought wise not to resist. North Carolina repressed with some effort the independent State of Franklin, or "Frankland," the land of the free Franks, as it was first called, which John Sevier and other hardy spirits set up in what is now eastern Tennessee.

While these attempts to create independent States in the remote regions are now praised as evidences of the organising instinct of the American people, it must not be forgotten that at the time they were formed within the legitimate bounds of regular States and seriously threatened to impair their domains. The domain of a State is regarded as one of

the most inviolable attributes of its sovereignty. The third Article of the Confederation bound the States to assist any of their number against attacks made upon its sovereignty. Not only were the States of Virginia and Kentucky threatened with the loss of territory through insurrection. The "Green Mountain boys," headed by Ethan Allen, had succeeded in setting up an independent State, with a popular innkeeper as governor, upon land claimed by New York. Against these infringements upon the integrity of the States, the Congress could do nothing more than draw up resolutions expressing "the highest disapprobation" of those who participated.

The experience of the National Government under the Articles of Confederation with the settlers on the frontier beyond the recognised limits of the thirteen States, although alarming at the time, was invaluable as a lesson. It taught thinking men not only that the Central Government must be given more power to protect the States themselves, but that these remote districts could be best governed by the central authorities. Every argument of this kind was timely since it might induce the States still holding out to yield their back lands as a common property. The beginning of ceding the western lands to the common stock is important as a precedent since it created ultimately the profit-sharing principle of the public domain. Mention has been made of the failure in Congress to place western bounds on certain States. When the Articles were sent to all the States for ratification before going into effect, individual State Legislatures had opportunity of making such boundary restriction the price of a national agreement. Individualism in this instance proved a blessing. It is important to an appreciation of the times to note that the State whose persistence won the victory was not one of the largest or most influential. Maryland was the eighth in rank of territory and probably the sixth in number of population. Her powerful neighbour and ancient enemy, Virginia, upon assuming statehood, had reiterated her charter claims to full one-half the territory of British North America, magnanimously "ceding" to the States of Pennsylvania, Maryland, and the two Carolinas the land of which they were already possessed.

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

Led more by the necessity for some kind of a national government to replace the rule of Britain thrown off in 1776 than by such appeals, the Legislature of New York in 1781 authorised her delegates in Congress to quitclaim all lands lying outside her present boundaries to the General Government for the benefit of present and future States of the Union. Although the claim of New York, based upon a treaty with the Indians, had been regarded as shadowy by other States, yet her greatly lauded action led in the same year to propositions from Virginia and, a few years later,

to advances from Massachusetts and Connecticut resulting eventually in their giving up all territory north of the Ohio and west of Pennsylvania and New York. Persuaded by these favourable indications, Maryland signed the Articles, as heretofore described.

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

CHAPTER III

THE CARE OF THE PUBLIC LANDS

Having been entrusted with the responsibility of administering the back lands, Congress immediately entered upon the work of arranging a method for their survey and sale, and of devising a feasible government to be extended over them. The pressing need of securing a revenue from them, together with a realisation that prospective purchasers would require protection both from each other and from the savages, impelled the members to immediate action. Against the many failures with which the old Congress stands charged during the eight years of its national control, the ordinances for the disposition and government of the western lands form a most pleasant and redeeming contrast. The Congress faced an absolutely new task. There were many precedents in history for colonial holding, varying from the policy of Greece, which allowed complete severance of home ties, to that of Spain, which regarded colonies as existing solely for the benefit of the mother country. By adopting the one, the United States must have left the western emigrants to perish. The other was repugnant to a people who had just rebelled against even the moderate colonial system of Great Britain. Equality is the only standard for a republic. Congress had resolved in 1780 that the lands ceded to its jurisdiction should be "disposed of for the common benefit and be settled and formed into distinct republican States which shall become members of the Federal Union and have the same rights of sovereignty, freedom, and independence as the other States." Here was an action almost unprecedented. Instead of holding the outlying region as a colonial possession for the benefit of the older portion, or making it into an Indian hunting-ground as Britain had tried to do, the Confederation of States had voluntarily agreed to erect it into independent States upon perfect equality with themselves. It was a practical application of the principles of the Declaration of Independence, of no taxation without representation, and of the real equality of all portions of the domain. The action was taken for the very practical purpose of assuring the States that if they surrendered their claims to the western lands, their citizens who

migrated thither would not lose their rights by changing from State to national sovereignty.

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

The provisions of the Jefferson Ordinance of 1784 for the temporary government of the western territory have been almost lost sight of because, after it had been in operation for three years and little had been accomplished through difficulty of dealing with the Indians in possession of the land, circumstances arose which brought about a new ordinance superseding the old and changing it in its working details. Yet the first ordinance embodied the main principles in creating States which have since been followed. The number of people in any given portion of the public lands was to be the determining factor. Jefferson's ordinance would allow these settlers to establish a temporary government, to adopt the constitution of any one of the thirteen States, and to elect a legislature. When their number should reach twenty thousand, they would be allowed to call a convention and establish a permanent constitution and government. Upon attaining a population of free inhabitants equal to that of the least numerous of the thirteen original States (at this time probably Georgia, whose population was estimated at twenty-five thousand) they would be admitted on equal footing with the other States. Between the establishment of the temporary government and admission to statehood, the prospective state should be allowed a representative in Congress with a right of debating but not of voting. The well-known Ordinance of 1787, which replaced that of 1784, substituted for the temporary government to be erected by the settlers a ready-made administration of governor, secretary, and territorial judges, to be sent out by the National Government, and to continue until the free male population should number five thousand, when they were to be allowed to exercise home rule in setting up a territorial government. The standard for statehood was fixed definitely in the later ordinance at sixty thousand free inhabitants.

Jefferson, notwithstanding the supposedly aristocratic training of a Virginia environment, placed no qualification for suffrage or office in his ordinance. The Ordinance of 1787, presumably drafted under democratic New England ideas, placed a qualification of ownership of two hundred acres of land upon a representative in the territorial legislature and of fifty acres upon an elector for a representative. Here was an illustration of that reversionary tendency in the sections which has maintained the national equilibrium. Accumulated wealth in the North was beginning to overcome the levelling creed of the Puritan, while the economic loss resulting from slave labour in the South was reducing the colonial Cavalier class in the planter States. The exceedingly profitable cotton culture had not yet developed in the Gulf States to create the ante-bellum aristocracy of the lower South,

nor had the stream of European immigration set in to the Northern States to restore the levelling tendency there.

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

Two provisions in Jefferson's first draft of the Ordinance of 1784 were struck out by the Congress before adoption. One, which forbade granting of titles of nobility, was eliminated because, as Jefferson wrote to Madison, "it was thought an improper place to encounter them." The contest against the introduction of aristocracy was unlikely to be precipitated in the backwoods bordering the Ohio River. Yet the provision would have been in keeping with the spirit of the times. Congress had recently rejected a proposition made to Washington by the Polish Order of Knights of Divine Providence that their order should be officially extended to the United States. The other eliminated provision, forbidding slavery and involuntary servitude in the territory after the year 1800 except as a punishment for crime, is important not only as the first attempted restriction of the slavery system by the National Government, but also as furnishing an interesting comparison with the later sentiment on this unfortunate controversy which affected every phase of United States history for a century.

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

Lafayette was urging Washington to employ his recently acquired leisure in transforming slaves into free tenants. "Such an example as yours," he wrote from Cadiz, "might render it a general practice."

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

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

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

Virginia.

