The southern states of the American union considered in their relations to the Constitution of the United States and to the resulting union.

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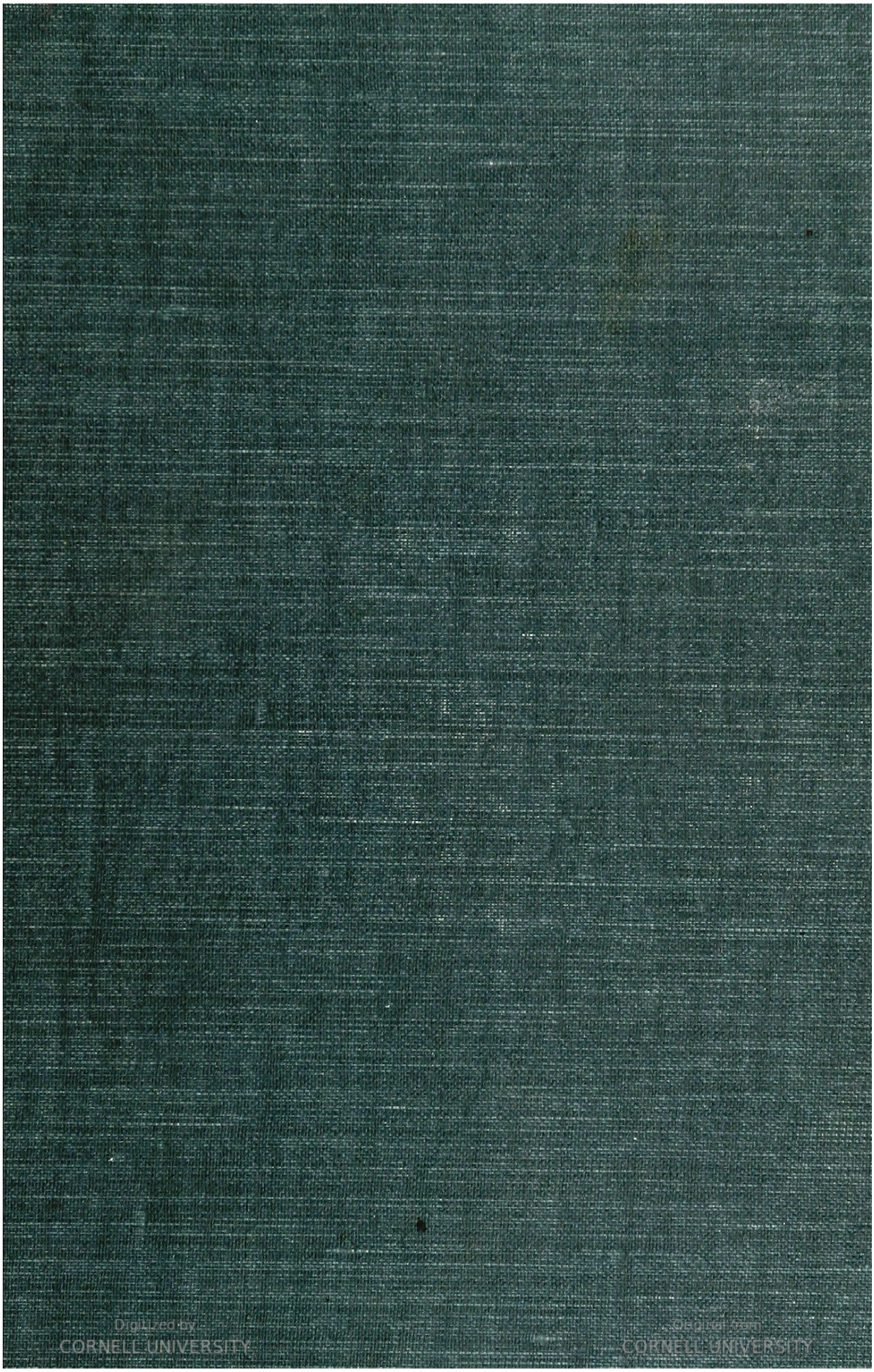

THE SOUTHERN STATES

OF THE

AMERICAN UNION

CONSIDERED IN THEIR RELATIONS
TO THE

CONSTITUTION OF THE UNITED STATES
AND TO THE RESULTING UNION

BY

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"WILLIAM EWART GLADSTONE," "ESTABLISHMENT AND DISESTABLISHMENT IN THE UNITED STATES," ETC.

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TO
THE SURVIVING SOLDIERS AND SAILORS,
WHO FOUGHT IN
THE WAR BETWEEN THE STATES,
WHO RESPECT THE
PATRIOTISM AND COURAGE OF THEIR FOES,
AND WHO WOULD RALLY,
WITH EQUAL READINESS, UNDER THE STARS AND STRIPES,
IN DEFENCE OF
THE CONSTITUTION AND THE UNION ;
TO ALL AMERICANS
WHO LOVE JUSTICE AND TRUTH,
THIS VOLUME
IS RESPECTFULLY DEDICATED.

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THE SOUTHERN STATES

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AMERICAN UNION.

THE SOUTHERN STATES IN THEIR RELATION TO THE CONSTITUTION AND THE RESULTING UNION.

CHAPTER I.

THIS book is not controversial; nor do I pretend to original research or to the discovery of unknown facts. Its aim is to reconstruct ideas and opinions adverse to the South, insofar as they are founded on ignorance and prejudice.

Freeman said, "When certain prejudices have become parts of our mental furniture, when our primary data and our methods of reasoning imply a set of local, narrow assumptions, the task of getting outside them is almost the task of getting outside of our own skins." Books on Political Science, and Constitutional Law, on the Government, written to sustain a theory, a foregone conclusion, a section, a party or pecuniary interest, often ignore or misconstrue the plainest historical facts. It has been found necessary to bring into light authentic records of official acts, forgotten or obscured or hid away, and to put upon them the original, the

natural, and the rational interpretation. Characteristics of institutions, and of constitutional law, may be ascertained from a study of the origin and history of the forces in operation anterior to the Constitution, which forces really were the source of its existence. It has therefore seemed necessary to go behind 1789, in order to understand what led to the adoption of the Constitution, and what kind of government the States established. That conquerors should make laws for the conquered seems a political, as it is the ordinary, consequence of the conquest. It is not so obvious, nor so logical, that they should make history. It is fortunate that authentic records survive to guide the impartial historian, or the inquirer into political philosophy.

From an early period, the Colonies of the southern portion of the British possessions were, in the broad phrase, specialized as Southern. In course of time, the South became a geographical term to designate the slave-holding section, and a political term to designate a theory of government, or a peculiar interpretation of the Constitution. "South and North," as descriptive classifications, became fixed in our political vocabulary, and parties were distinguished by local discriminations or epithets. In the Constitutional Convention, Madison said the antagonism between North and South would prove the most deep-seated and enduring of all. "It seems now to be pretty well understood

that the real difference of interests lay, not between the large and small, but between the Northern and Southern States."[1] "The institution of slavery and its consequences formed the line of discrimination." Bancroft says: "An ineradicable dread of the coming power of the Southwest lurked in New England, especially in Massachusetts."[2]

In 1796, the Hartford *Courant*, an organ of the Federalists, spoke of the "general opposition of sentiment which distinguishes the two great districts of territory." An "opposition of interest" was "strongly exemplified within the walls of the Constitutional Congress during the Revolutionary War." In the North Carolina Convention, 1788, Col. Bloodworth said, "When I was in Congress the Northern and Southern interests divided at the Susquehanna." The Ordinance of 1787 drew out many hostile, or suspicious expressions. Distinct political economies in the trading and planting colonies, distinct social and labor systems, differences in habits, thoughts, and interests, awakened, very early, apprehensions and jealousies, and tended to give permanency to geographical issues.

History, poetry, romance, art, public opinion, have been most unjust to the South. By perverse reiteration, its annals, its acts, its inner feelings, its purposes, have been grossly misrepresented. It is too late to repair the wrong, to atone for the neglect and the injuries of the

[1] 2 *Mad. Pap.*, 1104. [2] 6 Hist. 263.

past. The restoration of the South to its true place in the story of the formation and the history of our government, is the attempt, perhaps, presumptuous, of this volume. The true record of the South, if it can be related with historic accuracy, is rich in patriotism, in intellectual force, in civic and military achievements, in heroism, in honorable and sagacious statemanship, of a proper share in which no American can afford to deprive himself. So much genius in legislation, in administration, in jurisprudence, in war, such great capacities, should expel partisan and sectional prejudices.

It is my purpose to inquire, Has the South made any special, distinctive contribution to the Constitution, the Government, Civilization, to Liberty, civil or religious, to National independence and honor, to pivotal epochs in our history? Have its thoughts moulded policy, formed parties, acquired territory, prevented national wrong? Have its men led armies, become great thinkers, impressed themselves beneficially upon our age and institutions? The writer disclaims vehemently any wish to re-open settled controversies, to change the legitimate results of the secession war, and especially to arrest the rapid disappearance of sectional prejudices and animosities. The establishment of truth is never wrong. History, as written, if accepted in future years, will consign the South to infamy. If she were guilty of rebellion or treason, if she adopted and clung to barbar-

isms, essential sins, and immoralities, then her people will be clothed, as it were, with the fabled shirt of Nessus, fatal to honor, to energy, to noble development, to true life. The English Rebellion of 1640, the Revolution of 1688, the Reformation, the Inquisition, even Wellington at Waterloo, are discussed freely. Is there any sanctity or infallibility in acts and opinions, relating to the South, that they should escape historical criticism, or be exempt from all the tests of truth and justice?

CHAPTER II.

In 1584, Sir Walter Raleigh obtained from Queen Elizabeth the first patent, drawn according to the principles of the feudal law, in which patent he was constituted a lord proprietary with almost unlimited powers, holding jurisdiction over an extensive region, of which he could make grants according to his pleasure.[1] Raleigh obtained from Parliament a bill confirming his patent of discovery, and entered upon a plan of colonizing Virginia, the name by which his possessions were called in honor of her Majesty. The expedition landed on Roanoke Island; but the effort was futile and the colony perished.

In 1606, James I. issued an ample patent, and under this Virginia charter the whole American coast, to which the English laid claim, was divided into two parts, the Southern part being conferred on the London Company, and the Northern part upon the Plymouth Company. This division was the origin of the separate history of the Southern and the New England Colonies. With the charter as the starting point, may be traced the two diverging lines of development which mark the

[1] 3 Hakluyt, 297–301. 1 Bancroft, 92.

constitutional genesis of Virginia and the Southern Colonies on the one hand, and that of Massachusetts and the New England Colonies on the other.[1] In 1609 and 1612, changes were made in the charter of Virginia, which contained the germ of a revolution, in giving to the corporation a democratic form. "Power was transferred from the Council to the Company, and its sessions became the theatre of bold and independent discussion." The colonists were to have a share in legislation, and in 1619 the first Colonial Assembly met at Jamestown. "The Governor, the newly appointed Council, and two Representatives from each of the eleven boroughs, and hence called Burgesses, constituted the first popular representative Assembly of the Western hemisphere. . . . This was the happy dawn of legislative liberty in America. . . . The deliberate and formal concession of legislative liberties was an act of the deepest interest. . . . The system of representative government and trial by jury was established as an acknowledged right. . . . The ordinance was the basis on which Virginia erected the superstructure of its liberties. Its influences were wide and enduring, and can be traced through all following years of the history of the colony. It constituted the plantation, in its infancy, a nursery of freemen."[2] The

[1] *Annals of the American Academy*, April, 1891, pp. 537–8.

[2] Fiske, *Civil History of the United States Government*, 145; i., Bancroft, 120, 136, 145, 153, 158; i., Hening's *Statutes*, 57–66, 110, 118.

Company acquired the distinct character of a body with administrative and legislative functions in the hands of the Council and of a General Assembly. This corporate constitution of an English trading company, with executive, legislative, and judicial functions, furnished the type of the Colonial Constitution of Virginia. The general frame of government continued throughout the subsequent history. When the London Company was overthrown and Virginia became a royal colony, the governmental forms remained substantially the same, although modified in detail, sometimes by royal instructions, but generally by the legislation of the people themselves.

By charters of 1620, 1621, and 1628, the Plymouth Company, with the new name of the Massachusetts Bay Company, was substantially identical with the Virginia Company, and thus the same form of government became the model for the Colonies, both in the South and in New England. The "Fundamental Orders" of Connecticut in 1639 was, doubtless, the first example in history of a written constitution, enacted by the independent authority of the people, yet the form of government was simply a reproduction of that of the Massachusetts Bay Company. Upon territory granted to the London Company were afterwards erected the Colonies of Maryland and the Carolinas. The royal charter granted to Lord Baltimore, in 1632, was the basis of all political power and

privilege in Maryland. By the ordinance of 1637, issued by the lord proprietor, the political organization was closely modeled after that of Virginia. The constitutional development of the other Southern Colonies followed, in the main, the same method of growth. The date of the Lords Proprietors' Charter for the Province of Carolina is 1663; in 1719, the government was changed to that of a Colony of the King of England. So by successive steps, with many vicissitudes, with varying fortunes, with some modifications, the general type was adopted, and Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia became separate political entities, with a common allegiance to, and dependence upon, the mother country of Great Britain. At the beginning of the Revolutionary War, three forms of government existed in the Colonies. In Rhode Island and Connecticut, the Governors were elected by the people. In Maryland, Delaware, and Pennsylvania, the Governors were appointed by the proprietors. The King had no officers, except in the Admiralty Courts and in the Customs, and his name was hardly known in the acts of government. In the other colonies the Royal Governors were appointed by the Crown.[1]

CHAPTER III.

IN the colonial period there were thirteen commonwealths, with thirteen local governments. Each colony, distinct in origin, was separate from, and independent of, the others; each was a dependency, and an integral part of the British Empire; each was a creature of the British state, and legally subject to its sovereignty. The common bond of union was through the allegiance to the British Crown. The corporations, created by laws of Great Britain, scattered along the Atlantic coast, were as distinct and individual as are different railroad companies, which have severally obtained charters and grants of land from the United States.[1] In all that pertained to the regulation of their respective affairs, they acted singly. A British subject, residing within one of the Colonies, had, within the territory of the other Colonies, the common law rights of a British subject, but no more, and not otherwise, than he would have had in a British colony in Asia. Each colony had its legislative assembly, elected by its own people, and its separate judiciary. The basis of representation was different. In Massachusetts townships

[1] Dr. Small's *Beginnings of American Nationality*, p. 14.

were the unit; in Virginia, counties; but in each the assembly was a representative body. The laws enacted had force, authority, sanction, only within the limits of the colony, and had no extra-territorial validity. What Massachusetts did had no civil efficacy, no governmental sanction, over Connecticut or Rhode Island.

This common dependence, this amenability to British law, juxtaposition on a remote continent, sense of common danger from neighboring Indian tribes, and community of origin, language, literature, religion, and civil rights, naturally drew the Colonies into relationships of fraternity and friendship. Diversity of climate and productions and interposed mountains sectionalize peoples, raise international problems, and provoke alienations. The economic history of the Colonies, if thoroughly explored, would throw much needful light on their final union. This influence lessened colonial isolation, broadened the horizon of mutual interests, drew toward trade centres, and tended to develop a national character. Inter-communication, also, softened prejudices, promoted social intercourse, expanded trade, created a trend toward colonial fellowship and co-operation. The coast trade supplemented the work and influence of the interior highways, and brought colonial interests into closer unity. Massachusetts, in 1636, the very year in which Hampden resisted the payment of ship money,

asserted her exclusive power of taxation.[1] So did other colonies. In 1623 Virginia asserted the same separate power. In 1651 a treaty was made between the Commonwealth of England and the Colony of Virginia, by which it was agreed that the Virginia colonist was as free as the English subject; that the Assembly of Virginia should transact all of her affairs; that her people should have free trade with all nations, as the people of England had; and that taxes should not be imposed, nor forts erected, nor garrisons maintained in Virginia, but by the consent of her Assembly.[2] The violation of the Navigation Acts of Cromwell and of Charles II., and of the Sugar Act of 1733,[3] were proofs of the independent spirit of the colonists, and of their self-government in some economic matters. On the other hand, there were elements, tending not to cohesion, but to division and segregation. In those days, the Colonies skirted thousands of miles of unfamiliar coast; in the deficiency of means of intercourse, travel was slow, trade and commerce were limited and expensive, and there were not a few local jealousies. With the facilities for travel and trade which are so familiar at the present time, with the practical annihilation of space by steam and electricity, with the demonstrated experiment of a Federal Union, we fail to compre-

[1] 1 Pitkin, 89–91.
[2] 1 Hen., *Stat.*, 120, 363 *et seq.*
[3] 1 Burgess, 10, 99.

hend how widely separated were the Colonies in distance, in products, in industries, in social intercourse, in institutions. It has not been very long since our ablest statesmen doubted the feasibility of a government performing safely and wisely its functions over a large territorial area.

CHAPTER IV.

THE centripetal forces were the stronger and the more numerous. There gradually grew up a desire for a closer political and commercial union; and tentative efforts were made, at intervals, to bring about a confederation. As early as 1643, there was the New England Confederacy for the recognition and protection of common interests. After this Confederacy ceased to exist, various plans, at different times, between 1684 and 1754, were proposed for a union of the Colonies, chiefly with reference to more efficient action against the Indians and the French. What was known as Franklin's Plan of Union, adopted by the Albany Convention in 1754, was the most important Federal measure in the Colonies prior to the Revolution. Seven colonies were represented. "America," said Bancroft, "had never an assembly so venerable for the States that were represented, or for the great and able men who composed it." After several days' debate, the plan was adopted, either unanimously, or with the solitary dissent of Connecticut, as all felt the necessity for some union. "With the exception of such matters of general concern as were to be managed by the Grand Council, each

colony was to retain its power of legislation intact." [1]

It was rejected by all the colonial assemblies, the New England delegates, on the whole, being least disinclined to union. The failure of these attempts to obtain agreement upon plans of co-operation proves that the colonists were far from being ready to merge their separate interests into those of a comprehensive organization. Such an arrangement did not commend itself sufficiently to induce the taking of any effective steps towards it. The Colonies refused to make such corporate recognition of mutual relations as would be involved in the creation of organs for the performance of intercolonial governmental functions.

These incidents serve to illustrate the development of the idea of union, and to show the preparedness of the people for concerted action when the contest with Great Britain became inevitable.

The Parliament of Great Britain never relinquished her claim of right to govern the Colonies, or to collect revenues from them for any expenditures incurred in their behalf. This taxation was strenuously resisted by the Colonies, who, through their agents in London, or the local authorities at home, claimed the exclusive right to tax themselves, and especially as they had no representation in Parliament. In assertion of the imperial claim of sovereign

[1] Fiske's *Am. Rev.*, 8. 10.

power over the Colonies, and of the right to compel them, in whole or in part, to provide for the support of their military establishment, on 27th of February, 1765, was passed the Stamp Act, imposing stamp duties on his Majesty's subjects in America and the West Indies. It seems that not a single member of either House of Parliament doubted the right to impose the duty, although some sagacious friends of liberty remonstrated against the policy and justice of such legislation. The Stamp Act was almost self-executory, for unless stamps were used, marriages would be null, notes of hand valueless, ships at sea prizes to the first captors,[1] suits at law impossible, transfers of real estate invalid, inheritances irreclaimable.

Boston,[2] with a keen instinct for liberty, and a sagacious apprehension of everything that interfered with her rights, which have made her name immortal among the cities which have been most conspicuous in assertion and maintenance of popular freedom, even before the bill had passed, denied with earnestness any right to tax America, and sent a circular letter to the Colonies, exposing the dangers that menaced their essential rights, and desiring united assistance. Before the Bill, advised and proposed by Granville, had become a law, Samuel Adams,—called by Jefferson the Palinurus of the American Revolution—in 1764, drew up, in one of the grandest papers of our

[1] 2 Ban. 287. [2] 2 Ban., 220–6.

whole Revolutionary period, the earliest protest against the Stamp Act in the memorable instructions to the Boston representatives in the General Court: "We claim British rights not by charter only; we are born to them. Use your endeavors that the weight of other American Colonies may be added to that of this Province, that by united application all may happily obtain redress." [1] When the bill became a law, resistance was not, however, advised or deemed expedient. Every agent of the Colonies in England believed that the Stamp Act would be peacefully levied. Otis said, "It is our duty to submit, humbly and silently to acquiesce in all the decisions of the supreme legislature." [2] The Legislature of Massachusetts said, "We must yield obedience to the act granting duties." Other colonies yielded to the hard necessity. Not so had Providence decreed, for opinion was fermenting at the North, notwithstanding there was no declared purpose of action. This Stamp Act was in reality the harbinger of our independence. Virginia received it with consternation, and resolved that it should recoil with damage upon the land which adopted it. The planters, proud of their frugality, banished articles of luxury of English manufacture.[3] The Legislature, not content with a verbal protest, was

[1] Winthrop's Centennial Oration, July 4, 1876, pp. 15, 33.

[2] 2 Ban., 286–306; 1 Henry, 94.

[3] 2 Ban., 312.

averse to submission to the will of Parliament. Under the leadership of Patrick Henry, the taxation was declared to be an infringement of the privileges, liberties, and immunities of the colony, subversive of the fundamental principles of her chartered rights, and destructive of British as well as American freedom. This was the first legislative opposition to the scheme of the Stamp Act. The alarm spread throughout America with astonishing quickness, and "the great point of resistance to British taxation was universally established in the Colonies."[1] Secret societies, whose proceedings and actions after awhile transpired, were formed in the several colonies, pledging resistance by all lawful means. Uprisings began in Boston, and were followed by similar disturbances in other towns of Massachusetts, and in other colonies. Before the time arrived when the Act was to go into effect, the standard of resistance had been raised throughout the Colonies; and Burke,[2] in the House of Commons, declared, on the information received from the several Governors, that the Virginia resolutions were the cause of the insurrections. Virginia thus "rang the alarum bell" and "gave the signal for the continent."[3]

James Otis, of Boston, advised the calling of an American Congress at New York, to consist of Committees from each of the thirteen colo-

[1] 1 *Life of Henry*, 81

[2] 1 Henry, 100.

[3] 2 Ban., 312–16.

nies, to deliberate upon the Acts of Parliament, and to consider a united representation to implore relief.[1] South Carolina heard and heeded the invitation for a conference. "Had it not been for South Carolina, no Congress would then have happened," said "the great statesman, the magnanimous, unwavering, faultless lover of his country, Christopher Gadsden." "As the united American people spread through the vast expanse over which their jurisdiction now extends, be it remembered," says Bancroft, "that the blessing of Union is due to the warm-heartedness of South Carolina." In Georgia, against the will of the Governor, the representatives came together and sent, near a thousand miles by land, an express messenger to New York, promising adhesion; for, said they, "No people, as individuals, can more warmly espouse the common cause than do the people of this Province."

The Congress met on the 7th of October, 1765.[2] Massachusetts, Connecticut, Rhode Island, Pennsylvania, Maryland, and South Carolina were represented by regularly chosen delegates. Delaware, New Jersey, New York, had less formal delegates. New Hampshire agreed to abide by the result. Georgia sent a special messenger to the body to obtain a copy of the proceedings. Governor Fauquier would not suffer the Assembly of Virginia to come together to express the unanimous voice of her

[1] 2 Ban., 317, 318. [2] 2 Ban., 372.

people in behalf of liberty. The members of this first union of the American people were elected by the representatives of the people of each separate colony; all were commissioned not so regularly. While they formed one body, their power was derived from independent sources. Each of the colonies existed in its individuality, and notwithstanding great differences in their respective populations and extent of territory, as they met in Congress, they recognized each other as equals, without the least claim of pre-eminence, one over the other. The Congress, avoiding the argument for American liberty from royal grants, claiming rights that preceded and would survive charters, in carefully considered documents embodied the demands of the colonies, and dwelt on the inherent right of trial by jury, and the right of freedom from taxation, except through the respective colonial legislatures.[1] The Assembly of South Carolina received the delegates on their return, adopted without change, and, lacking one vote, with unanimity, the resolves of Congress, and transmitted, without delay, to England, "the evidence that South Carolina gave its heart unreservedly to the cause of freedom and union."[2] She wrote to her agent in London: "Every moment is tedious; should you have to communicate the good news we wish for, send it to us, if possible, by a messenger swifter than the wind."

[1] 1 Pitkin, 442–6. [2] 2 Ban., 408.

The resolute purpose of the colonists that the Stamp Act should not be enforced so far prevailed that it was repealed by Parliament, many lords and bishops entering their solemn protest, and the King deploring its repeal as the wellspring of all his sorrows. South Carolina voted a statue to Pitt; Virginia voted one to the King for his assent, and an obelisk on which were to be engraved the names of those who, in England, had signalized themselves for freedom.

The universal joy of America was unfortunately of short duration. The repeal of the Stamp Act was accompanied by a formal assertion of the full power and authority of the King and Parliament to make laws and statutes of sufficient force and validity to bind the Colonies and the people of America, "in all cases whatsoever." The claim of absolute authority was not long left in inaction. The Legislatures were required to support the soldiers quartered in the Colonies. Besides the billeting Act, port duties were laid on wine, oil, fruits, glass, paper, lead, colors, and tea. The Colonies were indignant at this imposition of new taxes, and this continued and offensive assertion of the unlimited power of Parliament.[1] In Massachusetts resistance was planned, and a Circular Letter to the sister Colonies was adopted. The Assembly of Virginia, which had been prorogued from time to time since its

[1] 2 Ban., 141.

session of November, 1766,[1] was called together in 1768, to devise measures for the prevention of Indian troubles. The Circular of Massachusetts was referred to a Committee of the Whole House. Petitions from freeholders of various counties, remonstrating against Acts of Parliament, fortified the courage of the members, who adopted unanimously memorials to England.[2] Massachusetts was commended for her devotion to civil liberty, and the Speaker was directed to write to the Speakers of all other Assemblies, making known her proceedings, and her opinions as to the need of firm and united opposition to every measure affecting their rights and liberties. In 1769, Washington said "something should be done to maintain the liberty we have derived from our ancestors," and he prepared a scheme, to be offered at the coming session of the House of Burgesses. In this House were Washington, Henry, and Jefferson. Demands by the Custom-house officers for writs of assistance in collection of revenues were declared illegal by the highest court. The Legislature claimed the exclusive right of imposing taxes on the inhabitants, and asserted the lawfulness and expediency of procuring a concert of the Colonies to care for their violated rights. Being dissolved by the Governor, they met together as patriots and friends, and adopted Washington's plan of non-

[1] 1 *Henry*, 13.

[2] 3 Ban., 162–3.

[3] 1 *Henry*, 133–142.

importation, and further made a special covenant not to import slaves, nor purchase any imported. Every colony South followed the example, and adopted the resolves of Virginia. North Carolina offered the first armed resistance to British authority, and at Alamance, in 1771, was shed the first blood in the struggle for liberty. South Carolina enforced the agreement of not importing by publishing as enemies the names of those who kept aloof from the association. She remitted to the society in London for supporting the Bill of Rights 10,500 pounds currency, that the liberties of Great Britain and America might alike be protected. In 1772, as the Government refused to pass any appropriations which should cover the grant to the Society for the Bill of Rights, the members declined to take any pay, and the planters ever stood ready to lend their purses and private credit to the wants of their agents or committees.[1]

Trescott, in an address before the South Carolina Historical Society, speaks of the character of Carolinians—a blending of English settlers and Huguenot immigrants—as "a character in which was fused, in admirable proportion, the strong will, the enterprise patient but bold, the rough truthfulness of the English mind, with the enthusiasm and quick facility and graceful courtesy of the French temper." The independence of the agriculturist and

[1] 3 Ban., 312.

director of labor, rather than a laborer, "naturally created great tenacity of rights and a watchful and resentful jealousy of any outside interference—a jealousy encouraged both by public opinion and legislation, on account of the necessity of sustaining the master's authority as the guarantee of the safety of society." This very jealousy and independence engendered, as its necessary complement, a remarkable and sensitive regard for the rights of others.

The evolution of committees of correspondence, so necessary to concerted action, which had been put in operation in Massachusetts by Samuel Adams, was in the direction of a closer union of the Colonies. Bancroft said "whether that great idea should become a reality depended on Virginia."[1] In 1773, its Legislature came together full of a patriotism which was not confined to the limits of their own colony. Approving of the resolute proceedings of the city of Boston and of the colony of Massachusetts, a system of intercolonial committees of correspondence, including a thorough union of councils, was adopted. The resolutions were transmitted to every colony with a request that each would appoint its committee to communicate from time to time with that of Virginia. "In this manner Virginia laid the foundations of our Union." "Massachusetts organized a province, Virginia promoted a confederacy. Were the

[1] 3 Ban., ch. xxv.

several committees but to come together the world would see an American Congress."[1] Such was the anticipation from this action which so gladdened patriotic Massachusetts. Sam. Adams, writing to Richard Henry Lee, said that Virginia and South Carolina, by their steady perseverance, inspired the hope that liberty would spread through the continent. A copy of the Proceedings was sent to every town and district in Massachusetts, "that all the friends of American independence and freedom might welcome the intelligence."

[1] 3 Ban., 502-4.

CHAPTER V.

In 1767, duties were levied on tea and other articles, which duties were to be used in paying the salaries of royal Governors and of the justices, appointed at the King's pleasure. The object of this legislation was clearly not "to regulate trade, but to assert British supremacy over the Colonies at the expense of their political freedom." In 1769 all obnoxious acts except the tea-duty were repealed. The policy of non-importation had pressed with severity on the commerce of New York, and her merchants complained that the fire-eating planters of Virginia and the farmers of Massachusetts were growing rich at the expense of their neighbors. They, therefore, sent orders to England for all sorts of merchandise, except tea, and virtually, within their limits, overthrew the non-importation policy upon which the patriots mainly relied to force the repeal of the Tea Act. Their conduct was vehemently denounced, especially by the two States, then and in the immediately subsequent years in such close sympathy with each other.

The year 1774 opened with questions of deepest import to American liberty. The associations, entered into against the use of tea,

were so extensive and effective, that the British Ministry were foiled in their attempt to raise a revenue from that source. The Colonies all declined to take tea, on any terms, and Parliament devised an expedient of exempting the East India Company from the heavy export duty, or allowing a drawback on all duties on tea imported by the Company, in consideration of which the Company was to send out to the Colonies large cargoes of tea. Numerous ships laden with tea arrived about the end of 1773 at New York, Philadelphia, Boston, and Charleston. In New York, eighteen chests were emptied into "the slip." How the boxes consigned to Boston were disposed of all the world knows. The action of the city was bold and patriotic. This notable event was supremely important to all mankind. It is not so well known that South Carolina, deeply agitated at the time by the arbitrary imprisonment of a publisher, did not allow her attention to be diverted from watching the ships which contained the offensive cargo. On the 2d of December, two hundred and fifty-seven chests arrived. The consignees were persuaded to resign. After the twentieth day, the collector seized the dutiable article. There was no one to sell, or to pay the duty, and the tea perished in the cellars where it was stored. In Philadelphia, the consignees were forced to resign, and the captain set sail straightway for England. In October, 1774, the brig, *Peggy Stuart*, with her cargo of

tea, was burned at Annapolis, in open day, by men who boldly assumed the responsibility of the act.

These acts of resistance to imperial tyranny kindled in the mother country a resentful and revengeful feeling, which found intemperate expression in a bill for closing the port of Boston, in fundamental alterations in the colonial government of Massachusetts, in virtual indemnity for crimes committed under color of official authority, and in new orders for quartering troops.[1] Boston was selected as the place to try the question of the power of Parliament, and nobly did the city, placed in "the front rank of the conflict" and the Colony of Massachusetts meet the question of Independence. The news of the passage of the Boston Port Bill, as a punishment for the destruction of the tea, reached the Virginia Legislature, in session at Williamsburg, and produced a profound impression, because it was felt that the crisis was imminent. The Governor dissolved the House of Burgesses for setting apart a day of fasting, humiliation, and prayer, to implore the Divine interposition for averting the calamity of civil war, and to give the people of America one heart and one mind firmly to oppose every invasion of their rights. The members re-assembled, denounced the Act for shutting up the harbor and commerce of Boston, "in our sister colony of Massachusetts Bay,"

[1] 1 Rives's *Mad.*, 41.

declared an attack made on one of the colonies to compel submission to arbitrary taxes to be an attack on all, and recommended the appointment of deputies from the several colonies to meet annually in General Congress to deliberate on those general measures which the united interests of America may from time to time require. A convention was called to meet in Williamsburg to consider measures for the protection of American liberty and to appoint deputies to the proposed Continental Congress. A large majority of the counties held meetings calling for efficient measures of retaliation and self-protection. As the decisive hour came nearer, a unity of interest led to a mutual determination to support each other and especially to sustain the Colonies, against which the measures of the Crown were directed with the greatest severity. Massachusetts, June 17, 1774,[1] agreed to this "meeting of committees from the several colonies to determine upon wise measures to be recommended to all the colonies." Other colonies assented, and on Monday, September 5, 1774, the delegates, appointed by the several colonies and provinces, acting separately,—Georgia not being represented—assembled in Congress at Philadelphia. It was of this body that Chatham used the remarkable tribute: "For myself I must declare and avow, that in all my reading of history and observation—and it has been my favorite study

[1] *Am. Archives*, 4th series, 350–1, 421–2.

