



Edm: Randolph

# OMITTED CHAPTERS OF HISTORY

DISCLOSED IN THE LIFE AND PAPERS

OF

# EDMUND RANDOLPH

GOVERNOR OF VIRGINIA; FIRST ATTORNEY-GENERAL UNITED STATES  
SECRETARY OF STATE

BY

MONCURE DANIEL CONWAY

AUTHOR OF "PINE AND PALM," "THE WANDERING JEW," ETC.

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## PREFACE.

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IN a room of the Virginia Historical Society there is a portrait so blurred that the face is repulsive. It is the alleged portrait of a man described by his contemporary, William Wirt, as of "a figure large and portly; his features uncommonly fine; his dark eyes and his whole countenance lighted up with an expression of the most conciliatory sensibility; his attitudes dignified and commanding; his gesture graceful and easy; his voice perfect harmony; and his whole manner that of an accomplished and engaging gentleman." The portrait at Richmond, repudiated when painted, suffered all manner of ill usage; and its fate resembles that of the man for whom its dauber meant it,—Edmund Randolph. Painted by partisanship as he was not, his name has been marred by every prejudice, and his fame left to his country in conventionalized disfigurement. The Centenary of our Constitution has already brought a gallery of fresh historical portraits of its leading framers, but one panel, like that of Falieri at Venice, is vacant; there is no portraiture of the statesman to whom the initiation and ratification of the Constitution were especially due, except a blackened effigy hung up by enemies in a moment of partisan passion. This traditional effigy of Edmund Randolph I have examined by the light of facts and documents to which historians appear to have had no access, with growing conviction that the nation knows little of a very interesting figure of its early history.

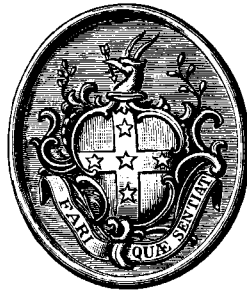
The true portraiture, personal and political, might have been given in small compass; but behind the vacant panel have been found facts and documents of wider scope. The more important of these have for many years been slumbering in families with

which I have a certain intimacy. These suggested the probable existence of others, which I have sought in many States and cities, including those of Europe. The result has been an accumulation of unpublished material, the reduction of which to the dimension of this volume has been the hard part of my task. Of course the elucidation of these papers has required occasional citation of others already published.

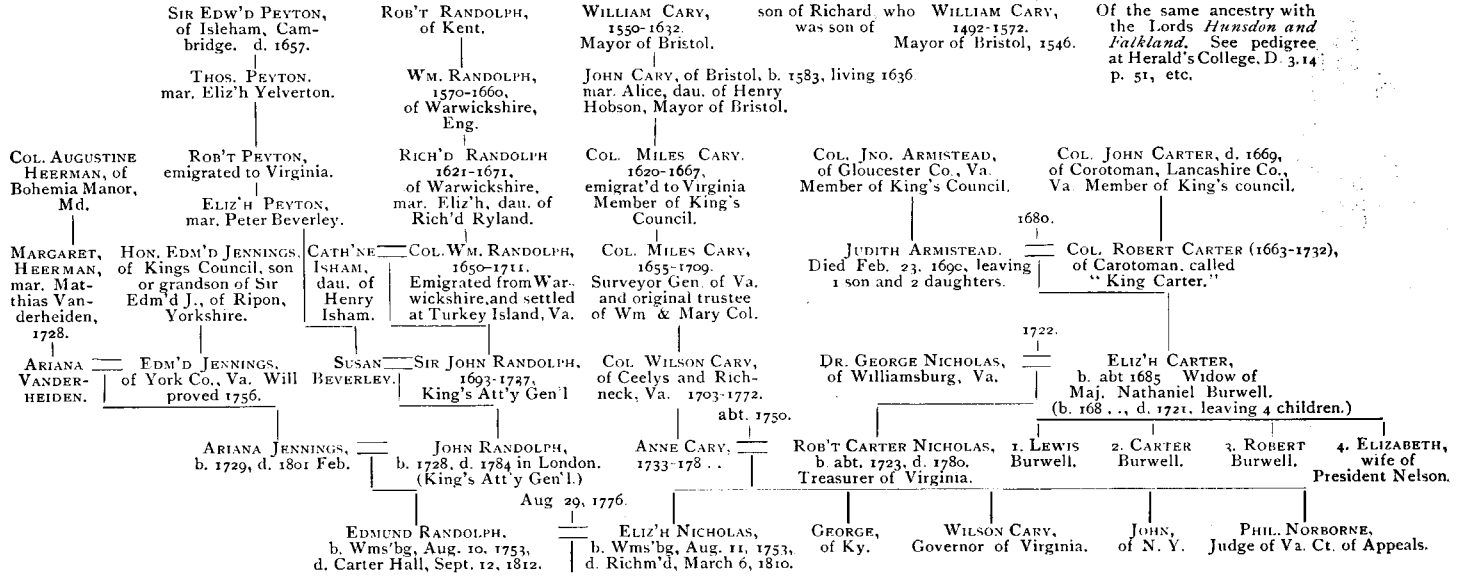
The historical student of our near future will, let us hope, be able to express gratitude to his government for the Bureau of Manuscripts, connected with its history, proposed by the Congressional Library Committee (1888). My own gratitude remembers the fact that our national negligence has some offset in the enterprise and liberality of our great private collectors. To their collections I have referred *in loc.*, but must here acknowledge the services I have received from Mr. McGuire of Washington, Mr. Dreer of Philadelphia, Mr. Gratz of the same city, Dr. Fogg of Boston, Dr. Emmett of New York, Mr. Ford of Brooklyn; also to Mr. Paul Ford, and to Mr. Worthington Ford of the State Department. To Mr. J. R. Garrison of the Treasury Department I am indebted for assistance in revising Randolph's accounts. Mr. Wilson Miles Cary, of Baltimore, has helped me in the genealogies. To Mr. Fenton, of London, and Mr. Durand, of Paris, I owe acknowledgments. To Mrs. St. George Tucker Campbell, a descendant of George Mason, and Miss Kate Mason Rowland; to the Hon. John Jay; to many descendants of Edmund Randolph,—especially Peter Vivian Daniel, Jr., of Richmond, and Edmund Randolph Robinson, of New York,—thanks are cordially given for the use of their family papers.

My work has been a labor of love and justice. It was in a field largely untilled, and no doubt has many imperfections. But I have done my best, and ask a patient and unbiassed attention to facts whose importance will not be denied.

Gules, on a cross argent, 5 mullets sable [pierced] was confirmed by Robert Cooke, Clarencieux, 15th March in 13th of Elizabeth, to Thomas Randolph, of Badlesmere Esquire, descended from the ancient family of Sir John



Randolph, of the County of Wilts, Knight . . . by the name of Randolph of Kent.—*A Display of Heraldry* (Gwillim). By not piercing their mullets the Randolphs of Virginia changed the Kent rowels to stars.



# EDMUND RANDOLPH.

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## CHAPTER I.

### THE RANDOLPHS.

“OUR homes are all haunted!” The words were archly spoken by the lady of a historic mansion in the ancient capital of Virginia. “I am proud to say we have two ghostly annual visitors in this very house—one the great man who built it, the other a beautiful girl in bridal dress.” A great man and a beautiful bride,—what house in Williamsburg has not known these? The old town is by no means a ruin; its picturesque homes, its parish church—fairly filled by refined people, who sit beneath mural tablets of their ancestors; its neatly kept university, whose venerable president awaits the student that never arrives; all suggest a departure of master spirits from forms still fair, which they might well love to revisit. It is a land of legends. One sits in rooms of quaint elegance, beneath pictures of noble and lovely faces, at tables adorned with heirlooms of porcelain and silver; and, listening to brave anecdotes that fade into dreams when passed from their habitat, establishes a certain intimacy with the old figures. They become more real than the people one meets on the street. On the portico of Wythe House, who cannot see sitting in the summer afternoon the sage chancellor? On the day, say, when Edmund Randolph brings him the offer of a seat on the Supreme Bench, then goes home to report to the

President that, while happy at being honored by Washington, he is too happy in his little legal monarchy to leave it. In Tazewell Hall, home of the Randolphs, now occupied by a northern family of Hamiltons, what reunions of republican and federal shades have prepared Imaginary Conversations for some American Landor!

The historic imagination may grow more realistic as it enters the college park, passes the bronze Lord Botetourt, and crosses the threshold of the first light-house of learning built in the South. As one enters the warm library the portraits have a self-conscious look: has President Blair been remonstrating with Professor Dew for having written the first pro-slavery book, or Bishop Johns deplored the rationalism of Bishop Madison? What American can enter without awe the Chapel, where have been uttered the youthful thoughts and aspirations of Blair, Mercer, Jefferson, Monroe, Marshall, Wythe, the Pages, Lees, Nelsons, Randolphs? Fires have scathed these ancient walls and destroyed their tablets, but faithful records illumine them with scenes they have witnessed.