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

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

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

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

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

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

The close vote, of which Jefferson complains, well illustrates the evils of voting by States in Congress. Seven affirmative State votes were necessary to retain the anti-slavery clause. Only eleven States were represented. One of these had but one delegate and his vote was cast out by the rule requiring a State to be represented by at least two delegates to participate in a vote. Of the ten States remaining, seven must have at least two delegates of an affirmative mind from each to retain the clause. Six of these States voted solidly to keep the restriction, but the seventh State could not be secured, as Jefferson stated. Considered by our present method of voting, sixteen

of the twenty-three delegates present voted affirmatively and seven negatively; yet the motion was lost and the clause struck out. Rarely has the power of a minority been so great. The individual may be allowed to hide the mass by being held too close to the vision.

However, the defeat of Jefferson's plan of excluding slavery from the territory after the year 1800 must be considered fortunate by all in sympathy with the general purpose. By it, slavery would have been permitted in the western country for sixteen years. The large influx of migration into the territory within that period, especially from the Southern States, would have established the system too thoroughly to be eradicated. The difficulty with which slavery was permanently kept out, although expressly prohibited by the Ordinance of 1787, is a proof of this assertion. The clearing of the way for the later prohibitive action by striking out the clause tended to the ultimate good. On the other hand, it is pointed out that the Jefferson ordinance provided only for "a temporary government of the western territory" and covered "so much of the territory ceded or to be ceded by the individual States to the United States as is already purchased or shall be purchased of the Indian inhabitants and offered for sale by Congress." Eulogists of Jefferson argue, consequently, that if his restricting clause had been allowed to remain it would have prohibited slavery in all the land west of the thirteen States, both north and south, after the year 1800, and thus the entire slavery system would have died through non-extension. But it must be remembered that the only land thus far ceded lay north of the Ohio and immediately west of the free States. It is not conceivable that such a restriction would have been permitted to hold south of the Ohio and west of the slaveholding States, directly in the line of migration. Indeed, when the time did arrive to create a government south of the Ohio, interference with slavery was distinctly prohibited. It is true, also, that Jefferson's ordinance as adopted solemnly declared its articles a charter of compact to stand as unalterable constitutions both before and after the sale of any part of the vacant land; but that a new ordinance should supersede it after three years, simply because a proposed purchaser demanded some additional guarantees, is a proof that none of its provisions could have withstood the pressure of slave territorial expansion.

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

[Illustration: MAP SHOWING THE PROPOSED WESTERN STATES. From Morse's "American Gazetteer". The five States here outlined in the North-west Territory, with slightly changed boundaries, are to be found on the map at present.]

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

Surveys were to be made by the "geographer" of the United States, assisted by a surveyor from each of the States. One-seventh of all lands surveyed was to be reserved for the land bounties promised to those who had served in the Continental army. An old handbill, frequently reproduced, shows that among the inducements to enlistment held out during the darkest period of the war were "Ease, affluence, and a good farm." The certificates issued to the soldiers at the close of the war in lieu of money were made receivable in payment for public land. A share in all gold, silver, lead, and copper mines was retained by the National Government. Lot number sixteen in every township was reserved for the maintenance of public schools. A provision for setting aside the section adjoining it for the support of religion was struck out, nor could a motion prevail to preserve it for "charitable uses." The votes on this question seemed to be governed purely by individual opinion. The delegates from Virginia, whose Legislature had just dealt the Established Church in that State its death-blow, voted to retain the reservation of land for religious purposes, much like the old church glebe lands. But the separation of Church and State had become too complete to enter upon a scheme so suggestive of establishment.

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

The Jefferson ordinance had been intended for such western lands as might from time to time be given to the National Government. But no

land south of the Ohio was surrendered. Congress, therefore, determined to cast aside the old ordinance, and to form the portion yielded into a specific territory, with a new ordinance which would allow more leeway in forming the States and give Congress more control over the domain from its incipience. Accordingly, Johnson, of Maryland, offered a new ordinance in the spring of 1786, which passed to a second reading. With the exception of the reforms noted above, it closely resembled the old ordinance. But in July following, after an interregnum of no quorum, the Congress passed, by an almost unanimous vote and after a consideration of only a few days, an entirely new law governing the territory north-west of the Ohio. It was the famous Ordinance of 1787. Its sudden transformation, inexplicable to early investigators and solved only by later research, was the result of a business transaction connected with the bounty certificates given to the Revolutionary soldiers.

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

One body of men, styling themselves "The Ohio Company of Associators," composed of ex-Revolutionary officers and privates residing in and about Boston, sent a botanist-parson, the Reverend Manasseh Cutler, to the Congress in the summer of 1787, to urge a proposition they had advanced for the purchase of a large tract on the Ohio River. These "adventurers," as they styled themselves, were desirous of driving a good bargain in a low price for the land and also of gaining certain guarantees from Congress which would give them as much personal liberty and protection in the new home and under the National Government as they enjoyed in their present residences under their State Governments. Cutler, provided with forty-two letters of introduction to members of Congress and prominent citizens of New York city, reached the seat of government in due time. "At 11 o'clock," he wrote in his private journal, "I was introduced to a number of members on the floor of Congress Chamber, in the City Hall, by Colonel Carrington, member from Virginia. Delivered my petition for purchasing lands for the Ohio Company, and proposed terms and conditions of purchase." Fortunately there was a quorum in Congress, the first in nearly two months. A few days later, Cutler was sent a copy of the Johnson ordinance then pending. To this he proposed "several amendments." Three days afterward, the celebrated Ordinance of 1787, for the government of that portion of the territory north-west of the Ohio, was completed and adopted to Cutler's satisfaction. "It is in a degree remodelled," he wrote in his journal. "The amendments I proposed have all been made except one, and that is better qualified."

Nevertheless it took a week more of haggling and lobbying before

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

"By this Ordinance," he wrote, "we obtained the grant of near 5,000,000 of acres of land, amounting to three millions and a half of dollars; one million and a half of acres for the Ohio Company and the remainder for a private speculation in which many of the principal characters in America are concerned."

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

[Illustration: NATHAN DANE'S DRAFT OF THE ANTI-SLAVERY CLAUSE IN THE ORDINANCE OF 1787. The authorship of this article of the Ordinance has been in much dispute. Benton attributed it to a similar provision, drafted by Jefferson, which was struck out of the Ordinance of 1784. Northern men gave the credit to Nathan Dane, a Massachusetts jurist, who was in Congress in 1787. During the sectional feeling aroused over the admission of Missouri in 1820, a dispute arose in Congress over the respective claims of Jefferson and of Dane. Of this, Dane himself said: "In April, 1820, search was made for the original manuscript of the Ordinance of 1787. Daniel Bent's answer was 'that no written draft could be found'; but there was found attached to the printed Ordinance in my handwriting the sixth article, as it now is, that is, the slave article." The original is now in the Library of Congress, Manuscript Division. The signature of Chas. Thomson, Jr., calls attention to the

faithful secretary of the Continental Congress during its entire existence.]

The century contest over slavery in the United States made that factor so prominent in national history that it overshadows matters of equal importance in many transactions. The anti-slavery provision of the Ordinance of 1787 has been extravagantly praised ever since the oratory of Daniel Webster first called general attention to it. Sectional partisans have exhausted logic in trying to trace the authorship to Jefferson, a Southern man, or to Dane, a Northern man. The North has credited it to the persistence of New England; the South, pointing to the five Southern affirmative votes out of the eight, has attributed it to the indulgence of their section. In recognising this first anti-slavery action of the National Government, Northern orators have overlooked an attendant clause, the first national fugitive slave law. It paved the way for a similar provision in the Constitution and led to the obnoxious slave rendition laws of later years. In praising the indulgence of the South, the eulogists of that section have failed to consider the price the New England Associators paid in this first slavery compromise of the nation.