—that for solidity of reasoning, force of sagacity, and wisdom of conclusion under such a complication of difficult circumstances, no nation or body of men can stand in preference to the General Congress at Philadelphia."

This body met for an emergency; but events ripened so fast, and the needs for conference and united action so increased and continued, that for seven years it sat and exercised *ex necessitate* some of the highest functions of a national government. As early as January, 1775, a military company was organized, in nearly every county in Virginia, to prepare for any extremity, and to meet danger whenever it might appear. Washington declared himself ready to raise and subsist at his own expense a body of a thousand men for the defence and the liberties of his country. On the 15th of June, on motion of Thomas Johnson of Maryland, Congress appointed that "illustrious Southerner" a general, "to command all the continental forces to be raised for the defence of American liberty." In accepting the command, he said, that, during his service, he would receive no pay or allowance, incidental to the place. In 1775 a Convention assembled in Richmond and ordered the raising of three regiments, selected their officers, passed other warlike measures, and appointed a Committee of Safety, consisting of eleven of the most honored members, including Pendleton, Mason, Bland, etc. To them were committed such executive functions

as were in abeyance in consequence of the hostile attitude of Governor Dunmore. This, perhaps, was the most important of all similar assemblies. The patriots of the body felt that the time for petition and remonstrance had about expired. The appeals to British justice and magnanimity were impotent. Mr. Henry's speech in old St. John's Church is historic. Arming the colony for defence was a bold step from which there was no retreat. It met the support of every county, and the other States, following the lead of Virginia, came courageously to the acceptance of all the hazards which the determination to protect the rights of person and property might involve. In 1773, North Carolina resolved in favor of communication and concert, and her readiness at all times to exert her efforts to preserve and defend her rights. In 1774, her people assembled independent of royal authority and declared that no person should be taxed without consent in person or through representative; that the tax on tea and other articles by the British Parliament was illegal and oppressive; that the Boston Port Act was unconstitutional. The Assembly also approved of a General Congress in Philadelphia, and appointed delegates thereto. In 1775, the Assembly approved of the proceedings of the Philadelphia Congress. About the same time (May 1775)—as is alleged but not sufficiently proved—the people of Mecklenburg County took a

bolder step than had been taken either by Congress or colony, declared for freedom and independence, and forwarded the Declaration to the Continental Congress by Captain James Jack. The Provincial Congress of North Carolina at Halifax, on the 4th April, 1776, passed a resolution unanimously, empowering the delegates to concur with delegates from other colonies in declaring independence and forming foreign alliances, "reserving to the colony the sole and exclusive right of forming a constitution and laws for this colony," and at that time one third of her adult white population was in the field.

A convention in Virginia, in May, 1776, unanimously instructed her delegates to propose to Congress to declare the United Colonies free and independent States. In deference to this instruction, the responsibility was assumed of proposing the measure unconditionally, and thus the 4th of July became immortal.

This Congress, for whose duration no precise time was assigned, was appointed for the sole purpose of taking into consideration the general condition of the Colonies, and of recommending measures for the security of their rights and interests. Strictly speaking, the Congress had no authority for making the Declaration, which of itself had no legal validity. The Colonies owed allegiance to the King of Great Britain, as the head of each

colonial government, and were extremely desirous of continuing their connection with the parent country, and Congress was charged with the duty of devising such measures as would enable them to do so, without involving a surrender of their rights as British subjects.

To terminate political connection with England was not desired except by a few of the most resolute. A peaceful solution of the troubles was generally desired and expected. The measures of the Colonies were not to involve a separation. In 1775, it was said by Jefferson and others that the armies were not raised to establish independent States. At that time, such was the avowed opinion of Washington, Warren and the Continental Congress. Nearly up to the 4th of July, the Congress held out the hope of reconciliation. The effort was honest to secure liberty and constitutional right, without being forced to extreme action. Protestations of unwillingness to do anything which involved a want of fidelity to the Crown were frequent and earnest.[1] The Declaration was the outcome of prolonged discussion, and of hopelessness in resisting arbitrary measures, while in union with the mother country. When no other course was compatible with self-respect, the pressure of liberty compelled the tearing asunder of the ties of allegiance and union, and Virginia and Massachusetts went hand in hand in leading the rupture. The

[1] 1. *Henry*, 363, 366, 371.

distinguished scholar, statesman and patriot, Robert C. Winthrop, bears this generous testimony to Virginia. "It is hardly too much to say that the destinies of our country, at that period, hung and hinged upon her action, and upon the action of her great and glorious sons. . . . It was Union which opened our Independence, and there could have been no Union without the influence and co-operation of that great leading Southern Colony."

All the acts of Congress, before and after the plain and explicit Declaration, that the Colonies were, and of right ought to be, free and independent States, were with a full reliance that those States would ratify whatever might be done for the public good. The States were not bound by any resolves of Congress, except so far as they separately authorized their delegates to bind them. In literal truth the Congress had no power of government at all. It could not pass an obligatory law, nor devise any obligatory sanction. Up to the ratification of the articles of Confederation, the Congress was without any right or authority, except what was derived from the consent, direct or implied, and the acquiescence of the several States, and when specific grants of power were called for, each representative applied to his own State alone, and not to any other.

The Declaration of Independence in its legal significance is much misunderstood. It created

no institutions, was in no sense a charter of government, or of a constitution. An appeal to it as a source of congressional power is illogical. The Colonies politically sustained the same relation to one another after as they did before. The Declaration looked only to their relation to their mother country, to independence of unconstitutional parliamentary or ministerial dictation. The sole question decided was whether they should continue in a state of dependence on the British Crown. In declaring that all political connection between them and Great Britain ceased, they became, according to their Declaration, not an independent nation, but free and independent States; and their separate legislative power was left complete. The common executive authority was cast off, and each State established a separate Executive authority for itself. The resolutions of the Colonies, authorizing the declaration, made an express condition, in conferring the power, that the colony, or new State, should retain the sole and exclusive right of forming its own government, and of regulating its internal concerns and police. The united voice gave moral force, but did not add a particle, in law or right, to the independence of a colony. Each had the same right to declare independence as all. The declaration was a solemn asseveration of the severance of the tie which bound the colonists to England, and of the separateness and independence of the States.

The sovereignty of the British Crown had not been jointly over all, but separately over each, might have been abandoned as to some, and retained as to others; and when the Colonies became free States, that sovereignty was not in the Congress, but in the separate, individual States. The Declaration, then, was impotent to make the people of the Colonies one people, or to invest them with paramount and sovereign authority. The naked historical facts must decide that question.

The Congress was appointed by colonies in their separate capacity, each acting for itself, and not conjointly with another. Each colony gave its own vote "by its own representative and the Colonies voted on the adoption of the Declaration in their separate character, each giving one vote by all its representatives, who acted in strict obedience to specific instructions from their respective colonies, and the members signed the Declaration in that way." "The declaration was a joint expression of separate wills; each expressing its own will and not that of any other; each bound by its own act, and not responsible for the act of any other." The Colonies had "no common legislature, no common treasury, no common military power, no common judicatory." "They were established at different times, and each under an authority from the crown which applied to itself alone. They were not even alike in their organization. Some were pro-

vincial, some proprietary, and some were charter governments."[1]

A proposition expressed in the Declaration, made up, said Senator Choate of Massachusetts, "of glittering and sounding generalities of natural right,"—All men are created equal—was unnecessarily stated, and had "no necessary part of our justification in separation from the parent country and declaring ourselves independent. Breach of our chartered privileges and lawless encroachment on our acknowledged and well-established rights by the parent country were the real causes and of themselves sufficient without resorting to any others to justify the step, nor had it any weight in constructing the governments which were substituted in place of the colonial. They were formed of the old materials and on practical and well-established principles, borrowed, for the most part, from our own experience and that of the country from which we sprang." In the popular mind, in party platforms, in common quotation, the assertion of the Declaration has been enlarged and amplified into an axiom, or a political truth, that all men are born free and equal. This hypothetical truism will not bear investigation. In no possible sense in which it can be viewed, is it historically, politically, ethnologically, individually true. Men are not born, nor created, free or equal. In 1848, Mr. Calhoun exposed the fallacy. "The

[1] Upshur, 23, 27, 45, 40, 15.

quantum of power on the part of the government and of liberty on the part of individuals, instead of being equal in all cases, must necessarily be very unequal among different people, according to their different conditions. For just in proportion as a people are ignorant, stupid, debased, corrupt, exposed to violence within and dangers from without, the power necessary for government to possess in order to preserve society against anarchy and destruction becomes greater and greater and individual liberty less and less, until the lowest condition is reached, when absolute and despotic power becomes necessary on the part of the government and individual liberty extinct. So, on the contrary, just as the people rise in the scale of intelligence, virtue and patriotism, and the more perfectly they become acquainted with the nature of government, the ends for which it was ordered and how it ought to be administered, and the less the tendency to violence and disorder within and danger from abroad, the power necessary for government becomes less and less and individual liberty greater and greater. Instead, then, of all men having the same right to liberty and equality, as is claimed by those who hold that they are born free and equal, liberty is the noblest and highest reward bestowed on mental and moral development combined with favorable circumstances. Instead, then, of liberty and equality being born with men, instead of all men and all classes and all descriptions

being equally entitled to them, they are high prizes to be won, and are, in their most perfect state, not only the highest reward that can be bestowed on our race, but the most difficult to be won, and when won the most difficult to be preserved. They have been made vastly more so by the dangerous error, that all men are born free and equal, as if those high qualities belonged to men without effort to acquire them, and to all equally alike, regardless of their intellectual and moral condition. The attempt to carry into practice this, the most dangerous of all political errors, and to bestow on all without regard to their fitness, either to acquire or to maintain liberty—that unbounded and individual liberty, supposed to belong to man in the hypothetical and misnamed state of nature,—has done more to retard the cause of liberty and civilization, and is doing more at present, than all other causes combined. While it is powerful to pull down governments, it is still more powerful to prevent their construction on proper principles." These are the opinions of a great statesman, looking at the axiom as a man of political affairs, from the government side. In the *Nineteenth Century* for 1890, Professor Huxley considers these natural and political rights as a scientist and a philosopher. He traces this axiom, assumed to represent absolute truth, behind Locke and Rousseau to Ulpian. "*Quod ad jus naturale attinet omnes homines æquales sunt.*" "*Quum jure naturali*

omnes liberi nascentur." Huxley says this is the *ne plus ultra* of individualism, and wherever individualism has unchecked sway, a polity can no more exist than it can among the tigers who inhabit the same jungle. It is, in fact, the sum of all possible anti-social and anarchic tendencies. "The political delusions which spring from the natural-rights doctrine are multitudinous, . . . probably none has been more mischievous than the assertion that all men have a natural right to freedom. . . . That which it would be tyranny to prevent in some states of society it would be madness to permit in others. . . . There is not the least connection between the natural rights of the solitary individual and the moral and civil rights of the man who has entered into association with others."

From the first settlement of the country, the colonies had their separate governments. Each had its own local life, its local pride and patriotism, its separate affairs, and often internal discussions were stormy. Not unfrequently there were stout contests with their governors. Each colony was regarded as the only political power competent to lay taxes, and it was mainly to protect from encroachment or usurpation this right that the colonies were forced into a war, into a kind of political union, into a reluctant throwing off of allegiance to the mother country. During the war, all the States—except Connecticut and Rhode Island, whose charters continued to do duty as State constitutions till

far into the nineteenth century, until 1818 and 1842 respectively—remodeled their governments, adapting them to changed conditions, to the cessation of loyalty to a foreign power, to the emergence from subordination to independence.[1] As charters lost their validity, other organizations became indispensable for the control of corporate affairs. The people either authorized or recognized them as the organs of popular rights, of self-government, and acquiesced in the assumption or exercise of every essential power of government.[2] This reorganization of colonial corporations into distinct commonwealths was not revolutionary, nor destructive of existing rights, but a deliberate and intelligent act of wise constructive statesmanship. The new constitutions followed very literally English precedents and principles. What we boast of in our triumphant democracy, and in our patriotic anniversary jubilations, are, with few exceptions, the birthrights of Englishmen. Freedom of religion, a written constitution, State autonomy, and better-defined Home Rule, and abolition of classes and hereditary distinctions, nearly exhaust what differentiates us from the government of Great Britain. Magna Charta, Habeas Corpus, trial by jury, freedom of speech and of the press, the common law, division of government into three departments, division of the legislature

[1] Fiske's *Critical Period of American History*, 64, 65.

[2] Small, 76.

into two branches, representation of the people, responsibility of those in authority, governments deriving their just powers from the consent of the governed, are all of English origin. Since the revolution of 1688, regal right in England, said Gladstone, has been expressly founded upon contracts, and the breach of the contract destroys the title to the allegiance of the subject.

On the first day of May, 1776, the General Court of Massachusetts passed a solemn act, to erase forthwith the name of the King and the year of his reign from all civil commissions, writs and precepts; and to substitute therefor "the year of the Christian Era, and the name of the Government and People of Massachusetts Bay in New England." On the 15th of May, 1776, Virginia renounced her colonial dependence on Great Britain; on the 12th of June, adopted her famous Bill of Rights, in which were summed up so compactly and luminously the great fundamental principles of liberty; and on the 29th of the same month, before the adoption of the Declaration of Independence by Congress, performed the highest function of State sovereignty by establishing, of her own free and sovereign will, a constitution which continued until 1829. She did not ask the permission of Congress, nor submit her new form of government to the revision of that body. The Legislature entered upon a series of measures, such as an effort at

religious liberty,[1] abolition of entails, etc., which were not consummated until a later day. They swept away the last vestiges of the aristocratic system, and made the social and political system conform to the philosophy and principles of the Bill of Rights. This constitution, which survived unchanged for three quarters of a century, established a conservative government, administered on popular principles, the object being in part to "avoid creating a numerous Democracy."

It is foreign to my purpose to give a continuous, or the briefest mention of the operations of the Revolutionary war, which terminated with the Treaty of Peace, solemnly acknowledging the colonies, naming each, separately and specifically, to be free, sovereign and independent States. It needs only to be said, in illustration of the subject, that the sacrifices and deeds of the South were unsurpassed. After providing for military establishment for State and Continental service, when disasters came or were threatened, Virginia, in 1776, stimulated in every way the recruiting of levies. She declared her purpose to bear her full share of the burdens and perils. She invested Governor and Council with unlimited power to call forth

[1] The Virginia Act for Religious Freedom, 16th December, 1785, drawn by Jefferson, says: "That all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, change, or affect their civil capacities."

any amount of military force, in addition to what was provided by law, and to send assistance to "any sister State" invaded, or threatened with invasion. She exhorted the Legislatures of the several States to adopt most speedy and effectual methods for calling their military force into action.[1]

Nothing could be more remote from my intention or feeling than to underrate or minimize the patriotic and noble efforts of other colonies, or to be guilty of the presumption of claiming any superiority of sacrifice or devotion to liberty on the part of the South. The aim is to secure justice, too much withheld, for the South, and to bring into proper recognition the indebtedness of the cause and the country to the Southern States. After the Long Island campaign of 1776, Adjutant General Reed declared that "the gallantry of the Southern men has inspired the whole army." Botta says of 1777, "the obstinate resistance of the Virginians, and the disasters of the partisans of England in South Carolina precluded all hope of success in these two colonies." The resistance was so successful that for nearly three years the Carolinas were free from the presence of the enemy. No candid historian can withhold from the Southern Colonies the meed of equal devotion and sacrifices in the Revolutionary conflict, in the days which tried men's souls,

[1] 1 Rives's *Mad.*, 177, 272, 274, 437. *Journal of House of Delegates*, 1776. October Session, pp. 106–108.

and when the difficulties of a prompt and full response to the requisitions of the Continental Congress and the needs of the feeble army were almost insuperable. Maryland, Virginia, the Carolinas, and Georgia, in the supply of men, money and munitions, were as prompt and liberal as were their confederates. It may be conceded that many of the inhabitants of Georgia and South Carolina were slow to break their ancient friendship with the land of their ancestors. England had favored and fostered them, and the colonial authorities were comparatively mild and beneficent. The people did not feel the burdens and injustices complained of by others. Commercial restrictions were not onerous. Their products were much in demand abroad, and commanded remunerative prices. There was little beyond sympathy with fellow-colonists and abstract love of liberty and self-government to excite disaffection towards, or withdrawals from, the mother country. Georgians and South Carolinians were closely allied in neighborhood, in habits, sentiments, pursuits, interest, and social intercourse. When the struggle became military, a diversity of opinion arrayed families in deadly feuds, and as population was scarce, and means of travel were primitive, there was engendered a unique partisan war, bold in its conception, sleepless in activity, and brilliant in its performances. After the battle of Monmouth, the tide of war turned southward. Organized resistance almost ceased

in Georgia and South Carolina, after the failure of General Lincoln in Charleston and General Gates in Camden, and Cornwallis then determined to subjugate North Carolina. How he failed, can be best read in the battles of King's Mountain, Cowpens, Guilford Court House, and Eutaw Springs. The masterly outwitting of Cornwallis and Tarleton by the accomplished Greene, second only to Washington as a commander, was accomplished almost entirely with soldiers from Maryland, Virginia, and the Carolinas. The battle of King's Mountain drove Cornwallis back into South Carolina; the defeat of the Cowpens made his second invasion of North Carolina a desperate enterprise; the battle at Guilford Court House transformed the American Army into pursuers, the British into fugitives. By these exploits the war was nearly brought to a close, and independence secured, for a little later the drama was ended by the surrender at Yorktown.[1] When Sir Henry Clinton reduced Charleston, and overran the country, and Cornwallis found Gates, in his weakness and incapacity, an easy victim, and tempting inducements were offered to resume ancient relations, the most fervent and faithful patriotism and courage were needed to resist the rewards that were offered, and to stand up against the cruelties and outrages which followed fidelity to the American cause.[2]

[1] See Edward Graham Daves's *Maryland and North Carolina in the Campaign of 1780-81*. [2] 2 *Henry*, 123-124.

Homesteads became objects of revengeful or avaricious attack, and families became refugees, and found shelter in mountains or in swamps. The patriots lived on scant food, snatched a precarious subsistence from what could be had from friends, or captured from enemies.[1] Without succor from Congress or Colonies, Marion, Sumter, Horry, Pickens, and others, at the head of untrained and unpaid gentlemen, achieved deeds and successes which, in other lands, more careful of chronicles, and more habituated to record and preserve achievements, would have been the theme of inspiration for romance, or verse, or history. Greg, the prejudiced English historian,[2] says: "The South Carolinians possessed a class of gentlemen well qualified by open air life, by frequent journeys on horse-back, their love of field sport, their keen sense of honor and personal dignity, and above all by their daily habit of command, which belonged to their position as planters, personally directing the labor of a dozen, a score, or a hundred slaves, to organize, lead, and discipline the splendid raw material of soldiership found among the farmers, graziers, and back-woodsmen."

It is unfortunate that the habits of life of the Southern people and their contempt for vainglory, love of money and mercenary services, prevented any adequate preservation of the

[1] 2 *Henry*, 116. 1 Rives's *Mad.*, 272–274.

[2] 1 Vol., 228.

materials of such a history. In consequence of this contemporary neglect to record and to save, these Southern States have suffered in failing to receive the bounties and pensions as well as the historical recognition properly due to them. Col. Higginson, in the Centennial address before the Massachusetts Historical Society, said: "No set of new colonists, probably, ever recorded their own history so promptly and continuously as did the founders of New England. The leaders of the Plymouth and Salem colonies wrote from the very beginning; each new colony was born writing as one might say—as if a baby were to raise its head from the cradle and demand pen and ink to put down his expressions. They kept back nothing so far as they knew it. This from the earliest period; and when we come to the storm and stress of the Revolution it is the same thing. Men came through it historians of themselves."

It might easily be shown, even with the scant memoranda almost providentially preserved, that the South, in expense and battles, and soldiers, bore her full share in the struggle for independence. In Baltimore, the first cruisers were fitted out, which were the pioneers of the American navy, and Maryland furnished more than twenty thousand men to the Revolutionary army. In 1790, the white male population over sixteen years of age, in Pennsylvania and Virginia, was about the same, the former being 110,788, and the latter, 110,934, and yet, accord-

ing to the official estimate presented to the first Congress by the Secretary of War, General Henry Knox of Massachusetts, Pennsylvania furnished 34,965 soldiers and Virginia 56,721. New Hampshire had a military population 513 larger than South Carolina, and she contributed 14,906 soldiers, and South Carolina, 31,131. The latter quota is nearly equal to that of Pennsylvania, which had triple the military population and twice the total population, free and slave. South Carolina outnumbered New York's troops 29,836, although New York had much more than double the military population, and 40 per cent. more of total population. Connecticut and Massachusetts did more than any of the States, not Southern, and yet South Carolina sent to its armies 37 out of every 42 citizens capable of bearing arms; Massachusetts sent 32; Connecticut, 30; and New Hampshire, 18. At the North, nearly every man who served was entered on the rolls, while, as General Knox says, "in some years of the greatest exertion of the Southern States there are no returns whatever of the militia."[1] Generally, at the North the war assumed a regular character; at the South it was brought home to every fireside; and there was scarcely a man who did not shoulder his musket, even though not regularly in the field. Again, while sending its troops freely to defend any part of the country, it fought, in very large degree, its own battles,

[1] See *Am. State Papers*, *Military Affairs*, 1, 14, etc.

and the losses sustained in supporting this home conflict were far heavier than any amount of taxation ever levied. "Certain partisan leaders in Vermont kept up, on their part, a shrewd parleying, now with the British authorities for the purpose of conjuring the storm of war from their borders, and now with the Continental Congress for the purpose of coercing that hesitating body into a recognition of the territorial independence."[1] A Pennsylvania historian says: "Pennsylvania fought in the Revolution like a man with one arm tied behind his back." The Declaration of Independence "was looked upon by many at the time as a party triumph" and dissidence of opinion—a civic feud—drove men of the highest character from the public service. John Adams called the triumph of the Revolutionary party a righteous overthrow of "cowardice and Toryism," and it was constantly alleged, "with much iteration of phrase," that "the proprietory gentlemen" were more solicitous to keep the scabbards of their swords unsoiled than to wield the swords in a battle for the rights of the Colonies.[2] According to General Knox's report, the North sent to the army 100 men for every 227 of military age, as shown by the census of 1790, and the South 100 for every 209. In 1848, one out of every 62 of the men of military age in 1790 in the North was a revolutionary pensioner, and one out of every 110 in the South. Of these pensioners New

[1] See *The Nation*, August, 1893. [2] Elliot's *Debates*, 10,

England had 3146, more than there were in all the South, and New York two thirds as many, though she contributed not one seventh as many men to the war. These are authentic historical facts, and are not presented by way of recrimination, but to establish equality and justice. If there were inequality of burdens, if the South made heavy sacrifices, they were cheerful free-will offerings on the altar of Liberty.[1]

While these things were occurring in the more stable settlements, there was, in the country on the Ohio and the Tennessee rivers, the most remarkable exhibition of self-government, individual prowess, and loyalty to liberty. In pushing West our borders, the South did a part that has not generally received proper record or commendation. Roosevelt, in his picturesque *Winning of the West*—a book of much laborious research, of contagious enthusiasm, of catholic patriotism,—has put together, in attractive form, with ability and literary skill, what the hardy pioneers of revolutionary days did, with incredible courage and privations, for the expulsion of the Indians, for punishment of their atrocities, and for the discomfiture of the British in their cruel alliance for political ends with the savage Indians.[2] The hardy adventurers

[1] 2 *Henry*, 9, 69, 155. 10 Bancroft, 479.

[2] "The introduction of barbarians and savages into the contests of civilized nations is a measure pregnant with shame and mischief, which the interests of the moment may compel, but which is reprobated by the best principles of humanity and reason." 8 Gibbon's *Rome*, 58.

supplied leaders and men,[1] and led their companions to battle and victory, as Jackson and Houston and Lamar did in later days. Roosevelt says:

"Indeed, the Southwesterners not only won their soil for themselves, but they were the chief instruments in the original acquisition of the Northwest also. Had it not been for the conquest of the Illinois towns in 1779, we should probably never have had any Northwest to settle; and the huge tract between the upper Mississippi and the Columbia, then called Upper Louisiana, fell into our hands, only because the Kentuckians and Tennesseeans were resolutely bent on taking possession of New Orleans, either by bargain or by battle. All of our territory lying beyond the Alleghanies, north and south, was first won for us by the Southwesterners fighting for their own land. The northern part was afterwards filled up by the thrifty, vigorous men of the Northeast, whose sons became the real rulers as well as the preservers of the Union; but these settlements of Northerners were rendered possible only by the deeds of the nation as a whole. They entered on land that the Southerners had won, and they were kept there by the strong arm of the Federal Government; whereas the Southerners owed most of their victories only to themselves.

"The first comers around Marietta, did, it is true, share to a certain extent in the dan-

[1] 2 *Henry*, v., 25.

gers of the existing Indian wars; but their trials are not to be mentioned beside those endured by the early settlers of Tennessee and Kentucky, and whereas these latter themselves subdued and drove out their foes, the former took but an insignificant part in the contest by which the possession of their land was secured. Besides, the strongest and most numerous Indian tribes were in the Southwest."

Beginning in 1774, these border-men crossed the Alleghanies, defeated French, Spaniards, and the British with their Indian allies, made homes for their families in the primeval forests, enlarged the area of freedom, and opened the way for the establishment of organized liberty on this virgin continent. Romance contains nothing more thrilling than the exploits of these pioneer men and women; and we do injustice while honoring the achievements of those engaged in more regular warfare against the British and the Tories, not to keep in grateful remembrance the deeds of those who, amid severer hardships and dangers, were subduing more active and dangerous foes. These backwoodsmen were ardent patriots, and deserve to be classed with their fathers and brothers on the Atlantic coast.

In 1774 was fought the battle of the great Kanawha, bloody and stubborn, closely contested between the Indians and the backwoodsmen. "This war kept the Northwestern tribes quiet for the first two years of the Revo-

lutionary struggle, and rendered possible the settlement of Kentucky," and, therefore, the winning of the West. Lewis's army consisted of men from Botetourt and Fincastle;[1] but those counties then embraced all Southwestern Virginia, even extended to "the waters of the Mississippi." On their homeward march, after the victory, the officers held a notable meeting near the mouth of the Hockhocking. They had followed Lord Dunmore; but they were Americans in full sympathy with the Continental Congress. Fearful lest their countrymen might not know that they were as one with them in the struggle which was looming up with ever increasing blackness, they passed resolutions professing devotion to their King and to the dignity of the British Empire,[2] but they added that this devotion would only last while the King deigned to rule over a free people, for their love for the liberty of America exceeded all other considerations and they would exert every power for its defence, not riotously but when regularly called forth by the voice of their countrymen.[3]

The men of the West took little share in campaigning against the British and Hessians. In the exigencies of the unequal war they were left to take care of themselves, and were fully occupied in "holding the wooded wilderness that stretched westward to the Mississippi,"

[1] 2 *Henry*, 103. [2] 1 *Henry*, 204–205.
[3] 1 *Winning of the West*, 238–240.

and in laying therein the foundations of many future commonwealths. Only trained woodsmen could have occupied successfully the regions out of which so many States have been carved. Patrick Henry and Jefferson and Wythe encouraged Clark to whose tact, energy, courage, and executive ability in his momentous expedition of 1778–1779, we owe the acquisition of the West, and the defeat of the British and the Indians. The British commander records his mortification at having to yield Fort Vincennes in 1779 "to a set of uncivilized Virginia woodsmen armed with rifles," and Roosevelt says had Clark "in this most memorable of all the deeds done west of the Alleghanies in the Revolutionary War" been defeated, "we would not only have lost the Illinois but in all probability Kentucky also."[1] The British were never able subsequently to shake the hold of the Americans upon this section; and the Indians became quiet until their hostilities were far less formidable. In the war of the Revolution, Great Britain sought to "stop the westward growth of the English race in America, and to keep the region beyond the Alleghanies as the region where only savages should dwell."[2] The arms used by savages against both organized foes and helpless noncombatants, were supplied from British arsenals. Clark, in his campaign, in Illinois and the Northwest, and Boone in Kentucky, encoun-

[1] 2 *Winning of the West*, 84, 85, 90. [2] 2 *Ib.*, 6.

tered Indians officered and armed by the British.[1] Under provocation, the Western pioneers sometimes retaliated eye for eye, scalp for scalp, but to courage they joined open-handed hospitality, generous neighborhood, a rough common sense and the true American capacity for extemporizing government. In 1772, on the head-waters of the Tennessee, was organized a government. A written constitution was formed, "the first ever adopted west of the mountains, or by a community composed of American born freemen. They were the first men of American birth to establish a free and independent commonwealth on the continent."[2] For six years this government continued in full vigor, and came to an end in 1778, when North Carolina organized Washington County, which included all of what is now Tennessee. Physical geography is a potent factor in national unity. In the war between the States, probably no one fact, apart from mere sentiment, was so controlling in the purpose and effort to prevent "the wayward sisters from departing in peace," as the need of the Mississippi River for a highway of commerce, and the danger of letting its mouth remain in the possession of a foreign power. The Mississippi River and valley are ours largely by reason of the energy, the courage, the patriotism of the winners of the West, the

[1] 2 Parkman's *Montcalm and Wolfe*, 421.

[2] 1 *Winning of the West*, 183–186.

fearless, adventurous, unconquerable pioneers from Virginia, North Carolina, Kentucky, and Tennessee. The constant wars carried on by them in their own independent way, for the protection of houses and families, were at their own expense, as they served without pay, and furnished their own rifles and ammunition, their own food and clothing. As Nehemiah's men builded with swords girded by their side, so these watchful men tilled their ground and felled the forests with their trusty rifles ever within ready reach. Roosevelt ascribes to the backwoodsmen the credit of the King's Mountain battle, and says the victory was of far-reaching importance, ranking among the decisive battles of the Revolution, cheering the patriots throughout the Union, giving a decisive blow to loyalists and causing Cornwallis to retreat from North Carolina. [1]

[1] 1 *Ib.*, 238–240. 2 *Ib.*, chap. IX.

CHAPTER VI.

THE Continental Congresses, which began their sessions at Philadelphia on the 5th of September, 1774, "under the severe pressure of a common fear and an immediate necessity of action," lasted for nine years, until the valid ratification of the Articles of Confederation. It is necessary to inquire into the exact relation of these Congresses to the States, because much misapprehension exists on the subject; and public men and historians have built theories and based arguments on palpable and demonstrable fallacies. "Nearly all the fallacies in the literature of our constitutional history may be traced, wholly or in part, to assumptions in answer to this question. Our constitutional history cannot be written with authority until the question of fact here raised is settled by appeal to the detailed evidence on record." This evidence and the facts of American history have been obscured or perverted to sustain certain political theories, dogmas, or measures. Bold assumptions and perversions on this point have violently and suddenly jerked the Colonies "from atomic colonial independence" into a blended organic nationality, from alliance for certain purposes into paramount indivisible sovereignty

as one people. The text-book for this study is "the authentic records of the public acts" of this period with occasional side lights from private sources. What Congress represented during the inchoate period of union, prior to the spring of 1781, must be decided by the action of the Colonies, or parties,who accredited the delegates.[1] These Congresses were extra legal and irregular in their composition, and in no sense proceeded from sovereign power. They brought common ideas and purposes into expression and co-operation. They were "for the development of a common consciousness" so that there might be thereafter, if occasion demanded and the Colonies approved, a common government with defined and larger powers. In any official action or assertion there is not the trace of a power of intercolonial control. The delegates never once claimed any independence of their constituencies, the colonial assemblies which they represented. The credentials of the members determine infallibly whom and what they represented. The popular branch of

[1] No one has labored more creditably and successfully in this department of historical civics than Dr. Albion W. Small. His *Beginnings of American Nationality*, in the Johns-Hopkins Historical and Political Science series, unfortunately incomplete, is a model of historic composition, constructed in a true historic spirit, letting naked facts, diligently searched and collated, speak themselves, without gloss of prejudice or comment of blind partisanship. The continuance of his researches is a historical and political need. Fiske has partially constructed his histories on the same facts.

the Legislature in Massachusetts, Rhode Island, and Pennsylvania, appointed deputies. In Connecticut, New Jersey, Maryland and Virginia, committees chose the delegates. In North Carolina and South Carolina, general meetings appointed and instructed delegates. The delegates from New York were chosen by wards in the cities and by counties in the province.[1] This irregularity of appointment shows the character of the body and its impotency to commit or bind the constituency. The instructions, proceeding from different sources, show that it was a deliberative and advisory body and nothing more; that it was appointed to consult and to adopt measures to obtain redress of grievances, and restore the union and harmony which existed between Great Britain and the Colonies. There was nothing administrative or governmental about the organization of the body, and in determining questions each province or colony had but one vote. "The most important business of the Congress was the preparation of the documents, which were intended not merely as weapons of peaceful warfare, but as incitement and equipment in case resort should be necessary to desperate means."[2] These demonstrate that the Congress was aware of its own authority, "as a committee of observation and recommendation without legislative or executive powers of any sort." The "Declaration

[1] Small, 17; Upshur, 20.