Out of the great days that have shone on it since the English-Indian school of 1660 was transformed into the college of 1693, let us select one whose memorial is a unique pamphlet: "An Oration, in Commemoration of the Founders of William and Mary College, 15 August 1771. By E. Randolph, Student. Williamsburg: Printed by William Reid. 1771." What a glorious summer day was that when from far and near the gentry came to bear witness to the latest flower of an old race, and recognize in its colors the flush of their own blood! For what gentleman or lady could be unrelated to the Randolphs, and not stir with gentle pride at hearing how young Edmund, at eighteen, had won fame for scholarship and easily borne the palm for eloquence?

Dashing along the park are gay equipages, heraldic decorations, negroes in liveries, eclipsing the civic robes of their masters,

and ladies in court dresses beaming on roadside adorers. Inside the theatre are lustres no masquerade can reproduce. Governor Nelson and his Council, the Harrisons, Pages; Wythe, with his law-student, Jefferson; Patrick Henry, just admitted to the bar; have come in courtly dress. Among the students are Taylor of Caroline, Innes, Nicholas, and many another destined to shine in history. Randolphins have come from many regions to rejoice with the King's Attorney that his only son, with Mr. Speaker Peyton Randolph that his darling nephew, with beautiful Ariana and Susannah that their beloved brother, wears the mantle of an ancestry famous in the annals of literature and jurisprudence. That the young orator was of manly beauty, his voice winning, his manners engaging, ample testimonies exist. This first effort received the unusual compliment of publication by the faculty. A few sentences will suffice a generation which can hardly renew its youth so far as to gain the enthusiasm of a community in its springtide, gathering the first-fruits of its own culture.

"I should be ungrateful indeed did I not with pleasure embrace this opportunity to commemorate the munificence of our royal benefactors. For, as far as I can trace back the scenes of life, or recall the fleeting ideas of childhood, these walls, reared by the pious hands of William, have sheltered me in my infant studies. I am well aware that I shall sink in the attempt, but I depend on your benignity to support me. I am conscious also that it requires an Apelles to portray an Alexander; but should I be fortunate enough to drop, during this essay of youth, any thing worthy your attention, I should exclaim *εὐρηκα* with more than Ægyptian joy, as having found my reward in the approbation of the learned." "Cadmus instructed Greece in letters, and Greece was grateful: Triptolemus first opened to the astonished world the treasures of the teeming field, and the astonished world demonstrated their gratitude by following his example. But can we, the offspring of his care, mention the name of William and not be enraptured with his praise? To him it is perhaps owing that the savage Indian is not now defiling this holy spot, exulting in barbaric triumph over his captive fellow-creature pinioned at the stake of slaughter, and

panting with an impious thirst after the unhappy victim's blood." "Arise, renounce the errors of your age, and approve yourselves worthy of royal patronage! If past hours have escaped unimproved, quit not the present opportunity, but, like the holy patriarch, clasp the parting angel to thy bosom until he bless thee. Let future statesmen, future lawyers, future divines, here spring up, but such statesmen, such lawyers, such divines, as shall strive to do honor to their family, their country, their Alma Mater."

The memory of this oration, of the graceful and modest orator, of the enchained audience, long survived, and mothers pictured the scene to stimulate the ambition of their sons: Frances Bland Randolph, for instance, whose son, John Randolph of Roanoke, wrote that "the bent of his disposition" came from his mother's expression of a wish that he might be as great a speaker as Edmund Randolph.

The oration over, Williamsburg occupies itself with sports. In the evening the theatre will be crowded; the play may even be "Every Man in his Humor," by Ben Jonson, who used to call Thomas Randolph, the poet, his "son." Or the grand hall and drawing-room of Tazewell Hall will be gay with dancers. And when the summer vacation is fairly opened, young Randolph and his sisters, with select companions, may voyage on the beautiful river, touching at home after home of their relatives, and gathering at last in grand pic-nic beside the picturesque ruin of the first home of the Randolphs in the New World. There, in Turkey Island, they would read on a gravestone: "Col. William Randolph, of Warwickshire, but late of Virginia, Gentleman, died 11 April 1711."

The ancient gravestone remains to-day. When laid, it was the lowly memorial of a brave, ancestral history, and might symbolize the foundation of a national history. The English Randolphs had attained high rank in the time of Edward I. Thomas Randolph is mentioned in "Domesday Book" as ordered to do duty against the king of France. Sir John Randolph, Knt.,



was a Commissioner to summon Knights (1298); John Randolph of Hampshire, connected with the Exchequer (1385), was an eminent judge, and other judges of the name are mentioned in Conway Robinson's "History of English Institutions"; Avery Randolph was Principal of Pembroke College, Oxford (1590); Sir Thomas Randolph was an ambassador of Queen Elizabeth. A nephew and namesake of the latter was Thomas Randolph, the poet (1604-34), so beloved of Ben Jonson and his circle. Of him Feltham wrote :

"Such was his genius, like the eye's quick wink,  
He could write sooner than another think ;  
His play was fancy's flame, a lightning wit,  
So shot that it could sooner pierce than hit."

A monument by Sir Christopher Hatton was erected to the poet (Fellow of Trinity College, Cambridge), and, in memory of his youth and his virtues, a fit inscription might have been found in a poem of his own :

"Wouldst thou live long? The only means are these,  
'Bove Galen's diet, or Hippocrates' :  
Strive to live well ; tread in the upright ways,  
And rather count thy actions than thy days ;  
Then thou hast lived enough amongst us here ;  
For every day well spent I count a year.  
Live well, and then how soon soe'er thou die,  
Thou art of age to claim eternity."

Colonel William Randolph of Turkey Island, though founder of the famous race of Virginia Randolphs, was not the first of the family in that colony. His uncle Henry came in 1643, and left a widow who married Peter Field, an ancestor of Jefferson. Col. William arrived in Virginia in 1674, the year after this uncle's death. In the civil wars the fortunes of the family, who had been devoted loyalists, were broken. The young cavalier was not, however, without some means. He was taken by Governor Sir William Berkeley to his heart, was the particular friend of Lady Berkeley, and at once took a high position in the colony. He

fixed himself at Turkey Island,—which may then have been an island,—twenty miles below the point on James River where Richmond now stands. He endeared himself to the worthy Col. William Byrd, whose letters show Randolph a gentleman of high character. He was a member of the House of Burgesses, and, a probable tradition says, one of the Governor's Council. His ship plied between Bristol and Turkey Island, where, with English brick, was built the grand mansion with lofty dome, whose ruin remains. He became the possessor of vast plantations; was active in the work of civilizing the Indians; a founder of William and Mary College. "William Randolph, Gentleman," is a trustee in its royal charter. The houses he is said to have "built" (for his sons), has led some literalist to suppose him a carpenter. He was on the first Board of Visitors of the College. The traces of this old colonist in Virginia, during the thirty-seven years of his life there, are altogether pleasant to follow. His wife was Catherine Isham, of the neighboring estate, Bermuda Hundred. The patriarchal pair had seven sons and two daughters. The sons were distinguished from numerous relatives by the estates or homesteads their father bequeathed them: William (Jr.) of Turkey Island, Thomas of Tuckahoe, Isham of Dungeness, Richard of Curles, Henry of Chatsworth, Sir John of Tazewell Hall (Williamsburg), Edward of Breno. With exception of Edward, who settled in England, these sons all entered with energy on the affairs of the colony. William (b. 1681) was a Visitor of the College, a burgess, a councillor of State, and treasurer of the colony in 1737. Isham (b. 1687) finished his education in London, where he married in 1717, and returning to Virginia, built the grand mansion at Dungeness, in what is now Albemarle County, which he represented in the House of Burgesses (1740). He was Adjutant-General of Virginia, but devoted himself mainly to science. He and his hospitable household are honorably mentioned in the memoirs of Bartram, the naturalist. He

died in 1742. Richard also was a burgess, and for a time treasurer of the colony. He did not marry; but with this exception all of the children married and had families. The Rev. Dr. Slaughter, historiographer of the Diocese of Virginia, informs me that there are persons in that State descended from all the sons of William and Catharine Randolph. The descendants are even less notable for their number than their eminence. Besides the twoscore Randolphs known to the catalogue of William and Mary College, many of other names were descended from William of Turkey Island; and among these may be named William Stith, historian of Virginia; President Jefferson, Chief-Justice Marshall, Harry Lee of the Legion, Bishop Meade, General Robert E. Lee, Admiral Wormelcy, R. N.

The most eminent son of Col. William was Sir John Randolph,—perhaps the only native of this country ever knighted—born at Turkey Island in 1692. After graduation at “William and Mary,” he studied law at Gray’s Inn, London, and was soon after appointed King’s Attorney in Virginia. He was a Trustee of William and Mary College, and represented it in the House of Burgesses. In 1732 he visited England on colonial business, and was knighted. The first number of the first Virginia newspaper (*Gazette*, 6 Aug. 1763) reports:

“The House, having attended the Governor in the Council Chamber and being returned, Mr. Conway put them in mind of the Governor’s commands to make choice of a Speaker, and did nominate and recommend Sir John Randolph, as having given undeniable proofs of his abilities, integrity, and fitness to execute that important task; and several other members spoke to the same purpose. Then Mr. Harrison proposed Mr. Robinson for Speaker, and with him Mr. Carter and Mr. Berkeley agreed. But Mr. Robinson, standing up in his place, declared that he did not expect to be made a competitor with the gentleman that was named; that he was no ways qualified, and prayed that Sir John Randolph might be chosen without any opposition. And he was accordingly chosen by all the rest of the members, and con-

ducted to the Chair by two members ; and being there placed made a speech to the House."