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

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

Another clause of the ordinance has often been the subject of eulogy. "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall for ever be encouraged." Yet this is simply the statement of a principle and precisely such a principle as would be held by the New England Associators where learning had been almost a fetich and where education

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

Immediately following the bargain of Dr. Cutler with Congress, the Associators prepared to migrate *en masse* to their purchase. What the hardy spirits among the country people of the South Atlantic States had been able to accomplish by individual initiative and sheer endurance, the town-dwellers of the North Atlantic States did more systematically and rapidly by concerted action. Organisation and government protection saved the Ohio Associators from such experiments of colonisation as had frequently led to Indian captivities and abandoned settlements in Tennessee and Kentucky. The project of a line of forts along the frontier settlements, conceived during the Indian and Revolutionary wars, assumed shape after the first sale of public lands had really been consummated. Forts McIntosh, Steuben, Washington, Harmar, Vincennes and Massac, were speedily erected or garrisoned, thus guarding the length of the Ohio River, the pathway to the North-west. By subsequent Indian treaties, additional reservations were secured and forts scattered throughout the territory at portages and along the river highways. Under this protection, the Ohio Company sent out its band of artificers to erect dwellings and a stockade for the first settlement. Scarcely a year was allowed to elapse after the purchase until Marietta was founded on the Ohio at the mouth of the Muskingum by the veterans of the Revolutionary War and their friends. It was 170 miles down the Ohio beyond the outpost of civilisation at Pittsburg. Similar settlements were speedily founded on other purchases and on the military lands.

[Illustration: DR. CUTLER'S CHURCH AND PARSONAGE AT IPSWICH HAMLET, 1787. The rendezvous from which the first company started for the Ohio, December 3, 1787.]

The national governor and judges for the Northwest territory in due time created a set of laws, established courts, and erected local governments. The latter was effected by applying the county system, familiar to the people of the Central and Southern States, to the land survey county, and by giving to the township, a unit in the survey system, some of the functions of the New England town. By this happy combination, settlers from any part of the old States would find a local government with whose forms they were to some extent familiar. The Symmes purchase on the Ohio below the Ohio Company's grant was opened to settlement, as was the Virginia Military tract lying between the two. Through Pittsburg, "the gateway of the west," came a throng of pioneers to float down the Ohio to the land of promise. The United States forts protected them on the northern or "Indian side" of the river. In 1786, no less than 117 boats were counted passing Fort Harmar.

So rapidly did the people take possession of this heritage of the Revolutionary struggle that within fifteen years the eastern part was ready to claim the promise of statehood. Eight years later, this new State, Ohio, had passed in rank of population the older trans-Alleghanian States of Kentucky and Tennessee. Blessed with contiguous waterways lying in the line of travel, forming the gateway into the West by the down-thrusting arm of Canada, the first State to be created out of the public domain, with definite land surveys instead

of tomahawk marks, with an endowed system of public schools, Ohio gained a political pre-eminence among the newer States and a national prestige which has scarcely yet been rivalled.

The solution of the problem of the frontier was thus so easily and permanently solved by the Central Government in its home-making policy that one scarcely appreciates the fear of Washington and others interested in the back country lest it become a refuge for outlaws and banditti. Mingling with the savages, it was feared that these outcasts would create a constant menace to the advance of civilisation. Colonial governors had much difficulty in controlling the "lawless banditti of the borders." The first settlers across the mountains were considered in England as "uncultivated banditti" and as "fanatical and hungry republicans" and the "overplus of Ireland's population." So late as 1835, De Tocqueville, the French commentator on America, declared that Americans who quit the posts of the Atlantic to plunge into the western wilderness were adventurers, impatient of restraint, greedy of wealth, and frequently men expelled from the State in which they were born. But he had no doubt that in time society would assume as much stability and regularity in the remote West as it had done upon the coast of the Atlantic ocean.

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

"What wonders there shall Freedom show,
What mighty _States_ successive grow.
What charming scenes attract the eye
On wild Ohio's savage stream.
Here Nature reigns, whose works outvie
The boldest pattern art can frame.
The _East_ is half to slaves consigned,
And half to slavery more refined."

CHAPTER IV

FAILURE OF THE CONFEDERACY

Scarcely a failure of the Confederation Government can be found which does not lead in the last analysis to the financial situation both during and following the war. Suddenly plunged into the Revolutionary War, drained of ready money by the colonial system, possessed of no mines, mints, nor any resource for securing a medium of exchange except an undependable paper promise to pay, the people of the United States emerged from the war broken in purse and overwhelmed with debt. According to Jefferson's estimate made at the time, they owed at least sixty-eight millions of dollars. To this fruit of the war he added the four hundred millions of paper money issued by the Federal and State Governments, estimated, in its depreciated condition, at about seventy-two millions more of debt. The ragged Continental soldiers, frequently reduced to seven-tenths of a pound rations, their arrearages of wages paid in Continental currency worth four pence on the dollar,

were now about to be discharged to return to their needy families carrying only paper promises of the United States to pay. These certificates could be disposed of only to brokers and that at ruinous rates. What was to become of a veteran who was disabled? Congress had already authorised the several States to look up needy soldiers of the Continental service and pay them five dollars a month, such sums to be deducted from the quotas assessed on the several States to meet the general expenses. Seven States only had complied, and in these the lists of needy ex-soldiers had been incompletely compiled.

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

"Can you consent to be the only sufferers by this revolution," asked the insurrectionary Newburg addresses, the work of those unwilling to see the army disbanded before being assured of receiving justice, "and, retiring from the field, grow old in poverty, wretchedness, and contempt? If you can--go--and carry with you the jest of Tories and the scorn of Whigs--the ridicule and, what is worse, the pity of the world. Go--starve --and be forgotten."

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

confidence by his hopefulness.

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

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

The financial confusion was increased because of the lack of a circulating medium. A mongrel collection of coins could be found, passing at varying rates in the different States--English pounds, shillings and pence, Spanish dollars, joes, half-joes, pistoles and

moidores, French guineas, carolins and chequins--but no United States coins. Even this money was soon drawn off to Europe, because British exporters demanded cash until the Revolutionary debts had been settled. That this cash would return to the States was unlikely if one judged from the first year of the peace, during which the United States purchased 1,700,000 pounds worth of goods in England and sent in return only 700,000 worth. In order to secure some kind of money to conduct business, seven of the States began to issue paper money. The troubles arising from a depreciated paper during the Revolution were neither ignored nor forgotten; but no other method presented itself. Congress had power to issue only "bills on the credit of the United States," which were not likely to be more acceptable than other kinds of paper.

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

Delegates were appointed by the State Legislatures usually for a term of one year to begin with the session on the first Monday of the following November. The term would frequently expire when the State Legislature was not in session, and the State would thus go unrepresented for some time. If a delegate pleaded the emergency of the case and asked that the rule be waived, as those from Rhode Island did at one time, Congress refused to sanction such a palpable infraction of the Articles. Cases actually occurred where delegates elect did not arrive at the seat of Government until after the expiration of their term of appointment.