[2] Small, 27.

of Rights and Grievances" declared "Our cause is just, our union is perfect," but "union" did not, could not, imply a notion of fixed organic connection.[1] To use the term *union* with its present historical associations is an inexcusable historical solecism. "The union of the time was the common purpose to postpone all minor interests in prosecuting the determination" to employ all the powers they possessed for the preservation of their liberties. The fourth clause declared that the colonies are "entitled to a free and exclusive power of legislation in their several provincial legislatures, where the rights of representation can alone be preserved, in all cases of *taxation and internal policy*, subject only to the negative of their sovereign, in such manner as has been heretofore used and accustomed." The Act of Association, intended to discontinue the foreign slave trade, importations from England, consumption of East India tea, etc., was recommended to the Colonies for such action as would carry it into execution. The Congress made an address to friends and fellow-subjects of Great Britain, to the King, inhabitants of Quebec, and a memorial to the twelve colonies. Georgia, not being represented, is not included. Dr. Small makes an epitome of the proceedings of the Congress, "utterly devoid of coercive power," and argues: 1. "The *powers* of the Congress, as defined by the votes of the bodies granting the credentials,

[1] Small, 40.

are those of a committee for consultation and advice. 2. The *acts* of the Congress, which we are now analyzing, are conformable to these instructions, hence: 3. The authority of a *government* cannot be predicated of this committee."[1] Further he adds, in reply to Frothingham's, Adams's, and Hildreth's theorizing after the event, that the terms, union, law, nation, sovereign, "composed into political creeds, have been the means of exalting arbitrary and unnatural hypotheses to the rank of fundamental truths." "There is not a trace of any popular or official act of the time that can be rationally expounded as evidence of a claim, on the part of a Continental Congress, to the power of intercolonial control." "By creating this Continental Committee the widely separated colonies became simply colonies testing the actuality and potency of their common ideas. They were no more a nation than twelve neighbors, meeting for a discussion of a possible venture, would be a partnership."

Before adjourning, the Congress *recommended* the colonies to choose deputies to attend another Congress, to be held the succeeding year, in Philadelphia. What occurred in the appointments and credentials of 1774, was substantially repeated in the choice of "members of another Continental Committee," known as the Congress of 1775. It is needless to repeat reference and statement and to make nearly the identical ex-

[1] Small, 29.

tracts. In some cases there was a little enlargement, as the colonies realized that revolution was an accomplished fact, but there was no delegation of power sufficient to make obligatory on the States the decisions of a Congress. There was no indication of a purpose or desire to place the co-operating commonwealths under central control, at the sacrifice of the twelve "self-determining and self-governing communities." An examination of the acts of the body will show a substantial agreement with the credentials, and make it indubitably clear that the second Congress had no powers above those authorized in the set of instructions. It is not denied that the Congress, in the absence of any formally constituted government, took a large view of its powers, enjoyed a prestige which it subsequently lost, initiated actions of various kinds, but it exerted no sovereign power in the premises, and based validity of action on a certainty of adoption by the colonies.

Powers exercised for the whole country by the Congress were not derived "from the will and force of all the States, existing as one integral sovereignty." That is a dogma invented for sustaining party theories and governmental assumptions of power, and does not rest on historical fact. Even when Congress, *ex necessitate*, and by connivance or consent of the Colonies, exercised, as a common medium, a quasi-international sovereignty, the Colonies were independent in their relations to one

another, and had their laws and governments as local units.[1] They had unity of sympathy and action, and these thirteen organized units strove long and hard before they had a common government with full powers of a Federal government. The feeling of resistance, the spirit of revolution, had become strong enough to support the deputies in assuming some powers, "not nominated in the bond," but there was no claim of superiority to the colonial assemblies, and everything was based on the belief that the people of the separate colonies acquiesced in the exercise of every essential power of government. The Congress presupposed concurrence in action taken by "the only possible medium of co-ordination and combination." "It was a Congress of deputies, not of legislators. It performed no single act which did not derive viability from sustentation by the local powers. Its history forms a record of localism rising superior to itself to meet the demand of a crisis," a localism "displaying its maximum possibilities for resistance and aggression."[2] "It was a body which wielded no technical legal authority; it was but a group of committees, assembled for the purpose of advising with each other regarding the public weal."[3] The Con-

[1] The ownership of all ungranted lands within the limits of the thirteen States passed from the Crown, not to the Confederacy, but to the several State governments.

[2] Small, 72, 73, 77.

[3] 1 Fiske's *Amer. Rev.*, 132, 243.

gress, as the organ of communication, in its offensive and defensive measures, and measures of general utility, in its direction of military affairs and creation and administration of revenue, became a quasi-permanent institution, until it lapsed into the Articles of Confederation. It really was only an occasional body, renewable from time to time. It was called "Continental" to distinguish it from the "Provincial Congresses," held in several of the colonies. It had no similarity in power or function to our present Congress. The authority arose from the acquiescence of the Colonies or States, which relied on the sagacity, the superior information, the strategic wisdom, the more comprehensive view, of the committee of safety which alone could express the general will. It was not strictly a legislative body. It advised and recommended and appealed and urged and sometimes assumed. There were no distinct executive officers, and it could not execute its own resolves as to most purposes, except by the aid and intervention of the colonial authorities. "Its executive operations were vicarious, not functional."[1] When money or troops were needed, the States were urged and begged. It borrowed money and issued promises to pay. It declared independence of Great Britain; it contracted an alliance with France; it issued letters of marque and reprisal; it built a navy; it organized an army; appointed a commander-

[1] Small, 76.

in-chief to direct its operations, and was the chief agency in carrying through successfully the long struggle for separation and freedom.[1] All this was done without exclusive powers, and with no pretence of interfering with, or abridging, the absolute sovereignty and independence of the States.

[1] Fiske's *Civ. Gov.*, 204, 208.

CHAPTER VII.

INTERCOURSE between the provincial assemblies and the Continental Congress, and those exigencies of war, which strain granted and call out inferential or implied powers in governments which have carefully-defined constitutions, brought to light the limitations of the Congress, and the need for prompter and more effective action than could be secured by tedious and uncertain appeals to the constituent sovereign bodies. This dependence of the central agency on the action of the States for the discharge of appropriate and urgent duties made it necessary to adopt a more intimate plan of union and to secure larger powers. This was formally proposed in Congress in June, 1776, as greater authority was necessary to good government, and to the success of the common cause. A committee, appointed to draw up the "articles of confederation and perpetual union between the States," urged a stronger league in order "to confound our foreign enemies, support public credit, restore the value of our money, enable us to maintain our fleets and armies, and add weight and respect to our counsels at home and our treaties abroad."[1] In November, 1777, the articles were

[1] 1 *Secret Journals of Congress*, 362, 365.

adopted by Congress. Virginia was the first of the States to respond to this appeal, and by a unanimous vote. As early as 1778, ten States confirmed the articles, another assented in 1779, and another in 1780. Maryland, the most reluctant, finally acceded, and thus made them obligatory on 1st of March, 1781. Nothing less than the ratification of them by *all* of the States, each acting separately for itself, was sufficient to give them any binding force or authority. Various causes as to methods of voting, of apportioning troops and taxes, and of regulating foreign trade, delayed the action of States, ever jealous of their separate and sovereign rights, but Maryland stood out most stubbornly in opposition to the compact and refused her necessary ratification unless the States, laying claim to the Northwestern lands, and especially Virginia, should surrender their claims to the confederation. The landed States were slow to surrender their territorial possessions. The landless States insisted that the unoccupied territory should be ceded and parcelled out into "free, convenient, and independent governments." In 1780, Congress implored the more fortunate to heed the clamors of the less richly endowed sisters, and adopted a resolution which is quoted as of much value in the controversies as to the rights of the States:

"*Resolved*, That the unappropriated lands that may be ceded or relinquished to the United States by any particular State, pursuant

to the recommendation of Congress of the sixth day of September last, shall be disposed of for the common benefit of the United States, 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." . . . (*Journals of Congress*, iii., 535, 282.)

As has been stated, Virginia was the principal claimant, and, as a matter of legal right, her claim was indubitably valid. Bancroft says her right to extend to the Mississippi was unquestioned. While asserting her claim against those who wantonly assailed it, she never sought to use it in any selfish spirit, but, with her usual queenly generosity and magnanimity, offered to admit the other States to a free participation as a fund to provide bounties to their soldiers on the continental establishment equally with her own. On 2d January, 1781, the General Assembly of Virginia proposed to surrender to Congress, for the common benefit of the whole, that immense territory claimed and possessed by her northwest of the Ohio and extending thence to the lakes and the Mississippi. Certain conditions, subsequently modified or withdrawn, delayed an acceptance by Congress until March 1, 1784.[1] Maryland, however, accepted the offer, as in good faith, and withdrew her opposi-

[1] Hening's *Statutes*, 564-7 ; 1 Rives's *Mad.*, 253-65 ; 6 *Am. Archives* (fourth series) ; 2 *Henry*, ch. xxvii.

tion to the articles of confederation. Fiske says of the magnanimity of the desired surrender: "New York, after all, surrendered only a shadowy claim, whereas Virginia gave up a magnificent and princely territory, of which she was actually in possession. She might have held back and made endless trouble, just as, at the beginning of the Revolution, she might have refused to make common cause with Massachusetts; but in both instances her leading statesmen showed a far-sighted wisdom and a breadth of patriotism for which no words of praise can be too strong." Senator Hoar says: "The cession of Virginia was the most marked instance of a large and generous self denial." In 1787, South Carolina ceded her western lands to Congress. Connecticut in her cession held the western reserve until 1800. The States, in their cessions, made their own conditions as fully as if they were foreign governments.

Under the Articles of Confederation each State was an integer of equal dignity and power. The States had no purpose to abandon their sovereignty. To that they clung as an object of dearest desire, as the right never to be yielded, and they stipulated in strong, unmistakable language, that "each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this confederation expressly delegated to the United States, in Congress assembled." This constitu-

tion (it was frequently, at that period, spoken of as such) did not mend matters.[1] The Congress was still without power to raise money by taxation, for that most fundamental of all the attributes of sovereignty was not given to it. Requisitions for men and money were still dependent for their execution upon the action of the States respectively. A successful war and independence secured left the confederacy with "an empty treasury, an impaired credit, a country drained of its wealth and impoverished by the exhaustive struggle." The limited and imperfect powers conferred by the Articles afforded no remedy for evils. Defects were not remediable, for practically there was no power except by the unanimous consent of the thirteen States. The impotence of treaties, commercial depression, financial disaster, and social disorders, caused many suggestions for enlarging powers and for a more efficient inter-state organization.

Investing Congress with larger powers, or a collapse of the Government, seemed to be the only alternative left. Congress, while confessing its helplessness, was unwilling to surrender its functions. In 1785, 28th of March, Commissioners from Maryland and Virginia met at Mount Vernon to establish commercial relations between those States for the commerce of the Potomac and Chesapeake Bay, and to devise measures for uniting the waters of the James

[1] Fiske's *Crit. Per.*, 146.

and the Potomac with those of the Ohio. The report of the joint Commission met with opposition in the Legislature of Virginia and was postponed. Maryland, however, in assenting to the compact agreed upon by the Commission, proposed that committees from all the States should meet in convention to regulate American commerce. At this critical juncture, the Legislature of Virginia, on 21st January, 1786, appointed a commission, with Madison at its head, to meet other Commissions at Annapolis, for the purpose of digesting and reporting the requisite augmentation of the powers of Congress over trade.[1] Nine States met and urged the necessity of extending the revision of the federal system to all its defects, and recommended a convention from all the States to devise such further provisions as might appear to be necessary to render the constitution of the federal government adequate to the exigencies of the Union. A federal convention became the last hope, the only feasible expedient, and the first idea of a national legislature, judiciary and executive, is found in a letter of Madison to Governor Randolph. Virginia, without a dissenting voice, early in November, 1786, gave her sanction to the recommendation for a convention, and appointed Washington, Madison, Randolph, and Mason as her deputies, stipulating, however, that the new federal constitution, after it should be agreed to by Con-

[1] 2 Rives, 60.

gress, was to be established, not by the legislatures of the States, but by the States themselves, thus opening the way for special conventions of the several States.[1] Urgency of action was increased by rebellions in Massachusetts, riots in some States, threats of withdrawal from the loose confederation, and the hostile attitude of neighboring commonwealths. Connecticut levied duties on imports from Massachusetts. Pennsylvania discriminated against Delaware and New Jersey. Connecticut and Pennsylvania quarrelled over the valley of Wyoming; New York and New Hampshire over Green Mountains. "The history of New York was a shameful story of greedy monopoly and sectional hate."[2] Despite all the pressure, it was found impossible to get a full representation in Philadelphia until May, 1787. Massachusetts had been as obstinate in her assertion of local independence, and her unwillingness to strengthen the hands of Congress, as New York and Rhode Island. When Virginia appointed delegates, and put Washington at their head, the popularity of the movement for a more perfect union grew rapidly, as trust in him quieted many apprehensions. Mr. Jefferson, February 8, 1786, wrote to Mr. Madison: "The politics of Europe render it indispensably necessary that with respect to everything external we be one nation only, firmly hooped together. Interior government is what each State should

[1] 1 Ban., 272. [2] *Ib.*, 145, 146.

keep to itself." In a later letter, December 16, 1786, he says tersely and clearly: "To make us one nation as to foreign concerns and keep us distinct in domestic ones, gives the outline of the proper division of power between the general and particular Governments." [1] Rhode Island alone refused to become a party to the proceedings. The convention of States did not confine its attention to a revision of the Articles of Confederation, as had been contemplated by the resolution of Congress, but formulated an entirely new instrument, made up of a series of compromises, and creating a government of an entirely different nature from that then existing. After four months of work, with closed doors, the Convention, "all the States concurring," says Madison's memorandum, was able to present to the States for their separate ratification the Federal Constitution. It was Rufus King, an advocate of a strong national government, who moved to add, "between the States so ratifying the same." It is not possible, nor desirable, to parcel out merit for this grand structure, but no honest person can claim that Washington, Madison, Mason, Martin, Rutledge, the Pinckneys, Wythe, Carroll, and Randolph, were surpassed in patriotism, influence and wisdom by their associates.

Much has been written and spoken as to the credit due to men and to States for the adoption of the Constitution, and to one or two men

[1] 1 Ban., 277.

of ability and patriotism has been ascribed the chief honor, ignoring completely the testimony that the record of the debates bears on the point. On the day appointed for opening the federal convention, the States being insufficiently represented, the deputies adjourned from day to day, awaiting the arrival of colleagues. The delay gave opportunity for conference. The Virginia delegation, as their State had initiated the convention, utilized the time in securing "a proper correspondence of sentiments" and in forming a plan for the consideration of the body when it should be organized. Madison undertook the task of preparing the outlines of a Constitution, as a basis for deliberation. For this he was eminently fitted, as he had made a thorough study of colonial, State, and foreign institutions, and had mastered the underlying and impelling causes of the Revolution. A plan for a government, submitted by him, after much consultation was amended until it was agreed to by all, and to Randolph was entrusted the office of bringing forward the Virginia plan, which he did on the 29th of May. A scheme, very similar in form and fulness of detail to the instrument finally adopted, was proposed on the same day by Charles Pinckney of South Carolina. Judge Patterson of New Jersey submitted a plan on the 15th of June. On the 18th of June, Hamilton proposed an outline, but it was so radically centralizing that it was neither referred nor voted on, the votes

in the Convention being taken chiefly on the rival plans of Randolph and Patterson. When the instrument was presented from the Committee of Detail, it bore the impress of John Rutledge of South Carolina.[1] The Convention in Committee, after an exhaustive analysis by Madison of competing schemes, reported the plan of Virginia of the 19th of June, 1787. After much debate and most earnest consideration, and being cast into its present form by the pen and mind of Morris, the unanimous consent of all the eleven States present was recorded in favor of the new scheme of Government.

What was foreshadowed in the preparation of a thoroughly comprehensive scheme of constitutional government for the Union was followed up by the energetic and ceaseless action of Madison, wherever he found opportunity for using tongue or pen. In the federal convention his wisdom and patriotism and sagacity are to be seen on every page of the records. In the convention in Virginia to ratify, the defence of the instrument rested mainly on him, and he, "the chief author of the constitution," as Bancroft calls him,[2] formed with Hamilton and Jay, the triumvirate, which, by the papers called *The Federalist*, prepared the States for accepting the determinations of the convention.

[1] See address of John Randolph Tucker before Yale Law School, on "History of Convention of 1787 and its Work," pp. 25–47.

[2] 2 Ban., 357.

The Constitution was ratified by the States in conventions, not by Legislatures, at various dates from November 6, 1787, to 29th of May, 1790. The ratification was on the part of each a separate and distinct act, as no one thought of submitting the new Constitution to the body of the people, to be voted upon collectively as the people of a nation. The union of the States was to have as a solid foundation the will of the sovereign peoples and not the caprice of ephemeral legislatures. Pursuant to the declaration of the individual independence and sovereignty of the colonies, the separate States had proceeded, each for itself, each in its own time and way, to form and adopt separate constitutions of government, separate State organizations, separate State governments, and now determined to enter the more perfect union by their own separate, individual action. The ratification of one State, or of nine States, the required number antecedent to an organization, did not, most remotely, bind or civilly affect the individual action of the remainder. In fact, the Constitution went into effect, became operative as a government, in 1789, between the States ratifying, several months before North Carolina on the 21st of November, joined the Federal Union, while Rhode Island lingered in her accession until 29th of May, 1790, and then, in terms, reserved the right to withdraw, whenever her interest demanded it. Nobody pretended to any right of coercion, or of inter-

ference with the separate sovereignty. The particularistic origin of the Congress, and particular ratification of the Constitution, are conclusive that the Union was created by the States.

The consideration of the Constitution by the Conventions of the several States drew together, in council and action, the ablest men of the country. The debates were spirited and strong. Differences of opinion, which had been developed in the Federal Convention of 1787, became more marked and more distinctly defined, and principles, which became the basis of organization of our first political parties, were formulated and enforced. The proceedings of the Convention in Virginia in 1788 have been presented with fulness and ability by Hugh Blair Grigsby, and the inquiring reader is referred to that admirable discussion. Virginia had favored the Articles of Confederation. For years their amendment had engaged public attention. Virginia, by formal resolution of her Assembly, had invited the meeting of the States, which became the convention of 1787. Many thought that an amendment of the system of government would be amply sufficient to secure the ends of its creation. The substitution of a different scheme of government, the entire destruction of the Articles which solemnly declared the Union to be perpetual, was not what many contemplated or desired when the delegates were chosen. Strong men criticised the inchoate constitution as endangering the

autonomy of the States, centralizing power in the national head, and investing the new government with the purse and sword.[1] The predictions of Patrick Henry, in the Virginia Conventions of 1788, as to the workings of the proposed Federal Constitution, show the remarkable prevision and sagacity of this friend of liberty. He considered that the real checks to the Federal Government must be the State Governments, and these were weakened to inefficiency. Secession would be impracticable. The Federal Government, being supreme, its taxation would be more potent than that of the State, and through its exercise the people and the State would be oppressed. No security existed against the profligate use of public money, except the honesty of rulers, which was a poor dependence. The interests of the Northern and Southern States were different; and the Federal Government subjects everything to Northern aggrandizement. Control of Congress over manner of holding elections will prove dangerous. Rich men will carry elections and make an aristocracy of wealth. Two judiciaries and legislatures will interfere, and those of the States will be subverted. Congress will not be confined to enumerated powers and will abuse the implied, and liberate slaves. The Federal Judiciary, by absorbing jurisdiction, will be dangerous to the liberties of the country.

[1] 2 Elliot's *Debates*, 47, 51, 57, 60, 148, 166, 322, 327, 337, 539, 579, 589.

An obstacle to the ratification of the Constitution by the Southern States grew out of the apprehensions and sectional feeling excited by the proposition to surrender the right to navigate the lower Mississippi in exchange for a favorable commercial treaty with Spain. The claim of Spain to the control of the navigation of the river below the Yazoo was pressed by the Spanish Minister persistently and somewhat insultingly. Jay, yielding at last to his inexorable demand, advised Congress to consent to the closing for twenty-five years. Northern statesmen "thought more of our right to the North Atlantic fisheries than of our ownership of the Mississippi valley."[1] The readiness of "the New England people to barter away the vital interests of a remote part of the country" elicited an outburst of wrath. This disposition of a majority in Congress, in 1786, to surrender the right to navigation, awakened a fear that any right or benefit would be sacrificed to build up commerce, and the South and Southwest were thrown into turbulent excitement. Indignation meetings were held in Kentucky. The Legislature of Virginia uttered an indignant protest. Madison expressed his fear that unless the project of Congress could be reversed there was little hope of carrying the State into the Federal system. Jefferson said it was a clear sacrifice of the Western to the maritime States. Gor-

[1] 1 *Winning of the West*, 22.

ham, of Massachusetts, openly avowed in 1787 that he wished to see the Mississippi shut for the advantage of the Atlantic States. North Carolina declined ratification, in part because of misgivings on this subject. Grayson declared in the Virginia convention that it was a contest for empire, for dominion. The Congress in 1788 revoked its action and arrested the proceedings in pursuance of the negotiations which Jay had been authorized to undertake.[1] Virginia announced in her ratification that the powers granted in the Constitution might be re-assumed whenever the same should be perverted to the injury or oppression of the people and shielded the rights of the States by the assertion that every power not granted by the Constitution remain for the people of the United States and at their will.[2] New York declared in her ratification that the powers of government might be resumed by the people whenever it should become necessary to their happiness, and that every power, jurisdiction and right that was not delegated to the Congress remained to the several States, or the respective State governments. Rhode Island, in postponing her acceptance of the Constitution and becoming a State of the Union, was mainly governed, said Justice Miller, in his address on the Centennial of the

[1] Fiske's *Crit. Period*, 210, 211, 335. 2 *Henry*, ch. xxvii.

[2] Elliot, 656.

Constitution, by the consideration that her superior advantages of location, and the possession of what was supposed to be the best harbor on the Alantic coast, should not be subjected to the control of a Congress which was expressly authorized to regulate commerce with foreign nations and among the several States. She accompanied her tardy ratification by declaring that the powers of government might be resumed by the people whenever it should become necessary to their happiness. Massachusetts and New Hampshire, "to remove the fear and quiet the apprehension of many good people," proposed an amendment that the powers not expressly delegated by the Constitution were reserved to the several States to be by them exercised.

In the throes of the war, when the land was overrun by powerful foes, the States looked with suspicion and jealousy upon a Congress having power over taxation. They, therefore, when such exigencies had partially ceased, were most reluctant to surrender so far their exclusive sovereignty as to concede the right to regulate commerce and trade, which involved the destruction of direct trade with foreign nations, and the right to control industry, direct labor, and wield capital at will. Empowering Congress to regulate commerce by a simple majority of votes was such an absolute transfer of the whole subject that Mason and Randolph, of Virginia, refused to sign the

Constitution, as they wanted a two thirds vote for the protection of their State.

This surrender of the regulation of commerce was coupled with the transfer of legislation to possible coalitions, so that the rights hitherto enjoyed were to be thereafter at the courtesy or sense of justice of the stronger. The net amount of money received into the treasury of Virginia from customs, during the three quarters of the year ending 31st May, 1788, was sixty thousand pounds sterling. The imports and exports of the State for 1788 must have[1] reached over $30,000,000; ships of every nation waved their flags in Norfolk and Portsmouth. The period between the peace of 1783, and the adoption of the Federal Constitution in 1788 was the most prosperous in the history of the State, for of the two centuries and a half this[2] was a time when she enjoyed the benefits of a trade regulated by her own authority, unrestricted and untaxed. "The increased production of agriculture, the immense quantities of lumber which employed a heavy tonnage, the vast commerce which filled our ports and rivers, and which was growing with every year, could hardly fail to attract observation. The imposing picture of a single seaport of Virginia, which had in the space of four years risen from ashes to a prominence which it had not attained during a century and a half of colonial rule, was a living witness of developed wealth, of

[1] Grigsby, 9, 11. [2] 1 Ban., 150.

successful enterprise and of good government, and afforded a cheerful omen of the future. From 1688 to 1776 the Government of Virginia was mainly conducted for the benefit of the people. She enjoyed a steady series of prosperity for the last eighty-five years of her colonial existence, increasing in strength and resources." [1]

In the ten years before the revolutionary troubles, 1760–9, the Southern colonies, with a population of 1,200,000, exported produce to the value of $42,297,705, while the exports of New England, New York, and Pennsylvania, with a population of 1,300,000, were only $9,356,035, or less than one fourth. In the same decade Carolina and Georgia exported twice as much in value as all New England, New York, and Pennsylvania. For the half century preceding her co-operation with her sister colonies, South Carolina had been prosperous, her exports being lumber, pottery, rice, indigo, and naval stores. In one hundred and eight years of colonial life, population had increased from a handful to 248,139. When Georgia, in 1775, instructed her delegates to the Congress to concur in any measures "which they might think calculated for the common good," she was in a most enviable state of prosperity. In 1763 her exports amounted to £27,031 sterling, and in 1773 to £121,677 sterling. Virginia and Maryland exported five

[1] Grigsby, 15, 16.

times as much as New England, eight times as much as New York, and over thirteen and a half times as much as Pennsylvania. At the beginning of the government Norfolk had a greater trade than New York, and for the first quarter of a century the South took the lead of the North in commerce. According to an assessment for direct taxes in 1799, the property held by the North and the South was almost exactly the same in amount, being about $400,000,000 in value each. A large extent of coast line improves climate and increases facilities for commerce. The Coast-survey in 1848-9 gives the coast line of the Southern States on Atlantic and Gulf as 6033 miles, while the Northern States have only 3275. The compact shape of the South makes this line of navigation available to a large portion of the original Thirteen. From 1791 to 1802 inclusive, the exports from Massachusetts were $98,770,000; from Connecticut, Rhode Island, New Hampshire, Vermont, and New Jersey, $30,926,000; from Maryland, $101,026,000; South Carolina, $83,631,000; and Virginia, $42,833,000. Five Southern States exported $256,708,300; five Eastern States, $129,205,000, a large portion of which consisted of productions of the Southern States, first transported to Boston and other ports coastwise. From 1791 to 1813 inclusive, five Eastern States exported of foreign and domestic articles, including an immense amount of Southern productions, only about $299,000,000. Southern

States, in same period, including Orleans, exported $509,000,000.[1]

The diminution in prosperity, the retrogression, the relative decline of the South, are easily accounted for. The adjustment of taxation, the bounties to navigation and fishing, government partnership with favored interests, sectional discriminative disbursements, the entire fiscal action of the Federal government, have concentrated favors on one section to the disparagement of the other. New York City is the financial centre, the Threadneedle street, of the United States. The United States is an enormous money-dealer, and its payments, exchanges, monetary transactions, are largely made in New York. The theory of the Independent Treasury system was that the Government had little to do, in a financial way, except to collect its revenues and pay its legitimate expenses. Now, the Government has nearly everything to do and holds the place occupied by the Bank of England in Great Britain. The legal tender act of 1862 was a reversal of ancient theory and practice. The Government, assuming to act as banker-in-chief, and putting a prohibitory fine upon every form of paper except government and national bank notes, diverted our medium of exchange from its natural channels of development into the control of the central Government, enabled corporate wealth to create a monopoly of money and thus

[1] *Olive Branch*, pp. 272-281.

crippled the productive activities of unfavored sections. The National Banking law, regulating reserves, has had a tendency to accumulate available cash means in a few large cities.[1] The immense capabilities of the North, the energy, enterprise, capacity, of this frugal, industrious, clever people, are not to be denied, nor underrated, but equally it cannot be denied that whatever advantages accrue from the financial and commercial and economic policy of the Federal Government enure almost exclusively, or very disproportionately, to the North.

In what has been written of the period during the war and between the peace with Great Britain and the inauguration of our present government, reference has been necessary to the opinions and acts of General Washington. Institutions are often but the crystalization of the thoughts and deeds of single men. America, in her military and civil struggle, was favored with many noble men and women (the South in unstinted prodigality contributing her full proportion), who, in varied fortunes, in dire emergencies, in prolonged weariness of hope deferred and severe disasters, exhibited a fortitude, a nobility of soul, a recuperative energy, a capacity to extemporize expedients and to wring victory out of defeats, a quenchless patriotism, that the annals of the world do not surpass. Yet the one conspicuous figure, the one leader without a fellow or a rival, the one man who

[1] Brough's *Natural Law of Money*, 160, 162.

more than all others was the Moses, the Joshua, the counsellor, the lawgiver, the general, the unselfish public officer, was a Virginian, and a slaveholder. With a handful of men poorly provisioned, clad and armed, he conducted campaigns which would have reflected credit on Marlborough or Napoleon. Disaffection, mutiny, treason more harmful and dangerous than the well-disciplined and well-equipped forces of the enemy, only developed brighter and more sterling qualities of character, just as outnumbering, flanking and defeats only called out greater exhibitions of military strategy and genius. In the acclamations which success elicited we forget "the intrigues which disgraced the Northern army and imperilled the safety of the country," the machinations to supplant the Commander-in-chief with Horatio Gates, full "of meanness and duplicity," [1] and the petty spites and sectional jealousies and harsh criticisms of even such patriots as Hancock and John Adams and Samuel Adams. The accumulating and constantly-repeated difficulties and trials never repressed nor crushed his sublime will. Without the ordinary agencies, he carried on offensive and defensive war, and won results through "sheer force of genius," by wariness, vigilance, skill, wisdom, audacity. Clothed with extraordinary, almost dictatorial powers, authorized at one time, to raise infantry, artillery, cavalry, engineers, from all parts of the country, to

[1] Fiske's *Am. Rev.*, 253–6 ; 2 *Ib.*, 35, 37.

appoint officers, to fill vacancies, to take private property, to arrest violators of civil law, he never acted rashly or imprudently, never subjected himself to harsh criticism, never was tempted into avarice, or self-seeking, or tyranny, but was always the embodiment of civic virtue, of military greatness, of incorruptible patriotism. The successful achievement of our independence enured not merely to the United States; it was a victory for free institutions, for popular government, for human liberty, for all countries, for all ages, and to Washington are the present and the future generations indebted for these incalculable blessings. Scarcely less are we indebted to his consummate wisdom, his clear far-reaching intellect, for our own Constitution, for the resulting Union, for our federal, constitutional, representative Republic, for giving practical, demonstrated, vigorous life and success to the new government which started into being under circumstances of such doubt and peril.[1] With a century and more of national life, with all the glory of our unparalleled progress, we have failed to appreciate the difficulties of the experiment of our nascent government, and we are just beginning to ascribe what is due to the military genius and statesmanlike ability of the illustrious Southerner.

Thackeray, in *The Virginians*, referring to the struggle between the Colonies and the Mother Country, thus writes:

[1] 9 Sparks, 250; 2 Ban., Con., 317.

"Washington inspiring order and spirit into troops hungry and in rags; stung by ingratitude but betraying no anger, and ever ready to forgive; in defeat invincible, magnanimous in conquest, and never so sublime as on that day when he lay down his victorious sword and sought his noble retirement—here indeed is a character to admire and revere; a life without a stain, a flame without a flaw. *Quando invenies parem?*"

And another Englishman, the historian, John Richard Green, thus speaks of him:

"No nobler figure ever stood in the forefront of a nation's life. Washington was grave and courteous in address; his manners were simple and unpretending; his silence and the serene calmness of his temper spoke of a perfect self-mastery, but there was little in his outer bearing to reveal the grandeur of soul which lifts his figure, with all the simpler majesty of an ancient statue, out of the smaller passions, the meaner impulses of the world around him. What recommended him for command as yet was simply his weight among his fellow landowners of Virginia, and the experience of war which he had gained by service in Braddock's luckless expedition against Fort Duquesne. It was only as the weary fight went on that the colonists learned little by little the greatness of their leader—his clear judgment, his heroic endurance, his silence under difficulties, his calmness in the hour of danger or defeat, the patience

with which he waited, the quickness and hardness with which he struck, the lofty and serene sense of duty that never swerved from its task through resentment or jealousy, that never through war or peace felt the touch of a meaner ambition, that knew no aim save that of guarding the freedom of his fellow-countrymen, and no personal longing save that of returning to his own fireside when their freedom was secured. It was almost unconsciously that men learned to cling to Washington with a trust and faith such as few other men have won, and to regard him with a reverence which still hushes us in presence of his memory."

CHAPTER VIII.