In the "Virginia Historical Register," IV. and VI., may be found this speech and others that passed between the Speaker and Governor Gooch ; and also an account of the magnificent reception accorded Sir John at Norfolk, on occasion of his appointment as Recorder of that town. Sir John is said, by William Stith, son of his sister Mary, to have intended to write a preface to the laws of Virginia, "and therein to give an historical account of our constitution and government, but was prevented from prosecuting it to effect by his many and weighty public employments, and by the vast burden of private business from his clients." The materials he had collected were used by Stith in his history of Virginia. His library is believed to have been the finest in Virginia. His mural tablet in William and Mary College was destroyed by fire, but its Latin epitaph is preserved in President Ewell's history of the college. He died in the year after he was made Speaker. He was the first to be buried in the college chapel, to which he was borne by six poor men, among whom was divided twenty pounds, according to his will. An interesting sketch of Sir John may be found in the *Virginia Law Journal* for April, 1877. He was described by an anonymous but evidently able contemporary—perhaps the Rev. Professor Dawson, who gave his funeral oration in Latin—as the man of best judgment who had ever been concerned in the colonial administration ; and it is added : "He had, in an eminent degree, that *ingenua totius corporis pulchritudo et quidam senatorius decor*, which Pliny mentions, and which is somewhere not unhappily translated, the air of a man of quality. For there was something very great and noble in his presence and deportment."

Sir John married Susannah Beverley, of Gloucester, Va., by whom he had three sons—Beverley, Peyton, and John.

Peyton Randolph—of whom, strange to say, no biography exists, though he may be entitled the first American President—was born at Williamsburg in 1721, there graduated, studied at the Inner Temple, London, and at the age of 27 was appointed King's Attorney for Virginia. Sir William Gooch was then Governor. Peyton Randolph represented Williamsburg in the House of Burgesses. In those days the apostle of Presbyterianism, Rev. Samuel Davies, revived dissent in Virginia, and the question of toleration came before the General Court. The young Attorney doubting that the Act of Toleration did not extend to Virginia, Davies answered that, in such case, neither did the Act of Uniformity—this view being sustained in England. In 1751 Governor Dinwiddie and his family arrived and were guests of Peyton Randolph and his wife—a sister of Governor Harrison—to whom they became much attached. But ere long a demand was made, under royal prerogative, for a pistole fee on every land-patent, and a serious quarrel ensued. In 1754 the Burgesses commissioned Peyton Randolph to argue the case in London. A note (MS.) by Edmund Randolph, no doubt containing what he had learned of this mission from his uncle Peyton, possesses interest.

“The House of Burgesses revolted against an extortion hitherto unknown and dispatched Peyton Randolph, the then Attorney-General, to impress its iniquity and unconstitutionality upon the mind of his Majesty. In behalf of the Governor the debate was conducted by Murray, afterwards Earl of Mansfield, and Mr. Campbell. In behalf of the colony by Healey, since Lord Worthington, and Forrester. With an indelicacy foreign to the temper and manner of Murray, and with a brutal insolence congenial with those of Campbell, the exaction was palliated by their genius, and finally supported by the council of the king. The king was at one time compared to a private land-holder, who might modify his terms with the mercenary dexterity of a huckster. But when the trustee of Virginia was for her domains, how could he affix a real tax upon them without the assent of the legislature, was forgotten to be proved, if indeed it was not designedly waived,

by the illustrious Mansfield. Campbell remembered that the mere name of rebellion might be worthy because an operative resource of argument. He did not hesitate to charge Virginia, tractable as she was, with entertaining views beyond the rescinding of a paltry fee. We have no recorded details of the result of this controversy, but it is certain that the pistole was required until the increasing discontents caused it to be reduced one-half.

“The Governor was wounded to the soul, and personal revenge was his weapon. He superseded Peyton Randolph from the office of Attorney-General, and appointed George Wythe in his room. But as the habits of a seducing and of a not wholly unambitious profession never warped him from friendship or patriotism, he accepted the commission with the customary professions of gratitude, not disclosing his secret and honorable determination that he would resign it to his predecessor on his return. It is possible, however, that it had been intimated to the Governor from England that he was to be restored. Without such an instruction even this obdurate ruler would not have dared to contemn the lofty tones of the people.

“The House of Burgesses were as bold as the time would permit. Their opposition would have been folly had a resort to force constituted a part of it: to know when to complain with truth, and how to complain with dignity, was characteristic of watchful patriots, and ample for the only end which could then be projected.”

This quarrel was a sharp one. Dinwiddie was in need of money to fight the Indians, and the Burgesses voted £20,000; but they attached to it an appropriation of £2,500 for Peyton Randolph, on account of his mission to England, which the Governor refused to approve. There was a deadlock and a pro-rogation; in the end a compromise. The Attorney apologized for having left his office without leave. His reinstatement in office was presently followed by restoration to favor, when he headed the lawyers of Williamsburg and marched against the Indians in time to share the glory of driving them back to Fort Duquesne. Although he wrote the protest of the Burgesses against the Stamp Act, he voted against Henry's violent resolutions, not doubting that England would do them justice, as in the case of the pistole fee. When elected Speaker in 1766 he re-

signed the office of Attorney and devoted himself to political affairs; as these assumed a more threatening aspect he showed such prudence, as well as patriotism, that he was placed at the head of all important committees. He was chairman of the Colonial Correspondence Committee (May, 1773), and of the Virginia Convention of Aug. 1774, for which he was threatened with attainder in England. He was unanimously elected President of the Continental Congress when it first assembled, 5 Sept. 1774. While he dissuaded the citizens gathered at Fredericksburg (27 April, 1775), after Dunmore's removal of the gunpowder from the public magazine, from marching on the capital, he brought such pressure on the Governor that the powder was paid for. In May 1775, he fulfilled his duties as Speaker of the Burgesses, then presided over Congress at Philadelphia. There he died of apoplexy, 22 Oct. 1775. In the following year his body was conveyed by his nephew to Williamsburg, where it was laid in the college chapel beside that of his father, amid great honors, masonic and civic; for he was a Grand Master of Masons. He was probably the most intimate friend Washington ever had, and certainly one of the noblest figures in the early history of our republic.

John, seven years younger than his brother Peyton, after graduation at William and Mary, and the completion of his law studies in London, became head of the Williamsburg bar. When his brother resigned the position of King's Attorney (1766), John was appointed to that office under Governor Fauquier. He married Ariana, daughter of Edmund Jennings, some time King's Attorney of Maryland (though a native of Westmoreland, Va.). The family mansion, Tazewell Hall, with its library—second to none in the colony—came to this youngest son of Sir John, and was the centre of Williamsburg fashion as well as culture. The courtly Attorney, his charming wife, his beautiful daughters,—one of them, Ariana, of a beauty that became celebrated both in Vir-

ginia and England,—and the handsome young orator, Edmund, were favorites at the palace in Lord Dunmore's time. John Randolph was a man of literary tastes, a skeptic in religion, and not much inclined to politics, though always a liberal. His particular friend was Thomas Jefferson; they were deists together at an early age; and they used to play the violin together. A curious contract was formed between them by which, if John Randolph survived Jefferson, he was to have eight hundred pounds' worth of volumes from the latter's library; but, if John died first, Jefferson was to have "the violin which the said John brought with him into Virginia, together with all his music composed for the violin." This friendship continued through life, and after John Randolph's death his widow gave Jefferson power of attorney for all legal purposes inconsistent with the position of her son Edmund as heir.