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

The derelictness in attendance on some occasions was humiliating and

even alarming. When Washington appeared at Annapolis to resign his commission as commander-in-chief, only seven States were represented by the least required number. He faced twenty-one delegates instead of the ninety-one from the thirteen States, who should have graced this memorable occasion. The definitive treaty of peace lay on the table at the time. Nine States were required by the Articles to be present when a treaty was ratified. Unless ratified within six months after it had been signed in Paris, it would be null and void. More than half the precious time had already elapsed. With the greatest difficulty, the required number was secured. Four years later, there was no quorum for a period of three months, the representation at times falling to two States. During the first eleven months of the year 1788, a quorum was present only 129 days. Much of this delinquency was due to the expense of maintaining the delegates which fell upon the individual States. To make the burden as light as possible, two delegates only were commonly sent. They were likely to disagree. Manifestly the State in which the Congress sat avoided this difficulty, because it could maintain a larger number of delegates at less expense. To avoid this draft upon the needy treasuries, some of the States adopted the expedient of choosing as representative a resident of the city wherein was located for the moment the seat of government, or some man who had the means and the willingness to serve without pay. During quite a long period, Delaware was represented by three delegates, only one of whom was a resident of the State. This was in accord with the custom of British representation. It is interesting to imagine the results if it had ever become fixed in the United States.

It may be truly said that the framers of the Articles could not have expected a successful continuous sitting of so large a body of men. They had not so planned it. The Articles provided that a Committee of States could be appointed at any time, whenever the Congress as a whole might wish to adjourn, by the delegates from each State naming one of their number to serve in this capacity. This was the method of forming a "grand committee" on any important business in Congress. The attempt to give over national affairs to a Committee of States was made in the spring of 1784, after the peace. One trial of the expedient was sufficient. Only eleven States were represented at the time. From these, eleven delegates were selected. According to Monroe, "their powers are confined so that no injury can be effected." He referred to the manner in which the Articles restricted the Committee. The eleven celebrated the beginning of their administration by adjourning for three weeks, "for the benefit of the health of the members." At the end of this vacation, nearly two weeks were consumed in getting nine of the Committee together. A month of regular sessions followed, when suddenly the ever-present dissension concerning the place of meeting broke out. The Southern members of the committee wished to remain at Annapolis. The Northern members wished to adjourn to the cooler climate of New Jersey.

The strife increased until, at the end of two months, the members from New Hampshire, Massachusetts, and New Jersey withdrew. Being left without a quorum, the remaining members signed a manifesto, placing the blame on the seceders and departed for their several homes. Franklin compared the action of the Committee to two lighthouse keepers who quarrelled about the task of filling the lamp until the light went out. "There will be an entire interregnum of the federal government for some time against the intention of Congress, I apprehend, as well as against every rule of decorum," wrote the indignant Madison. During this interregnum, a chief clerk was acting as Secretary of Foreign

Affairs and General Knox was serving as Secretary of War. They were the only visible parts of the National Government. Madison at first thought that the Committee of States should be censured when Congress reassembled, but, recognising discretion as the better part, suggested that "we had also better keep this affair out of sight." It was so done. The complete failure of this Committee of States scheme as an executive makeshift was in the end fortunate since it demonstrated clearly the need of a trustworthy and permanent head to the General Government. If it had been even a partial success, it might have been tried again and correction thereby delayed.

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

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

That the capital of the United States to-day occupies a territory independent of a State is the result of sad experience in these early days. When Congress, in 1783, was driven from Philadelphia by some rebellious State troops, who threatened force unless they received their back pay, the village of Princeton was the refuge to which the members fled. Some faithful Continental troops stationed there would protect them. The citizens of the village, grateful for this gift of the gods, prepared a list of families and the number of guests each could accommodate. They also adopted a long set of resolutions, deprecating the "gross indignities" offered to the Congress at Philadelphia, and pledging with the utmost cheerfulness their lives and fortunes to the Government of the United States. They promised to protect Congress "in whatever way our services may be required, whether in resisting Foreign Invasion or in quelling intestine Tumults." That the National Government of the United States of America should be offered protection by a small New Jersey village is indicative of the progress which nationality had thus far made. Sentiment would in time demand a permanent, independent home. Notwithstanding the prevalent financial depression, small tendency toward economy was manifest among the people or its officials. As long as credit held out, extravagance would prevail. The war had been successfully closed, political freedom had been won, and individual ease and affluence presumably secured. Short-sighted fashion viewed her immediate gratification as the concomitant of independence. Even the members of Congress were not exempt from temptation. A Rhode Island delegate reported from Congress

sitting at Annapolis to the governor of his State:

"The horse races were attended here the week before last, and are all over, as are also the balls, routs, fandangoes, and plays. I assure you there has been a merry Winter in this place, according, at least, to accounts for I have seen but little of their diversions. I did not even look upon the horse races, although they were to be seen from the windows in the back room of the State House: nor have I attended a single play, although the theatre has been open twice a week the chief part of the Winter, and the playhouse adjoins the house where I lodge."

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

The Congress was a close corporation. The public was not admitted to its sessions, the debates were never published, and the proceedings rarely appeared in the public prints. Its adjournment of both time and place was so frequent and the beginning of new sessions so delayed that news concerning it rarely found a place in the newspapers. This was in marked contrast with its early history, when the assembling of delegates at Philadelphia was described in great detail for those days. Internal dissensions marked the sessions, as indicated by the experience of Howell, of Rhode Island, described by himself above. Members bore their obligations lightly. It was said that at one time when a delegation of Indians arrived at Princeton to make a treaty, a member left for Philadelphia to be married, thus breaking the quorum, and almost precipitating an Indian war.

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

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

Monroe thought that the Articles were practicable and, with a few alterations, the best plan that could be devised. Hamilton, on the contrary, regarded them as hopeless. Even before they were adopted, he predicted a speedy failure. They were "neither fit for war nor peace," he declared. "They show chiefly a want of power in Congress." Washington attributed the defects made in framing the Government to too good an opinion of human nature. "Experience has taught us," he said, "that men will not adopt and carry into execution measures the best calculated for their own good, without the intervention of a coercive power." He declared that requisitions made upon the States by the central power became a perfect nullity when thirteen sovereign, independent, disunited States were in the habit of discussing and refusing compliance with them at their option.

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

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

Such sentiment among public men should have brought about a speedy amendment of the defective parts of the Articles. But, as Washington once said, the people were not yet sufficiently misled. Attempt after attempt was made to secure the necessary unanimous consent to an amendment. Congress begged the States to give over to it the collection of an impost or duty for a limited number of years or for a limited per cent.; to give to it authority to regulate foreign vessels in American ports; and to refrain from levying discriminating duties among themselves. The unanimous consent required by the Articles to make any amendment blocked these and all other proposed reforms. Sometimes twelve States would agree, but before the thirteenth could be won over, another would withdraw its consent. On one occasion, when Rhode Island alone held out, her delegates in Congress wrote to the governor of the State that their "reasonable and firm stand against the all-grasping hand of power in the case of duties had saved the United States!" Connecticut protested that such an addition to the functions of Congress as the collection of an impost would at one stroke vest that body with the power of the sword and the purse, and leave nothing of the individual States but an empty name. Others argued that with 320 million acres of land, which would bring an average of at least one dollar an acre, the General Government needed no other source of revenue. Unanimous consent to an amendment could never be secured. This was the lesson taught by the attempts.