IN the convention originated the two great parties which, under different names, have represented and more or less embodied the two theories of the nature and policy of the government—the centralizing party and the States Rights party, involving not merely expedients of party policy but the character of the government, the construction of the Constitution and the design and effect of legislative measures. This conflict was prefigured by the ante-natal struggle which occurred between Jacob and Esau in the womb of Rebekah. One party, said Marshall (his statement discolored by his party relations), contemplated America as a nation, and labored incessantly to invest the federal head with powers competent to the preservation of the Union, as in the supremacy of the General Government there was the only hope of escape from anarchy and civil war. The other attached itself to the State Governments, viewed all the powers of Congress with jealousy, held mistrust of the Government to be the corner stone of freedom, and assented reluctantly to measures which would enable the central head to act independently of the mem-

bers.[1] Hamilton and Jefferson represented the two parties and their antagonistic theories. The States, by their accepted Constitution, had created a government of limited powers. Are they to be held strictly to the limitations of that instrument, or are they to have a system of loose construction which will transcend those powers? Hamilton favored a centralized National Government, absorbing all power and granting to the people certain privileges. His plan was that Congress should have power to pass all laws they shall judge necessary to the common defense and general welfare of the Union. Jefferson believed in the capacity of man for self-government in his local affairs, and that only those powers should be conferred upon the Federal Government which were especially granted in a written constitution. His plan was the support of the State Governments in all their rights, as the most competent administrations for our domestic concerns and the surest bulwark against anti-republican tendencies. He pronounced the tenth of the amendments to the Constitution its corner stone.[2] A dogmatic political philosophy has twisted and perverted the facts of American history to sustain its definitions and doctrines.[3] A body of traditions has gathered around the genesis of the Government, falsifying the veritable

[1] 1 *Life of Washington*, 33.

[2] See Hamilton's *A Federal Union not a Nation.*

[3] Small, 7.

records, misconstruing documents, putting false glosses upon words, interpolating sinister motives and purposes, and giving strained and unnatural meanings to simple words. A theory of national development, wholly foreign to stubborn facts, has been advocated by statesmen and historians, and made the basis of judicial dicta and decisions, of executive proclamations and messages, of legislative enactments. This has been done so persistently and continuously, and with such an array of great names, and such a command of the agencies for making and controlling public opinion, that the task of rectifying seems Sisyphan. What, in so far as it exists, has been the process of slow evolution, or "the procession of gradual advance," is asserted to have had a Minerva birth, and to have been of instantaneous creation. The relation of the colonies to the Continental Congress has been misinterpreted or travestied, and false coloring has been given to individual utterances. Colonial action, induced by unselfish patriotism, or by a pressing exigency, has been strained to justify a theory antipodal to the plainest history. These assumptions and fallacies are gravely incorporated into history, and into public documents, to excite prejudice against men and parties and sections, and palliate or warrant what, in the better days of the Republic, would have been scouted even by the school of Alexander Hamilton. Where national sovereignty resided, if anywhere, was a *vexata quaestio*, until it was

decided in 1865 by the arbitrament of arms. The Declaration of Independence declared the acting colonies to be, not a nation, or union, but free and independent States. As such they antedated the Constitution and the resulting Union. Each original State, politically organized as a unit, possessed in severalty all the powers of a political sovereignty. The treaty of alliance with France in 1778 was made "between the most Christian King and the United States of North America, to wit, New Hampshire, etc.," enumerating them all by name. Under the Articles adopted at Philadelphia, July 9, 1778,[1] the sovereignty and independence of the States was placed in the forefront of the Declaration of Confederacy. The form observed in the treaty with France was repeated in the treaties with the Netherlands in 1782, and with Sweden in 1783. Foreign nations, in treating with the revolutionary government, considered that they treated with distinct sovereignties, through their common agent, and not with a new nation composed of all those sovereign countries fused into one. The provisional articles with Great Britain in 1782 proceeded upon the same idea. She did not make a treaty of peace with the people of the United States, but, by name, Pennsylvania, Connecticut, New Jersey, Georgia, etc., are acknowledged as free, sovereign and independent States and treated with as such. Roger Sherman, of Connecticut,

[1] 19 How, 441–502 ; 9 Whea, 187.

in the Convention of 1787, said: "Foreign States have made treaties with us as confederate States, not as a national government." "Surely historical evidence could scarcely be clearer than that which points to the fact—recognized, declared, undisputed—of the sovereignty and independence of the individual States prior to the adoption of the Constitution."[1] This doctrine of State sovereignty was the creed of a large majority of States and statesmen for more than three fourths of the years of our first century.[2] The question in whom resided the right of ultimate decision on a disputed point of constitutional law, where reposed the primary and paramount allegiance of an American citizen, never had a satisfactory or an accepted solution, until the adoption of the amendments to the Constitution, subsequent to the war between the States. The opposing views, as to the extent of powers conferred upon the General Government and the party to determine in case of conflict, were as open, as public, as well known as the existence of the Government itself. The studied and somewhat successful attempt to represent the Confederate States as having improvised a novel and unheard-of view of the relations of the States to the Federal Government, as the justification of their alleged "rebellion" or "treason," proceeds from blind ignorance of our whole constitutional and poli-

[1] Political Science Lectures of the Univ. of Michigan, 247.

[2] 13 Peters, 584–597.

tical history, or from a bad purpose to get honor and credit by maligning and falsifying the opinions and actions of the subjugated.

Writers on the Constitution have asserted that "one people," or a nation *de facto*, formed the Constitution. That ought to be easily determinable from surviving contemporaneous records. On the 6th of August, 1787, the Committee reported the first draft of a Constitution. The preamble recited: "We, the people of the States of New Hampshire, Massachusetts, etc., do ordain, declare, and establish the following Constitution." On the succeeding day, this preamble, utterly negativing all idea of consolidation, and preserving carefully the entity and distinct sovereignty of the States, was unanimously adopted. No change was made in this preamble until the 8th of September, when a committee was appointed "to revise the style of," not to change the meaning of, the articles. On the 12th they made their report, using the language now found in the Constitution, "We, the people of the United States." This change in the phraseology seems to have been accepted without comment, and the presumption is irresistible that the Convention regarded the two forms as substantially the same.[1] The omission of the names had a con-

[1] Edward Everett, in an address at the Academy of Music, 4th of July, 1861, said that "the States are not named in the Federal Constitution." In the second clause of Article I., in providing for representation, until an enumeration should be

clusive reason for it, for, unlike the Articles of Confederation, unanimity was not required for the adoption or validity of the Constitution. It was to become obligatory on the States adopting, when nine had ratified; and no human prescience could forecast the action of the States in their free and separate deliberations. As has been stated, Rhode Island was not even represented, and neither she nor North Carolina ratified until after Washington had been inaugurated as President. A form of expression was necessarily devised so as to apply to and cover the States which should become members of the Government. "The people of His Majesty's Colonies," "the people of the united Colonies," "the people of the United States," are modes of expression which frequently occurred, without intending in any wise to deny or surrender the separateness of the several Colonies or States. The people of the several Colonies were never a unit in a political sense, neither before nor after the Declaration of Inde-

made, each State is mentioned, and Rhode Island and North Carolina are not omitted, as their application was confidently anticipated. Mr. Motley, in 1861, wrote a letter to the London *Times*, on "Causes of the War," and permitted himself to say "the name of no State" is mentioned in the whole document, and that "it was not ratified by the States," but "by the people of the whole land in their aggregate capacity acting through conventions, etc." And this statement was made in the face of an express provision of Article VII. "that the ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same."

pendence. They were never a nation, nor an entire community, contradistinguished from the people of the several States, having, as such, community rights and powers of a political character. The Revolutionary Government, as has been amply shown, was emphatically a Government of the States, through Congress, as their agent, with very limited powers. The phrase of the preamble is the most common reliance of those who claim the nationality and sovereignty of the General Government, and it is confidently quoted as tantamount to the lodging in the hands of the Government all the powers that belong to any other Government *qua* Government.[1] If the Constitution had been made by "the people" of the United States, "in their collective capacity," a certain portion, *prima facie* the majority, would have had that right. Did such majority ever act? Can the time or the occasion be specified when power was visibly exercised by others than those personally delegated by the organized political peoples of the several States? Was there any mode prescribed by which the majority might act; or, if acting, by which their will could be, or was, ascertained? It is possible that the Constitution became the fundamental law by the suffrages of a minority, for we know that it was laid before the conventions of several States and by them ratified and adopted, each State acting for itself, without reference to

[1] See Cooley's *Const. Limita.*, 5.

any other State, and that the Government was put into operation, when the necessary number was obtained, without counting the aggregate vote, or waiting to inquire whether a majority of the people had assented. The "people of the United States," in the sense held by the Nationalists, were not the authors of the Constitution, and could not have formed it, since they did not appoint the Convention, nor ratify their act, nor in any way adopt it as obligatory upon them. It was voted for by States in the Convention, submitted to the people of each State separately, and became the Constitution only of the States adopting it. "The people of the United States," as a political organism, never had an existence; in the aggregate, never performed a single political act, never was entrusted with any civil function, never was appealed to for sanction to any proceeding, and never can do what a National Government might do, without an entire radical revolution of our system of constitutional, representative, confederated republics. It seems conclusive of controversy to say that the Government of the United States has no *inherent* powers whatever, none by virtue of the fact that it is a Government. Its powers are all derivative, nominated in the bond, specifically granted, and what is not granted was reserved to the States respectively, or to the people thereof. The General Assembly of Virginia of 1798 says forcibly of another portion of the preamble: "Had the

States been despoiled of their sovereignty by the generality of the preamble, had the Federal Government been endowed with whatever they should judge to be instrumental towards justice, tranquillity, common defence, general welfare, and the preservation of liberty, nothing could have been more frivolous than an enumeration of powers."[1] The Constitution is federative in the power which framed it, in the power which adopted and ratified it, in the power which sustains and keeps it alive, in the power by which alone it can be altered or amended, and is federative in the structure of all its departments. In no sense is our Federal Government a democracy, or do the people rule *en masse*. The doctrine of State co-operation, of concurrent majorities, of restraints upon mere popular will, of checks and balances, runs through and dominates the whole system. The Government of the Union is the creature of the States.[2] It is not a party to the Constitution, but the result of it, as made by the constituent States, and cannot, as originally formed and designed, exist independently of it, or of the States, its creators. The Union, so much lauded and so beneficial and necessary, is not a self-existing thing. It is a consequence, a creation, and whatever powers it possesses or can exercise, whatever authority it can use, whatever allegiance it can claim, grow out of

[1] Upshur, 79.

[2] Pomeroy, *Constitutional Law*, § 54–56.

the voluntary and separate acts of the several States. The States are united to the extent of the delegated powers; beyond those the States are not in a union. As forcibly stated by Mr. Justice Nelson, "the General Government, and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former in its appropriate sphere is supreme; but the States within the limits of their powers not granted, or, in the language of the Tenth Amendment, 'reserved,' are as independent of the General Government as that Government within its sphere is independent of the States."[1] Outside the granted powers, or what is necessarily implied from the granted, the General Government, the Union, has no more right, power, authority, control, dominion, over Massachusetts or Montana than it has over Austria or Chili. Within the powers reserved, and not prohibited to the States and not delegated to the General Government, Colorado or Connecticut is as free from interference or control by the Government at Washington, or should be under the Constitution, as Turkey or Japan or Brazil. The Federal theory of our Government made the party which has sedulously guarded the States against encroachment or usurpation, and has construed the Constitution strictly in its grants and limitations.

[1] *The Collector v. Day*, 11 Wall. 113, 124.

Standing over in antagonism to this is the opposing view as to the extent of the powers conferred upon the Government,—a view which makes the Government a creature of national sovereignty, and in its machinery of administration independent of, and superior to, the weal of State governments. This theory makes the National Government the ultimate and sole interpreter of its own powers, with no remedy except revolution against usurpation; for there can be no difference between a government having originally all powers, and one having the right to take what powers it pleases. At one time, in the progress of framing the Constitution, the words "National Government" were inserted, but after debate, on motion of Mr. Ellsworth of Connecticut, were stricken out unanimously, thus showing that the Convention intended the Government to be Federal, not National. Mr. Calhoun, in 1811, used this clear and terse language: "The chief object for which the Constitution was formed was to give the General Government power, security, and respectability abroad. In our relations with foreign countries, where strength of Government and national security were most required, the powers of our Government are undivided. In those exterior relations abroad, this Government is the sole and exclusive representative of the united majority, sovereignty, and power of the States constituting this great and glorious Union. To the rest of the world, we are one.

Neither State nor State Government is known beyond our borders. . . . It is only at home, in their internal relations that they are many." There is no necessary antagonism between the State and Federal systems of Government. Each in its orbit is sovereign. In the exercise of delegated functions, the Federal Government is supreme, and in all else the State is sovereign.

The Constitution was a compromise between sharply conflicting views. "The compact by which the several States were fused into one united body would never have taken place without the concession which is found enacted into words in the instrument of Union."[1] Some of the ablest men of the time had ideas very remote from the plan adopted, and looked with distrust and apprehensions of evil upon the Republican idea. Alexander Hamilton,[2] the founder of the consolidation school of politics, although he powerfully contributed, by his essays in the *Federalist*, to the ratification of the Constitution, expressed frankly his doubts as to the success of "the experiment." General Washington, after the war, before the Constitution was framed, confessed that he was puzzled to account for the "monarchical ideas" in New England, when it would have been more natural to expect such ideas at the South. Afterwards, in the early administrations, federalism had

[1] Mich. Lect., 152.

[2] Hamilton's *Reminiscences*, iii., 298.

almost its entire strength at the North, while republicanism was largely preponderant at the South. Very naturally a party, headed by one who had avowed his opinion that the monarchy of England was the best Government in the world, "the happiest device of human ingenuity," inclined to a liberal construction of national powers and sought by ingenious and latitudinous interpretation to enlarge the sphere and functions of the Government, to centralize authority and to reduce the States to provincial dependencies. Not being in sympathy with the paper originally, he determined to make it by expansive construction what he had failed to make it in the convention.[1] In an address to the people in 1798, the Virginia House of Delegates complained of the effort of the Federalists in "establishing by successive precedents such a mode of construing the Constitution as will rapidly remove every restraint upon Federal power." The compact and powerful organization of men, known as Federalists, hostile to popular rights and honestly inclined to a strong government, resisted those who held that no power should be conceded to exist unless conveyed in unmistakable terms.

The sectional feeling, which was such a disturbing or hindering cause in the effort to agree

[1] In 1791, Hamilton said: "I own it is my opinion, though I do not publish it in Dan or Beersheba, that the present Government is not that which will answer the ends of society, by giving stability and protection to its rights, and that it will probably be found expedient to go to the British form."

upon a common Government, became mischievous during Washington's administration. This jealousy manifested itself painfully in resisting and defeating the admission of Kentucky into the Union, until Vermont was ready to come in as a counterpoise and balance. The alien and sedition laws, passed by Congress during John Adams's presidency, filled the country with alarm and drew forth expositions of the Constitution which became the text-book of political faith, and were recognized by a great party as late as 1856, as the true interpretation of the character of our Government. The Virginia and Kentucky Resolutions of 1798 and 1799, and Madison's Report thereon, first put into clear and logical form of statement the States-Rights theory of our Federal compact. The action of Kentucky and Virginia illustrates how the people of those States, under the leadership of Jefferson and Madison, rallied to the defence of the Constitution and interposed to prevent legislative and executive usurpations. Virginia explicitly declared "that it views the powers of the Federal Government as resulting from the compact to which the States are parties as limited by that compact, as no farther valid than as they are authorized by the grants enumerated in that compact; and that in a case of deliberate, palpable, and dangerous exercise of other powers not granted by said compact, the States, who are parties thereto, have the right and are in duty bound to inter-

pose for arresting the progress of the evil and for maintaining, within their respective limits, the authority, rights, and liberties appertaining thereto."[1] The address speaks of those "entrusted with the guardianship of the State sovereignty," and says that it was admitted by the early friends of the Constitution, "that the State sovereignties were only diminished by powers specifically enumerated, or necessary to carry the specified powers into effect." The Kentucky Resolutions, drawn by Mr. Jefferson, declare the Constitution to be a compact, and that "if those who administer the General Government be permitted to transgress the limits fixed by that compact, by a total disregard to the special delegations of power therein contained, an annihilation of the State Governments and the creation upon their ruins of a general consolidated Government will be the inevitable consequence"; that the principle and construction contended for by sundry of the State Legislatures that the General Government is the exclusive judge of the extent of the powers delegated to it, "stop nothing short of despotism since the discretion of those who administer the Government and not the Constitution would be the measure of their powers; that the several States who formed the instrument, being sovereign and independent, have the unquestionable right to judge of the infraction; and that a nullification by those sovereignties

[1] 3 Jefferson's *Works*, 428; 6 Hamilton's *Works*, 348.

of all unauthorized acts done under color of that instrument is the rightful remedy."

These utterances by the purest patriots, familiar with the organic law in its origin and intent, prove, if no more, that what has been ascribed, in its origin and proclamation, to the impetuous and rebellious spirit of the South in modern times, was a clearly stated and unanswerably reasoned theory of the greatest statesmen of the better days of the Republic. Henry Cabot Lodge says[1]: "It was probably necessary, at all events Mr. Webster felt it to be so, to argue that the Constitution at the outset was not a compact between the States, but a national instrument, and to distinguish the cases of Virginia and Kentucky in 1799, and of New England in 1814, from that of South Carolina in 1830. . . . Unfortunately the facts were against him in both instances. When the Constitution was adopted by the votes of States at Philadelphia, and accepted by the votes of States in popular conventions, it is safe to say that there was not a man in the country, from Washington and Hamilton on the one side to George Clinton and George Mason on the other, who regarded the new system as anything but an experiment entered upon by the States, and from which each and every State had the right peaceably to withdraw, a right which was very likely to be exercised."

Wendell Phillips, in New Bedford, Mass., in

[1] *Webster*, p. 176.

1861, said that the States who think their peculiar institutions require a separate Government, "have a right to decide that question without appealing to you or to me." A convention in Ohio in 1859, declared the Constitution a compact to which each State acceded as a State, and is an integral party, and that each State had the right to judge for itself of infractions, and of the mode and measure of redress, and to this declaration Giddings, Wade, Chase, and Denison assented.

CHAPTER IX.

IN the earlier years of the Government, it was viewed as a doubtful experiment by many good men in America, and regarded with aversion and hostility by the rulers and the Governments of the old world. Our free institutions were adjudged and disparaged as a protest against tyranny and absolutism, a defiant declaration of the personal and civil rights of the people, and a challenge to all the world to show cause why a few families should usurp the prerogative of dominion. The feeling which ultimately led to the Holy Alliance and the league of reigning dynasties in Europe against popular liberties, and the covenant for mutual support against popular revolution, showed insulting and unrelenting hatred of the principles of our representative Government. Our claim to equality among the nations of the earth was disregarded and denied. The United States was contemptuously ignored and habitually maltreated. The ocean was not free to us. Our flag was not respected. The laws of nations were construed as inapplicable to us. Great Britain, sore and mortified at her loss of Colonies, and at their rapid growth in wealth and power, took the lead in measures resentful

and disdainful, and studiously sought to reduce the United States to inequality, and to make us feel and acknowledge inferiority. Our commerce was crippled, our vessels were visited and searched, our sailors were impressed. Claims for indemnity, demands for reparation, protests against national wrongs, were unheeded or causelessly procrastinated, and every injury seemed only a provocation and a license to greater wrongs and outrages. Our Embargo and Non-Intercourse acts, punitive of our enemies and protective of ourselves, failed of their purpose abroad and encountered bitterest opposition in New England. A struggle for supremacy between France and England, a fierce and mighty war, commanding all their passions and energies, made these belligerents disregard our rights and interests as a neutral and peaceable power and our independence as one of the nations of the earth. England, having the largest navy and the immunity of her island home, was especially conspicuous, wilful and insolent in violating neutral rights and prosecuting a *quasi* war, subjecting our maritime rights to the arbitrary rule of her will. Vessels were seized in our own ports and confiscated, sailors were torn from ships floating the Stars and Stripes, and coerced into service on English men-of-war. At that period, Calhoun came into the House of Representatives, and he and Clay and Crawford and Cheves and Lowndes and Forsyth and Grundy and Troup and R. M.

Johnson, in burning words of indignant patriotism,[1] aroused the country by showing England's purpose to drive our flag from the seas and reduce us again to colonial vassalage. They made the people see that the only alternative was war or degradation. The opposition this resistance to English wrong encountered gave the contest in Congress somewhat of a sectional aspect. "The war of 1812," says Adams, "was chiefly remarkable for the vehemence with which, from beginning to end, it was resisted and thwarted by a very large number of citizens, . . . who considered themselves by no means the least respectable, intelligent, or patriotic part of the nation." [2]

As early as 1793, when peace with Europe was endangered by Genet's machinations, there were those in New England who, in no dubious language, urged that a dissolution of the Union was preferable to a war with Great Britain. Timothy Dwight wrote: "A war with Great Britain we, at least in New England, will not enter into. Sooner would ninety-nine out of one hundred of our inhabitants separate from the Union than plunge themselves into an abyss of misery." [3] The inconsistent attitude of New England was a little remarkable. In 1748, resistance to a press-gang resulted in a riot in the

[1] 6 Hildreth's *U. S.*, 259, 260.

[2] 6 Adams's *Hist. of the U. S.*, 224, 229.

[3] 4 Hildreth, 412, 440, 477-8. 1 Von Holst, 112-118. Butler's *Effect of the War of 1812*, 10.

streets of Boston. In 1768, the frigate *Romney*, guarding the harbor of Boston, seized several of the citizens and impressed them as seamen. The insolence was then stigmatized as wanton cruelty and violative of natural right. As a rule the Eastern States were opposed to the war, but President Madison of Virginia recommended a declaration. His message complained that British cruisers had violated the American flag on the ocean, and seized and carried off persons sailing under it, that they had violated the peace of the coasts and harassed entering and departing commerce; that the British Government had established fictitious blockades without the presence of an adequate force, and sometimes without the practicability of applying one, by means of all which American commerce had been plundered on every sea, and that it had perpetrated this wrong most flagrantly by a system of blockades known as the Orders in Council. Mr. Calhoun, of South Carolina, reported from the Committee on Foreign Affairs a bill recognizing war. All the Senators and Representatives from South Carolina, Georgia, Kentucky, Tennessee, and Louisiana, and the most of them from Maryland, Virginia, and North Carolina, supported the declaration, which had the concurrence of such cities as Baltimore, Charleston, and New Orleans.

Governor Strong of Massachusetts issued a Proclamation for a public fast in consequence of the war just declared "against the nation

from which we are descended, and which for many generations has been the bulwark of the religion we profess." The returning members of Congress, who had voted for the war, met an offensive and insulting reception even to the point of actual assault. One was seized in Plymouth and kicked through the town. "By energetic use of a social machinery, still almost irresistible, the Federalists and the clergy checked or prevented every effort to assist the war either by money or enlistments." From the pulpit, prostituted to party and treasonable purposes, the war was denounced as "unholy, unrighteous, wicked, abominable, and accursed." Boston newspapers declared that any Federalist, "who loaned money to the Government, would be called infamous, and forfeit all claim to common honesty."[1] The Supreme Court of Massachusetts decided that no power was given to the President or to Congress to determine the actual existence of the exigencies upon which the militia of the several States may be employed in the service of the United States, and that to the Governor belonged the right to decide when the constitutional exigency existed.[2] The Governor refused the request of the President for the quota of militia to defend the coast, and the House of Representatives declared the war to be a wanton sacrifice of

[1] *Olive Branch*, pp. 298, 301.

[2] *Correspondence between J. Q. Adams and Citizens of Mass.*, 36.

their best interests and asked the exertions of the people of the State to thwart it. The disaffection of Connecticut was equally treasonable. The Governor withdrew the militia from the national service, and made it subject to orders issued by State authority.[1] New Hampshire was not far behind. Governor Plumer says, "The federals made my calling out the militia, in obedience to the laws of Congress and by order of the Federal Government, to save the national capital in 1812, the rallying point against me. I lost votes enough from this cause to have elected me Governor." In 1814 Governor Gilman called out some companies of militia to defend Portsmouth, and his party associates murmured greatly at it. Many worthy citizens were seen to rejoice over British victories and to mourn over those of their own country.[2] When Jackson, in January, 1813, left with his brigade to reinforce General Wilkinson at New Orleans, he wrote to the Secretary of War informing him that he was in command of 2070 volunteers, choicest citizens of Tennessee, who had "no conscientious scruples" about executing the will of the Government, or marching beyond the limits of their State, and would rejoice to "banish effectually from the Southern coast all British influence." Not being allowed at that time to proceed, he again wrote: "Should the safety of the lower country admit, and the

[1] 6 *Adams*, 399, 402. [2] *Life of Plumer*, 406, 414.

Government so order, I would, with pleasure, march to the lines of Canada, and there endeavor to wipe off the stain on our military character occasioned by the recent disasters," referring to the surrender of Detroit by General Hull and subsequent military miscarriages.

The treaty of peace was signed at Ghent, December 24, 1814, but was not, in official form, delivered to the Secretary of State, by a special messenger, until February 13, 1815. Meantime, the victory of New Orleans had been gained on January 8, 1815, which put an end to sectional machinations, and gave the Government a triumph over all immediate dangers, internal and external. Peace was welcomed everywhere, and resources, crippled by the suspension of commerce, sprang suddenly into prosperity. Adams says: "New England was pleased at the contrast between her own prosperity and the sufferings of her neighbors. The blockade and the embargo brought wealth to her alone. Wheels roll, spindles whirl, shuttles fly. New England banks were believed to draw not less than half a million dollars every month from the South." "Money is such a drug that men are willing to lend it secretly to support the very measures intended and calculated for their ruin." [1]

The war, which gave such a shining illustration of our military and naval prowess, was

[1] 8 *Adams*, 14, 55.

rightly called the second war of Independence. In its glories, officers and men from the South had a conspicuous part. The effect of the war was to vindicate our equality and independence among the nationalities of the world. It gave us a position of dignity, importance, and power which has never been diminished. It was a wholesome agency in promoting national unity, in developing national patriotism and courage, military and naval skill and ability, in quieting for many years sectional discord, and demonstrating our unaided competency to defend our soil and coasts, and cope successfully with the best disciplined army and the most formidable navy of the old world.

In this war, and in the various Indian wars which have occurred in Alabama, Florida, the West, on the frontiers, and in the Territories, it will hardly be questioned that the Southern States did their full duty in soldiers furnished, privations endured, and services rendered.

In the war with Mexico, from Palo Alto to the taking of the capital city, in contributions of officers and men, in skill of command and gallantry of rank and file, the South cannot consent to be placed in an inferior position to any, however meritorious, that may be assigned to the North. A carefully prepared table presents this exhibit:

Total number of Volunteers from the South, 45,640
" " " " " " North, 23,084

It will be seen, if it be taken into consideration that the population of the North was two thirds greater than that of the South, that the latter furnished more than three times her proportion of volunteers.

CHAPTER X.

SIR CHARLES DILKE has a striking book on the *Greater Britain*, and Professor Seeley has a suggestive volume on *The Expansion of England*. The territorial area of the United States, since they were organized into the Union of the Constitution, has been more than quadrupled. In 1789, the area was 829,600 square miles. By the acquisition of Louisiana the area obtained was 1,182,752 square miles; by the Florida cession of February 22, 1819, 59,258 square miles; by the treaty of Guadalupe Hidalgo, February 2, 1848, 522,568 square miles; by the annexation of Texas, in 1845, 371,063 square miles, 96,707 of which were ceded to the United States and became a portion of New Mexico, Colorado, and Kansas; by the Gadsden purchase, December 30, 1853, 45,535 square miles; by Mexican cessions, 1848–1853, 591,318 square miles; and by the Alaska purchase of March 30, 1867, 577,390 square miles. The manner of acquisition has been by treaty and by annexation.

The history, in adequate recital, of the negotiations and other steps by which Louisiana—with its immense sweep of territory, comprising everything (except Texas) between the

Mississippi and the crest of the Rocky Mountains, and embracing the States of Louisiana, Arkansas, Missouri, Kansas, Nebraska, Iowa, Montana, the Dakotas, Wyoming, and parts of Colorado, Minnesota, and Idaho, and the Indian Territory,—and Florida, Texas, California, Arizona, and New Mexico have been added to the Union, would fill a volume.

The purchase of Louisiana, necessitated by national safety and unity, was fortunately and wisely made by Jefferson for $15,000,000. Of the indispensableness of our control of the mouth and of the navigation of the Mississippi, and of the incalculable value of the vast acquisition, there are now not two opinions, and yet the Federalists in 1803 objected because the acquirement would give the South a preponderance which would "continue for all time," the States created west of the Mississippi would injure the commerce of New England, and the "admission of the Western world into the Union would compel the Eastern States to establish an Eastern empire."[1] The purchase came near bringing to a head the threats and wishes of separation, and provoked certain leaders to devising formal and earnest plans for a dissolution of the Union. The fear of wrong and oppression inflamed New England to a pitch of violence and treason. New England is habitually represented by her historians and orators as always loyal and abhorrent of

[1] Cooper's *American Politics*, 16.

every scheme of nullification and disunion, and no terms of vilification and obloquy are too severe for the South, and yet secession had its genesis in New England, and in not a few instances, when her material interests were apparently endangered, has she insisted on her right of resistance, carried even to nullification or separation.

One of the most singular illustrations ever presented of the power of literature to conceal and pervert truth, to modify and falsify history, to transfer odium from the guilty to the innocent, is found in the fact that the reproach of disunion has been slipped from the shoulders of the North to those of the South. As early as 1786 the situation became "dangerous in the extreme." The agitation in Massachusetts was great, and it was declared that if Jay's negotiation for closing the Mississippi for twenty-five years could not be adopted, it was high time for the New England States to secede from the Union and form a confederation by themselves.[1] Plumer traces secession movements in 1792 and 1794, and says that all dissatisfied with the measures of Government looked to a separation of the States as a remedy for oppressive grievance. In 1794 Fisher Ames said: "The spirit of insurrection had tainted a vast extent of country besides Pennsylvania." In 1796 Lieutenant-Governor Wolcott, of Connecticut, said: "I sincerely declare that I wish the Northern

[1] Fiske's *Crit. Period*, 211.

States would separate from the Southern the moment that event (the election of Jefferson) shall take place." Although he was not elected until four years afterwards, the bare election without waiting for inauguration, or an overt act, was considered a sufficient cause for separation. In 1796 a voluntary and concerted withdrawal of the States north of the Potomac was advocated by *per se* Disunionists from conviction of the desirableness of separation. From that year to 1800, and later, Federalist leaders in Connecticut set on foot and continued "an open propaganda for the dissolution of the Union." This was not from temporary exacerbation, but was based on the ground of permanent incompatibility in the same civil polity. Governor Plumer distinctly affirms that in 1805 the purpose of New England leaders, whose names he gives, was to dissolve the Union.[1]

These latent convictions were formed into a design immediately after, and as a consequence of, the acquisition of Louisiana. This purchase revived what Henry Adams calls "the old disunion project," because of the alleged disturbance of the sectional equilibrium.[2] John Quincy Adams published over his own signature that the plot was formed in the winter of 1803–4. "The plan was so far matured that the proposal had been made to an individual to

[1] *Life of Plumer*, 276, 278, 289–296, 309.

[2] Welling on the Conn. Federation, 9–17.

permit himself, at the proper time, to be placed at the head of the military movements, which it was foreseen would be necessary to carry it into execution." "A separation of the Union was openly stimulated in the public prints and a convention of delegates of the New England States, to meet at New Haven, was intended and proposed."[1] In March, 1808, these facts were communicated by Adams to Jefferson. In that same year the Embargo brought to the surface the same remedy for ills, and in 1809 Massachusetts declared that the Embargo was not legally binding on her citizens.[2] Quincy urged the people to anticipate the evil and prepare against the event. The Essex Junto was formed in March, 1810, and "their prime object was the dissolution of the General Government and a separation of the States." Griswold was a "zealous advocate of the dismemberment of the Union." In 1811, on a bill for the admission of Louisiana, Josiah Quincy—of whom Lowell said, "His fears were aroused for the balance of power between the old States, rather than by any moral sensitiveness, which would, indeed, have been an anachronism at that time"—used this language: "I am compelled to declare it as my deliberate opinion that, if this bill passes, the bonds of the Union are virtually dissolved; that the States which compose it are free from their moral obligations; and

[1] Hamilton's *Reminiscences*, 95, 109, 110.