John Randolph is described by William Wirt as a gentleman of the most courtly elegance of person and manners, a polished wit, and a profound lawyer. A characteristic anecdote is told of Henry's application to him for admission to the bar:

"At first he was so much shocked by Mr. Henry's ungainly figure and address that he refused to examine him. Understanding, however, that he had already obtained two signatures, he entered with reluctance into the business. A very short time was sufficient to satisfy him of the erroneous conclusion which he had drawn from the exterior of the candidate. With evident marks of increasing surprise . . . he continued the examination for several hours. . . . During the very short portion of the examination which was devoted to Common Law, Mr. Randolph dissented, or affected to dissent, from one of Mr. Henry's answers. . . . This produced an argument, and Mr. Randolph now played off on him the same arts which he [Henry] himself had so often practised on his country customers—drawing him out by questions, endeavoring to puzzle him by subtleties, assailing him with declamation, and watching continually the defensive operations of his mind. After a considerable discussion, he said: 'You defend your opinions well, sir; but now to the law and to the testimony.' Hereupon he carried



him to his office, and, opening the authorities, said to him : ' Behold the force of natural reason ! You have never seen these books, nor this principle of the law, yet you are right and I am wrong. And from the lesson you have given me (you must excuse me for saying it), I will never trust to appearances again. Mr. Henry, if your industry be only half equal to your genius, I augur that you will do well, and become an ornament and an honor to your profession.' "

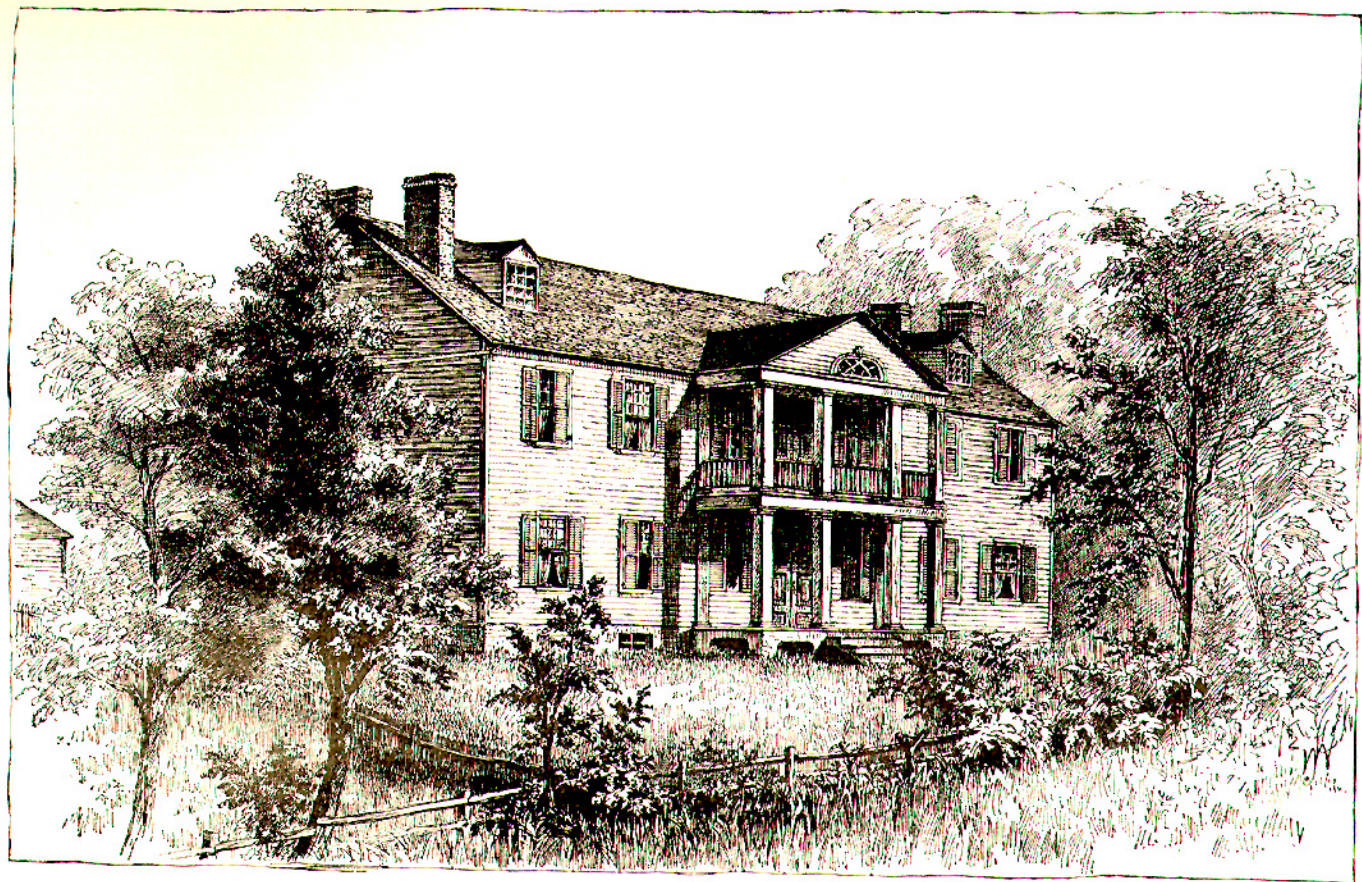
The only son of John was Edmund, with whom this history is especially concerned. Among the eminent Randolphs of the same and later generations may be named : Gov. Beverley Randolph ; Thomas Mann Randolph, Sr. ; Gov. and Hon. Thomas Mann Randolph, Jr. ; Lieut. Robert Randolph ; Thomas Jefferson Randolph ; John Randolph, of Roanoke ; Peyton Randolph (Second) (son of Edmund), jurist ; Edmund Randolph (Second), the eloquent advocate of California ; George Wythe Randolph ; Sarah Randolph, author ; Bishop Randolph, of Virginia.

## CHAPTER II.

### “A CHILD OF THE REVOLUTION.”

UNDER fairest auspices was born—10 August 1753—Edmund Jennings Randolph. His early life was a fairy-tale. Never was happier home than Tazewell Hall, on its green terrace beyond the town. At his father's hospitable table young Edmund listened to the conversation of the greatest men of his time,—to that of his uncle Peyton, of Wythe, Washington, Pendleton, Henry Tucker, Jefferson, Harrison, Nelson, Lee; there also he met every distinguished traveller who visited the most famous capital in America. A few hundred steps would bring him into the House of Burgesses, where he might listen to statesmanlike speeches, or in the General Court he might feel the magnetism of eloquence. There was no need now for Virginia's youth to repair to the bars of London. Randolph, after his brilliant career in college, studied law with his father, passed easily to an early success, and gained a high reputation with the bench for legal accuracy and exact thinking. Among the youth of Williamsburg the popularity of a good-natured youth with two pretty sisters was already assured.

Socially the little principality reached its full flower in Lord Dunmore's second year, or about the time when Edmund reached his majority. The palace was thronged with charming inmates and guests,—Lord and Lady Dunmore, Lord Fincastle, the Hon. Alexander and John Murray, the Ladies Catharine, Augusta, and Susan Murray. Between the palace and Tazewell Hall there was



TAZEWELL HALL.

cordial intimacy. So fair was the sky until that day when out of the north came a whirlwind. Early in 1774 tidings came that the ports of Boston were to be closed. The day decreed, June 1st was ordained in Virginia as one of fasting and prayer. The remembered impression of that day on Edmund Randolph is recorded in his unpublished history of Virginia.

“Mr. Jefferson and Charles Lee may be said to have originated a fast to electrify the people from the pulpit. Such is the constitution of things that an act of public devotion will receive no opposition from those who believe in its effects to appease offended Heaven, and is registered in the cabinet of the politician as an allowable trick of political warfare. Those gentlemen knowing that Robert Carter Nicholas, the Chairman of the Committee of Religion, was no less zealous than themselves against the attempt to starve thousands of the American people into a subservience to the ministry, easily persuaded him to put forth the strength of his character on an occasion which he thought to be pious, and to move for a fast to be observed on the first day of June, which few beside himself could so well delineate as a hopeful appeal to the Deity, and over which his reputation as a religionist spread popularity.

“The style in which the fast was recommended was too bold to be neglected by the Governor as an effusion which would evaporate on paper.

“It was a cement among the colonies, unconnected as they were in situation, and dissimilar as they were in manners, habits, ideas of religion and government, from the States abounding in slaves. It brought home to the bosom of each colony the apprehensions of every other, and if in the hour of reflection the ministry could have foreseen the approach of a closer union among the colonies, these resolutions might have been well interpreted into the seed of a revolution. The Governor therefore resorted to his power of dissolving the Assembly; a power which hindered the circulation of offensive matter under the legislative seal, but inoculated the whole colony with the poison against which it was directed.

“The Burgesses immediately after the dissolution, assembled with Peyton Randolph at their head, made the cause of Boston their own; protested with indignation against the taxation of America in the British Parliament, and the baseness of tampering with one section of a colony to sever it from the general sentiment, for the sake of the

spoils of another. A congress of deputies from each province had been discussed in town meetings in New York and Boston, and was now consigned to the Committee on Correspondence for execution. A convention was also voted to be holden in the latter part of the summer. The fast was obeyed throughout Virginia with such rigor and scruples, as to interdict the tasting of food between the rising and setting sun. With the remembrance of the king, horror was associated; in churches, as well as in the circles of social conversation, he seemed to stalk like the Arch-enemy of mankind."

Even sectarian feuds appear to have sunk into abeyance that day; at least I find that in Fredericksburg, second only to Williamsburg in importance, the Presbyterian Mr. Wilson read prayers, and the Episcopalian Mr. Marye preached,—from Psalm xii.: "The Lord shall cut off all flattering lips, and the tongue that speaketh proud things." If flattering lips were found at revolutionary Fredericksburg, home of the Washingtons and Mercers, they were much more numerous at conservative Williamsburg, whose ardor was largely imported with Burgesses from the Rappahannock Valley. The capital, built in fashion of a royal monogram, was controlled from the College, of which Lord Dunmore was Visitor and Governor, and wherein loyalty to the crown was the fortieth article of faith. Even in April 1775, after Dunmore had seized the gunpowder, the Faculty passed complimentary resolutions begging him to remain their Visitor and Governor; and a year later (12 April 1776) John Page writes to R. H. Lee that the College has expelled Captain Jones for "activity in the cause."<sup>1</sup>

The following letter from Edmund Pendleton, written soon after his arrival at Philadelphia to attend Congress to a friend in Massachusetts, adds fresh interest to an often told story.<sup>2</sup>

PHILADELPHIA, 15 June, 1775.—I have y<sup>r</sup> Fav<sup>r</sup> of the 25th of May & received pleasure in hearing that you and y<sup>r</sup> family were well, a

<sup>1</sup> MS. Lee Papers, Univ. of Va.