Aside from the difficulties arising from the defects of the Confederation experiment, the disorders in the national body were simply reflections of the turbulent spirit prevalent at the time. Suddenly emerged from the restraining hand of a mother country, misinterpreting the meaning of independence, confounding liberty with license, having lost the law-abiding sense in the treatment of the Tories, grown only too accustomed to the pleasures of mob law, the

people were passing through the reassembling period which always follows a civil war. Peace is the normal condition of a people; war is the abnormal. Restraint, taxation, and obedience, it was supposed, had passed away with royalty and kingly prerogative. "Taxes and relaxed government agree but ill," observed the laconic Jay. From South Carolina, Edward Rutledge wrote to him, "It is really very curious to observe how the people of this world are made the dupes of a word. 'Liberty' is the motto; every attempt to restrain licentiousness or give efficacy to government is charged audaciously on the real advocates of freedom as an attack on liberty."

Visionists indulged their hopes of universal happiness. The rebellion which Captain Daniel Shays, officer in the late Revolutionary army, headed in Massachusetts was aimed directly at closing the courts and preventing the issuing of writs to sell mortgaged farms. But Knox wrote Washington that the creed of the insurgents was that the property of the United States had been saved from Britain by the exertions of all the people and therefore ought to be the common property of all; and that they were determined to annihilate all debts, public and private, and to have agrarian laws, which could be easily effected by the means of unfunded paper money; and that this money should be a legal tender in all cases whatever. The madness had spread to New Hampshire, Connecticut, and Rhode Island, according to Knox, embracing a total of twelve or fifteen thousand "desperate and unprincipled men." Wild-eyed enthusiasts in Rhode Island secured the passage of an "iron-clad oath" to the effect that paper money was as good as gold or silver coin--"compelling people to embrace the doctrine of political transubstantiation of paper into gold and silver," as Jay put it. The militia had to be called out in New Hampshire to disperse a mob besieging the State Legislature at Exeter. "The mob clamoured," said a contemporary, "some for paper money, some equal distribution of property, some annihilation of debts, some rebate of all taxes, and all clamoured against law and government." The disorder spread to Virginia. "In several counties the prisons and court houses and clerks' offices have been wilfully burnt. In Green Briar, the course of justice has been mutinously stopped and associations are entered into against the payment of taxes," wrote Madison to Jefferson in France.

Neither those who caused these troubles, nor those who wept over them, as did Mrs. John Adams in France when news of Shays's Rebellion reached her, could foresee the blessings which would follow; that these eight years of individualism were to form an argument for nationalism to be handed down by intuition to future generations. At the time it seemed that nothing but a miracle could save the Union. "Our affairs seem to lead to some crisis, some revolution--something I cannot foresee or conjecture--I am uneasy and apprehensive; more so than during the war." Jay was never given to exaggeration of thought or expression; he must have been deeply impressed to write those words to Washington. "What a triumph for the advocates of despotism to find that we are incapable of governing ourselves," replied the equally conservative farmer of Mt. Vernon, "and that systems founded on the basis of equal liberty are merely ideal and fallacious." To Jefferson in France, Washington confessed that the General Government, if it could be called a government, was shaken to its foundation, and that unless a remedy were soon applied anarchy would inevitably ensue. "The question whether it be possible and worth while to preserve the union of the States must be speedily decided some way or other." said Madison. "If some strong props are not applied, it will quickly tumble to the ground." He thought he detected a propensity to return to monarchy in some

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

Franklin, appearing in the midst of these disorders from his nine years' residence in France, felt the necessity of counteracting the despairing feeling among the friends of America in Europe and of checking the rejoicing among her enemies. He, therefore, filled his letters with descriptions of American prosperity, crops, prices, and happiness. "In short," he wrote, "all among us may be happy, who have happy dispositions, such being necessary to happiness even in Paradise." At the same time, acting in his new station as president of the State of Pennsylvania, he was endeavouring to arrest "a number of disorderly people" who had collected near the line separating Pennsylvania and New York. "They are impatient of regular government," he wrote in seeking the co-operation of the governor of New York, "and seize upon and presume to dispose of lands contrary to and in defiance of the laws. Their number is recruited daily by vagabonds from all quarters." The disorder arose from the long-standing controversy between Pennsylvania and Connecticut over possession of the Wyoming valley--a dispute which the Federal Government had been unable to settle.

The general public had long since lost respect for the National Government and its Congress. Even Washington referred to it as the half-starved, limping Government, that appears always moving upon crutches and tottering at every step. The chief difficulty was not to ascertain the remedies needed, but how to apply them. As early as 1780, Hamilton had thought Congress had the right to reassume the powers of sovereignty it had appropriated with the silent consent of the States during the pressing times of the war; or, if the application must be external, that the people might meet in a convention of delegates empowered and instructed to conclude a new and effective federation. Few were ready to go as far as the impetuous Hamilton in thus virtually overthrowing the "Articles of perpetual union" which were legally binding although inefficient. To amend them according to their own provisions would be legitimate if it could be accomplished.

[Illustration: SIGNATURES OF DELEGATES TO ANNAPOLIS CONVENTION. Hamilton, Reed, Dickinson, Randolph, and Madison were the most prominent members of this abortive meeting, which led eventually to the Philadelphia Convention.]

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

exigencies of the Union."

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

CHAPTER V

REFORMING THE NATIONAL GOVERNMENT

The suggestion, emanating from the unsuccessful gathering at Annapolis, that a convention of delegates be called from the several States to meet at Philadelphia the following year to devise means for rendering the National Government adequate to its task, was supported most admirably by the condition of the times. The Shays Rebellion in Massachusetts, its support in the neighbouring States, and the disorder in Virginia and New Jersey, were moving arguments for immediate action. Even Washington was forced to admit that the people were at last sufficiently misled. The National Government, helpless to invade a sovereign State to suppress domestic insurrection, was compelled to finesse in taking some steps to mobilise the militia by imagining an outbreak of Indians in Massachusetts.

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

During the spring of 1787, State after State took up the idea of a convention of the people to correct the errors in the national frame. With rare discrimination, they chose, through their State Legislatures, their leading men as delegates. All hope became centred in this apparently last resort. The convention "will either recover us from our present embarrassments or complete our ruin," said Monroe. That radical changes were necessary, many felt assured. Madison likened the Government at this time to a ship which Congress kept from sinking by standing constantly at the pumps instead of stopping the leaks which endangered her. He began to talk about "a new system" before the convention assembled. In sending to Washington an outline study of all

prior confederated governments, he wrote, "Radical attempts, although unsuccessful, will at least justify the authors of them."

Such sentiments were found to prevail generally among the delegates when, on May 25, 1787, a majority of the States was represented and sessions begun in the Independence Hall in the city of Philadelphia. Within five days it was decided to cast aside the deficient Articles, to exceed instructions, and to frame a new National Government with separate legislative, judiciary, and executive functions. To put new wine into old bottles was felt to be useless. No small task confronted the convention in carrying out this resolution. Independence and the other steps thus far leading toward nationality had been taken, as George Mason, of Virginia, said, under a certain enthusiasm which inspired and supported its advocates; but to sit down calmly to consider a project which might bring happiness or misery to millions yet unborn was an action, which, he confessed, absorbed and in a measure suspended the human understanding. Robert Morris, a delegate from Pennsylvania, begged his sons in France to offer a prayer for the success of the meeting since so much of their future happiness depended upon it.