[2] *Plumer*, 293–6; *ibid.*, 290.

that as it will be the right of all, so it will be the duty of some, to prepare definitely for a separation, amicably if they can, violently if they must." In 1812, the desire for separation crystallized into a formal conspiracy. The New England Federalists, thinking that the National Government must cease its functions, that the States must resume their sovereign powers, and enter into some other political compact, fell upon the project of a New England convention, summoned by State authority. Their intention was to establish their new Government under the authority and protection of the State Governments. The hostility to the war culminated in a convention at Hartford, at which delegates were present from all the New England States. This secret conclave was to adopt measures looking to a restoration of peace, and "the establishment of a new Federal compact, comprising the whole or a portion of the actual Union." The Boston *Centinel*, announcing the adhesion of Connecticut and Rhode Island to the Convention, displayed the head-line, "Second and Third Pillars of a New England Edifice Reared." A Report adopted asserted the right and duty of a State to interpose its authority for the protection of its citizens from infractions of the Constitution by the General Government. The tone of the press and of the elections bore out the belief that a popular majority would have supported an abrupt and violent course, "even to a dis-

ruption of the Union." President John Quincy Adams remained a stubborn believer in the semi-treasonable purposes of the leaders of the body. Matthew Carey, in the *Olive Branch*, published in 1814, affirms, over and over, that a project of separation was formed shortly after the adoption of the Constitution—was publicly advocated in some of the gazettes, and preached from the pulpit during Jefferson's administration; that unceasing endeavors were made to poison the minds of the people of the Eastern States and to alienate them from their fellow-citizens of the South, and that it was beyond doubt that during the war there existed in New England a conspiracy, among a few of the most wealthy and influential citizens, to effect a dissolution of the Union, at every hazard, and to form a separate Confederacy.[1]

Horatio Seymour, on October 8, 1880, in a public address in New York City, thus spoke:

"The first threat of disunion was uttered upon the floor of Congress by Josiah Quincy, one of the most able and distinguished sons of Massachusetts. At an early day Mr. Hamilton with all his distrust of the Constitution, sent word to the citizens of Boston to stop their threats of disunion and to let the Government stand as long as it would. When our country was engaged with the superior power, population, and resources of Great Britain, when its armies were upon our soil, when the walls of its

[1] See pp. 7, 49, 204, 205.

Capitol were blackened and marred by the fires kindled by our foes, and our Union was threatened with disasters, the leading officials and citizens of New England threatened resistance to the military measures of the Administration. This was the language held by a convention of delegates appointed by the Legislatures of three of the New England States, and by delegates from counties in Vermont and New Hampshire: 'In cases of deliberate, dangerous, and palpable infractions of the Constitution, affecting the sovereignty of a State and liberties of the people, it is not only the right but the duty of such State to interpose for their protection in the manner best calculated to secure that end.' This covers the whole doctrine of Nullification. They denounced the measures of the Administration for carrying on the war in defence of our country against invasion. 'They advised the Legislatures of the several States represented to adopt all such measures as may be necessary effectually to protect the citizens of said States from the operation and effects of all acts which have been or may be passed by Congress which shall contain provisions subjecting the militia or other citizens to forcible drafts, conscriptions, or impressments not authorized by the Constitution of the United States.' This was not the language of a mob excited by a draft which was admitted by the Administration to be unfair, and where it was conceded the draft in the city of New York ex-

ceeded the whole quota of Vermont, but it was the deliberate language of a solemn convention. The men who uttered these threats, which gave 'aid and comfort' to the enemies of this country while they were burning its Capitol, were held in high esteem. To this day the names of George Cabot, Nathan Dove, Roger M. Sherman, and their associates are honored in New England. The dissolution of the Union was urged by prominent men of the North and West at public meetings, and was loudly applauded. When the anti-slavery agitation began, those engaged in it took the extreme State-rights view throughout the North and West. These changes in the past admonish us of changes in the future, and that it is as unwise to hate the South for its past errors as it would be to war on Northern or Western States for like heresies, for those are as guilty who originate as those who act upon them."

The treaty of Ghent gave a quietus to the inflammatory agitation and suspended the hostile purposes of the leaders. The "exigency of so momentous a crisis" as the continuation of the war having passed, another convention was not held in Boston as had been contemplated.

J. Q. Adams said, in the letter already quoted from: "The two postulates for disunion were nearly consummated. The interposition of a kindly Providence, restoring peace to our country and to the world, averted the most deplorable of catastrophes, and turning over to the

receptacle of things lost upon earth the adjourned convention from Hartford to Boston, extinguished (by the mercy of Heaven may it be forever!) the projected New England confederacy." Some of the prominent plotters having denied Adams's statements, Governor Plumer bears this positive testimony: "I am certain that on retiring early one evening from dining with Aaron Burr, Mr. Hilhouse said, in an animated tone, 'The Eastern States must and will dissolve the Union and form a separate Government of their own; and the sooner they do this the better.' I think the first man who mentioned the subject of a dismemberment was Samuel Hunt, a representative from New Hampshire. But there was no man with whom I conversed so often, so fully and freely, as with Roger Griswold. He was, without doubt or hesitation, decidedly in favor of dissolving the Union and establishing a Northern Confederacy."

The acquisition of Florida was pursued with vigor by several administrations, and was so obviously required by geographical and national considerations, that it elicited little opposition at home; and yet Monroe, who had been active in the negotiations from beginning to end, said that he took by the treaty less territory than Spain was willing to grant, because of the repugnance with which the Eastern part of the Union had long viewed the aggrandisement of the country towards the South and the West.

The annexation of Texas, although the main issue in the Presidential election which resulted in the choice of James K. Polk over Henry Clay, called forth an outburst of violent antagonism, and brought into public addresses and legislative resolves very similar protests and threats to those which fatigued the public ear after the purchase of Louisiana. In 1845, John Quincy Adams, Truman Smith, and other Congressmen from the Northern States declared, in a joint letter, that the annexation of Texas would justify a dissolution of the Union and would lead to that result. The Legislature of Massachusetts, at the session of 1844-5, followed by other New England States, resolved that they were not bound to recognize the annexation of Texas as obligatory on them. In 1845 the joint Standing Committee on Federal Relations said: "When Massachusetts is asked to violate the fundamental provisions of that Constitution as well as her own, she unhesitatingly throws herself back on her rights as an independent State. She cannot forget that she had an independent existence and a constitution before the Union was formed. Her constitution secured to every one of her citizens the right of trial by jury and the privilege of the writ of *habeas corpus*, whenever their liberty was at stake. These essential elements of independence she has never bartered away. She will not suffer them to be wrested from her by any power on earth." The accession of this

immense empire was designed and accomplished by Calhoun, Tyler, Jackson, Polk, and their political associates. That pure patriot and statesman, Robert C. Winthrop, although opposed to the policy of the administration, was not seduced by passion or sectionalism into disloyalty, but gave as a patriotic toast; "Our Country, however bounded, still our Country." Mr. Bancroft, in 1806, writes: "Very soon after March 4, 1845, Mr. Polk, one day when I was alone with him, in the clearest manner and with the utmost energy, declared to me what were to be the four great measures of his administration. He succeeded in all the four, and one of the four was the acquisition of California for the United States. This it was hoped to accomplish by peaceful negotiation; but if Mexico, in resenting our acceptance of the offer of Texas to join us, should begin a war with us, then by taking possession of the Province." When the war was pending there was conclusive reason to believe that England was aiming to obtain a footing in the then Mexican province of California by an extensive system of colonization. A grant of nearly fourteen millions of acres was issued to a British subject,[1] on the express condition that Americans were to be kept out.

At different times the country has been harassed by questions of national character and consequence, which happily passed without any

[1] *The Century*, April, 1891, pp. 919-927.

serious departure from the tradition and pledge of no entangling alliances with foreign nations. In 1848, a bill was introduced to enable the President to take temporary military possession of Yucatan. This had the support of prominent men of both sections; but the true representatives of the South opposed it, as at war with the salutary rule of non-intervention, laid down by Mr. Jefferson, and which had grown into one of the received maxims of national policy. The popular upheavals in Europe, in 1848, excited much interest, and there was naturally a universal rejoicing at the overthrow or weakening of monarchical Governments, and the autocratic rule of human societies, and at the assertion of the dependence of Governments for their legitimacy upon their conformity to the democratic will and regard for the general welfare, instead of upon nearly exclusive concern for the privileged classes. Expressions of satisfaction and congratulations upon the triumph of free principles were proper and perhaps required, but some extremists verged upon the French propagandism of the last century in the advocacy of our intervention to make permanently successful the revolutions which had had a beginning. The South, almost as a unit, resisted the departure from the rule of abstinence in the affairs of foreign Governments. In 1850 there was an able debate in the Senate in favor of suspending diplomatic relations with Austria, as a protest against atrocious

acts of despotism, sacrificing human liberty and life, and in audacious contempt of the rights of man and of the sentiment of the civilized world. Sympathy with the oppressed Magyars and horror of Austrian cruelty and despotism did not beguile Southern sentiment and action into an interference with the right of foreign peoples to regulate their affairs without our officious or insolent intermeddling. The succeeding year, resolutions of sympathy with Louis Kossuth, authorizing the President to employ public vessels to convey him and his associates to this country, were introduced into the Senate and had strong support, "pretty much," said Senator Mason of Virginia, "in the West and North," but generally the South opposed this attempt to commit the United States to any of the schemes for revolutionizing Europe. When some of the Irish revolutionists of 1798 desired to come to this country as political exiles, Rufus King, our Minister to England, was instructed to protest, but Kossuth was brought in a national ship. He was fêted and honored, delivered speeches in the prominent cities, and displayed extraordinary capacity for public address and in the use of the English tongue. In 1852, a resolution, occasioned by the armed intervention of Russia between Austria and Hungary, was introduced by a Senator from Rhode Island, adhering to non-intervention as the true principle of our national prosperity, and yet laying down the

specious but dangerous doctrine, that a just regard to our safety might require us to "advance to the conflict" against the foes of constitutional freedom and human liberty, when a "prudent foresight" should warn us that our "liberties and institutions" were threatened. The section, ordinarily adjudged to be impetuous, hot-blooded, and revolutionary, was marked, in all these aggressive and neutrality-violating movements, by a wise conservatism and a scrupulous respect for treaty obligations, holding that each nation is the best, and ought to be the sole, judge of the form of Government most conducive to its peace and prosperity.

CHAPTER XI.

THE line of demarcation between the two great political organizations, existing mainly in the North and in the South, or, more accurately, dividing the political opinions of the North and South, may be drawn on the cardinal question of construing the Constitution of the United States. The *one* has *ab initio* sought to enlarge the powers of the General Government, to consolidate power and authority in Washington, to reduce the States to a position of inferiority and subordination. This end has been sought by magnifying the dignity and powers of the one Government and minifying those of the others. By construing liberally all granted powers, by covering under implication whatever was desired or needed, by making "general welfare and common defence," which were designed as terms of description or limitation, substantive and distinct grants, by denying to the States all right of ultimate interpretation or resistance, by making the Supreme Court—a mere part or agency of the Federal Government—the final arbiter not merely of judicial cases, but of all matters of constitutional controversy, by successive and

repeated usurpations, by unforgetting, unremitting purpose to draw into the vortex or grasp of Federal power all powers incident to any Government,—by such means, the Constitution has practically ceased to be any restraint upon executive, legislative, or judicial action. In common parlance and in falsification of all previous history, the Government at Washington is spoken of and regarded as the creator of the States, as the fountain of all political authority, as the protector of all rights of person, property, and liberty.[1] The Union is worshiped as antedating the States, as a fetich, the object of supreme idolatry, a distinct substantive thing, instead of a consequence; and Wolsey speaks of it, "as something higher and greater than the separate States created by the Constitution."[2] Sectionalism, self-aggrandizement, avarice, cupidity, ambition, use of government partnership in business, appropriation of national revenues for individual benefit, and for doing what legitimately belongs to States, municipalities, and local communities, have helped to delude patriotic and unsuspecting people, and to pervert utterly the character and original purposes of the Union. Fallacies and false-

[1] *Reconstruction*, by Charles G. Loring, published in 1866, has these novel statements: "The people of the United States was the grantor, and the several States respectively were the grantees, of that right," that is, the right of representation in Congress. "State rights and powers are such, and such only, as were granted, defined, or recognized by the Constitution."

[2] Page 251.

hoods have been interwoven into party platforms and political theories, and substituted for incontrovertible historical facts. A member of Congress, in 1891, gravely proclaims to a party convention: "We took the old Constitution, defective as it was—made away back, more than a hundred years ago, made in the dim light of that age, made out of the compromises of those days of political turmoil and anxiety,—and have built upon that foundation the magnificent structure that we now call the Constitution of the United States." Flexibility and pliancy of organic law, adaptation to historic life, may be desirable, as the admirers of the British Constitution contend, but that is not the theory of our written Constitution. That the organic law should be the true expression of the organic life, the prompt reflection of the deliberate will of the people, may be true, but the question is, How is that will to find authorized expression? By the prescribed mode of amendment, or by a departmental interpretation of the supposed utterance of a popular election? There are grave treatises on the unwritten Constitution, as if such an absurdity could exist under our form of Government. Constitutional rights are gravely asserted to be the result of a process of political evolution, and limitations are occasioned, or removed, by the influence of public opinion, or the demands of private interests. There has been a silent expansion of the powers of Congress, the Executive, and the

Judiciary, through which checks and balances of the written instrument have been destroyed; and these usurpations are justified by a supposed or an asserted harmony with public sentiment. Sovereign power is defined by one author, a professor in a law school, as "the aggregation of individuals who now possess the supreme power of the land." "The people possess the political power, and powers prohibited to the States, but neither prohibited nor delegated to the General Government, may be justly exercised by the latter." Dorrism finds sanction in such treatises, and lynch law, if it have the sanction of the multitude, is put on the same plane with formal legal enactments, and the Constitution becomes the embodiment of all possible powers. Our fathers committed to writing the organic law, put it into definite form at a given time and place, and it was adopted as a distinct repudiation, both of the British system and of unlicensed democracy. It was a careful attempt to curb popular passion, to restrain within defined limitations the irresponsible action of the multitude, to keep the Government within narrow and prescribed limits, and at the same time to provide expedients for meeting the needs of an advancing civilization, of an expanding national life, and to apply correctives for any demonstrated defects. Our Constitution may be satirized by the German Von Holtz and some American imitators, as a divinity for the worship of the masses who fall

down and adore it, but it was not the improvisation of a moment, a hasty contrivance to meet an emergency; it was the careful embodiment of principles long sacred to the lovers of liberty, the re-enactment of antecedent institutions which had become almost American by usage and precedent.

The *other* party adhered to the historical fact that the constituent members, the creators, of the American Union were distinct political corporations, that the Constitution was an instrument of Government, a compact between the States, that it contains the full grant of surrendered powers, and to that extent is supreme, and that it unambiguously declares that the great mass of undelegated powers were retained by the States. There are no vagrant powers seeking a resting-place. What was not in terms, or by necessary implication, granted to the General Government, was not *in nubibus*, or without a lodging-place, or floating in uncertainty, but had a certain home in the people of each State. Hence, in all controversies, at the threshold of the introduction of every measure, the first question confronting the legislators, the President, the Court, after looking into the Constitution for an express grant, is: Is this constitutional? Is this within the constitutional competency of this department of a limited Government? This habit, this principle, this right of a State, of the South, has elicited much satirical comment, much contemptuous

ridicule, and has become so characteristic, that one rarely hears from the opposite side a reference to the Constitution, except in general phrase, or a suggestion of the possibility of a measure transcending the restrictions of the fundamental law. All along the history of the Government one can trace the position of the South in harmony with the original attempt to make a Government of well defined powers.

This theory is in no sense in conflict with proper development. To remove imperfections, to meet exigencies, and to provide for natural evolution, the Constitution, by the concurring action of the Federal and the State Governments, may be amended. The manner is conservative, securing full and open discussion, and preventing any hasty or furtive change. There is no legal road to amendment, except through the consent of the people, in the forms prescribed by the Constitution.[1] This Constitution is not complete in itself as a frame of Government, is not the completed structure of constitutional authority and right, for "the States and the people thereof," with all their reserved rights and powers, are an essential part of this structure. The powers of the Federal Government are conferred and measured exclusively by the written instrument, which was an emanation of sovereign will, expressed by formal, prearranged procedure. Precedent cannot enlarge national authority,

[1] 2 Ban., on Con., 216, 330.

nor can prescription, as in other countries, be summoned to its support. A constitutional organism is intended to be preservative and protective of liberty, of local Government, and should be impotent to destroy freedom.

Attempts, under the guise of a protective tariff, to control investments, to secure bounties, to get the benefit of Government partnership in trade, to make agriculture pay a bonus to manufactures, have found friends on one side, and opponents on the other. The same principles of adherence to limitations necessitated antagonism to a general system of internal improvements, drawing into the central maelstrom what was local and remote, and also to the furnishing of a currency, and making that currency a legal tender. The Independent Treasury scheme was largely a Southern measure, certainly had its leading supporters in that section. Opposition to these enlargements of power was kept in subordination to a proper nationality. It seems impossible for some to comprehend that at the South there has been an intense loyalty and devotion to the Union of the Constitution. It has been uniformly conceded that national security in times of exigency or war, or of imminent hostility, may require a full use of all the resources of the Government, so as to be ready for an emergency. As a means of national defence, and protection against dangers from abroad, it might be expedient, and even necessary, to improve

systems of internal communication, to make ourselves financially and, in certain manufactures, independent of alien enemies, of hostile Governments. This plenary power of self-protection, of using measures to prevent our country from becoming dependent on another for its means of defence, is not our daily food, and does not justify or vindicate what is done *pro hac vice* as a permanent policy.[1]

It is one of the commonest perversions of historical and ascertainable truth, that the imposition of tariff burdens after the war of 1812 was favored by the South and resisted by the North. Mr. Webster, even, was led, without proper examination, into this inaccuracy and injustice. So also were Benton, Greeley, and others. Mr. Calhoun has been the special subject of animadversion and of persistent efforts to convict him of inconsistency. He was at that period chairman of a committee which had nothing to do with the tariff. Yielding to urgent solicitation, he made two brief speeches in favor of the tariff of 1816, arguing that its object was to raise revenue to pay off the debt and incidentally to aid the manufactures whose development was essential to national security in time of war. The duty was "as a means of national defence and protection against dangers from abroad," which, at that time, were impending. "Laying the claims of manufactures entirely out of view, on general principles without

[1] Lamar's *Calhoun*, 80-83.

regard to their interests, a certain encouragement should be tendered, at least, to our woollen and cotton manufactures. The failure of the wealth and resources of the nation necessarily involved the ruin of its finances and its currency. It is admitted by the most strenuous advocates on the other side that no country ought to be dependent on another for its means of defence; that at least our musket and bayonet, our cannon and ball, ought to be of domestic manufacture. But what is more necessary to the defence of a country than its currency and finance. . . . When our manufactures are grown to a certain perfection, as they soon will under the fostering care of the Government, we will no longer experience these evils." Burning with intense love of country, knowing the hatred and the power of the enemies of the Republic, he was led to advocate, also, under the supreme law of self-preservation, a bank and an improved system of internal communication, and he sustained these measures by a resort "to that complete and plenary power which pertained to the Government as the sole and exclusive representative of the undivided sovereignty of the Republic in its relations with other nations." The tariff of 1816 was very light as compared with the tariffs of 1824 and 1828. Greeley says "the tariff of 1828 was opposed by most of the members from the cotton States and by a majority of those from New England," and Benton says that Louisiana supported the tariff

of 1816, and that the New England States were against the tariff until 1828. The records of Congress are the only safe appeal, and they give the facts for this protracted dispute. In the Senate, South Carolina voted against the tariff of 1816. At the session of 1815–16, only one Northern vote favored the reduction of the tariff on woolens from 25 to 20 cents *ad valorem*, while Georgia, Maryland, South Carolina, Virginia, and North Carolina voted unanimously in the affirmative. Other votes equally significant showed which States wanted governmental discrimination for their interests, and which wanted merely revenue for legitimate purposes. The only speeches against the tariff were made by Southern men. On the final vote for the tariff of 1816, Massachusetts voted for it. The memorials and petitions presented in its favor were mainly from the North. It is often asserted that the South advocated "protection" until 1824 and even until 1828. The official journals disprove the assertion. On the tariff of 1818, New England, New York, New Jersey, and Pennsylvania were largely in its favor. South Carolina opposed by a vote of 6 to 1, North Carolina by a vote of 11 to 1, and Louisiana, Mississippi, Tennessee, and Georgia opposed unanimously. On the tariff of 1824, Massachusetts and New Hampshire opposed, but the rest of New England, New Jersey, Pennsylvania, and New York sustained. The two Carolinas, Georgia, Alabama, Mississippi,

and Louisiana voted solidly against it. In the nullification period the tariff was a compromise. In 1842 the South was largely against the protective act of that year. In 1846 the revenue tariff was Southern in great measure. And the attempts in late years to get rid of the inequalities and iniquities of the war tariffs have had the support of an almost undivided South.[1]

Under the delusions of the so-called "American system," under the temptations to use public revenues for local and individual benefit and the corruptions of "log-rolling," the Government engaged largely in making internal improvements with Federal revenues. Vetoes, party platforms, absence of constitutional authority, offered no obstacles, and under vagrant powers and the elasticity of the "general welfare" clause, roads have been built, rivers

[1] President Cleveland voices very clearly Southern sentiment: "I believe that the theories and practices which tariff reform antagonizes are responsible for many, if not all, of the evils which afflict our people. If there is a scarcity of the circulating medium, is not the experiment worth trying as a remedy of leaving the money in the hands of the people, and for their use, which is needlessly taken from them under the pretext of necessary taxation? If the farmer's lot is a hard one in his discouraging struggle for better rewards of his toil, are the prices of his products to be improved by a policy which hampers trade in his best markets and invites the competition of dangerous rivals? Whether other means of relief may appear necessary to relieve present hardships, I believe the principle of tariff reform promises a most important aid in their satisfaction, and that the continued and earnest advocacy of this principle is essential to the lightening of the burdens of our countrymen."

improved, harbors opened, and nearly everything done which general or sectional needs and wishes have suggested. Rightly to define the authority of the Government in this particular, and fix a safe or just limitation, is conceded to be a difficult problem. In 1843, a meeting was held at Memphis, and a report was submitted by Mr. Calhoun, and adopted, which placed the question on impregnable grounds, but the loose views of construction which prevail, and the advantage of having other people to pay for what should come out of one's own pockets, have left the whole matter without any safe controlling restrictions. Mr. Calhoun, in a letter to myself, never before published, says: "I send you a copy of my Memphis report, and hope the view I have taken of the important subjects of which it treats will meet your approval. I feel assured that on no other can they be permanently settled, and that they must exercise a powerful disturbing influence over the regular action of the Government until they are settled. I am not surprised that some of my warm political friends should still entertain doubts. I have lived too long not to know how reluctantly the clearest proposition is admitted against preconceived opinions. But I have great faith in the final triumph of truth, and never have I been more certain of triumph than in this case. I regard the Report as one of the most effective States-Rights papers I ever put forth,

and that too on a portion of the Federal Constitution heretofore the least understood. It draws a broad line between internal and external improvements, and restricts the Federal Government more rigidly to those belonging to the external relations of the States than any other view ever taken. Indeed, I have heard no objection to the argument, as it relates to the improvement of the navigation of the Mississippi."

The South, from her opposition to the use of such doubtful powers, and from being in a minority, has been greatly the sufferer from the discriminating inequalities of the Government.[1] As the result of Federal appropriation,

[1] While the South by the war was decimated in men and bankrupted in property, the North made money, and at the end of the stupendous conflict was richer than at the beginning. No hostile enemies tramped over her soil; no armadars blockaded ports and threw fiery shot and shell into maritime cities; currency was redundant, speculation was rife, prices were high. The profuse expenditure of the Government kept trade busy in every department, and Mr. Seward said that not only had the war not impoverished anybody but that it "had largely augmented the national resources." As early as July, 1861, James. A. Hamilton, writing to the Secretary of the Treasury, quotes from a letter of Governor Fish, "Can he live amid the extremists and the corruptions that have taken possession of the Government?" and then adds: "This letter is filled with the most painful statements of corruption, which I am not at liberty to repeat. Let us have a proper Committee and the scoundrels will call upon the mountains to crush them; I could mention names of men in the community, hitherto held above reproach, who have been putting thousands and tens of thousands in their already well filled pockets." In December, 1871, Mr. Van Wyck made a report to the House of

the North has had her harbors and rivers and roads and bridges and buildings, facilitating commerce, lessening the cost of transportation, increasing circulation of money, while the South, in these respects, has had only "the crumbs which fall from the rich man's table."

Representatives, exposing in disgraceful detail how greedy patriots supplied vessels, arms, stores, horses, clothing, etc., and by clever and atrocious swindling perpetrated gigantic frauds. The aggregate State revenues collected in 1892 by the Northern States from all sources, from real and personal estate—banks, railroads, licenses, and polls—were $103,192,-922. In 1893, the money paid for pensions was $156,740,467, besides the $3,703,563 paid for soldiers' homes, of which the North, excluding Delaware and Missouri, received near $127,000,000. Not simply individuals but whole States are pensioners upon the Government—Illinois receiving $11,019,-932 ; Indiana, $11,703,434 ; Kansas, $7,103,003 ; Ohio, $17,326,682 ; Pennsylvania, $15,177,339 ; Wisconsin, $4,-378,353 ; Michigan, $7,760,227 ; and Massachusetts, $6,881,-243. It is hardly to be wondered at that pension frauds are perpetuated, and all attempts to remedy or prevent them are traduced as disloyalty to the Union. In his Message of December, '93, President Cleveland says : "I am unable to understand why frauds in the pension rolls should not be exposed and corrected with thoroughness and vigor." Every attempt to displace men put fraudulently upon the rolls meets with a howl of simulated indignation, fierce waving of the "bloody shirt," and unstinted reproaches. The proposition is gravely maintained in Congress and by the press, that a pension is a vested right, and cannot be vitiated by incontestable proof of fraud in its obtainment. Subsidized States refuse to yield the subsidies on which they fatten. Mr. Putnam, in his 4th of July address before the city of Boston in 1893, speaks of "a pension-list swollen to uncounted and ever-growing millions of money, making peace more expensive and more demoralizing than war, and converting the nation's roll of honor into a sordid list of grabbers at the Government's money bags."

CHAPTER XII.

THE principles, policy, and necessity of the South led her to rigid conservatism. A thoughtful scholar notes as a striking antithesis that "a feudal aristocracy like that of slave-holding Virginia produced the most pronounced and inveterate type of *democratic* politics that has ever existed in our party formations," and that after the Declaration of Independence "the socially aristocratic and prelatical State of Virginia hastened to declare religious liberty." One has not far to go to find solution for these seeming paradoxes. Purest freedom and strongest restraint are in entire harmony. A denial to the Federal Government of a right to resort to and use undelegated powers, and an insistence upon an adherence to the imposed limitations, naturally reacted in favor of State rights and home rule and the individual liberty of the citizen. This home rule, and slave-holding, and personal freedom created a sentiment of individualism, of self-control, of local Government, of opposition to interference of Government with individual and property rights, of manly, chivalrous independence, of family sacredness, of voluntaryism in action, of freedom of conscience. In the Southern States,

under the old system, there have been less yielding to popular clamor, more consistency in political action, firmer support of public men, less variation from year to year in elections, and more concern for principle than for mere expediency. The Northern States revised their constitutions, or made new ones, much oftener than did the Southern States. "No hardier Republicanism," says Gladstone, "was generated in New England than in the slave States of the South which produced so many of the great statesmen of America." A Justice of the Supreme Court says that the basis of the enigma of the so-called slave power lay in the cool, vigorous judgment and unerring sense applicable to the affairs and intercourse of men, which the Southern mode of life engendered and fostered. The South was a barrier against libidinous democracy. In the Revolutionary war, and the nascent, formative period of the Federative Republic, there were no mutinies, no Shay rebellions, no Arnolds, as since there were, up to the reconstruction period and later, no strikes nor labor complications. The great change wrought by the States in resuming their sovereignty, and in forming the Confederate States Government, was attended by no anarchy, no rebellion, no suspension of authority, no social disorders, no lawless disturbances. Sovereignty was not, for one moment, in suspension. Conservatism marked every proceeding and public act. The object

was to do what was necessary and no more; and to do that with the utmost temperance and prudence. St. Just, in a report to the Convention of France in 1793, said: "A people has but one dangerous enemy and that is Government." The seceding States, where there was an unparalleled universality of conviction as to the necessity and rightfulness of resistance, adopted no such absurdity. In nearly every instance the first steps were taken legally, in accordance with the will and prescribed direction of the constituted authorities. The people were not remitted to brute force, or to natural law, or to the instincts of reason. The charters of freedom were scrupulously preserved. As in the English Revolution of 1688, and ours of 1776, there was no material alteration in the laws beyond what was necessary to redress the abuses that provoked the secession. No attempt was made to build on speculative principles. The effort was confined within the narrowest limits of historic precedent and constitutional right. The controversy turned on the records and muniments of the past. The States had their Governors, General Assemblies, and Courts; the same electors, the same corporations, "the same rules for property, the same subordinations, the same order in the law and in the magistracy." The States, when assembled in council, did not make but sought to prevent a revolution.

Being in the minority, having a "peculiar in-

stitution," African slavery, and schooled from the beginning in the States-Rights theory, the Southern States naturally tended to conservatism in politics, to making much of protective guarantees, and to holding the General Government within the limitations of the Constitution. Slavery had been recognized in the written compact of compromises as a basis of representation, and by a mandate for the delivery of fugitives. That instrument attributed to the individual States the exclusive right to determine the status of American citizenship, and of the freedom or slavery of the persons domiciled in them.[1] When slaves ceased to be held at the North as property, "the history of the times in which the framework of the common Government was reared, the mutual concessions made by the parties to it, the fixed resolves as to what should not be surrendered from the custody of the States themselves," were all forgotten, the anti-slavery sentiment became more violent and aggressive, and awakened more acute apprehensions at the South.[2] The Constitution, amendable, as was supposed, only by prescribed and

[1] Decision of Court, delivered by Justice Nelson in the Dred-Scott case. "We all know, the world knows, that our Independence could not have been achieved, our Union could not have been maintained, our Constitution could not have been established, without the adoption of those compromises which recognized its continued existence, and left it (slavery) to the responsibility of the States of which it was the grievous inheritance." *Winthrop's Centennial Address*, p. 49.

[2] *Mich. Lectures*, 196.

dilatory methods, was clung to as furnishing a breakwater against the mad waves of fanaticism and wrong, and as a security for solemnly guaranteed property. It was well known from oft-repeated historical precedent that officials, even the most honest, are inclined to a liberal construction of their own powers, and to hostility to popular or community rights, but it was not for a long time dreamed or suspected that the Constitution was to be readily suspended whenever it stood in the way of personal ambition, or party exigency, or sectional passion. The habit, however, of strictly construing the contract, and seeking to restrain the delegated powers within the defined boundaries, became operative as a principle and rule of action, and, when adverse attacks were made, consolidated the South into an unbroken phalanx for the defence of the Constitution. Prior to the crisis of 1860 and 1865, it was a favorite method of political and sectional attack to ridicule Southern statesmen as abstractionists. In reality this was a compliment, because such abstractions imply the highest inductions of political philosophy, the results of the profound study of the science of politics, of the history of Governments, of civil experiments under most varied circumstances. The student of our constitutional history will be constantly struck with the marked and characteristic divergence of opinion and action between the North and the South, in adherence to the Constitution and the recog-

nition of its binding force. The debates in Congress show constant reference on the one side to the Constitution, and equally constant ignoring or contempt, on the other. Books on constitutional law and decisions of courts show a studied purpose on the one side to enlarge the scope of Federal power and minimize the reserved powers and the rights of the States, and on the other to define closely the enumerated powers and to maintain for the States respectively or the people thereof the great residuary mass of undelegated powers.