<sup>2</sup> I am indebted for the letter to Miss Chew, of New York, to whose ancestor of the same name it was written.

blessing which will enable a man to sustain all Calamities Public or private, of which we have all of us enough at present to call forth every exertion of Fortitude. The Crisis of our Fate in the present and unhappy Contest seems approaching nearer than may be imagined by us, and perhaps this Summer may determine whether we shall be slaves, or a Rotten, wicked Administration be sacrificed to Our Freedom, in such times there will be as great Variety of Sentiments as Constitutions, among those who have the same end in view. The Sanguine are for rash Measures w<sup>th</sup>out consideration, the Flegmatic to avoid that extreme are afraid to move at all, while a third Class take the middle way and endeavor by tempering the first sort and bringing the latter into action to draw all together to a Steddy, tho' Active Point of defense ; but till this is done, it is natural to suppose the extremes will be blaming each other, & perhaps in terms not the most decent, & each at times will include the third class in that which is opposite to themselves, this I have frequently experienced ; & must blame, since mutual Charity should lead Us, not to censure, but to endeavor to convince the Judgment of each other ; you are much mistaken my friend, in the sentiments of y<sup>r</sup> countrymen about paying for the Tea ; scarce a Man there (Scotch Merchants excepted) thinks it ought to be done, not on account of the trifling sum, but that it would be giving up the Cause ; and so early as May 1774 did our Convention Resolve that "if by dire Necessity Boston should be compelled to pay for the Tea we would never purchase or consume an Article of East India goods, till the Company refunded the money." To consider the question abstractedly, as only this, That a Company of Merchants sent their property & offered it for sale at a Market where they had a legal right to send it, & it was destroyed, no one could speak of its being wrong and that they had ought to pay for it : but when you take the case in its true light, consider the tea as sent in consequence of a Combination between the Ministry & Company to fix the Precedent in fav' of taxing Us ; (the only design of their retaining that trivial duty) That if Landed, the Tools of Government would have had sufficient Influence over the Virtue of individuals, to have affected the sale of it and that all their endeavors to send it away were defeated, Necessity of choosing the lesser evil justified them in its destruction, as the only means of avoiding the Poison : suppose it doubtful or even Wrong, the severity in the designed Punishment would scarcely incline Us now to retract and pay for the Tea. Upon a bare accusation thousands confessedly inno-

cent are condemned for the supposed Fault of about 40, & this without hearing & without Testimony ; Nor are these sufferings to have an end when the Tea is paid for or they have endured them for a limited term, but so long as the Minister Pleases, after " he shall be satisfied the Trade of Great Britain may be carried on w<sup>th</sup>out Interruption " that is in plain English, " until we shall agree to receive and pay for w<sup>th</sup>out murmuring all such goods as Parliament shall tax and send to Us": after this can we doubt of the Original Plan and design in sending the Tea? surely not, and then reason must reject the Idea of Paying for it. I am truly sorry for the uncasiness Col. Johnston has been subject to, and hope the Committees of Albany & Schenectady have 'ere this removed that & Satisfied the Indians. We have reason to Watch the motions of all Government Officers & especially in your parts when well we know it is projected by our Enemies to pour Mischief upon us from the Canadians & Indians, as far as they can effect it ; it was proper therefore to seize and guard the door of Canada as they had done ; I hope Col. Johnston had none other foundation than this for his apprehension of an Attack, For tho' it might have been in contemplation to apply to him to preserve the Indians in Neutrality, I dare say no hostility to him was thought of unless it should appear he had instructions to enlist the Indians against Us and intended to carry them into Execution, when his own good sense will suggest the propriety of resistance and Reprisals ; However as I hear he has assured those Committees of his having no such instructions or Intention, for which the nature of his Office and his great stake in the community seem a sufficient security ; As the Indian chiefs have declared that they don't consider themselves as concerned & shall not intermeddle in the dispute & as the Committees have assured Col. Johnston they know nor had heard of any intention to molest him, I hope this matter is settled to general satisfaction ; Whatever is done in this Affair, I consider Virginia as under particular Obligations to Col. Johnston for his Interposition with the Indians & keeping them from entering into the War against Us last year, and probably the Indians themselves owe him thanks for the same. I mentioned at setting out that our Affairs were growing Critical—3 Generals are arrived & 9 Regiments come or coming, whether all to Boston or to New York is yet to Us here matter of Speculation—the disgrace the Troops have met with in three skirmishes, must spirit up the Officers to some great Effort, which we may daily expect : however I am not apprehensive of very bad consequences, I think we have sufficient troops of brave men fighting for

their all & flushed with Victory, to repel them, and at once perhaps to put an end to the War; for I do not think the people of Britain will suffer their Ministry to lavish their blood & treasure in another experiment of the sort, especially when they are feeling the want of Our trade, that great resource of their Wealth.

All our friends as far as I hear are well in Virg<sup>a</sup> where we have had a small taste of the troubles of the times. L<sup>d</sup> Dunmore very imprudently had 15 half Barrels of Powder removed in the night from the Magazine on board a Man of War, whether Crown or Country property is uncertain. This alarmed the Country & I suppose 1,000 men were in arms to go to W<sup>ms</sup>burg on the Occasion, but sent an express there to know the true state of things. The Corporation requested they would not come down, as they had force enough in the neighborhood to effect any thing necessary to be done, but they believed him sincere in his professions that he only meant to secure it from the slaves & would return it—the greater part was satisfied; however 150 marched on to make Reprisals, but the Receiver General met them & having p<sup>d</sup> them a high value for the Powder they returned & that matter appeared to be Over. Our Assembly have since met & seemed to be going on smoothly in business, but we now hear the Governor has fled w<sup>th</sup> his family on board a Man of War & refused to return, saying his Assassination was resolved on, tho' the Assembly sent him a Message that they would protect him & be pledged for his safety. We have no certain account of the beginning of this Affair, but it probably was this—there are many stands of Arms in the Magazine from w<sup>ch</sup> the locks have been taken, & the people uneasy lest the Guns would also be taken away. Curiosity led a Burgess & two other men to go & open the door. Upon their doing it three guns went off, being so fixed as to do so on Opening the Door & so well placed as to wound every one of the three—this made a noise, the Governor was applied to and he threw it upon his servants, who to his face, avowed it to be done by his Orders; if this was the Case he might well fear what he must have been conscious he deserved, Assassination—it seems he privately sent to the Man of War for Marines to protect him (as he had done before) the Burgesses told him if they came, there should not a man of them return alive, and then he fled to them, since which we have not heard from them. I imagine I have by this time tired you & will only Add what we are at liberty to Publish, that Col<sup>o</sup> Washington is appointed General & Command<sup>r</sup> In chief of all the American Force & that a Committee of the whole Congress have voted to raise 15,000 men and



to emit a Continental Currency to Am<sup>o</sup> of 2 Mill<sup>s</sup> of Dollars to pay & provide for them. My best respects to y<sup>r</sup> Lady & family. I am D<sup>r</sup> S<sup>r</sup> Y<sup>r</sup> very Aft<sup>e</sup> friend

EDM<sup>d</sup> PENDLETON.

Rarely has explosive by its presence wrought such havoc as this Williamsburg gunpowder by its absence. Society was, so to say, blown to pieces. The saddest catastrophe was brought to the family at Tazewell Hall. The King's Attorney was indefatigable in trying to harmonize the antagonisms; for a time he did nothing but drive to and fro between Dunmore on his ship and the Burgesses at Williamsburg. But when, at length, it became evident that no reconciliation could take place, and that a revolution was at hand, John Randolph regarded his oath of service to the crown as binding on him. Our national sentiment is hardly yet mature enough to do justice to the memory of the many honest liberal gentlemen who were vulgarly called "Tories" in the Revolution. John Randolph was a martyr to his oath and his sense of honor. The friend with whose religious and other liberalism he most sympathized was Jefferson, and their correspondence shows the King's Attorney at heart on the American side. Lord Dunmore had gone on board the ship *Fowey*, 8 June, 1775. The Attorney sailed somewhat later. In a letter to him from Jefferson, August 25th, there is a suggestion that John Randolph's friends regarded his departure somewhat in the light of a mission. "Looking with fondness," says Jefferson, "towards a reconciliation with Great Britain I cannot help hoping you may be able to contribute towards expediting the good work." Peyton Randolph must have had the same feeling concerning his brother, to whom, in his will, dated 18 August 1774, unrevoked, he left the reversion of his property.