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

[Illustration: MANASSEH CUTLER]

This secrecy was felt to be binding perpetually by many of the members. The secretary of the convention, Major Jackson, who came to Philadelphia as private secretary to General Washington, kept the official minutes. This book, by one of the final motions of the convention, was entrusted to Washington, who had presided so conscientiously over the sessions that he did not allow himself even the privilege of debating. In 1796, he deposited it among the public archives. Until the year 1837, these minutes, with a few letters submitted by some of the seceding delegates justifying their action, and the gleanings from eighty-odd private letters written by members of the convention, constituted all public knowledge of the details of the meeting. But in the year mentioned above, Madison's papers were purchased by the National Government, and

among them was found a number of little home-made books containing his priceless "Notes on the Convention." In the introductory pages, Madison tells how he carried out his determination to preserve a record of the debates for the benefit of posterity.

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

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

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

The solution of this problem immediately raised another. What was meant by "population," which had been substituted for wealth as a basis of apportioning delegates in the popular branch? Did it include slaves? The Continental Congress had long been accustomed in assessing the expenses of the war to add to the quotas of the States a sum equal to three-fifths of the number of slaves in each, on the ground that the labour of five slaves was equivalent to that of three free men. This proportion was now taken both for determining representatives in Congress and for assessing direct taxes. The States which continued to hold slaves would consequently have the benefits of three-fifths of their slaves represented by additional congressmen; but they must

bear three-fifths additional of a direct tax, whenever one might be levied by the National Government.

The questionable value of slave labour had already divided the Southern States into two economic classes. Delaware, Maryland, and Virginia, because of the exhausting effects of tobacco upon the soil, had attempted to restrict its cultivation by forbidding more slaves to be brought in. The two Carolinas and Georgia, requiring fresh slave labour for their rice and indigo fields, would not consent to any diminution of the supply. A compromise was at last effected in the convention which permitted the importation of new slaves into the United States for the coming twenty years. This was done by the votes of the New England States, where the slave-trading vessels were generally built, added to those from the three Southern States. Against these were New Jersey, Pennsylvania, Delaware, and Virginia. For some reason, the Maryland delegates voted with the majority to keep the trade open. This compromise was strongly opposed by Gouverneur Morris, a Northern man, who confessed that he would sooner submit himself to a tax for buying all the negroes in the United States than saddle posterity with such a slavery constitution, and by Madison, a Southerner, who declared that these twenty years would bring as much mischief as an unlimited trade could produce. In accord with the practice of the old Congress, the delegates decided to eliminate the word "slave" from the Constitution, lest it might cause offence and beget opposition toward the new government they were about to propose. Milder terms, like "such persons" or "persons legally held to service or labour," were substituted.

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

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

Turning over the pages of Madison's "Notes," one may follow through committee and general session, the slow evolution of the Constitution

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

Experience was the fountain from which the Constitution-makers drew their "inspiration." A novel creation, as a certain narrow provincialism in the United States is sometimes fond of claiming for the Constitution, would have been an assembling of theoretical machinery, of untried experiments, which could not have met the shock of being suddenly put into motion to replace a broken down system. It could not have won back, solely on its merits, the confidence of the discouraged people. If it had been "the most wonderful work ever struck off at a given time by the brain and purpose of man," it could scarcely have withstood the vicissitudes of a growing people for over a century, with amendment in four particulars only. More experiments and less experience might have required the adoption of more of the fifteen hundred amendments which have been proposed to the Constitution in these hundred years. Experience is a safe ground upon which to build. Gouverneur Morris demolished a vast amount of eulogy when he wrote to a correspondent in France that some boasted the Constitution as a work from Heaven, while others gave it a less righteous origin. "I have many reasons to believe," said this matter-of-fact man, who bore such a large part in recasting the phraseology of the document, "that it was the work of plain, honest men."

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

rejected as unfitted to the national frame. An advisory council for the President, such as nearly every colony gave to its governor, was desired by many but finally omitted. The present Cabinet really takes its place.

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

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

The French constitution of 1793 and those which followed bore little resemblance to the American frame. The influence which the American Revolution exerted upon the French Revolution had passed, and the two movements bore no further resemblance to each other. The Americans had been content with a rebellion against authority and a revolution which substituted old forms, or combinations of forms, with new officials. The French revolutionists were not satisfied until they had tried to change all existing forms and institutions. They would annihilate society, the church, Christianity, even Deity itself. Precedent became a crime. The accepted system of weights and measures, the calendar--nothing was too well tried to compete with innovation. In America, the rights of man were eventually tacked on to the tail of the American Constitution as an afterthought to conciliate the timorous, "a tub thrown to the whale," as the first ten amendments have been called. In France, the rights of man overshadowed the working part of the constitution, delaying essential details by their incorporation, and ultimately furnishing a pretext for interfering with other peoples. When once the Americans had secured a constitution, they desired nothing

so much as to be left alone to work out their own destiny. When once the French had evolved a system, with true propagandist spirit they wished to foist it on others. "With cannon for treaties and millions of freemen as ambassadors," they demanded that the feet of all nations should keep step with the march of what they deemed liberty. Hamilton, as usual, had proven a seer when he wrote to Lafayette in France at the very beginning of the French movement, "I fear much the final success of the attempt, for the fate of those I esteem who are engaged in it, and for the danger in case of success, of innovations greater than will consist with the felicity of your nation."

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

"The names of the members will satisfy you that the states have been serious in this matter," wrote Madison to Jefferson from Philadelphia. "The attendance of General Washington is a proof of the light in which he regards it. The whole community is big with expectation and there can be no doubt that the result will in some way or other have a powerful effect on our destiny."

Even stronger conviction of the critical situation may be gleaned from the private correspondence of the other members, bound by the pledge of secrecy from describing the turbulent scenes attending the sessions. Daily had they seen the difficulty of reconciling the inherited animosity between the Puritan and the Cavalier transplanted to America; between the Established Church and the Dissenter; between commercial and agricultural interests; between a slave system and free labour; between an urban population, accustomed to abide by majority rule, and a rural people, bred to individual freedom and absolute home rule. They had to evolve a system satisfactory to people scattered through thirteen degrees of latitude, with climatic differences arising from a mean average temperature of forty degrees in the north and sixty degrees in the south. Such decentralising tendencies were met with nowhere in Europe save under the strong hand of a monarch in Russia. These climatic differences produced the frugal Northerner, who had to provide in advance for the winter season, and the hospitable planter of the South, in whom prodigality was induced by the very lavishness of nature about him. It was not strange that by contrast, and seen through the haze of distance, the frugality of the North should appear to be avarice to the South; while the hospitality upon which that section prided itself should seem to be prodigality in Northern eyes. These basic differences could be reconciled by compromise, and that only temporarily. Washington had summed up the situation when he declared that there must be reciprocity or no union; that the whole matter could be reduced to a single question--whether it was best for the States to unite.

Although Washington, as presiding officer, took no part in the debates, his influence in favour of effective government must have had weight in the convention. Madison and Gouverneur Morris bore the brunt of objections to a national system. Franklin, a victim of old age and ill health, was allowed to read his speeches from his seat. Hamilton pleaded for a more effective system early in the sessions, but his radical views undoubtedly militated against any plan he had to offer. Two of the most influential members from the Southern States, Randolph and Mason, of Virginia, refused to countenance the proceedings by their

signatures to the document. Another member, Gerry, of Massachusetts, followed their example. Luther Martin, a prominent lawyer of Maryland, returned to his constituency to write a letter of protest against the assumption of power by the convention in framing a new government when called together solely for the purpose of correcting the old. Yates and Lansing, two of the three delegates from the prominent State of New York, went home for the same reason. The third, Alexander Hamilton, withdrew for a time in disgust because his efforts for an efficient central power produced apparently little results. The sessions had, for the most part, representatives from eleven States only, Rhode Island having failed to send delegates. Her refusal was caused by a conviction that the convention would recommend taking away from the States the power to issue money and to collect duties. Her fears proved true.