On no question has this contrariety of opinion and policy been so marked as in relation to the power over the territories. In 1787 was passed by the Congress a memorable Ordinance which put an immediate interdict on slavery in the Northwest, only a solitary vote being recorded against it. It was accompanied by a proviso, suggested more than two years before, for the rendition of fugitive slaves. By this agreement the Southern States secured in the Northwest territory a privilege they did not possess in the States. This proviso was the precursor of the fugitive-slave clause, imbedded the same year in the Constitution without a dissenting voice. In 1643, Articles of Confederation were formed by the Colonies of Massachusetts, Plymouth, Connecticut, and New Haven for mutual help. The Articles provided that all servants running from their masters should, upon demand and proper evidence, be returned to their masters

and to the Colonies whence they had made their escape. This New England and Puritan fugitive-slave law was the first ever enacted on this continent. In 1788 it was a matter of complaint that Florida did not return fugitive negroes from the United States who escaped into that Colony, and a committee, composed of Hamilton of New York, Sedgwick of Massachusetts, and Madison of Virginia, reported resolutions instructing the Committee on Foreign Affairs to address the Chargé at Madrid and require him to apply to His Majesty of Spain to issue orders to his Governor to compel the rendition of fugitive slaves to any one who should be entitled to receive them. They added, by way of example and argument, "as the States would return any slaves from Florida who might escape into their limits." North Carolina, by her deed of cession in 1790, the first concluded under the present Constitution, was careful to make reservation against the right of Congress to establish any regulation tending to emancipate slaves. In 1798, Congress, in accepting a cession of lands from Georgia, volunteered to exempt them from the anti-slavery clause of the Ordinance of 1787, which antedated the adoption of the Constitution. Every inch of this territory, fell outside the limits embraced in the acts of 1784 and 1787. Thatcher, of Massachusetts, sought to put an interdict on slavery in this territory; but his motion received only twelve votes.[1] The idea

[1] 2 *Annals of Fifth Congress*, 1306.

of an equitable division of territory between Northern and Southern States, says Dr. Welling, was already embedded in the political consciousness and moral consciousness of the country.[1]

The power of Congress over the Territories came up for first formal and excited discussion on the question of the admission of Missouri into the Union, when what is known as the "Missouri Compromise" was adopted. In 1819, the then Territory of Missouri applied to Congress, in the usual form, for leave to form a State Constitution and Government with a view to admission into the Union. To a bill reported for that purpose, amendments were offered, making the prohibition of slavery a condition precedent to her admission to the Union. An agitating debate followed, engendering a fierce and dangerous sectional strife. The two sections were arrayed in hostile attitude; the South in favor of the bill without the amendment; the North opposed to it without the amendment. A compromise was offered, based on the ground that the provisions of the Ordinance of 1787, for the Government of the Northwestern Territory, inhibiting slavery, should be applied to all the Territory of Louisiana, lying north of 36° 40′, except the portion lying in the State of Missouri. This was an arbitrary fixing of the line of 36° 30′ parallel of north latitude, by which slavery north of that

[1] Welling, 31, 32.

line was excluded, and south of that line was left to be determined by the action of the States in framing their Constitutions. The Northern members embraced the proposed settlement. It was forced through Congress by the almost united votes of the North against a minority consisting almost entirely of members from the Southern States. The power exercised was not in any sense within the Constitution.[1] It was assumed in a great crisis, under the pressure of a supposed overwhelming exigency, under the influence of the principle that the safety of the Republic is the supreme law, and with a reliance upon the patriotism of the people to justify the extreme medicine. This "Compromise" was no compromise. Congress assumed and asserted the power of excluding property in slaves from the territory north of an arbitrary line, of preventing the common enjoyment of common territories, purchased or acquired by common expenditure of treasure and blood. It is no vindication of this restriction and exclusion, this *ex parte* partition, to denounce slaveholding as a sin. That was an adjudicated question and the right to hold slaves was incorporated with most solemn guaranties into the organic law which was the basis and condition of union, and is the sole measure of the rights, duties, and powers of the General Government.

For many years the subject of slavery in the

[1] Dred Scott *vs.* Sanford, 19 Howard, 393.

Territories did not again agitate the country, but the war with Mexico, which terminated in the acquisition of California and New Mexico, was the occasion for a fierce sectional strife, which precipitated what Seward called "the irrepressible conflict," and made it painfully apparent that the States would not be permitted to live in peace, "half slave and half free." Prior to the treaty of peace in 1848, on a question of organizing civil Government for the Territories, David Wilmot, of Pennsylvania, offered to a bill pending in the House an amendment interdicting slavery in any territory which might be acquired from Mexico. This became known as "the Wilmot proviso," and was successively offered in House and Senate, until the final settlement of the whole slavery question. The proviso was subsequently applied to the territorial Government for Oregon, and President Polk signed the bill, accompanying his approval with a message to the House, stating that he approved it only because the whole territory was geographically north of the Missouri Compromise line. The South proposed the extension of the "Missouri Compromise" to the Pacific, but in vain, as there was a fixed dominant purpose, at all hazards, to monopolize for the North the whole of the territory "belonging to the United States," and prevent the spread of African slavery in any direction. By the "Compromise measures" of 1850, the South accepted the

admission of California as a free State and the prohibition of the traffic in slaves in the District of Columbia, coupled with what was supposed to be an efficient law for the recapture of abducted or runaway slaves. This law was, however, openly, flagrantly, riotously, boastfully nullified by individuals, mobs, communities, and States. This clear obligation, this essential part of the constitutional compact, was evaded, annulled, and became defunct. A distinguished professor in the law school of Harvard College said: "The only successful nullification of the Constitution and laws of the United States came from Massachusetts in her personal liberty laws." It is a singular political Nemesis that Nullification and Rebellion as terms of reproach should attach to the South while the North has escaped any odium attaching to the terms, although she openly and successfully nullified the Constitution, and the flag of rebellion against the Federal compact and Federal laws floated over half her capitols. In the earlier days of the Republic there was no diversity of opinion as to the meaning and intent of the constitutional requirement. The Executive, Congress, Courts, Legislatures, the people, placed the same interpretation on it. No impediments were placed in the way of the recovery of fugitive slaves, and none denied the right of the master to every proper facility in enforcing his claim.

A law was passed in 1793 for the delivery of

persons held to labor escaping into another State, and it was not repealed until the war between the States. When the District of Columbia was created, by cessions from Maryland and Virginia, and became subject to the exclusive jurisdiction of Congress in 1801, the existence of slavery was recognized and to some extent nationalized. Webster, vainly dreaming that a sense of justice and of mutual interest would insure the faithful execution of the clauses of the Constitution, after it became the fundamental law of the land, said in 1850 in a tone of pathetic dignity: "The principle of the restitution of runaway slaves is not objectionable unless the Constitution is objectionable."

This "agreement with hell"—so designated by Phillips, Garrison, and other abolitionists, who would not take an oath to support the Constitution because thereby they would commit themselves to the support of, and obedience to, "a Pro-Slavery Compact"—was defiantly and joyously trampled under foot. There was no pretence of a purpose, nor the least conception of an obligation, to execute the law. Cheves said: "The highest violation of the Constitution is to employ the use of its forms to violate its spirit," but in this matter there was no disguise in the deliberate, avowed, overt, contemptuous disregard of a constitutional requirement. The judges, or marshals, or Senators and officers, Federal and State, who had any conscientious scruples, or hesi-

tated in the annulment of a clear mandate, were rudely flung aside for the most fanatical radicals.

Judge Story, in the case of Prigg *v.* The Commonwealth of Pennsylvania, said: "Historically, it is well known that the object of this clause was to secure to the citizens of the slaveholding States the complete right and title of ownership in their slaves, as property, in every State of the Union, into which they might escape, from the State wherein they were held in servitude." "The full recognition of this right and title was indispensable to the security of this species of property in all the slaveholding States, and, indeed, was so vital to the preservation of their interests and institutions, that *it cannot be doubted, that it constituted a fundamental article, without the adoption of which the Union would not have been formed.* Its true design was to guard against the doctrines and principles prevalent in the non-slaveholding States by preventing them from intermeddling with, or restricting, or abolishing the rights of the owners of slaves." "The clause was therefore of the last importance to the safety and security of the Southern States, and could not be surrendered by them without endangering their whole property in slaves. The clause was accordingly *adopted* in the convention by the *unanimous consent of the framers* of it, a proof at once of its intrinsic and practical necessity." "The clause manifestly contem-

plates the existence of a positive unqualified right on the part of the owner of the slave, which no State law or regulation can in any way regulate, control, qualify, or restrain." Judge Baldwin, in the case of Johnson *v.* Tompkins, and others, after referring to this provision, said: "Thus you see that the foundations of the Government are laid and rest on the right of property in slaves. The whole structure must fall by disturbing the corner-stone." Judge Story, 16 Peter 611, again, says: "Without it the Union could not have been formed." Judge McLean, on the authority of Chief-Justice Marshall, reiterated that without it "no Constitution could have been adopted."[1] At Capon Springs, Virginia, June 28, 1851, Daniel Webster said: "I do not hesitate to say and repeat that if the Northern States refuse wilfully and deliberately to carry into effect that part of the Constitution which respects the restoration of fugitive slaves, and Congress provide no remedy, the South would no longer be bound to observe the compact. A bargain broken on one side is broken on all sides."

Writing to a committee of New York lawyers in 1851, Mr. Webster said: "In the North, the purpose of overturning the Government shows itself more clearly in resolutions

[1] 2 Curtis's *Cons.*, 451; 2 Benton's *Thirty Years' View*, 773; 1 Stephens's *War between the States*, 202; 1 Rhodes's *History of the United States*, 18.

agreed to in voluntary assemblies of individuals, denouncing the laws of the land, and declaring a fixed intent to disobey them. I notice that in one of these meetings, holden lately in the very heart of New England, and said to have been very numerously attended, the members unanimously resolved 'That as God is our helper, we will not suffer any person charged with being a fugitive from labor to be taken from among us, and to this resolve we pledge our lives, our fortunes, and our sacred honor.' These persons do not seem to have been aware that the purpose thus avowed by them is distinctly treasonable. If any law of the land be resisted by force of arms, or force of numbers, with a declared intent to resist the application of that law in all cases, this is levying war against the Government within the meaning of the Constitution, and is an act of treason, drawing after it all consequences of that offence." He conjured his fellow-citizens "to reject all such ideas as that disobedience to the laws is the path of patriotism, or treason to your country duty to God."

Slavery, as a domestic institution, was, at the time of the Declaration of Independence, common to all the colonies; at the time of the adoption of the Constitution, common to nearly all the States. Georgia gave Gen. Anthony Wayne of Pennsylvania, a rice plantation in testimony of her regard for deliverance from British domination, and his biographer records that at the end

of the war the General borrowed 4000 guineas in order "to stock his plantation with negroes." In the life of Thomas Hazard, an anti-slavery pioneer in Rhode Island, it is said that a thousand slaves were held in the county where he lived, very many of them by his relatives, some of whom were Guinea slave-traders.

In Mrs. Earle's *Customs and Fashions in Old New England*, it is stated that Rev. Peter Thatcher bought an Indian girl for ten pounds, and, a "very kindly gentleman and good Christian" as he was, "took a good walnut stick and beat her" until she promised to offend no more. Burdened in their consciences, the owners exchanged Indian slaves for negro slaves. A French refugee wrote home: "You may also here own negroes and negresses, and there is not a house in Boston, however small may be its means, that has not one or two." Mrs. Earle says: "I have never seen in any Southern newspapers advertisements of negro sales that surpass in heartlessness and viciousness the advertisements of our New England papers of the 18th century. Negro children were *sold by the pound as other merchandise*." New Englanders were willing to buy slaves, in order that "the poor heathen might be brought up in a Christian land." One respectable elder in Newport, whence the slavers set sail, was in the habit of giving thanks in meeting, on the next Sunday, after the arrival of a slaver, "because a gracious overruling Providence had been pleased to bring

to this land of freedom another cargo of benighted heathen to enjoy the blessings of a gospel dispensation."

The States entered into the bond of Union—created by the Constitution, adopted in mutual agreement by the separate act of each State—with this institution existing in its full force, and with provision for, and expectation of, its increase. The Southern States, where slavery had a stronger hold, were not merely accepted and welcomed into the Union, but were urged into it by the most strenuous efforts to induce their ratification of the Constitution. The institution, recognized and protected in the Constitution, in the course of years and for various reasons, became more localized and concentrated, and awakened persistent and organized efforts on the part of the non-slaveholding States to restrict it, to make it unprofitable and odious, and ultimately to extinguish it. It may be as well, just here, in as calm and unprejudiced a manner as possible, to present the more recent aspects of the slavery question from both Southern and Northern standpoints, or rather to compare the respective claims and contentions of both sides prior to the war.

In the controversy growing out of the proposed admission of Missouri, it was claimed on the part of the North that Congress had a right to impose, at discretion, what conditions it pleased upon a State seeking admission into the Union, and to require that the Constitution

of the State should contain a provision prohibiting slavery.

When territory was acquired from Mexico, Congress, in organizing Governments for the Territories, claimed that the power to organize included the power of legislation for the inhibition of slavery. A public opinion, strong and dominant at the North, insisted upon the exercise of all the power that was necessary to prevent the spread of slavery and "to consecrate the Territories to freedom."

As an expedient to avoid the application of the doubtful, or denied, power of direct congressional restriction, there were introduced the phrase and the principle of "squatter sovereignty." This was a resort to the extreme democratic idea that the inhabitants of, the first adventurers into, a Territory, in a state of pupilage, prior to the possession of a population equal to the ratio of representation in the House, and even before any steps were taken to frame a constitution, preparatory to admission into the Union as a State, had the absolute, sovereign right to legislate on all internal and domestic matters and to determine for themselves the question of slavery.

Another theory held by Northern statesmen was that slavery was the creature of local law, and required for its validity or legality previous express legislative enactment. Ancillary to this was the contention that Mexico having prohibited slavery, the *lex loci* of the acquired

Territories prevailed and accomplished freedom, without the intervention of Congress or of a Territorial Legislature. Perhaps, the most controlling reason for the antagonism of the North was the conviction, produced by literature and violent speeches and angry agitation, that property in man was *per se* a sin, that slavery was "the sum of all villainies," and that any human compact for its protection was "a covenant with death, an agreement with hell," void in itself, incapable of imposing obligations on human conscience, or creating any oughtness of duty, as to its observance or enforcement. Hence arose the doctrine of "the higher law," which was that the individual must determine, finally, for himself, irrespective of society and Government, as to the obligatoriness of law and the duty of personal obedience to its injunctions. Mr. Seward said: "There is a higher law than the Constitution which regulates our authority over the domain. Slavery must be abolished and we must do it." Others formulated their creed into this sentence, "The times demand and we must have an anti-slavery Constitution, an anti-slavery Bible, and an anti-slavery God." As slavery polluted the land where it existed, corrupted and cursed the Government which tolerated it, no human power had the right to extend it to a soil unstained by it, and in the discharge of duty, as an officer, or as a private citizen, every one must heed and give scope to his own peculiar

speculative opinions, to the admonitions of his conscience, irrespective of the commands of the supreme civil law, the decisions of highest judicial tribunals, or of the rights and claims of others. Mr. Edmund Quincy thus voiced the idea of his school: "For our own part we have no particular desire to see the present law repealed or modified. What we preach is not repeal, not modification, but disobedience." A reverend and active abolition agitator said: "The citizen of a Government tainted with slave institutions may combine with foreigners to put down the Government."

The opinions of the South as to their rights under the Constitution were diametrically opposite. Mr. Calhoun's resolutions, introduced into the Senate on 19th of February, 1847, in clear and concise language expressed the belief of his section as to the nature and character of our own system of Government and the equal rights of the States in the Territories.

"*Resolved*—That the territories of the United States belong to the several States composing this Union, and are held by them as their joint and common property.

"*Resolved*—That Congress, as the joint agent and representative of the States of this Union, has no right to make any law or do any act whatever, that shall directly, or by its effects, make any discrimination between the States of this Union, by which any of them shall be deprived of its full and equal right in any terri-

tory of the United States, acquired or to be acquired.

"*Resolved*—That the enactment of any law, which should directly, or by its effects, deprive the citizens of any of the States of this Union from emigrating with their property into any of the Territories of the United States, will make such discrimination and would, therefore, be a violation of the Constitution, and the rights of the States from which such citizens emigrated, and in derogation of that perfect equality which belongs to them as members of the Union, and would tend directly to subvert the Union itself.

"*Resolved*—That, as a fundamental principle in our political creed, a people, in forming a constitution, have the unconditional right to form and adopt the Government which they may think best calculated to secure liberty, prosperity, and happiness, and that in conformity thereto no other condition is imposed by the Federal Constitution on a State, in order to her admission into this Union, except that its constitution be republican, and that the imposition of any other by Congress would not only be a violation of the Constitution, but in direct conflict with the principle on which our political system rests."

The Southern States denied that Congress could do as it pleased, upon the subject of slavery or any other subject, in the Territories or elsewhere. Congress has no absolute power

whatsoever, nor any power of any description, except such as is specifically delegated, or is necessary and proper to put granted powers into execution. The exclusion of slavery from the Territories is maintainable only by denying that the Federal Government is one of specific power—that it is a Government of which the States are the constituents—and that Congress holds its powers as delegated, trust powers. The South held that the General Government had no right to restrict slavery, or to extend it, no more than to abolish or establish it; nor any right to distinguish between the domestic institutions of one State,or section, and another, in order to favor the one and discourage the other. As the Federal representative of each and all of the States, it is bound to show, within the sphere of its powers, equal and exact justice and favor to all. What was insisted upon was that as slaveholders they should not, on that account, be disfranchised of a privilege, possessed by all others, citizens and foreigners, without discrimination as to character or color. "Ours is a Federal Government—a Government in which not individuals but States, as distinct sovereign communities, are the constituents. To these as members of the Federal Union the Territories belonged, and they are hence declared to be Territories belonging to the United States. The States then are joint owners. It is conceded by all writers on the subject that in all such Governments their members are all

equal—equal in rights and equal in dignity.[1] They also concede that this equality constitutes the basis of such Government, and that it cannot be destroyed without changing their nature and character.[2] Exclusion from Territories was resisted, as in derogation of the equality of the members of the Federal Union, and as sinking the South to an inferior and subordinate condition. The South asserted her right to an equal participation in the Territories and in all public property. This right rested impregnably on the equality of the States; at the formation of the Government they were equals in dignity and right, and nothing had occurred since to deprive them of that equality. On that equality the Constitution and the Union rested and could not be destroyed by the exercise of any power which was derived by implication from the terms of the Constitution. In other words, said Senator Berrien of Georgia, an implied power could not destroy an elementary principle of the very Constitution from which it is derived.

As to the doctrine that slavery existed by force of positive law and, consequently, could only exist within the limits of the State enacting that law, it was replied that slavery had existed within every one of the British American Colonies without being sustained by statute.

[1] Genesee Chief *vs.* Fitzhugh, 12 Howard, 443.

[2] Address of Southern delegates in Congress, signed by fifteen Senators and thirty-two Representatives.

"Statute laws can be found regulating a pre-existing slavery, but statute laws cannot be found authorizing its introduction." Property in slaves did not stand on a ground different from any other description of property. "The relation of master and servant was one of the first and most universal forms in which property existed. It is so ancient that there is no record of its origin."

As to the excluding effect of the Mexican law, it was maintained that, *proprio vigore*, "the moment the Territory became ours, the Constitution passes over and covers the whole with all its provisions, which, from their nature, are applicable to Territories, carrying with it the joint authority and sovereignty of each and all the States of the Union, and sweeping away every Mexican law incompatible with the rights, property, and relations of citizens of the United States; without regard to what State they belong to, or whether it be situated in the Northern or the Southern section of the Union. The citizens of all have equal rights of protection in their property, relations, and persons in the common Territories of each and all the States. The same power that swept away all the laws of Mexico which made the Catholic religion the exclusive religion of the country, and which let in the religion of all denominations; which swept away all the laws prohibiting the introduction of property of almost every description, some absolutely, and others under the con-

dition of paying duties, and letting them in duty free, until otherwise provided for, swept that which abolished slavery and let in slaves. No distinction can be made between it and any other description of property or thing, consistently with the Constitution and the equal rights of the several States of the Union and their citizens."

The practice of the Government in reference to the Territories has been uniform with only slight departures. The territorial condition remaining, the laws of Congress governed. Territorial Governments were organized, and the officers were appointed by the Government of the United States, and the inhabitants of the territory were under legislative bodies, whose acts were subject to the revision of Congress, and had validity only from the actual or presumed consent of Congress. This state of things continued until the territorial authority applied to Congress to permit the inhabitants to form a constitution and Government preparatory to admission into the Union. Ordinarily, Congress passed an act fixing all the preliminaries—time and place of holding the convention, qualification of voters, establishment of boundaries, etc. Such an act *pro hac vice* withdraws the sovereignty of the United States, and leaves the inhabitants of the inchoate State as free as were the original States to form their constitution and Government. "At this stage the inhabitants of the Territory

became for the first time a people, in legal and constitutional language. Prior to this they were by the old Acts of Congress called inhabitants, and not people."[1] Permission being given to organize and form a State, the constitution and the State derive their authority from the people, and not from Congress. The Territory emerges from dependence and pupilage into an equality with the sisterhood of States. The "inhabitants," the pioneers, had no right nor authority to constitute a State, to ordain an organic law, to fix boundaries, and claim any extent of territory they pleased.

In 1856, the Supreme Court of the United States made the famous Dred Scott decision,[2] in which it was held that the Missouri Compromise Act of 1820, prohibiting slavery in the territories acquired from France north of 36° 30′, was void, and that Congress had no power to make such prohibition, and further, that a free negro of the African race, whose ancestors were brought to this country and sold as slaves, was not and could not be a citizen within the meaning of the Constitution. Chief-Justice Taney, who delivered the opinion of the court —six out of nine judges concurring,—has been held up to reprobation and scorn, pilloried alongside of Jeffries and all judicial monsters, and made the synonym for all possible official and personal corruption, usurpation, and vil-

[1] Calhoun's speech, March 4, 1850.

[2] 19 Howard.

lainy. No language has been too severe, no epithet has sufficed, to express the sectional condemnation of as pure and upright and able a judge as ever adorned judicial annals. An eminent lawyer of Philadelphia speaks of his ability to present an argument with breadth of view, intelligent discrimination, with the nicest precision of reasoning, and the fullest and fairest examination of the grounds upon which the opposite argument is based. "His opinions are distinguished by their clearness, learning, directness, and firm grasp of the points discussed, and, when dealing with constitutional subjects, for sound and weighty reasoning, thorough acquaintance with the political history of the country, and for the close bearing of all contained in it upon the question under examination." Justice Curtis said of him, that his power of subtle analysis exceeded that of any man he had ever known. S. Teackle Wallis says of him that to question his integrity is enough to beggar the resources of falsehood. The decision convulsed the North, aroused it into fury, was seized on with avidity and unscrupulousness, and perverted and maligned to fire the Northern heart and expel the party in power. It is still discussed with passion and hatred, and misrepresented as to language, argument, and effect. Public men, the press, histories, speak of it "with a degree of ignorance as to the real points ruled in it, equal to" the blind partisanship and sec-

tional hate exhibited. The calm, unprejudiced judgment of the future, remote from the passions and interests of the present, will rightly estimate Taney's fidelity to the Constitution, "his ideal of the character of American citizenship," and his courageous "following in the path so often trod by him before, in attributing to the individual States the exclusive right to determine judicially the *status* of freedom, or of slavery, of a person found domiciled in them." [1]

Those who would convert our Federal, constitutional, representative Republic into a consolidated Government of the aggregate population, refer to the Supreme Court as the ultimate arbiter in the decision of political as well as of judicial questions, and as the tribunal on which all can rely, because of its great wisdom and impartiality. The power of judicial relief against unconstitutional action is a peculiar and beneficent provision of our American system, which cannot be too highly appreciated. One trained under the English system of jurisprudence can scarcely conceive that a court should exercise the prerogative of declaring null and void a law having the approval of the legislative and executive departments of the Government. In fact, there is not in Europe a court which has authority to pass on the constitutionality of laws. Our Supreme Court has not, probably, been surpassed in ability and integrity

[1] Mich. Lectures, 198.

by any judiciary of the world, and no Southerner can repress a sentiment of honest pride that his section for sixty-two years should have furnished the Chief Justices for that august body. It is not needful, however, to shut our eyes to the fact, that there is a natural tendency in all officers to enlarge their own powers, and that there is nothing in judicial station to exempt one from that infirmity, or from his political bias. The interpretation of the Constitution by judges is to be sought not unfrequently in their party affiliations and in the history of the times. Courts are sometimes dominated as much by the spirit of party as are the other departments. Opinions are sometimes disfigured by abusive terms, and vituperation is substituted for reason and law.[1] Judgments can be sometimes traced to political views, party relations and prejudices. Political affinities and convictions color constitutional decisions, and the judgment of the court often illustrates how much the judicial opinion depends on the men who happen to be on the bench.

Besides, the court may assume or usurp jurisdiction not allowed by the Constitution, and there is no power in the Federal Government to gainsay it. There is nothing to prevent

[1] In 3 Black, 673, a justice, in delivering his opinion, sneers at the alleged unconstitutionality of executive action, and, to make his contempt conspicuous, prints the word "*unconstitutional!!!*" in italics with three marks of surprise.

them from interpreting as they may please, and thus a single department of the Government may deny to the others powers which they really possess, or confer powers never conceded. Every one knows what a system of laws has been built up by the legislation of courts. In specious verbiage may be found the bacillus of all sorts of licentious conceptions which will later on take on form and pernicious activity. The modern assumption of equity jurisdiction in the case of railroad receiverships might, on plausible grounds, be so augmented as to enable judges to take into their hands the executive administration of the entire railroad system. Judicial decisions upon constitutional interpretations have made a constitution very different from that of the Fathers, and all decisions on constitutional law should therefore be held under the scrutiny of jealous vigilance.

What has been said of the excitement and bitterness and flagrant injustice engendered by the Dred Scott decision illustrates the impotence of mere constitutional restraints. The court was overruled by the turbulent passion of the "fierce democratie." The Supreme Court of Wisconsin pronounced the fugitive-slave law unconstitutional and void, and resisted its administration by the Federal authorities.

The Legislatures of fourteen States enacted laws which nullified the Acts of Congress, passed in pursuance of the clear mandate of

the Constitution,[2] A judgment of the Supreme Court, according to the clearest forms of judicial procedure, was audaciously and insolently set at naught, and the Legislature of a State, whose officers had been guilty of a lawless defiance of constitutional authority, denounced the act of the highest judicial tribunal known to the law as an act of arbitrary power, and therefore null and void. The Supreme Court of the United States, no one dissenting, overruled the State decision, but the voice of the law was no longer heard in the land, and the Federal Government was browbeaten and defeated. One of the most striking demonstrations of the incompetency of the court to preserve constitutional restrictions is to be found in the legal-tender cases. In the case of Hepburn *vs.* Griswold, 8 Wallace, the court decided that Congress had no power to make greenbacks a legal tender in payment of debts. According to the former rules of interpretation no lack of power could be clearer, but that was no obstacle to those in power, and was not allowed to defeat the clamors of interest. Judges, whose opinions were known, were added to the Court for the purpose of reversing, and what, a few days before, was unconstitutional, was made the law of the land by judicial construction. What is to prevent the enlargement of the court in future, when a change on

[2] Greeley's *American Conflict*, 221.

constitutional questions is to be effected, when certain desired ends are to be accomplished?

The Supreme Court also legitimated the creation of a new State from the territory of another State in flagrant disregard of a clear constitutional inhibition, and of the known will of the spoliated State.

In addition to the action of the States, nullifying a law of Congress, and proclaiming their determination to expunge from the Constitution one of its essential stipulations, there occurred, on the 16th of October, 1859, an invasion of the Commonwealth of Virginia by a band of armed conspirators, who seized upon Harper's Ferry, and were proceeding to execute a deliberately concocted plan to arouse the negroes to insurrection, to plunder and murder, and to overthrow the Government of one of the original thirteen States. Such an act of unparalleled audacity, of open treason, of levying war against a State of the Union, should have aroused universal execration. On the contrary, Victor Hugo pleaded for the remission of the just punishment of the traitor, and Hughes, in his *Manliness of Christ*, places John Brown almost on a level with the Son of God. Edward Everett and others in Boston had the courage and patriotism to denounce the diabolical purpose of the conspirators, but the fanatical leader has been canonized at the North, and his name heads the roll of martyrology.

During the whole period from 1789 to 1860 the predominant sentiment of the South was that of intense loyalty to the Union. For the flag, the Union's symbol in peace and war, it had made incessant and willing sacrifices. The strong, pertinacious defence of the Constitution, the resistance to encroachments upon it, were the best and only means for the preservation and perpetuity of the Union. State interposition, as advocated in 1828–1832, was in no sense a disunion measure; it was designed to arrest the operation of oppressive and unconstitutional taxation, until the sober second thought of the people of the States could be consulted, and the creators of the Constitution, in the most legitimate and authoritative manner, could decide whether the questioned power had been, or should be conferred. It was an appeal to a convention of the States, the paramount power in our federative system, "the most august and imposing embodiment of political authority known to the American system of Government." What the South has uniformly held is that the best preservative of the Union is a faithful adherence to the Constitution, and that to vest in Congress, in the President, in the Supreme Court, the right of determining finally and exclusively the extent of powers delegated to the Government, is incompatible with the integrity and the rights of the States, and the limitations of the Constitution. It seems, says an able lawyer, a truism

too palpable for argument, that rights of the States are as incapable of violation without a violation of the Constitution as rights delegated to the General Government. The United States is sovereign as to all matters delegated to it by the Constitution; it is without any sovereignty, jurisdiction, power, or function as to all matters not placed within its power by the Constitution. The topics which lie outside of national legislation greatly exceed the number to which the power of State legislation does not extend.[1] State power and jurisdiction embrace the relations of husband and wife, parent and child, guardian and ward, master and servant, and can arrest, imprison, try, condemn, and execute citizens of the United States infringing State laws. The people of each State compose a State, having its own Government, and endowed with all the functions essential to separate and independent existence, and without the States in Union there could be no such political body as the United States. The preservation of the States and the maintenance of their Governments are as much within the care and design of the Constitution as the preservation of the Union and the maintenance of the National Government.[2] As Henry Clay said: "Our Government is not to be maintained, or our Union preserved, by invasions of the rights and powers of the several

[1] Mich. Lect., 244.

[2] 7 Wallace, 700, 755.

States." Robert C. Winthrop closed his great Centennial Fourth of July oration, "GOD SAVE THESE AMERICAN STATES."[1]

[1] It may be pertinent to append the opinions of some distinguished Northern men as to the value of States Rights. Mr. Bancroft says :

"Aside of the sphere of the Federal Government, each State is in all things supreme, not by grace, but of right. . . . This supremacy of the States in the powers which have not been granted is as essentially a part of the system as the supremacy of the General Government in its sphere. The States are at once the guardians of the domestic security and the happiness of the individual, and they are the parents, the protectors. and the stay of the Union. The States and the United States are members of one great whole ; and the one is as needful as the other. The powers of Government are not divided between them ; they are distributed ; so that there need be no collision in their exercise. . . . But for State rights the Union would perish from the paralysis of its limbs. The States, as they gave life to the Union, are necessary to the continuance of that life."

Alexander Hamilton wrote :

"The State Governments are essentially necessary to the form and spirit of the general system. With the representative system a very extensive country may be governed by a confederacy of States in which the Supreme Legislature has only general powers, and the civil and domestic concerns of the people are regulated by the laws of the several States. State Governments must form a leading principle. They can never lose their powers till the whole people of America are robbed of their liberties."

George Clinton used equally strong language :

"The sovereignty of the States he considered the only stable security for the liberties of the people against the encroachments of power."

2 Banc., Const., 332, 343, 344.

CHAPTER XIII.

THESE principles made the Southern States the true defenders and friends of the Constitution and the Union. So far from being revolutionary, their doctrines were regarded as the only solid foundation of our system and of the Union itself. The doctrine which denied to the States "the right of protecting their reserved powers, and which would vest in the Government (it matters not through what department) the right of determining exclusively and finally the powers delegated to it, is incompatible with the sovereignty of the States, if the Constitution itself be considered the basis of the Federal Union."

When the election of Mr. Lincoln became an established fact, notwithstanding the formal legality of the election, it developed a sectionalism so pronounced and powerful as to be able and willing to organize the Federal Government apart from and irrespective of all Southern support. The Southern States, as previously and most solemnly announced, regarded the election as involving necessarily the perversion of the Government from its originally limited character, and the overthrow of all those guarantees which furnished the

slightest hope of equality and protection in the "irrepressible conflict" thus precipitated upon the minority section.

It is often said as conclusive of rash impetuosity, or of a predetermination to dissolve the Union, that the South did not wait for some overt act of wrong before entering upon the fatal step of secession. It may seem to have been imprudent and precipitate, viewed in the subsequent experience of subjugation and abolition, but that same experience is the confirmation of the apprehensions entertained and the proof that the South was not blind as to what was the purpose, nay, the inevitable logical result, of the triumph of sectional and hostile anti-slavery organization. What was the South to suppose had been the meaning and the motive of the nullification acts of all the Northern States, of the bitterness of hostility towards her institution, the canonization of John Brown, and the growth and dominancy of the abolition sentiment? In 1840 the Abolitionists were a despised sect, with nearly as little favor in Boston as in Charleston. In 1844 and 1848 the Liberty and Free Soil parties had candidates for the Presidency; in 1856 the Republican party had absorbed the Whig party at the North and carried eleven States, and in 1860 it was triumphant in the executive and legislative departments of the General Government.