Edmund, just twenty-two, had espoused with ardor the American cause, but at a heavy cost. He parted from his parents and sisters on the seashore and returned to a deserted homestead.

Nay, worse, he returned to hear injurious whispers concerning his "aristocratic" father's "Toryism," with suspicious intimations concerning himself. On the other hand, his uncle and aunt, always tenderly devoted to him, took him to their hearts; indeed, being childless, they adopted him; the second reversion of Peyton Randolph's estate was devised to Edmund.

Jefferson's correspondence with John Randolph continued after the latter had settled himself in London. Under date 28 November 1776, he informs him of his brother Peyton's death, and adds: "I have it in my power to acquaint you that the success of our army has corresponded with the justice of our cause." These refugees in London had nothing to live on but a pension of £100, the smallness of which may have been due to the ex-attorney's lack of sympathy with the ministerial policy towards America. Their daughter Ariana had been in Virginia betrothed to Captain, afterwards Admiral, Sir Hyde Parker; but this was broken off, and her lover from student days, James Wormeley, renewed his courtship, and married her at Lord Dunmore's house in Scotland. John Randolph died in 1784, aged fifty-six. His dying request was to be buried in his beloved Virginia. In the first ship that sailed thither after the peace young Wormeley and his bride conveyed the dead body of the unfortunate Attorney. It was received by his son; the exile was buried beside his father and brother in the College chapel. The late Rear-Admiral Wormeley, R. N., was a son of James and Ariana, and I have a note from his daughter, Katharine, of Newport, R. I., well known by her literary and charitable works, which may fitly end this episode.

"My father had, as you know, a fond looking back to the past, a tender love for Virginia and all the family traditions and histories. He told them to us again and again from our childhood up. Many a pilgrimage I have made with him to Brompton, merely to walk before the house where his grandfather, John Randolph, died, and to the

Brompton churchyard, where his grandmother Randolph lies buried. That John Randolph parted with his son on the seashore I have heard father tell again and again : he no doubt got it from his father, whose heart turned towards the past as father's did. I remember also a history of how something over a year went by before the old man heard from his son, or received remittances, on account of the war, which stopped all communication ; of his yearning for Virginia, and his dying of an almost broken heart ; his entreaty when dying that he might be buried in Virginia,—a wish fulfilled by my father's father and his wife Ariana. Father said that John Randolph lost every thing by the Revolution, and lived in the utmost poverty in the obscure lodgings at Brompton. At one time Lord Dunmore gave him and his family a home in his Scotch house (or castle), and it was there, I think, that my grandfather married Ariana. My father, who always held the closest intimate communication with his father, was brought up to feel a passionate admiration for his uncle Edmund, and when his father left Virginia, after the death of his wife, he left his daughters in the house, and under the guardianship of Edmund Randolph."

## CHAPTER III.

### IN WASHINGTON'S FAMILY.

ALTHOUGH when John Randolph parted from his son he sailed for London, he may have been popularly associated with Dunmore's raids along the coast. It was a generation unversed in the ethics of revolution and of loyal oaths. Edmund found himself under a shadow, as his father's only bequest, and though his tastes inclined little to a military career, he resolved to join the army. His hero was Washington, and the only office he ever sought in his life was a post at the commander's side. Early in August 1775, he presented himself at Washington's Headquarters, Cambridge, bearing letters of introduction from the leading Virginians in Congress. One is from Benjamin Harrison, dated Philadelphia, 21 July 1775 :

"Edmund Randolph is here, and has the greatest desire to be with you ; he has beg'd of me to say something in his favour, and that if you can you will keep one of the places now in your gift for him. He is not able to support himself or he would not ask this of you ; you know him as well as I do ; he is one of the cleverest young men in America, and if Mr. Reed should leave you, his place of Secretary cannot be better supplied. He will set off for New York in a few days, and I beg it as a favour of you to write a line to be left at the Post Office till called for. This deserving young man was in high repute in Virginia, and fears his father's conduct may lessen him in the opinion of his countrymen. He has taken this method, without the advice of his friends, to raise him into favor, as he is determined on the thing. I am sure our good old Speaker will be much obliged by any favour you show him. Applications of this sort, I fear, will be too

frequent—I shall avoid them as much as possible, but I could not refuse it on this occasion, well knowing that a most valuable young man, and one that I love, without some step of this sort may, from the misconduct of his parent, be lost to his country, which now stands much in need of men of his abilities.”

Another letter is as follows:

PHILADELPHIA, 26 July 1775.

DEAR SIR:—With the most cordial warmth we recommend our countryman, Mr. Edmund Randolph, to your patronage and favor. This young gentleman's abilities, natural and acquired, his extensive connections, and, above all, his desire to serve his country in this arduous struggle, are circumstances that cannot fail to gain him your countenance and protection. You will readily discern, Sir, how important a consideration it is that our country should be furnished with the security and strength derived from our young gentry being possessed of military knowledge, so necessary in these times of turbulence and danger. Encouraged by your friendship and instructed by your example, we hope Mr. Randolph will become useful to his country and profitable to himself.

We most heartily wish you health and success, with a happy return to your family and country, being with great sincerity, dear Sir, your affectionate friends and obedient servants,

RICHARD HENRY LEE.

P. HENRY, JR.

TH. JEFFERSON.

Randolph also handed to Washington at Cambridge a letter from Richard Henry Lee. In answering this (29 August 1775) the General says: “The merits of this young gentleman, added to your recommendation, and my own knowledge of his character, induced me to take him into my family as Aide-de-Camp in the room of Mr. Mifflin, whom I have appointed Quartermaster General.”

Randolph was appointed on the fifteenth of August. He wrote few letters at this time. The following is dated 31 August 1775:

“Through a channel not worthy of much confidence we have received an account of the imprisonment of several Canadians for being

restless under their present exceptionable constitution. They are said in general terms to have wished a return of their former government ; but no movement towards a reform is specified as having been made. Added to the vagueness of this information, very late opportunities have offered directly to this place, by which this auspicious news, if true, could doubtless have been transmitted to us [*torn.*] . . . after the earnest endeavors of the Volunteers to replace him in Williamsburg, why is he so far neglected as to plunder Custom Houses with impunity and review his myrmidons on *terra firma* without danger of an arrest ? Indebted as I am, and shall ever acknowledge myself to be, to his lordship, I should offend against a higher obligation were I to wish his ravages uninterrupted or his hostilities unanswered. Not one advice have I heard or read from thence but what chance and a single newspaper have afforded me. Let me therefore entreat you to acquaint me with the circumstances of Virginia whenever your leisure can not be better employed than in writing to yours sincerely.”<sup>1</sup>

In the same way he writes, on the same day, to Jefferson :

“ No new occurrence at Cambridge can justify an Intrusion on the well-employ’d moments of a Delegate. I must, however, urge you, to assign a Reason for the Supineness of Virginia, amidst the Robberies, and other Violations of private Property, said to have been committed by Lord Dunmore. He plunders Custom-Houses, and reviews his Body-Guard at Gosport, unarrested. What is the conclusion from hence ? That Virginia has become eminent in her Forgiveness of former Injuries, and fearful of revenging new ? But such an Inference is surely uncharitable, unless, what I cannot believe, she has ceased to be virtuous. His Lordship’s demands upon me on the score of Gratitude I can never satisfy, but by acknowledging the Justness of them : yet a Demand from a higher Feeling must be first answered. Therefore I impeach him.

“ Since our Possession of plowed Hill, distant about  $\frac{1}{2}$  mile from the Enemy, Balls and Shells are no varieties. It is an approach towards them certainly ; but, as I am not oracular in military matters, my conjectures that it is not tenable in our present *craving* Circumstances, will not dishearten you. For your own Sakes, be expeditious in enabling us to burn the Traitors out of their Hole.

“ Desertions have been lately undertaken with the utmost Audacity. An enterprising Genius, who was one of 30 Regulars on Board a float-

<sup>1</sup> Lee Papers, Univ. of Va. (unaddressed).

ing Battery, in the absence of the Commanding Officer, opened his Intentions of quitting them to the whole Crew, without Reserve or sounding them individually. The Rhetoric which an appetite for fresh Meat ever suggests, prevailed with three others to join him in his Escape—with the remaining 26 to connive at it.

“My Brother Aide de Camp [Baylor] has just now set off for Providence to purchase 8 Tons of powder lately arrived.”

Col. John Trumbull—who says inaccurately that Randolph succeeded him as Aide-de-Camp—mentions in his “Autobiography,” among the requirements of that position to which he did not feel equal: “It was further my duty to receive company and do the honors of the house to many of the first people of the country of both sexes.” None could be more suited for this elegance than the handsome Virginian. Here he entertained Benjamin Franklin. No doubt, however, amid the siege he dreamed of such songs as those which, from the great heart of Longfellow, went forth from that same mansion to exalt the nobler virtues of peace. Randolph’s hereditary loyalty turned with enthusiasm to George Washington, and he became devotedly attached to the great man. It could not fail to be a consolation to the commander to have near him this brilliant youth, friend of his friends, nephew of one of the few who enjoyed his intimacy—Peyton Randolph.