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

At last the only body, which has ever been called together in the United States to consider a frame of national government, was ready to report and to adjourn. A new plan of government lay on the table signed by thirty-nine of the fifty-five men attending the convention. They admitted its defects, but agreed that it was the best frame that could be obtained at the time, and resolved to throw themselves on the indulgence of their constituents. As much was confessed in the explanatory and conciliatory circular, which they prepared to accompany the document to the Congress and thence, they hoped, to the States.

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

Here was the voice of compromise, and of that conciliatory spirit, which alone can make union possible. If the people at large would show the same indulgence toward each other, the experiment would be given a trial. Assuredly, the members of the convention set them a good example of toleration. "No man's ideas," said Hamilton, "are more remote from the plan than my own are known to be; but is it possible to deliberate between anarchy and convulsion on the one side and the chance of good to be expected from the plan on the other?" "I consent, sir, to this Constitution," said the aged Franklin, in a paper read

by his confrere, Wilson, "because I expect no better, and because I am not sure it is not the best." He advised that opinions on the errors of the document should never be carried beyond the walls of the convention.

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

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

Washington, after his return to Mt. Vernon, sent a copy of the document to Patrick Henry, saying, "I wish the Constitution, which is offered, had been more perfect; but I sincerely believe it is the best that could be obtained at this time." The Revolutionary orator had refused to attend the convention as a delegate from Virginia. He preferred the Articles with their imperfections to an experiment. To Washington he replied that he could not bring his mind to accord with the proposed Constitution. He would prefer to bear the ills they had than fly to others that they knew not of. Harrison, a Virginia neighbour with whom Washington had also been associated since the Revolutionary times, replied to the General in acknowledging the receipt of a copy of the Constitution that he feared the remedy would be worse than the disease. Such sentiments were not confined to these Virginia statesmen. It was evident that the victory for the new government had been only half won in its formation and adoption by the convention. It had yet to be accepted by the Congress and to be adopted by nine of the States before going into effect. Great opportunity for a renewal of insurrection and faction would be offered by undue delay.

CHAPTER VI

ADOPTING A NATIONAL CONSTITUTION

The statesmen who had won the fight for a new form of national government in the Philadelphia Convention lost no time in following it up through the various stages leading practically to a plebiscite of the people. Madison returned immediately to New York to resume his seat in Congress, where the first stand must be made. That body had been engaged during the summer with the Ordinance of 1787, and the question of the navigation of the lower Mississippi. It was feared that Richard Henry Lee, who had refused to be a delegate to the convention, might make the Congress hostile to the new plan, or delay it until after the fall meetings of the State Legislatures. Fortunately there was a quorum when Madison arrived from Philadelphia. Through his personal efforts and private letters from influential men, the Congress in little more than a week had accepted the report of the convention

and transmitted it to the several State Legislatures for their consideration. The members of the Legislatures in each State were requested to call a popular convention to pass upon the new document, rather than to consider it themselves. The Legislature is created to make laws and not to judge of constitutions. The Articles had not observed this canon of political science, but had been adopted by the State Legislatures. Less haste and more regularity were to characterise the consideration of the Constitution.

During the nine months following the submission of the Constitution to the States, while the necessary nine ratifications were being obtained, hope and fear alternated in the minds of its friends. To Hamilton, success seemed so assured that he wished they had made the Constitution "higher toned." Yet the struggle was likely to be arduous enough under existing conditions. Since the word "Federal" had by common usage been applied to the national in contradistinction to the State governments, the new frame was known as "A plan for a new Federal Government," and those who favoured it styled themselves "Federalists." Men were known as "warm Federalists" before the discussion was a month old. On the other hand, Richard Henry Lee had attacked the new idea under the pseudonym, "The Federal Farmer." His use of the word was entirely consistent with the desire of the opposition to continue a federated instead of running the risk of a consolidated government. As Gerry, an Anti-Federalist, complained later, an injustice was done them by fastening upon them the word "Anti," when they were in favour of retaining the Federal Government and the others wished to cast it aside and to establish a National Government. The Federalists, in the light of the present day, would be called "Unionists"; but, being largely city dwellers and having control of the presses, they were able to assume the less alarming name of "Federalist," and to put upon their opponents the name "Anti-Federalist."

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

The war between the Federalists and Anti-Federalists was waged chiefly in the public press. Sixteen editions of the Constitution in pamphlet form have survived to this day, in addition to those officially struck off. An edition appeared in London. Another was printed in Albany, New York, in the Dutch language. Pamphlets without number poured from the presses. Correspondents occupied columns in the newspapers. When Governor Clinton, of New York, opened his opposition batteries under the pen name of "Cato," Hamilton replied vigorously in defence of the new proposition under the name "Caesar." When George Mason addressed his fellow-citizens of Virginia in a pamphlet against the Constitution, he was answered by James Iredell as "Marcus." In other publications, "Cassius," "Agrippa," "Sidney," and "Civis" filled columns, while "Plain Dealer," "A Columbian Patriot," and "An American Citizen" withheld not their pens. Much of the rapid increase in the number of newspapers and the betterment of printing facilities in the United States near the close of the century may be attributed directly to these debates on the proposed Constitution. The religious controversial literature of colonial days had now been replaced by political composition.

Not only in the public press and in private letters did the Federalists further their cause, but they did not hesitate at more cogent arguments. When seventeen country members of the Pennsylvania Legislature ran

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

The "Antis" soon found out, as "Antis" are wont to do, that opposing a popular movement was an ungrateful, as well as an unpleasant task. Pamphlets issued by the other side called them a junto of debtors, knaves, and worthless-moneyists. The Anti-Federalist members of the Massachusetts Convention complained that they were pointed out and abused upon the streets. They also charged that the moneyed interests of New York were trying to bribe the convention with large sums of money sent to Boston.

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

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

Concerted action usually wins over individualism. The Anti-Federalists showed no such capacity for united efforts as the Federalists displayed. For instance, Hamilton, with the aid of Madison and Jay, wrote a series of articles for the New York press, calculated to explain the new government, to enlighten the people, and to quiet their fears. Collected into the Federalist, they form the best commentary yet written on the Constitution. Copies of the numbers, as they appeared, were forwarded from city to city to be reprinted in Federal newspapers. Nothing was omitted likely to impress the people favourably. Impressive ceremonies marked the ratification in each State as the news was received. In Baltimore, a vessel, fifteen feet long, representing the

new frame, fully equipped and rigged, was drawn on wheels through the streets, then launched on Chesapeake Bay, and navigated to Mt. Vernon, where Washington received it "as a specimen of American ingenuity."

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

"Each party-view, each private good, disclaim,
Each petty maxim, each colonial aim;
Let all Columbia's weal your views expand
A mighty system rule a mighty land;
Yourselves her genuine sons let Europe own
Not the small agents of a paltry town."