When it appeared evident to the Southern

States that there was utter hopelessness in any effort to conserve the Constitution and the equality of the States, or to have them recognized in the administration of Federal affairs, the sole alternative was submission to, or acquiescence in, the revolution which had been wrought, or an effort to secure the benefits of the Government as originally constituted. Shall the Constitution and the rights of the States be maintained under new relationships, and a Federal constitutional union of States be preserved, or shall the existence of a nation be maintained, irrespective of the Constitution and the autonomy and the parity of the States? Stripped of all extraneous matter, that was the naked issue submitted to the Southern States. The leading idea of those engaged in secession, and in the formation of the Confederacy, is presented in a condensed form by Justice Lamar in his oration on John C. Calhoun:

"The American Union is a Democratic Federal Republic, a political system compounded of the separate Governments of the several States and of one common Government of all the States, called the Government of the United States. Each was created by written constitution, those of the particular States by the people of each acting separately, and that of the United States by the people of each in its sovereign capacity, but acting jointly. The entire powers of Government are divided between the two—those lodged in the General

Government being delegated by specific and enumerated grants in the Constitution ; and all others not delegated being reserved to the States respectively, or to the people. The powers of each are sovereign, and neither derives its powers from the other. In their respective spheres neither is subordinate to the other, but co-ordinate, and being co-ordinate, each has the right of protecting its own powers from the encroachments of the other, the two combined forming one entire and perfect Government. The line of demarcation between the delegated powers to the Federal Government and the powers reserved to the States is plain, inasmuch as all the powers delegated to the General Government are expressly laid down, and those not delegated are reserved to the States unless specially prohibited.

" The greater part of the powers delegated to the General Government relate directly or indirectly to two great divisions of authority: the one pertaining to the foreign relations of the country ; the other of an internal character, and pertaining to the exterior relations of the States, the purposes for which the Constitution was formed being power, security, and respectability without, and peace, tranquillity, and harmony within."

The action of Congress, of Northern States and Legislatures, in direct and hostile contravention of the theory of Government which

had been maintained consistently from the beginning of the Federal Union, the utterances of newspapers, books, party conventions, judicial decisions, the increasingly virulent public sentiment, adverse to constitutional guarantees and the equality of the States, culminating in the hostile and treasonable incursion of an organized band into Virginia, and in the election of a President by a purely sectional vote, satisfied the Southern States that the Union could not permanently exist, composed of "free and slave States," that the Constitution would no longer furnish any protection to a minority, and that the rights of the States were contingent upon and determinable by the popular will of a dominant and a passionate section. Originally, the States antedated the Union, and were, by separate action, a sufficient number spontaneously concurring, the creators of the Union and stood on a plane of absolute political equality. In course of time new States, carved out of common territory, had their territorial organizations, their enabling acts, their school funds, their admission into the Union, through the will of the Central Government at Washington, and they thereby seemed unable to realize that Iowa was as Massachusetts and California as New Jersey. "In 1789, the States, were the creators of the Federal Government; in 1861, the Federal Government was the creator of a large majority of the States. In 1789, the Federal Gov-

ernment had derived all the powers delegated to it by the Constitution from the States; in 1861, a majority of the States derived all their powers and attributes as States from Congress under the Constitution. In 1789, the people of the United States were citizens of States originally sovereign and independent; in 1861, a vast majority of the people of the United States were citizens of States that were originally mere dependencies of the Federal Government, which was the author and giver of their political being." [1] The new States were slow or unwilling to believe that they were on a plane of perfect equality with any of the original eleven who began the Government. Then grew up the notion of an aggregate people, of an unrestricted democracy, of the absolute right of a popular majority, whenever existing, however ascertained, to rule without check or restraint, independent of constitutional limitation or State interposition. The will of the majority, for the time being, becomes *vox Dei*, and must be immediately executed, irrespective of law or constitution.

These two adverse theories clashing and making an "irrepressible conflict," war was inevitable. It is not creditable to our civilization, to our political philosophy, to our Christianity, that differences of opinion, not sudden, not the outcome of recent causes, but contemporaneous with the formation and adoption of the Con-

[1] Lamar on Calhoun, 70.

stitution, running along parallel with the whole history of the Union, should not have been capable of settlement by some other arbitrament than arms, which logically settles nothing except the avoirdupois of numbers and superiority of munitions. Senator Hammond of South Carolina closed his speech on the Kansas Bill, in 1858, with words of solemn emphasis and historical accuracy: "You complain of the rule of the South; that has been another cause that has preserved you. We have kept the Government conservative to the great purposes of the Government. We have placed her and kept her upon the Constitution and that has been the cause of your prosperity. The Senator from New York says that is about to be at an end; that you intend to take the Government from us; that it will pass from our hands. Perhaps what he says is true; it may be; but do not forget—it can never be forgotten—it is written on the brightest page of human history that we took our country in her infancy, and after ruling her for sixty out of seventy years of her existence, we shall surrender her to you without a stain upon her honor, boundless in her prosperity, incalculable in her strength, the wonder and admiration of the world. Time will show what you will make of her; but no time can diminish our glory or your responsibility."

South Carolina called a convention and repealed her ordinance of 1788, which ratified the

Constitution of the United States, and thus she dissolved the union subsisting between her and the other States united with her under the compact entitled the Constitution of the United States of America. Let it be remembered that this action of South Carolina—and the same can be said of all the seceding States—was not the exercise of a novel claim, It was not the unexpected and arbitrary exercise of a power "trumped up" for the occasion. From the very origin of the Union in 1789 to 1860, by jurists, statesmen, and political writers, the right of a State, for just cause of which she was the sole judge, to secede, had been argued and asserted a thousand times. In the Convention which framed the Constitution, in every administration, in the origin and history of parties, the most widely divergent views of the character of our Government had been proclaimed and discussed, and it was universally known that at the South there was a general concurrence of opinion as to the federative character of our Government and the right of each State, in the last resort, to judge of infractions of the compact and of the mode and measure of redress. Every well informed citizen knew that a large section of a large party and several of the States uniformly and earnestly claimed that under our federative system of Government a State, in the exercise of its sovereignty, had the ultimate right to withdraw from the Union into which it had voluntarily entered. Therefore, when South Caro-

lina seceded, as she had given frequent and emphatic notice of her purpose, under certain contingencies, to do, there was no surprise felt at the exercise of the alleged right. The expediency of the act was criticised; but no one is bold or ignorant enough to affirm that South Carolina deceived the Government or her co-States by resorting to a remedy or right which had been kept hidden in her breast.

After the secession of South Carolina the States of Mississippi, Alabama, Florida, Georgia, Louisiana, and Texas followed in quick succession. A Congress of the seceding States, to meet at Montgomery, Ala., on February 4, 1861, had been suggested. The Congress met at the time and place designated. The deputies from the States proceeded at once to create a general Government by adopting a provisional Constitution. This was *pro hac vice*, to prevent disorder and anarchy and secure co-operation. On the 18th of February Jefferson Davis was inaugurated as President. In the action of the States and of the Congress the proceedings were conservative and in accordance with established precedents for the preservation of personal and proprietary and civil rights. The pressure for a permanent Government was strong, and some of the wisest and most trusted men, notably Mr. Stephens, seemed to be anxious to convince the world that secession was not caused by a desire to depart from the well known principles of our Federal Republic. On the 11th

of March, by the unanimous vote of the deputies in Congress, a permanent constitution was adopted, and in due time was ratified by the States represented, and also by Arkansas, North Carolina, Virginia, and Tennessee. Kentucky and Missouri afterward had representatives in the permanent Congress and furnished many brave soldiers to the army, but their admission to the Confederacy was opposed by the writer and by others as irregular and at variance with the principles on which the Confederacy was established.

The Americans are a constitution-making people. The American idea,—different from that of our English ancestors, to whom we owe so many of the chief muniments of civil and personal liberty,—is to formulate and embody in organic law, having more permanence and solemnity of sanction and adoption than mere statute law, the foundation of government and the accepted principles of civil relations. In early Revolutionary times general principles were set forth in Bills of Rights. The Virginia Bill of Rights is a most remarkable compend of essential political truths. It was objected to the ratification of the Constitution of the United States, that it contained no such declaration, and the first amendments, adopted in 1791, and ratified by all the States but three, were responsive to the demand for a formal assertion of the basis of liberty and free institutions. The first ten were preceded by a

preamble stating that the conventions of many States had, at the time of their adopting the Constitution, expressed a desire, in order to prevent misconception or abuse of its powers, that further declaratory and restrictive clauses should be added. The constitutions of the States were detailed plans of government, the practical application of the methods of carrying out fundamental principles, and of defences and barriers against the infringement of rights and liberties. We have had about one hundred and thirty constitutions, and in them we can see definitions of rights, divisions into departments, assignments of separate functions, but we can read also the attempts to guard against the evils and dangers which experience has brought to light.

The "long continued labor to work out the foundation of government" is now superfluous. For a thousand years every reform in government in England has had for its immediate purpose the limitation of the powers of the Executive. In the more recent of our State Constitutions we discover social, political, economic, and labor complexities, of which the founders of our first State Constitutions knew nothing. The department of administration, the responsibility of officials, the reform of civil service, the recognition of office as a public trust for the public good and not as a reward for partisan services, the suspicion of the untrustworthiness of these in authority, the dan-

ger of powerful corporations, these and many other phases of modern thought are clearly discernible in modern constitutions. The Executive department is not so much feared as the Legislative. Confidence in legislatures having been much lessened, the constitution-making bodies have imposed restrictions upon the law-making department to protect the people against overmuch or corrupt legislation.

The Constitution of the Confederate States, as the instrument of government, is the most certain and decisive expression of the views and principles of those who formed it, and is entitled to credence and acceptance as the most trustworthy and authoritative exposition of the principles and purposes of those who established the Confederate Government.[1]

Excluding all reference to slavery, an examination of the Constitution will exhibit the animus of the Confederate States. Let it be premised that the Constitution was modelled on that of the United States and followed it with rigid literalness. Alabama and Georgia, in appointing delegates to the Congress of the seceded States, placed them under restrictions to form a government upon the principles and basis of the Constitution of the United States. Alabama invited other States to unite with her in order " to frame a government upon the prin-

[1] By the kind permission of the Philadelphia *Times* the substance of an article contributed by the author in 1882 is here reproduced.

ciples of the Constitution of the United States." Davis, in his inaugural address, said: "We have changed the constituent parts but not the system of our Government. The Constitution founded by our fathers is that of these Confederate States in their exposition of it." The preamble declared that the people of the Confederate States, each State acting in its sovereign and independent character, invoking the favor and guidance of Almighty God, ordained a Constitution to form a permanent Federal Government and for other purposes. The change in phraseology was obviously to assert the derivative character of the Federal Government and to exclude the conclusion which Webster and others had sought to draw from the phrase, "We, the people of the United States." In the Executive department, the Constitution provided, in accordance with the early agreement of the Convention of 1787, that the President should be elected for six years and be ineligible. A seat upon the floor of either House of Congress might be granted to the principal officer in each of the Executive departments with the privilege of discussing any measures appertaining to his department. The President was empowered to remove at pleasure the principal officer in each of the Executive departments and all persons connected with the diplomatic service. To give entire control of Cabinet officers and of foreign ministers was considered to be necessary for the proper dis-

charge of the President's duties and for the independence of his department. All other civil officers could be removed when their services were unnecessary, or for dishonesty, inefficiency, misconduct, or neglect of duty, but the removals in such cases, with the reasons therefor, were to be reported to the Senate, and no person rejected by the Senate could be reappointed to the same office during the recess of the Senate. The President was empowered, while approving portions of an appropriation bill, to disapprove particular items, as in other like cases of veto, the object being to defeat log-rolling combinations against the Treasury.

Admitting members of the Cabinet to seats upon the floor of Congress with right of discussion (which worked well during the brief life of the Confederacy), was intended to secure greater facility of communication betwixt the Executive and the Legislative departments and enforce upon the heads of the departments more direct personal responsibility. By ineligibility of the President and restriction of the power of removal, the Congress, acting as a convention, sought to secure greater devotion to public interests, freedom from the corrupting influences of Executive patronage, and to break up the iniquitous spoils system which is such a peril to the purity and perpetuity of our Government. The Judicial department was permitted to remain substantially as it was in the old Government. The only changes were

to authorize a tribunal for the investigation of claims against the Government, the withholding from the Federal Courts jurisdiction of suits between citizens of different States, and the enactment of a wise provision that any judicial or other Federal officer, resident and acting solely within the limits of any State, might be impeached by a vote of two thirds of both branches of the Legislature thereof. The provisions in reference to the election of Senators and Representatives and the powers and duties of each House were unaltered except that the electors of each State were required to be citizens, and the Senators were to be chosen by the Legislatures of the State at the session next immediately preceding the beginning of the term of service.

In reference to the general powers of Congress, some of the changes were more vital. The general welfare clause was omitted from the taxing grant. Bounties from the Treasury and extra compensation to contractors, officers, and agents were prohibited. "A Protective tariff" was so far forbidden that no duties or taxes on importations could be laid to promote or foster any branch of industry. Export duties were allowed with the concurrence of two thirds of both Houses. Congress was forbidden to make internal improvements except to furnish lights, beacons, buoys, to improve harbors, and to remove obstructions in river navigation, and the cost of these was to be paid by duties levied

on the navigation facilitated. That the objects might be better attained, States, with the consent of Congress and under certain other restrictions, were allowed to lay a duty on the sea-going tonnage participating in the trades of the river or harbor improved. States, divided by rivers, or through which rivers flowed, could enter into compacts for improving their navigation. Uniform laws of naturalization and bankruptcy were authorized, but bankruptcy could not affect debts contracted prior to the passage of the law. A two-thirds vote was made requisite to appropriate money unless asked and estimated for by some one of the heads of departments. Every law must relate but to one subject, and that was to be expressed in the title. To admit new States required a vote of two thirds of each House, the Senate voting by States. Upon the demand of any three States, legally assembled in their several conventions, Congress could summon a convention to consider amendments to the Constitution, but the convention was confined in its action to propositions suggested by the States making the call.

From this explication of the permanent Constitution it clearly appears that the seceding States were not only satisfied with, but deeply attached to, the plan and principles of the Constitution of the United States. The changes, in no respect anarchical or revolutionary, were "explanatory of the well-known intent" of the instrument, or remedial of evils,

unanticipated by our forefathers, which had developed themselves in the practical administration of the Government. The Confederate Constitution was the embodiment of the State rights and republican construction of our organic law. It put into the framework of the new Government, in clear language, what such men as Calhoun, Polk, Pierce, Woodbury, Wright, and Marcy thought was in, or ought to be in, the Constitution of the United States; only purging it of vicious interpretations. Any possible infringement of popular liberty or State rights, any oppressive use of the taxing power, was jealously guarded against. Civil service reform was made easy and practicable. The angry controversies about tariffs, internal improvements, and subsidies, which have been so injurious and violent, were settled. The taxing power, used so oppressively for the benefit of favored sections and classes and the injury of the masses, was put under salutary restrictions. The money in the Treasury was protected against purchasable majorities and wicked combinations. While the General Government was clothed with the powers adequate for a simple and just government, the States maintained their autonomy and were not reduced to mere petty corporations.

It may be as well to group here the provisions of the Constitution affecting slavery, although they have now only an historical interest. In sharp, direct, unambiguous language, "the im-

portation of negroes of the African race was forbidden, and Congress was required to pass laws effectually to prevent it." The right of transit or sojourn with slaves in any State was secured and fugitive slaves—called "slaves" without the euphemism of the old instrument—were to be delivered up on the claim of the party to whom they belonged. Congress could prohibit the introduction of slaves from States and Territories not included in the Confederacy, and laws impairing the right of property in negro slaves were prohibited. Slaves could be carried into any Territory of the Confederacy by citizens of the Confederate States and be protected as property. This clause was intended to forbid "squatter sovereignty," and to prevent adverse action against property in slaves, until the Territory should emerge from a condition of pupilage and dependence into the dignity, equality, and sovereignty of a State, when its right to define "property" would be beyond the interference or control of Congress.

These constitute the changes that were made, and it will be seen that they were not aggressive, simply defensive, and were the opinions, the claims of constitutional right, of Southern Statesmen, formulated and embodied into organic law.

The distinguishing features of the Confederate Constitution may be summarized under three heads:

First, and obviously, additional and less disputable guarantees against anti-slavery.

Secondly, prevention of the enlargement of the powers and jurisdiction of the General Government. Mr. Garfield, when a candidate for the Presidency in 1880, said: "That powers do and ought to gravitate more and more toward the General Government." The Confederate States feared and tried to arrest this gravitation. The pretension of the British Parliament which the Colonies resisted was its claim to omnipotence in its legislation over the Colonies.

Thirdly, the Confederate States dreaded the abuse of the taxing power, as menacing the purity of the Government and the liberties of the people. They acted on the maxim of Mackintosh, that "the preference of partial to general interest is the greatest of all public evils." Security against wrong is the best definition of liberty, and the people have need to be protected against the usurpations and oppressions of Government as well as against domestic violence and foreign invasion. Justice Miller, in Loan Association *vs.* Topeka, 20 Wallace, 655, uses these weighty words: "Of all the powers conferred upon Government, that of taxation is most liable to abuse. There is no such thing in the theory of our governments, State and national, as unlimited power in any of their branches. The Executive, Legislative, and Judicial departments are all of

limited and defined powers. Among these is the limitation of the right of taxation—that it can only be used in aid of public objects, an object which is within the purpose for which governments are established. It cannot, therefore, be exercised in aid of enterprises strictly private, for the benefit of individuals, though in a remote or collateral way the local public may be benefited thereby. To lay with one hand the power of the Government on the property of the citizen and with the other to bestow it upon favored individuals, to aid private enterprises and build up private fortunes, is none the less a robbery because it is done under the forms of law and is called taxation. This is not legislation. It is a decree under legislative forms."

In this authoritative interpretation of the Confederate national life is not a single revolutionary clause, not a single phrase asserting a new claim, nor a novel application of an old principle. There is not the slightest encroachment upon the right of a single Northern State or citizen.

The Southern States quit the Union, as they supposed, to check centralization, to save the principles of the Constitution, to restore the government of the earlier and better days. Purposing no interference with the rights or the property of others, they asked nothing for themselves but rights adjudicated by the Supreme Court or claimed uninterruptedly since

the organization of the Union. In the lapse of years, the conflicts of parties, foreign wars, under all administrations, no one ever whispered that the Southern States had violated the compact or meditated mischief to their sisters. To the Government and its principles, in peace and war, they had been unswervingly loyal and true. At the great Union meeting held in New York, 15th December, 1860, approved or participated in by Hunt, Dix, Astor, Fillmore, General Scott, Van Buren, Pierrepont, Bennett, Tremaine, and others, the Hon. Charles O'Connor said, with applause: "There is no fault in the South, as a whole, and it has done nothing to atone for." Hon. Fernando Wood, in his message as Mayor of the city of New York, on 7th January, 1861, suggested the propriety of New York becoming a *free city*, so as to protect herself and not be a party against "the aggrieved brethren of the slave States." Mr. Stephens, the patriot and the statesman, whose pure life and sustained moderation make him a model for young politicians, in *War Between the States*, vol. ii., p. 94, says: "No Southern State ever did, intentionally or otherwise, fail to perform her obligation to her confederates under the Constitution according to the letter and spirit of its stipulated covenants, and they never asked of Congress any action or invoked their powers upon any subject which did not lie clearly within the provisions of the articles of Union." In State and Confederate Govern-

ments there was the strong determination to resist consolidation and centralism. That was the *raison d'être*.

Political speculators have frequently made deliverances in reference to centralism that are alarming to those who regard local governments as essential to liberty and republican institutions. Party platforms and campaign speeches denounce State rights and hold up to suspicion and execration the "Solid South" as still cherishing disloyal and disruptive designs. If Southern testimony, given in words and more expressive acts, is ever to be accepted, the North ought to be convinced that there is not at the South either wish or purpose, present or prospective, for a separation of the States. By universal concession, secession, as a remedy for any evil or abuse, has been buried in the tomb of the Capulets. Party necessity or virulence may keep open the stale accusation to inflame hatred or arouse the belligerent feeling of the past, but Don Quixote never charged a more real and harmless windmill than do the speakers and writers who conjure up secession as an enemy to be conquered again. State interposition is as dead as African slavery, and neither has any more life than a mummy of the time of the Ptolemies.

The American people should distinguish betwixt secession, a *mortuum caput*, and the much maligned and misunderstood doctrine of State rights. Among the many evils growing out of

the war not the least is the popular prejudice which attaches to a theory of government that in other days was considered essential to the development and preservation of our institutions. The war for the Union is construed as determining, not simply slavery and secession, but State rights and all their appurtenances. Men so misconstrue legal and logical results as to think that the overthrow of the Confederate States involved the overthrow of the principle under which the seceding States sought to shelter themselves. As State rights were for long interposed by the South as a shield of slavery and as a bulwark against Federal usurpation, the subjugation of the South is supposed to involve the defeat of all the political principles that were ever held at the South. A suggestion looking to a strict construction of the Constitution, an argument for the preservation of the well-defined boundaries between Federal and State power, an appeal to State pride or local patriotism, are treated with ridicule and contempt. The public mind has been schooled to look with indifference or aversion upon every attempt to return to the old paths or to set up the old landmarks. The vast stretch of Federal power during the war, the supposed necessary supremacy of the Central Government, the abeyance of State authority in those perilous times, have become fatal precedents, contributing to this habit of thought and the acceptance of unwarrantable interfer-

ences. The States are as important as the Union. The powers exercised by the States and the protection they afford are not less valuable than similar functions of the Central Government. Centrifugal tendencies may be dangerous and need ceaseless vigilance, but the same is true of the centripetal. Undue enlargement of State authority may lead to collisions and irritations, but enlargement of Federal authority leads to consolidation, to the sacrifice of individual and sectional interests at the shrine of national glory. Our fathers were jealous of Federal encroachment and sought to place State and personal rights beyond the possibility of injury. The history of New York, Rhode Island, Massachusetts, and Connecticut shows as earnest a purpose to preserve the autonomy of the States as does the history of any other of the original thirteen. It is an evil omen that, in those same States, State rights should have fallen into disrepute, and battle cries, once stirring patriotic ardor to fever heat, should have become odious. To associate jealousy of Federal usurpation or resistance of illegal Federal authority with the South exclusively, or identify these patriotic sentiments with secession, is most unjust to the North and a travesty upon its history. Prior to 1860, Northern States were not slow to invoke their sovereignty. Massachusetts' records bristle with declarations of State authority. Republics in Europe have lacked the conserva-

tive and educatory influence of local governments. The complex system of Federal and State governments, each moving in its ascertained and well-defined sphere, has been the puzzle and admiration of philosophical students of American politics. The abolition of slavery, as great a blessing as I concede it to be, unless universal suffrage shall neutralize its advantages, will have been purchased at a great price, and the desuetude of secession will have been established at perilous cost, if from these two results shall come the overthrow of States rights and the establishment of an unlimited centralism.[1]

The New York *Herald*, 16th March, 1861, published the Confederate Constitution in full, and on the 19th, recommended its acceptance as the basis of peaceful reunion.

"The ultimatum of the seceded States is now before the Government at Washington, in this new Constitution adopted by the Congress at Montgomery, Alabama. Heretofore even our best-disposed Northern conservatives have been perplexed how to move, and what to propose to reconcile 'the cotton States' to the Union. Now, however, with their ultimatum before us, there can be no longer any doubt upon the subject. In their unrestricted discretion to shape a Federal constitution for themselves, the seceded States have unques-

[1] See Texas *v.* White, 7 Wall. 700, 13 Wall. 646, and Keith *v.* Clark, 97 U. S., 451.

tionably provided these securities, checks, and balances, which they regard as essential for the maintenance of their peculiar institutions. Thus our Northern politicians and the administration at Washington are furnished the conditions upon which the Union may be re-established, without war and without trouble. The new Southern Constitution is the Constitution of the United States with various modifications, and some very important and most desirable improvements. . . .

"Such are the provisions of this Southern Constitution which we may accept as the ultimatum of the seceded States on the subject of slavery. Upon some other questions, however, there are certain stringent provisions in said Constitution, which it would be extremely difficult to persuade our Northern fishermen, manufacturers, and lobby corruptionists to swallow, even to re-establish the Union. The provisions include:

"(1). The absolute prohibition of all bounties from the Federal treasury, and all duties or taxes on imported goods intended to promote or foster any branch of home industry.

"(2). A positive prohibition of Federal appropriations for internal improvements, and the substitution of local tonnage duties for such improvements.

"(3). The restriction of Congress by a majority vote to such appropriations as may be recommended by the President, or some Execu-

tive department. All other appropriations requiring a two thirds vote.

"(4). The holding of contractors to the strict letter of their contracts.

"(5). That the Post Office department shall pay its own expenses.

"These are excellent constitutional amendments. If they had been in force in Washington during the last ten years, they would have prevented the wasteful squandering in swindling lobby jobs, contracts, etc., of three, four, or five hundred million dollars of public money and public property that have been squandered to the enriching of the lobby jobbers, and the general demoralization of our Northern political parties and politicians to the lowest level of moral debasement and corruption. The two classes of amendments upon slavery and upon the other important subjects comprehend the peace offering of the seceded States to the border States. They are radical propositions of change and reform. . . . We are free to say, also, that the invaluable reforms enumerated should be adopted by the United States, with or without a reunion of the seceded States, and as soon as possible. But why not accept them with the propositions of the Confederate States on slavery as a basis of reunion? Practically, to the North these slavery abstractions amount to nothing, while the reforms indicated are indispensable to the existence of our Government for any length of time, with or without the

seceded States. Let President Lincoln then call Congress together, and let him lay before it this new Constitution of the seceded States and the peace propositions of their treaty Commissioners, and perhaps there may be wisdom enough in the two houses to provide the ways and means for peace, and the purification of the Government at Washington, even if there be no way to absorb the government at Montgomery, Alabama."

Slavery is thought by many, but inaccurately, to have been the sole cause of the conflict between the North and the South, which conflict, as has been shown, originated in the convention which framed the Constitution, and continued until the surrender of Appomatox. Slavery was rather the occasion, the incitement, which developed widely divergent, fundamental differences as to the character and functions of the Federal Government. The pecuniary value of the "peculiar institution," the sensitiveness inseparable from the holding of such property, the terrible consequences that might have come from fanatical agitation, increased the importance of the "occasion," or incident, and magnified it in public estimation into the prime cause of the "irrepressible conflict." The selfishness of property, the fierceness of party warfare and of sectional animosity, resistance to officious and unconstitutional interference, the certainty of the solemn and clear guarantees of a sacred compact, had the

natural effect of diverting Southern attention from the indefensibleness of slavery in civilized and Christian society, and of blinding the South to the incurable social, political, economic, moral evils connected with it.

> "When self the wavering balance shakes,
> It 's rarely right adjusted."

There was a reaction from opposition to tolerance, to defence, to approval. It is difficult at this day to realize what a change has been wrought in international law, in judicial decisions, in treaty obligations, in statute law, in opinions of churchmen and statesmen, in public sentiment and conscience, on the question of African slavery. Just eighty-two years before the immortal proclamation of President Lincoln, Edmund Burke, one of the greatest political philosophers of modern times, thought slavery was an incurable evil, but the trade in slaves could not be stopped, and that all that could be done was to mitigate its horrors by judicious legislation. Bossuét, the great French preacher, prior to that time, declared that "to condemn slavery was to condemn the Holy Ghost." Whitfield believed slavery an ordinance of God, designed for the eventual good of the African. Wesley had no doubt of the lawfulness of keeping slaves, and would have thought himself highly favored if he had been able to "purchase a good number of them."

Jonathan Edwards left, among other property, a negro boy. Bishop Berkeley also owned slaves. European nations engaged in and regulated the slave trade. In the first quarter of the eighteenth century, South Carolina imposed taxes on the importation of negroes, as much as £40 on each. In 1734 it was as much as £50. The London slave-traders, grown rich in the nefarious traffic, made a strong appeal to the King for relief against these taxes. The efforts of the colonists to protect themselves against such a population, were "shattered by an order from the King, instructing them to modify the laws so as to relieve the slave-traders of the import duties." The Carolinians abolished the customs-duties, but imposed a heavy tax on the Carolina purchaser of the imported negroes. This act expired by limitation in 1751, but was promptly re-enacted and its conditions were continued under one form or another, until the Revolution.[1] In 1769, the Virginia Legislature prohibited the importation of negroes to be sold into slavery, but George the Third, who obstinately resisted all movements for the abolition of the slave trade, commanded the Governor to veto the bill, and Governor Botetourt obeyed. In 1776 slavery existed in all the thirteen States. In 1778, Jefferson succeeded in carrying through the Assembly of Virginia a bill prohibiting the further introduction of slaves, and the same meas-

[1] See *New York Evening Post*, April 12, 1894.

ure was passed in Maryland in 1783, while both States removed all restraints upon emancipation. In 1786, to discourage the trade, North Carolina imposed a duty of five pounds per head on all negroes thereafter imported. In 1787, by a combination of New England with the far South it was consented, in the Constitution, to prolong the slave trade until 1808, notwithstanding George Mason of Virginia denounced it as an "infernal traffic." In 1799, Lord Thurlow denounced the "altogether miserable and contemptible" proposal to abolish the slave trade. A traveller in 1795, writes: "Nearly twenty vessels from the harbors of the Northern States are employed in the transportation of negroes to Georgia and the West Indian Isles. The merchants of Rhode Island are the conductors of the accursed traffic." Munro, in his history of the town of Bristol, says: "Descendants of those engaged in the slave trade suppress the evidence implicating their ancestors," and that "the De Wolfs were by no means the only persons interested in the traffic." [1]

[1] The *Christian Union*, 1st September, 1891, says the exportation of rum to Africa from Boston for the fiscal year ending June 30, 1891, was 808,737 gallons, and that the value of this "nefarious traffic" was $964,694.

CHAPTER XIV.

OF the protracted and terrible conflict which supervened, it is not my plan or purpose to write. To most persons it came unexpectedly. It was generally believed that the North would welcome a release from further responsibility for the "barbarism and crime of slavery," and that the "wayward sisters," as Horace Greeley in the *Tribune* advised, would be allowed "to depart in peace."

South Carolina sent a commission to Washington to adjust all questions of dispute between her and the United States. One of the first acts of the Confederate government was to accredit agents to visit Washington and use all honorable means to obtain a satisfactory settlement of all differences. Both efforts failed. Peace Congresses were alike impotent for good. It would avail nothing now to seek to explain the criminations and recriminations on both sides. The passions and prejudices of men were too inflamed for calm negotiation. Each side has published irreconcilable statements as to what occurred. Suffice it to say that war began. For the arbitrament of arms, the South had made, could have made, no preparation. Without the organized machinery of an estab-

lished national government, without a navy, or the nucleus of an army, without even a seaman or soldier, with limited mechanical and manufacturing facilities, with no accumulation of arms or ordnance and with no existing means for making them, without revenue, without external commerce, without foreign credit, without a recognized place in the family of nations, with the hostile prejudices of the world, it is not easy to conceive of a nation with fewer belligerent capabilities.

When war was accepted by the Confederacy, in its prosecution every resource of men, money, and means was used and exhausted. The blockade excluded from Southern ports arms, munitions, medicine. Bibles even had to be introduced surreptitiously, by evading the vigilance of formidable fleets. The whole coast-line being guarded, the salt, which was necessary for cooking and for curing meats, had to be found in few and remote salt mines, or by boiling saline water, or the saturated earth of "smoke-houses." The loyalty and fortitude and heroism of the women surpassed the courage and patient endurance of the men. Women singly furnished clothing, or united in bands and forwarded boxes of shoes and clothing, over failing and slow railroads, to the distant soldiers. By fatigue, hunger, disease and battle the Southern army, largely armed with guns captured from the foe, was reduced to a thin skirmish line, confronting lines upon

lines of well-clad, well-fed, well-drilled, well-equipped hosts, reinforced from the populous North, from freedmen, from hordes of foreigners. At length came the surrender. Attrition had worn away the granite hill to disparate pebbles. Whatever may be the differences of opinion as to the causes of the war, no brave or generous person can deny that it was illumined by deeds of desperate valor, of consummate skill, matchless fortitude, and patient endurance of retreat, sickness, nakedness, and hunger. The heroism of the defence of asserted rights, the dramatic catastrophe, submission to the inevitable, resumption of paralyzed industries, the brave battle for rehabilitation of homes and establishment of a new civilization, should challenge respect, if not approval; sympathy, if not admiration. The two chiefs, may I not say the four,—Lee and Johnston, Grant and Sherman,—at the head of the conquered and of the conquerors, present a spectacle of the moral sublime, at Appomatox and Durham's Station, which history may parallel but cannot surpass.[1]

[1] On the much-belabored question of exchange of prisoners see vol. i. of *Southern Historical Papers*, for testimony of Gen. Grant before the "Committee on the Conduct of the War," concurrent statements of Gen. Butler and others, and the following letter from Gen. Grant:

"CITY POINT, Aug. 18, 1864.