But Randolph soon received tidings of the death of his uncle Peyton. This occurred 22 October, 1775. Peyton Randolph was laid in a vault in Philadelphia, with congressional honors. His death threw the Virginia Congressmen and Williamsburg into dismay. Representations were made to Washington that Randolph should be at the Virginia capital to attend to the many affairs, public and private, which had fallen from his uncle’s hands. Military and political affairs were in a critical condition in that region. Washington gave Randolph a furlough, and he bore dispatches to Congress, on his way to Virginia. His connection with Washington’s military family was nominally retained. From Cambridge

Washington wrote, 2 November 1775, to the President of Congress: "I could not suffer Mr. Randolph to quit this camp without bearing some testimony of my duty to Congress; although his sudden departure (occasioned by the death of his worthy relative, whose loss, as a good citizen and worthy member of society, is much to be regretted) does not allow me to be particular."

Early in the following year Congress appointed Randolph "Mustermaster" for Williamsburg District. Williamsburg appointed him (January, 1776) one of three judges to determine questions relating to the property of "Tories," and other questions growing out of the Revolution. The appointment as "Mustermaster" reached him in April; but, meanwhile, the Virginia Convention had been summoned, and Randolph had been elected to it by the old capital, which already saw the mantle of Peyton Randolph on the shoulders of his nephew. Randolph declined the lucrative military appointment for unpaid duties for which he felt more competent. Under date of 13 April 1776, he writes to the Committee of Safety:

"It distresses me much that I should be obliged to refuse the distinction intended for me by the Congress, in their appointment of me to the office of Mustermaster for this District. The citizens of Williamsburg having elected me to represent them in convention—and an ordinance excludes all persons holding any military post of profit from a seat therein,—I cannot desert them without the highest violation of gratitude. I must, therefore, entreat you, sir, to transmit these my reasons for not entering upon the duties of the above office, and my sincere acknowledgments for the favor."



## CHAPTER IV.

### THE VIRGINIA CONVENTION OF 1776.

EDMUND RANDOLPH was the youngest member of the famous Virginia Convention, which first met 6 May 1776. Though but in his twenty-third year, his influence was recognized by Jefferson, then in Congress, who through him conveyed his ideas to the leaders of the Convention. Jefferson urged Randolph to oppose the formation of a permanent constitution for Virginia until the people should elect deputies for that especial purpose. "He denied the power of the body elected (as he conceived them) to be the agents for the management of the war, to exceed some temporary regimen." The young member communicated these ideas to Edmund Pendleton, Patrick Henry, and George Mason.

"These gentlemen saw no distinction between the conceded power to declare independence, and its necessary consequence, the fencing of society by the institution of government. Nor were they sure that to be backward in this act of sovereignty might not imply distrust whether the rule had been wrested from the king. The attempt to postpone the formation of a constitution until a commission of greater latitude, and one more specific, should be given by the people, was a task too hardy for an inexperienced young man."—(Randolph MS.)

The inexperienced young man, as Randolph calls himself, probably shared Jefferson's misgivings that a revolutionary body might commit the State to an executive little distinguishable from a dictatorship. On June 21 he wrote to his "brother Aide-de-Camp," George Baylor, some hasty account of the situation :

"We are in confusion beyond parallel: no government is in existence but such as is vested in the hands of the Convention. This august body yesterday elected delegates for Congress, and rejected Colonels Harrison and Braxton. It was first determined we should have only five. The fortunate candidates were Wythe, Nelson, Jefferson, R. H. Lee, and T. L. Lee. We are engaged in forming a plan of government. God knows when it will be finished. It is generally thought that the contest will be between President Nelson and Mr. Henry, who shall be governor. Hunter's gun manufactory has turned out twenty or thirty excessively fine guns, upon which the Convention made a contract with him for all the guns he can make in the course of a twelvemonth, at the price of £6 each. I know not what to add, except that Lord Dunmore's estate is ordered by Convention to be sold."<sup>1</sup>

The Virginia Convention, on May 15, instructed their delegates in Congress to propose the declaration that "The United States are free and independent States." This resolution, celebrated on the following day with civic and military rejoicings, has been declared by Randolph to have been "drawn by Mr. Pendleton, proposed by General Nelson, and enforced by Mr. Henry."<sup>2</sup> It was followed immediately by a resolution appointing a committee "to prepare a declaration of rights, and such a plan of government as will be most likely to maintain peace and order in this colony, and secure substantial and equal liberty to the people." On this committee were Henry, Nicholas, Cary, Bland, Henry Lee, Mann Page, Digges, Carrington, Madison, Mason, and, young as he was, Randolph. No one was a more observant actor in affairs of the time than the latter, and his reminiscences, written in later life, may introduce other unpublished documents illustrative of this important period.

"To Patrick Henry the first place is due, as being the first who broke the influence of that aristocracy. Little and feeble as it was, and incapable of daring to assert any privilege clashing with the right of the people at large, it was no small exertion in time to surprise them with the fact that a new path was opened to the temple of honor

<sup>1</sup> From a letter in possession of Edmund Randolph Robinson.

<sup>2</sup> Oration on the death of Edmund Pendleton, 1803.

besides that which led through the favor of the king. He was respectable in his parentage ; but the patrimony of his ancestors and of himself was too scanty to feast ostentation or luxury. From education he derived those manners which belonged to the real Virginian planter, and which were his ornament, in no less disdaining an abridgment of personal independence than in observing every decorum interwoven with the comfort of society. With his years the unbought means of popularity increased. Identified with the people, they clothed him with the confidence of a favorite son. Until his resolutions on the Stamp Act he had been unknown, except to those with whom he had associated in the hardy sports of the field and the avowed neglect of literature. Still he did not escape notice, as occasionally retiring within himself in silent reflection, and sometimes descanting with peculiar emphasis on the martyrs in the cause of liberty. This enthusiasm was nourished by his partiality for the dissenters from the established church. He often listened to them while they were waging their steady and finally effectual war against the burthens of that church, and from a repetition of his sympathy with the history of their sufferings he unlocked the human heart, and transferred into civil discussions many of the bold licenses which prevailed in [the] religious. If he was not a constant hearer and admirer of that stupendous master of the human passions, George Whitfield, he was a follower, a devotee of some of his most powerful disciples at least.

“ The declaration in the first article of the bill of rights, that all men are by nature equally free and independent, was opposed by Robert Carter Nicholas, as being the forerunner, or pretext, of civil convulsion. It was answered, perhaps, with too great an indifference to futurity, and not without inconsistency, that with arms in our hands, asserting the general rights of man, we ought not to be too nice and too much restricted in the delineation of them, but that slaves, not being constituent members of our society, could never pretend to any benefit from such a maxim.

“ The fifteenth, recommending an adherence and frequent recurrence to fundamental principles, and the sixteenth, unfettering the exercise of religion, were proposed by Mr. Henry. The latter, coming from a gentleman who was supposed to be a dissenter, caused an appeal to him, whether it was designed as a prelude to an attack on the established church, and he disclaimed such an object.

“ After creating the office of governor, the Convention gave way to their horror of a *powerful* chief magistrate without waiting to reflect

how much stronger a governor might be made, for the benefit of the people, and yet be held with a republican bridle. These were not times of terror, but every hint of a power which might be stigmatized as being of royal origin obscured for a time a part of that patriotic splendor with which the mover had before shone. No member but Henry could with impunity to his popularity have contended as strenuously as he did for an executive veto on the acts of the two houses of legislation.

“Those who knew him to be indolent in literary investigations were astonished at the manner in which he exhausted this topic, unaided, as he was believed to be, by any of the treatises on government, except Montesquieu. Amongst other arguments, he averred that a governor would be a mere phantom, unable to defend his office from the usurpation of the legislature, unless he could interpose on a vehement impulse or ferment in that body; and that he would otherwise be ultimately an independent instead of a co-ordinate branch of power. His eloquence, however, had an effect only personal to himself; it only stopped the wheel of popular favor, while as to him, in this respect, it was inclining to roll backwards.

“It may surprise posterity that in the midst of the most pointed declamations in the Convention against the inequality of representation in the British House of Commons, it was submitted to in Virginia without a murmur, and even without a proposition to the contrary. The fact was that the counties to the eastward of the Blue Ridge, in which that inequality was the most glaring, were too numerous to be irritated, and it was tacitly understood that every body and individual came into the revolution with their rights, and was to continue to enjoy them as they existed under the former government, except in the example of the antiquated and reduced borough of James Town and the College of William and Mary, which were now to be stripped of the honors of representation.

“General Charles Lee took an early opportunity, after the introduction of the new government, of expressing to Governor Henry his anxiety to see the title of Excellency, which had been appropriated to former governors, who were not deputies, buried in the revolution. Some titles designating officers force themselves into popular language, while others, which are pompous distinctions having no intelligible analogy to the duties of the office, have been created by flattery. It is natural that a Governor or Judge should have his name coupled with his office; but Excellency and Honorable spring from vague allowances of

merit, as necessarily attached to certain posts. It was expected at the commencement of our revolutionary government that these gaudy trappings would be abandoned. They were retained indeed by usage, not by any authoritative recognition, nor yet from any admiration of the empty baubles in the country of our origin, or an anti-republican tendency in the people ; but they may be ascribed to a degree of pride which would not suffer the new government to carry with it fewer testimonies of public devotion than the old. This is verified by the total contempt of trifles by the officers themselves.