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

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

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

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

The keener spirits among the opposition looked above these details and

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

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

These words of the preamble to the Constitution, so pregnant of future interpretation, were thus, from the beginning, a cause of alarm to a few minds. Patrick Henry seemed to feel presciently that the later theory of an indissoluble union would be based largely upon this phrase, and that the Civil War to preserve the Union would be justified by it. Yet its incorporation in the document in that form was due purely to an accident. The Virginia plan contained no preamble. Pinckney's plan, as given by Madison, began, "We, the people of the States of New Hampshire, etc." When the first rough draft of the Constitution had been put together by the Committee on Detail, during the eleventh week of the convention, and secretly printed for the use of the members, the preamble began, "We, the people of the States of New Hampshire," etc. Six weeks later, the revised draft was reported with the preamble changed to "We, the people of the United States," etc. What caused the change to be made? Chiefly because the blank designating the number of States required to put the new form into execution had been filled with the word "nine." No one could tell which nine would ratify first and, therefore, no list of States could be put into the preamble. A phrase covering all the people of the United States was substituted. What slight chances give rise to arguments justifying the making of a nation!

[Illustration: FIRST DRAFT OF THE CONSTITUTION OF THE UNITED STATES. The form of the preamble in this draft is described in the text of this volume. It was printed for the benefit of the members of the Convention in making further changes.]

Two factors were potent in securing the final success of the new plan. One was the provision in the last clause by which the new frame could be amended easily. The unanimity which the Articles required in order

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

The State conventions were not slow to take advantage of the privilege of proposing amendments, and these the promoters were too wise to resist. Proposals to make amendments were non-committal and harmless where the motto was "Anything to get the new plan in operation." Massachusetts wished nine additions made, South Carolina four, Virginia twenty, New Hampshire twelve, New York thirty-two, and North Carolina twenty-six. Of the 103 propositions submitted to the consideration of Congress by the conventions, many were duplicates. Only ten were destined to survive. At the time, they served as a machine of the gods to avert the dangerous proposition that another convention be held to draw up a second constitution embracing the desired changes.

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

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

by the precarious method of amendment. Advancement must have been hindered constantly by waiting on the slow process of adding provisions to the Constitution. Such crises as the purchase of Louisiana, the suppression of domestic insurrection, and the adjustment of the national finances after the War of 1812 could never have been met because of constitutional limitations.

Several of the States incorporated in their acts of ratification a kind of political creed of the inalienable rights of the individual. Although not intended as amendments or even as conditions of ratification, they were supposed to be a kind of perpetual compact between the State and the nation. They were modelled after the Bill or Declaration of Rights in some of the State constitutions. Rhode Island, for instance, declared that "the rights aforesaid cannot be abridged or violated and that the explanations aforesaid are consistent with the said Constitution." Time was to show in seasons of national aggrandisement, during the reconstruction period, for instance, how futile such State barriers would be in hedging about the national powers. These sticklers for individualism and fearing souls could not see that the central clearing-house, which the people of the respective States were creating, could not be confined to a few expressed powers; that unseen situations and sudden emergencies would call for action not specified; that to make a list of allowable acts in advance was simply an impossibility. In their alarm, they failed to see that the individuals of which the States were composed would come in contact more closely with local than with national affairs; that they would participate more frequently in State than in Federal Government; and that this very participation for the regulation of local affairs would perpetuate a fealty to the State which would guarantee its perpetuity within its proper sphere. But, at the time, many agreed with Lowndes, who predicted in the South Carolina Convention that despite all precautions the State powers under the Constitution would soon be confined to the regulation of ferries and roads.

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

Nevertheless the body assumed an unwonted activity in these, its last days. A quorum was had during several of the summer months of 1788. The business of settling accounts between the Confederation and the several States was actively carried on, and further arrangement was made for selling the public lands in the North-West Territory. The form of levying quotas upon the States, amounting to a million and a half dollars, was again gone through with. Since it was unlikely that these assessments would be paid, John Adams borrowed one million

guilders in Holland for ten years with which to inaugurate the new Government.

A petition for statehood from the settlers in Kentucky, the second in the long list of additions to the Union, reached Congress, accompanied by the consent of Virginia to the severance of her western district. Since the time for the beginning of the new Government was so near at hand, the petition was returned with the suggestion that it be renewed after that event.

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

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

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

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

CHAPTER VII

BEGINNING AN EFFICIENT GOVERNMENT

In the manner of its formation and adoption the Constitution was the product of a confederation. In these respects, it was little in advance of the rejected Articles. Its strength lay in the possibilities of its administration. But as a document in 1789, it was the product of federated States. If all the people of the United States could have assembled and formed a constitution to go into effect immediately, or even if delegates, chosen by the people of the United States as a whole, had drawn up such a document, which had been adopted by the entire people or their delegates in a ratifying body, there would have been a national sovereignty wholly independent of the States from the beginning. Such a procedure was impossible--the very best reason why it was not attempted. A pure democracy is possible only among a small number of people living in a small State. For a large population and an extensive territory representative government must be substituted. If the idea of government in the British colonies in North America had been national instead of local from the beginning, the States would have disappeared under the Constitution, or have been kept only for selecting national representatives, and performing other national functions. An equipoise between the two could never have been reached. But fate had ordained otherwise. In a new land, the settlers naturally gathered into little groups for mutual protection. Collecting about some harbour or along some navigable waterway in the Northern colonies, or assembling from the plantations at the centre of the parish in the Southern colonies, the people instituted local government. Clusters of these units under home rule formed larger divisions, and, in this way, union came as an afterthought resulting from contiguity and intercourse. The States as colonies existed long before the Union. Individualism was born long before unity in America, and gained a prestige which aggregation has required nearly a century to overcome.

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

Whatever destiny may have made of the later Union, whatever theories may now be indulged in concerning the abstract Union the fathers made in 1789, the concrete Union which was put into effect was the offspring of the States not only in the thoughts of the people, but it was even dependent upon them for aid in several particulars necessary for putting it into operation. Having no electoral machinery, the Union was compelled to ask the States to choose members of both branches of its Congress. In electing its chief executive, it was obliged to give the

States sole charge of choosing electors for this purpose. A national election gradually came into existence because the Union took this control practically away from the States. The Federal Government was indebted to State agency for its first capitol, the Federal Hall, furnished it by the kindness of the City of New York. It had not a foot of soil independent of the States, State militia furnished the military escort for its President-elect, and a State governor, Clinton of New York, with his staff, gave him official welcome to the State and national capital combined. Even the oath given to the chief executive, an oath required by the national Constitution, was administered not by a national official, but by the chancellor of the State of New York.

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

It must also be noted that State qualifications for freemen determined who should vote in this first national election. In those States where the people voted, statistics show that only three men out of every hundred of population could vote in this first presidential election, where nowadays twenty men have that liberty. In some States, the people had no voice whatever in choosing the President, because the State Legislatures decided that they were the proper mediums to choose the presidential electors. The Constitution left the matter entirely in their hands. In some States, the people voted for electors in fixed districts; in other States they voted for a whole electoral ticket. This system of choosing a President through a set of electors, borrowed from the method of electing a German emperor, was far removed from democracy. It showed the distrust which the Constitution-makers felt in the intelligence and discrimination of the masses. Irregularity marked the elections generally. Two factions in the New York Legislature fell into a dispute over the manner in which Senators and electors should be chosen. It resulted in that State being deprived of participation in the first election and in the first session of the Senate. Before the next presidential election, Congress began to make regulations governing the States in their conduct of this important matter, an innovation which grew until it culminated in the election "force laws" of reconstruction days following the Civil War.

"The first Wednesday in March next shall be the time and the present seat of government the place for commencing proceedings under the said Constitution." So accustomed had the people grown to delays in public affairs, that a strict compliance with these provisions of the old

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

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