"TO GENERAL BUTLER:

"On the subject of exchange, however, I differ from Gen. Hitchcock. It is hard on our men held in Southern prisons

The North displayed illimitable resources and "indefatigable durability of fight." The conflict developed marvellous military and naval skill and capacity. Since 1865 millions have been and are now being paid in grateful reward for services rendered. The Grand Army of the Republic keeps up its semi-political organization, and membership is a quasi title of nobility. Statues and monuments, from public revenues and by private subscription, are erected to dead heroes. A war record is the most available qualification for a candidate seeking popular suffrage. The "Bloody Shirt" is waved vigorously and successfully more than a quarter of a century after Appomatox. The most courageous politician yields conscience and conviction before every demand of a soldier, and no party nor man dares to antagonize an issue which involves one of the Union patriots. The glory of men is that they volunteered or were drafted into the war; the glory of a party is that it managed the war and brought it to a victorious termination; the glory of the North is that it subjugated the weaker South. Every-

not to exchange them, but it is humanity to those left in the ranks to fight our battles. Every man released on parole, or otherwise, becomes an active soldier against us at once, either directly or indirectly. If we commence a system of exchange which liberates all prisoners taken, we will have to fight on until the whole South is exterminated. If we hold those caught, they amount to no more than dead men. At this particular time, to release all Rebel prisoners North would insure Sherman's defeat and would compromise our safety here."

thing in the past hides its diminished head in comparison, or contrast, with the unexcellable honor of winning victories over the Confederates. The credit, the enthusiasm, the furor, are not permitted to die out, but are sedulously fostered and enkindled. It would seem that all this should teach justice, and magnanimity, and chivalrous courtesy, and a ready recognition of the noble and valorous and knightly deeds which secured for the conquerors so much fame. Here and there, in towns and cemeteries of the South, are monuments to officers and privates, erected by the hands and hearts of poverty and patriotism, but every pension granted to Union soldiers, every resolution of thanks and congratulation after a battle, every statue of marble or bronze, crowning hillside or public square, every guarded and decorated national cemetery, is, indirectly, however otherwise intended, an enduring and eloquent tribute to the courage, the skill, the patriotism, the nobility of the South.

CHAPTER XV.

SINCE 1804 the Constitution had not been amended, but immediately after the war the Thirteenth, Fourteenth, and Fifteenth Amendments were, by a kind of Cæsarean operation, adopted, changing the constituency and revolutionizing the whole theory of the Government.[1] The Thirteenth Amendment provided for the abolition of slavery. The "peculiar institution" was thus rendered impossible by adding to Mr. Lincoln's Proclamation of Emancipation,—resorted to as a means of war permissible against a belligerent,—a constitutional inhibition and a similar inhibition in the

[1] Ex-Senator Ingalls, of Kansas, expresses a somewhat different opinion: "In the Thirteenth, Fourteenth, and Fifteenth amendments to the Constitution are incorporated the final results of the War of the Rebellion. They are its summary. These few paragraphs are the treaty between the belligerents. In them are the trophies of the victors. Waged ostensibly to maintain the integrity of the Union and in denial of the dogma of State sovereignty, the future historian will not fail to note that the three amendments are silent upon this subject, and that two of them relate exclusively, and the other principally, to the freedom, citizenship, and suffrage of the negro race. The right of secession, if it ever existed, exists now, so far as any declaration in our organic law is concerned. It has not been renounced, nor is the supremacy of the Nation affirmed in its charter."

organic laws of the seceding States. It was proposed in Congress and ratified, while none of the seceding States were represented there, and yet the validity of the ratification depended on the approval of the States thus unrepresented.[1] This article abolishing slavery (the first time the word "slavery" appears *eo nomine* in the Constitution is in the article abolishing it), was proclaimed as ratified by twenty-seven States, December 18, 1865. In this number of States, Virginia, Louisiana, Arkansas, South Carolina, Alabama, North Carolina, Georgia, and Tennessee, were computed in the ratifying three fourths although all, except Tennessee, were under governments declared illegal by the Reconstruction Act of 2d March, 1867, and its supplements. The same objections existed to the other two amendments, and their ratification, besides, was coerced, being made a condition of the readmission of the States to their ordinary rights in the Union. The Fourteenth was declared as properly ratified July 21, 1868, and among the States included in the requisite ratifying number were Georgia, North Carolina, South Carolina, Louisiana, Alabama, and Florida, whose adoption of this article had been made a prerequisite to their readmission into the Union or to their emergence from Provinces to States. Arkansas, whose admission was declared to be due to her antecedent ratification,

[1] *Mich. Lect.*, 226.

was also counted, as were Virginia, Mississippi, and Texas. These States, by act of March 2, 1867, passed because of their refusal to ratify the proposed amendment, had been placed under military rule. This article, as well as the others, had as its main purpose the making sure the emancipation of the negroes, and providing for their protection, and against State discrimination on account of color. These amendments did not confer on the negroes the right of suffrage, but the Fifteenth did provide that no State shall deny to any one this right because of "race, color, or previous condition of servitude."[1] President Grant, in a special congratulatory message, 30th March, 1870, speaks of the ratification of the Fifteenth Amendment as a "measure which makes at once 4.000.000 of people voters, who were heretofore declared by the highest tribunal of the land not citizens, nor eligible to become so," yet they had already voted, under the reconstruction acts, while citizens had been disfranchised. The process of enfranchising Indians is the reverse. The whole race or tribe is not transferred into the body of citizenship, with all the powers of government, but each, man by man, is made a citizen on the condition of proving his competency to use the privilege for the general good, by dissolving his tribal relations and taking lands in severalty. The doctrine of primary and paramount allegiance to a State

[1] *Mich. Lects.*, 227.

was negatived by making what had never previously existed, a citizen at large. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside." This clause made citizenship the prerogative of birth in this country, introduced the new element of negro citizenship, and recognized and defined the distinction between citizenship of a State and citizenship of the United States. It is very doubtful whether, prior to this amendment, a citizen of the United States existed, except by virtue of the previous citizenship in a particular State.[1]

When the war was over, so far as related to any participation in it by the seceding States, not a single armed belligerent being in the field, there was demonstrated, by the Executive, Legislative, and Judicial departments of the National Government and by the public press, the strangest and most contradictory difference of opinion as to what were the legitimate results of the war, and what was the character of the Government which had successfully prosecuted it. The State governments of the South were in an anomalous or doubtful position. The officers had been active participants in the struggle, and therefore liable to all the prescribed disabilities and penalties. In the absence of authority, recognized as legiti-

[1] See, however, the Dred-Scott case, 19 Howard, 404, and The Slaughter-House cases, 16 Wallace, 36.

mate, some method had to be devised to prevent anarchy and to restore former relations to the Union. The opinions of the dominant party in Congress and of all the North as to the power of Congress, and the relation of the seceding States after the war to the Union, were in disorder and chaos. The powers and duties of the Central Government seemed in as much confusion, and as little coherent, as the *disjecta membra* of a fleet after a disastrous shipwreck. The restoration of the ante-bellum relations of the States occupied much of Mr. Lincoln's attention during the last years of the war. It is known that he oscillated between a rebellion, as the act of individual inhabitants in geographical districts, and the act of States as political bodies. As early as 1863, he proposed to Congress the readmission of States whenever it should appear that one tenth the number of those who voted in 1860 had established a State Government asking admission into the Union. He left the question of suffrage entirely in the hands of those who were qualified voters under the laws existing at the date of secession. A difference of opinion was developed between him and Congress as to whether the Executive or the Legislature should provide for reconstruction. Henry Winter Davis and Senator Wade denounced Mr. Lincoln's action as "a studied outrage on the legislative rights of the people." His tragic and unfortunate death made Johnson Presi-

dent, and his views were widely out of harmony with those of the party leaders in Congress. He claimed that Statehood was only in abeyance, that its loss by the seceded States was only temporary, and that, in laying down their arms and ceasing their resistance to the National authority, they resumed their former attitude, and should at once be so recognized. The existence of the several States had not been terminated, nor were they out of the Union. They had powers and rights as before the war, and how to bring those powers into action again was the question. He held that the Executive alone was authorized to take the necessary steps toward restoration. Accordingly, he appointed provisional governors, and directed them to call constitutional conventions,[1] whose duty it should be to make constitutions under which State Governments could be established, and representatives be elected to Congress. He required that the constitutions of the several States should be so amended as to abolish slavery, and that the amendment of the Constitution of the United States for that purpose should be adopted. No one could vote at the elections for members of these conventions, except such as were qualified by the laws of the State just prior to secession, and no other qualification was required save an oath of loyalty. This scheme was carried out. The States with readiness obeyed the proclamation,

[1] *Mich. Lect.*, 219, 220.

held sessions of their legislatures, elected Senators, amended their constitutions, declared null and void the ordinances of secession, and abolished slavery. The Supreme Court sustained the right of the President to establish provisional governments in the seceded States prior to any action of Congress, but impliedly denied his power to determine the conditions of restoration in opposition to the will of the National Legislature.[1] The President's action excited great indignation at the North and in Congress. The admission of the Southern Members of Congress was refused.

An angry controversy arose between the President and Congress, and the latter, insisting upon its exclusive right to impose conditions, limited by legislation the power of the President as to amnesty, command of the army, and right of removal from office. The party in power were able to maintain their policy over the veto of the President, and the bitter antagonism culminated in the partisan spectacle of Articles of Impeachment by the House of Representatives. The disgrace was not consummated, as there was a failure to secure a two-thirds vote of the Senate. Congress considered the secession of the States as an abandonment by them of all rights under the Constitution, and that by the arbitrament of war they were relegated to the position of territories, to be governed by Congress, until they should appear as suppli-

[1] 7 Wall., 700; 13 Wall., 646.

cants for admission to the Union with constitutions properly framed and adopted by vote of the entire people, including the negroes. By a perverse inconsistency it was held that a war to prevent secession put the States out of the Union, and that secession, defeated on the battle-field, was practically accomplished under the policy of peace—at least, so far as to deprive the "wayward sisters" of their autonomy, and to consign them to the status of military districts or subjugated provinces. It was held that the lately belligerent and conquered States could legally adopt and give validity to a constitutional amendment, but could, also, be kept out of the Union in provincial vassalage as long as Congress pleased, and then be admitted on any terms the conquerors might dictate. The Constitution, *quoad* the "rebellious" States, was abrogated or suspended. The constitutionality of the reconstruction acts has never been fully or formally decided by the Supreme Court, but the language of the Court, in the cases last cited—Texas *vs.* White, and White *vs.* Hart, shows that, in the opinion of the Court, it was the duty of Congress, on the success of the Government, to provide for the establishment of loyal governments in the seceding States, and their restoration to their old place on such conditions as seemed to that body wise, and that the methods and conditions of such restoration were "political" questions, in which the Court was bound to follow the action

of Congress! There was not a consensus of opinion, even in the dominant party. Its leader in the House of Representatives said he would not so far stultify himself as to say that the reconstruction measures were constitutional. In reports and speeches there were exhibited as many irreconcilable views as to the political status of the lately seceded States and as to the competency of Congress, as there were individual members in the party. It was the game of the thimble-rigger transferred to the Congressional arena. The ingredients of the witches' cauldron were not more odd and heterogeneous than the opinions of judges, their *obiter dicta*, the utterances of Representatives, and the acts of Congress. On 22d of July, 1861, the House of Representatives denied "any purpose of conquest or subjugation," and affirmed that the war was waged "to preserve the Union with all the dignity, equality, and the rights of the States unimpaired, and that as soon as these objects are accomplished, the war ought to cease." The close of the war made urgent and absorbing the question of reconstruction, involving that of negro suffrage. The resolutions, opinions, and actions were in utter discord and irreconcilable with any plausible theory. . Insurgent populations, military organizations, belligerent parties, States with political capacity to wage war, were used as equivalent terms. The guaranty of a republican form of government was the favorite Constitutional shelter for

severe legislation, and this provision was executed by organizing, under coercion of the bayonet, "an electoral machinery," the motive power of which was stupid freedmen. One purpose, however, was manifest in all this contrariety and confusion. It ran through the whole legislation. The South had not been sufficiently punished by the war; the rebellion had not been sufficiently stamped out. R. H. Dana, in Faneuil Hall, had proposed to hold the Southern States "in the grasp of war for thirty years." The "rebels" must be humiliated and put under bonds, galling and stinging, to keep the peace. The decimation of population, the crushing of hopes, the dislocation of society, the bankruptcy of the country, the obliteration of millions of property, the sudden overthrow of the traditional system of labor, submission to all the ingeniously devised tests of loyalty, must be supplemented by placing the State governments in the control of negroes and carpet-baggers. The effort was coolly, deliberately, avowedly made, to place the offending States in the hands of those who had been, and still were, loyal to the Government at Washington—the only admitted test or standard of loyalty being the color of the skin, or voting the Republican ticket in elections. As previously stated, on 2d of March, 1867, it was enacted that ten of the Southern States should be divided into military districts and placed under military rule. This law, as Mr. Garfield

declared in debate, "laid its hands on the rebel governments, taking the very breath of life out of them; in the next place, it puts the bayonet at the breast of every rebel in the South, and leaves in the hands of Congress utterly and absolutely the work of reconstruction." This, and a supplemental act of 23d of March, annulled the State governments then in operation; enfranchised the negro; disfranchised all who had participated in the war, if they had previously held any office under the State or General Government, and pointed out all the machinery necessary to organize new Governments upon the ruins of the old. Until the several States should be admitted under these governments into the Union, the military officers in command were to have absolute power over life, liberty, and property—except that death sentences must have the approval of the President. Several ineffectual attempts were made to get the question of the validity of these laws before the Supreme Court. At last a case was presented and argued, and, while the Court had it under advisement, a bill was rushed through both Houses of Congress and passed over the President's veto, depriving the Court of jurisdiction over appeals in such cases.[1] This substitution of military despotism for government by the people, of courts martial for civil jurisprudence, gave, as was purposed,

[1] *Why the Solid South; or, Reconstruction and Its Results*, pp. 25–27.

uncontrolled supremacy to the authorities in Washington. The citizenship and suffrage, compulsorily thrust upon the negroes, were not due to any effort for freedom put forth by them. In the history of the human race, such priceless privileges had been hitherto won by persistent effort, by tedious centuries of discipline and sacrifice. The National Government constituted itself the guardian of these wards, and, by military supervision, by special laws, by coerced constitutional amendments, by exotic judges, by provisional and provincial governments, by freedmen's bureaus with lavish largesses, by every variety of appliance, undertook to preserve the rights of the freedmen. The negro was provided with schools and churches, courts and governors, garrisons and legislatures. The plan of reconstruction was made to depend upon his political support, and, at any cost, that support had to be given or to appear to be given. The wards followed implicitly, uninquiringly, as a religious duty, the direction of their new masters, and the corrupt leaders nursed the prejudices and the self-conceit of their ignorant followers, inflamed their passions, and deluded them with expectations of social equality and a partition of the lands. While thus engaged, these leaders enjoyed the confidence and support of those who commissioned them, and they had themselves elected to multiplied offices, not as public trusts, but as furnishing opportunities for plundering and for revenge.

"Horrors of Reconstruction" is no exaggerated phrase. Duplicity, ignorance, superstition, pauperism, fraud, robbery, venality, were in the ascendant, made and kept so by Act of Congress.[1] Mr. Pike, a former Republican member of Congress from Maine, in *The Prostrate State*, speaks of the military government of South Carolina, in 1867, as "a carnival of crime and corruption," "the most ignorant democracy that mankind ever saw invested with the functions of government," and characterizes "the villainies of the State Government" by such terms as "morass of rottenness," "huge system of brigandage," "wholesale bribery of members." "The last administration stole right and left with a recklessness and audacity without parallel."

It is a presumption of law that one intends the necessary or legitimate consequences of his own acts. No excuse can be pleaded against

[1] *Debts and Liabilities of the Southern States.*

States.	At close of the war.	After reconstruction.	Increase.
Alabama	$5,939,654.87	$38,381,967.37	$32,442,312.50
Arkansas	4,036,952.87	19,761,265.62	15,724,312.75
Florida	221,000.00	15,763,447.54	15,542,447.54
Georgia	Nominal.	50,137,500.00	50,137,500.00
Louisiana	10,099,074.34	50,540,206.61	40,341,132.27
North Carolina	9,699,500.00	34,887,467.85	25,187,967.85
South Carolina	5,000,000.00	39,158,914.47	34,158,914.47
Mississippi	Nominal.	20,000,000.00	20,000,000.00
Tennessee	20,105,606.66	45,688,263.46	25,582,656.80
Texas	Nominal.	20,361,000.00	20,361,000.00
Virginia	31,938,144.59	45,480,542.21	13,542,397.62
	$87,139,933.33	$380,160,575.13	$293,020,641.80

From Hon. H. Herbert's "Solid South," and the speech of Hon. St. George Tucker, p. 6566, *Congressional Record*, first session, Fifty-first Congress.

the accusation that Congress intended to place Louisiana, Mississippi, and South Carolina under the control of the negroes, the census showing in those States that the negroes had a majority over the white people, and the assumption being that every adult male negro was a legal voter, a Republican, in actual exercise of suffrage. Let it suffice to give the summing up of the reconstruction policy by Justice Lamar. "It was the offspring of misconception and distrust of the Southern people. Its theory was that the Federal success in arms over the South was only a partial one; that the sentiments, passions, and aims of the Southern people were still, and would continue to be, rebellious to the authority and hostile to the policy of the Nation; that the termination of the war having put an end to the absolute military control, it became necessary to substitute another organization which, though not purely military, would be no less effectual in its function of repression and force. Its unmistakable purpose was the reversal of every natural, social, and political relation, on which, I will not say the civilization of the South, but of the world and the whole Union, rested." [1]

Negroes and their allies were in control for a few years. The lesson should not be forgotten that the races, so distinguishable, may meet, side by side, but are far more immiscible than Jew and Gentile, Greek and Moslem. It re-

[1] Lamar's *Calhoun*, 71.

quired the combination of all the strength, prestige, patriotism, patience, intelligence, spirit of the South, sustained by constitutional conservatism at the North, to save the country from becoming a second San Domingo. Better work was never done for the negroes than in defeating the policy and purpose of "Reconstruction." But for the successful resistance to ignorance, superstition, fanaticism, knavery, the grossest executive, judicial, and legislative outrages, there would, to-day, be no schools for negroes at the South, no protection to property, no loyalty to the Union.

CHAPTER XVI.

As the Southern States have given infallible proofs of their recognition of the Thirteenth, Fourteenth, and Fifteenth Amendments, however doubtfully adopted, and of the consequent indissolubility of the Union by any separate act of State interposition, and of the equality of the rights and privileges of every citizen, the magnanimity which they have exhibited needs to be imitated. Reconstruction, as a personal and State obligation, should not be confined to territory south of Mason and Dixon's line. Loyalty and patriotism are inward, and come not from coercion, distrust, or multiplication of tests and oaths. What the South has said and done should be accepted generously and confidingly. In 1868, either Seymour or Grant received all their electoral votes. In 1872, Greeley had their partial support, and his endorsement by Southern men was the strongest possible proof that universal freedom was an unalterable fact, and that slavery of the African was no longer an issue in political contests. In this contest, General Grant received six of the nine seceding States whose votes were counted. Such Northern men as Tilden, Han-

cock, and Cleveland have been sustained with enthusiasm, and no persons could be, in mind and heart, more thoroughly Union and anti-slavery than they. Our foreign relations have, in some instances, been committed to Southern hands, and no one has suspected that our interests and honor and flag were not in them perfectly secure. In internal legislation, while consistently adhering to their old principles of strict construction, States rights, economy of expenditure, low taxes, there has been no whisper of a covert purpose on the part of the South to weaken the Government, discredit its character, or impair its prosperity. If, unfortunately, a foreign war should occur, no one doubts the enthusiasm or courage or patriotism of the South in sacrifices or conflicts.

The action and utterances of the press and of public men at the South, in sustaining the wise and successful effort of President Cleveland to maintain the authority of the Federal Government and execute Federal laws in Chicago, are in strict accordance with the reconstructed sentiment, and ought to silence the gibes about disloyalty and the "rebel brigadiers." The spirit of nationality and of devotion to the Union is as strong in Georgia as in Massachusetts; stronger than in many States where a hyphened citizenship is the dominant factor in elections. It is, however, singular that Southern support of the Constitution and of regular Government should be adduced as inconsistent with the contention

of the seceding States. It is stupidity to assimilate the action of those States to the lawlessness of rioters and anarchists. It shows a perverse unwillingness or incapacity to understand the character of our complex federative system when it is argued that sustaining the President in the protection of property and lives against the crimes and madness of the lawless is an abandonment of the true States-Rights theory. Secession was the enthronement of law, the interposition of political sovereignty between the people and illegal usurpation. It was not mobocracy nor anarchy, but the appeal to LAW, in its highest and most authoritative expression. There is not the remotest analogy, but irreconcilable opposition, between the claims of a mob and the deliberate action of a State, invoking its sovereignty.

It is often coolly, somewhat pharisaically, assumed that emancipation of slaves in the North was the result of respect for the laws of God and the rights of man, and that the war was a protest of sensitive and enlightened consciences against the barbarism of slavery. The altruistic teachings of Christianity are often exaggerated as to their influence in the abolition of class-distinctions. History shows that progress has not been due to intellectual and religious forces only, but that economic forces which have been at work in society have been the most controlling of all. Unquestionably, religion in human evolution has been potential in inducing

the sacrifice of individual interests to the general good, but it is a common *post hoc propter hoc* delusion to attribute to conscience and morals what grew out of economics, or political or military causes. The abolition of slavery at the end of the fourteenth century was brought about "almost wholly by economic causes, and apparently the teachings of Christianity had no share in it."[1] So the logic of events, the unprofitableness of slave labor, the exigencies of war, had much to do with freeing the slaves in the Northern States and with President Lincoln's proclamation. It is almost certain that the border States would have gradually and peaceably manumitted their slaves, if they had been left to the natural course of human events, and to the exercise of their own independent autonomy. In 1830 the Virginian Convention came within a few votes of adopting prospective emancipation. Kentucky, at a later day, had a strong political and religious movement, looking to the same end. Many statesmen, and leaders of thought, and quiet men and women deplored the existence of slavery, and perplexed their intellects and consciences to devise feasible methods of release from what seemed to them an increasing evil and danger. These wise and conservative men and women were silenced by the growing and perverted proslavery sentiment which had been created by selfish interests on the one hand, and the fierce assaults of

[1] *Yale Review*, May, 1894, pp. 101–103.

the abolitionists on the other. The war abolished slavery summarily. The South, being no longer interested pecuniarily or politically in its extension or continuance, was in a condition to consider the whole question without the bias of prejudice or of interest. As the result of this calm survey, every thoughtful, rational person in the South not only acquiesces but rejoices in the cessation of the system. As to the suffrage imposed upon the negro, his general eligibility to office, his fitness for such responsibilities of citizenship, and the persistent attempts to subordinate States, cities, and communities to his domination, the opinion and sentiment of the white people of the South are solid and unchangeable. As to the freedom of the negro, his right to choice of, and compensation for, his work, his capacity for improvement, there is little difference of opinion. In her sacrifices and continuous efforts to lift up the race, the South has acted with conspicuous magnanimity and generosity. The law makes no distinction between races as to personal and property rights. Public schools have been established and sustained in every State; every child, white and black, has access, for a portion of the year, to free education.

It should be borne in mind that the burden of this gratuitous instruction has fallen, and for a long time must continue to fall, disproportionately on the white citizens, who pay ninety-five per cent. of the taxes. The negro improves

in intelligence, is slowly accumulating property, finds the level his merits entitle him to, but as the Government, which so unconditionally liberated him, and thrust upon him the exalted prerogatives of citizenship, refuses to aid in his education, he must rely for that boon upon the people who were formerly his masters, and against whom, in all political contests, he is urged and commanded to act as if he had no option, and as if they were his implacable enemies.

Serious as are the political and social apprehensions arising from two races, radically dissimilar, occupying the same territory, and sharing jointly and equally in all civil rights and privileges; and revolutionary and precipitate as was the change in the traditional system of labor, the South is slowly vindicating the possibilities of her people under the stimulus of free institutions and a Christian civilization. From 1865 to 1880 the recovery from the paralysis and bankruptcy and exhausted energies of a prolonged and desolating war on her own soil was slow and painful, and there was no increase in the aggregate value of her property, but now there is a sure growth because of development of mineral resources, increasing manufacture of wood and cotton and iron, multiplied and cheapening facilities of transportation, and the beneficial effects of free schools and manual training upon productive industry and self-reliant manhood.

The two great Republics, the French and ours, have exhibited extraordinary powers of self-restoration, demonstrating the solidity of a prosperity and of governments which rest on the secure basis of popular support. Both France and the United States, after terrible reverses, bravely "picked themselves up again," to repair losses and restore strength. France was a unit, and had the spirit of nationality. The South, which alone of the two combatants in the war between the States sustained pecuniary damage, had far more serious reverses than France, was more thoroughly impoverished, had disasters multiplied fourfold, and was subjected to a social, political, and economic upheaval that history cannot parallel, yet she has displayed splendid powers of rehabilitation and unusual capacity for government. In the past, her record in politics, in jurisprudence, in war, in social life, has been remarkable, but since her new life has begun she has illustrated a slow, practical purpose of reorganization, a magnificent patience and fortitude in bearing up under calamities, an adaptation to strange and hard vicissitudes, a loyalty to Truth and the Constitution that should elicit everywhere the admiration of the thoughtful and the patriotic. This harmonizes with her ancient glory. No large-minded student of comparative civilizations can utter a hasty censure on a state of society which gave to the world and to free government our Washington and Jefferson, to judicature our

Marshall and Taney, to statesmanship our Madison and Clay and Calhoun, to the science of war our Jackson and Scott and Taylor and Johnston and Lee, to chivalry and energy of recuperation such splendid examples of manhood and womanhood. It would be no compliment to the North, with exhaustless wealth, with all the machinery of a powerful, organized government, with unquestioned courage and patriotism, with extraordinary military and naval prowess, if four years were needed to defeat a handful of badly-clad, badly-equipped, widely scattered men, the product of an inferior civilization.

Mr. Gladstone expressed the true philosophy of politics when he said: "I ask that we should apply to Ireland that happy experience which we have gained in England and in Scotland, where the course of generations has now taught us, not as a dream or a theory but as practice and as life, that the best and surest foundation we can find to build upon is the foundation afforded by the affections and the convictions and the will of the nation, and it is thus by the decree of the Almighty that we may be enabled to secure at once the social peace, the fame, the power, and the permanence of the Empire." If anything has been well established in modern times, as the result of an enlightened civilization, sublimed by the spirit of Christ, it is that "as practice and life, the best and surest foundation" a nation can find to build upon,

for its social peace and fame and power and permanence, "is the foundation afforded by the affections, the convictions, and the will" of the people. Love is not won by distrust, suspicion, injustice, or abuse. This disturbing sectional issue between the North and the South having been removed by the irrevocable emancipation of the slaves, philanthropy, patriotism, sound policy demand the exercise of mutual forgiveness and confidence and fraternity. The object of this book is to shield the South from unjust aspersions, to vindicate her motives, to show that her action did not spring from any sudden ebullition of discontent or hate, was not the offspring of sudden caprice, or of a predisposition to separation, and to place her action in connection with the Union upon the impregnable basis of authentic history and the Constitution. While seeking to vindicate or extenuate her course at the bar of impartial, disinterested posterity, this effort is not at all inconsistent, in reason or in conscience, with the calm and sincere confession that the Union is highly advantageous, that success would have brought many complications and responsibilities, and that the greatest curse that ever afflicted the South was the introduction and the continuance of African slavery. We must distinguish between constitutional guarantees, deliberately and unanimously covenanted, as the price for a union of States, and the subsequent opinions and conditions in opposition to slavery and its security,

the antipodes of what prevailed when the Union was created. Now, disembarrassed of all questions of interest, of organic restraints and compromises, of political power, the calm judgment of all must be that slavery, socially, politically, and economically, was a misfortune, an evil, a calamity. Rid of some of its wrongs and mischiefs, the South, in the elements of a future prosperity, presents an aspect novel and hopeful. In population, in the last decade, it has made an immense advance, showing an increase of from 9 to over 40 per cent. Cities have sprung up like magic, and grown from 100 to 1000 per cent. The industrial progress has been more remarkable. Coal and iron and marble, which were known to exist in princely abundance but had remained dormant, have been developed to an extent which seems likely to transfer to the South the control of the mineral industries of the country. The nine iron-producing States of the South in 1890 turned out 2,917,529 tons of iron ore, only 246,310 tons less than the entire product of the United States in 1870. The output in the coal-producing States of the South in 1890 was more than twice the output of bituminous coal of all the States in 1860, and nearly 2,000,000 more tons than the total production in 1870. The South produces about three fourths of the world's annual cotton crop, and in ten years the number of her too few cotton mills has more than doubled.

One of the most obvious economic evils of slavery was the concentration of labor upon a few products. Lately, there has, under the new conditions, been a most marked and gratifying diversification of crops. Vegetables and small fruits, in their transportation to Northern markets, require the full capacity of steamers and railroad trains for several months of the year. Other crops and the rearing of live stock show the remunerating change from a limited number of products. Improved tillage, improved country roads, manual labor in public schools, will add other varieties and enhance wealth. "The timber resources of the South are far greater than any other portion of the United States, or indeed, of any civilized and well-settled country in the World. The Southern section contains the largest area of wooded land, and nearly one half of the merchantable timber in the United States. It has a greater variety of woods than any other section, and these enter into more industries." In the railroad mileage of the South in the last decade, there was an increase of 96 per cent., and, in the twelve Southern States, the total assessed valuation of property shows $3,706,906,168 against $2,164,702,585 in 1870.

The educational statistics present the most significant development. The per centage of gain in school enrolment has outstripped the per centage of gain in population. "In the thirteen years for which separate statistics for

the white and black races in the South are accessible, the white children enrolled in the public schools have increased from 1,827,139 to 3,197,830 or about 75 per cent. while the increase of white population has been only 34 per cent. The negroes have a still better record. In the same years, the enrolment has increased from 571,506 to 1,213,092, an increase of 112 per cent. while the population has increased only 27 per cent. The increase in school appropriation has been from $11,231,073 in 1877 to $23,226,982 in 1889. The negroes paying one thirtieth of the taxes get nearly one-half of the fund spent in education."

The North and the South are mutually dependent for helpful offices, and for the most effective working out of their grand destiny. The right arm cannot say to the left, "I have no need of thee." Excluding all questions of controversy and variance, they have had a common history, full of noble achievements, of successful endeavors in the cause of enlightened popular government, and have been incalculably beneficial to humanity. Neither section has been free from human frailties, from the errors and vices generated by selfishness and ambition and passion. Time enough has elapsed since the great contest for prejudices to yield to justice, for animosity to be merged in fellowship, for sectionalism to yield to a broad, catholic patriotism. Both North and South need reconstruction, not in legislation and govern-

ment, but in sentiment, in fraternity, in the conviction of the need of undivided Caucasian energies for working to a wise solution the great problems which Providence has devolved upon them. The South has been sinned against as well as sinning. What brought upon her the severest condemnation—Slavery and Secession—were not originated by her, but borrowed or inherited from others. It would be well for those of us, survivors of the terrible struggle of 1861–1865, to make amends for our errors, and give the remainder of our days to making good the not unreasonable boast that this is the best government the world ever saw.

What has been accomplished by the North and the South in all departments of government, in all the utilities of practical life, in all the duties of citizenship and religion, shows that they are of one blood and possessed of common characteristics. No people in any land have given better and nobler illustrations of the higher human virtues. There is before them, if thoroughly united and co-operating, a future of vast and inspiring possibilities. Civilization, free government, a pure religion are committed in large measure to them. After care and defence of their own race and people—guarding against the delusion of altruism, that this is to be indefinitely and without restriction the asylum of the discontented of the Old World—they still owe to other nations and peoples

duties which can best be discharged by making our experiment in the highest degree successful. The other countries need America, if she keep herself free, prosperous, law-abiding. Our Revolution, said Europe's greatest statesman, was "a vindication of liberties inherited and possessed." An eminent English writer said: "The ruin of the American cause would have been the ruin of the constitutional cause of England, and a patriotic Englishman, not less justly than the patriotic American, may revere the memory of Patrick Henry and of George Washington." Through a colossal trade Great Britain and the United States make contributions of wealth to each other. The old mediæval or barbarous notion that what one nation gains in trade the other loses, should have no adoption in our land. We have illustrated the principles of popular government, and demonstrated that a people, under proper restrictions, with the security of concurrent majorities and a written constitution, can be safely trusted with political powers, and that a standing army and constructive treason and the aristocracy of caste or class, of birth or office, are not necessary to hold the governed in loyal subjection. With fidelity to the Constitution, the Union, the States, with a scrupulous regard for national engagements, with honest money, with justice to all, with a rejection of the harmful and perilous dogma that To the Victors belong the Spoils, and its sequence of Legislative cor-

ruption, sinecure offices, and administrative nepotism, with a union of hearts and hands of all sections, ours may still be an example of Liberty enlightening the World. Be it our high privilege to confer other and greater blessings and to show how intelligence, enterprise, civil and religious freedom, and respect for the Majesty of Law may constantly increase comfort, intelligence, prosperity, and happiness.

THE END.