“ Every thing which had been done in the Convention of May was hailed as masterpieces of political wisdom, and acted upon with a cheerfulness and submission which naturally resulted from the first demonstration of popular self-government. The young boasted that they were treading upon the republican ground of Greece and Rome, and contracted a sovereign contempt for British institutions. With them to recede from those institutions with abomination was the perfection of political philosophy. Not a murmur was heard against the competency of the Convention to frame the constitution according to its full extent. Nay, so captivating were its charms, that it was many years before some of its defects, even upon the theory of democracy itself, were allowed or detected.”

From Randolph's critical retrospect we may be conveyed back to the fresh spirit of the revolution in Virginia by contemporary letters to Richard Henry Lee (in Philadelphia) from members of the Convention.

From John Augustine Washington, Williamsburg, 18 May 1776 :

“ I have the pleasure to enclose to you a Resolve of our Convention upon the subject of taking up government, and an instruction to our delegates in Congress to declare the United Colonies free and independent States. It is not so full as some would have wished, but I hope may answer the purpose. What gave me pleasure was that the Resolve was made by a very full house, and without a dissenting voice.”

After saying that the Resolution would have been better worded had not the Treasurer talked two days to no purpose, the letter continues :

“ I hope the great business of forming a well-regulated government will go on well, as I think there will be no great difference of opinion among our best speakers—Henry, Mason, Mercer, Dandridge, Smith ; and I am apt to think the President <sup>1</sup> will concur with them in sentiments. The Resolve with regard to government, etc., was entirely his.”

From Thomas Ludwell Lee. (Same date.)

“ Enclosed you have some printed resolves, which passed our Convention to the infinite joy of the people here. The preamble is not to be admired in point of conception, nor has the resolve for independence that peremptory and decided air which I could wish. Perhaps the proviso which reserves to this colony the power of forming its own government may be questionable as to its fitness. Would not a uniform plan of government prepared for America by the Congress, and approved by the Colonies, be a surer foundation of increasing harmony to the whole? However, such as they are the exultation here is extreme. The troops were drawn out and we had a discharge of artillery and small arms. You have also a set of resolves offered by Col. M. Smith ; but the first, which was proposed the second day by the president—for the debate lasted two days—were preferred. These he had formed from the resolves and preambles of the first day, badly put together. Col. Mason came to town yesterday after the arrival of the post. I showed him your letter, and he thinks with me that your presence here is of the last consequence. He designs, I believe, to tell you so by letter. All of your friends agree in this opinion. Col. Nelson is on his way to Congress, which removes the objection respecting a quorum of delegates. To form a plan of just and equal government would not perhaps be so very difficult, but to preserve it from being marred with a thousand impertinences, from being in the end a jumble of discordant, unintelligible parts, will demand the protecting hand of a master. . . . The delegates met at the capital and went to hear a sermon preached by the appointment of Convention. Corbin and Wormeley are banished,—the first to an estate his father has in Caroline, the other to his plantation in Berkeley. Adieu, my dear brother ; give my love to Loudounn, and let us have the satisfaction to see you assisting the great work of this Convention.”

From the same, Williamsburg, 1 June 1776 :

“ I enclosed you by last post a copy of our declaration of rights nearly as it came through the Convention [committee?]. It has since

<sup>1</sup> Edmund Pendleton.

been reported to the Convention, and we have ever since been stumbling at the threshold. In short, we find such difficulty in laying the foundation-stone that I very much fear for that Temple of Liberty which was proposed to be erected thereon. But, laying aside figure, I will tell you plainly that a certain set of Aristocrates, for we have such monsters here, finding that their execrable system cannot be reared on such foundations, have to this time kept us at bay on the first line, which declares all men to be born equally free and independent. A number of absurd or unmeaning alterations have been proposed. The words as they stand are approved by a very great majority, and yet, by a thousand masterly fetches and stratagems, the business has been so delayed that the first clause stands yet unassented to by the Convention."

From the same, Williamsburg, 6 December 1776:

"I almost inclined to begin a long story, but, as it is a foolish one, I hesitate. Yet, seeing also it is a very wicked one, I proceed, as it may be profitable to know those thoroughly who can be the contrivers of such tales. Soon after the return of Edmund Randolph from Philadelphia, C. B. gravely reported, upon the authority of the young man, that an act of piracy had been committed on the open sea by an eastern privateer on an American vessel coming from Nantes, loaded with goods for the Continental army,<sup>1</sup> which goods were taken on board by an order from the President of Congress, as appeared by Mr. Hancock's letter produced by the merchant captain to the commander of the privateer; that it afterwards became a question in Congress whether the pirate should be punished; that the New England delegates all supported this villain, and, on a division of our delegates, you and our brother were on the pirate's side, Harrison and Wythe on the opposite, Nelson being then absent; and, in fine, that a majority of Congress suffered this knave to go free and enjoy the fruits of his crime. During this recital, which passed in a full company at Mrs. Campbell's, the simple, the honest, the ingenuous Mr. Speaker of the Delegates appeared greatly amazed and shocked at such enormous profligacy, and entertained not the smallest doubt of its truth. In short, this solemn farce ended with a toast of reformation to the Congress. Mr. Randolph, being afterwards interrogated by a gentleman, turned, to use the gentleman's own lively description, white and blue and green and red, his visage lengthening extremely; swore he was abused and grossly misrepresented. He went immediately with this

<sup>1</sup> This word may be "account."

gentleman, Mr. Matzei, to the lobby and had B. called out, who, being expostulated with, said he had misunderstood him, and returned to the House with all the marks of a confounded, detected, self-condemned villain. We have discovered since that the Speaker intended, when a certain bill came in, to make use of this story to prove that the Congress merited no confidence or esteem, and that it would be improper to let an appeal lie from the provincial Admiralty. However, his courage has failed him, and the matter ends in confusion on the heads of these despicable wretches. Young Edmund, being told that Banister was of the company, mentioned the affair to him, who said: 'Oh, there was such a thing said, but nobody believed it.' Matzei observes thus to Randolph: 'My friend, these are a pack of damned, crafty, profligate knaves. You are young; let me advise you to keep on your guard against them; they care not whom they sacrifice, provided they may gratify their damned, malignant, deadly hate of liberty and virtue. Banister tells you nobody believed it, and yet you are certainly informed that they drank reformation to the Congress. Lay these things together; how do they fit, my friend?' So far Matzei."

Matzei was a scientific Italian who, with a small colony of Tuscans, had settled in Virginia; he took up arms in behalf of the Colonies, and was captured by the British. The State Treasurer, whose long speech vexed John Washington, and whose fear that the slaves might take to heart the Bill of Rights seemed impertinent to Ludwell Lee, was Robert Carter Nicholas, whose daughter Randolph presently married. He was ultimately as serviceable to the common cause as his censors. Indeed, in reading the Lee Papers (University of Virginia), from which the four preceding letters have been selected, with their objurgations involving honored names, I have remembered the words of Browning's "Luria":

"If we could wait! The only fault 's with time:  
All men become good creatures—but so slow!"



## CHAPTER V.

### THE FIRST ATTORNEY-GENERAL OF VIRGINIA.

AT the close of the Convention of 1776, the general admiration for Randolph rose to enthusiasm. The people saw in him the powerful house of Randolph restored. The Assembly elected him Attorney-General under the new Constitution (salary £200); Williamsburg elected him Mayor; and among the many notices of him in the *Gazette* of that great year, the following (August 29th) shows that he had been the object of another important choice:

“Edmund Randolph, Esquire, Attorney-General of Virginia, to Miss Betsey Nicholas, a young lady whose amiable sweetness of disposition, joined with the finest intellectual accomplishments, cannot fail of rendering the worthy man of her choice completely happy.

“Fain would the aspiring muse attempt to sing  
The virtues of the amiable pair—  
But how shall I attune the trembling string,  
Or sound a note which can such worth declare?  
Exalted theme! too high for common lays.  
Could my weak verse with beauty be inspired,  
In numbers smooth I'd chaunt my Betsey's praise,  
And tell how much her Randolph is admired.  
To light the hymeneal torch since they've resolved,  
Kind Heaven I trust will make them truly blest,  
And, when the Gordian knot shall be dissolved,  
Translate them to eternal peace and rest.”

Miss Nicholas was daughter of the Hon. Robert Carter Nicholas, State Treasurer. “We were both,” Randolph writes to his children, after his wife's death, “born in the city of Williamsburg,

within twelve hours of each other ; myself on the 10th of August, 1753, and she on the 11th. My aunt Randolph, who saw each of us soon after our birth, facetiously foretold that we should be united in marriage—a circumstance which, improbable at the time from the dissensions of our families, seemed daily to grow into an impossibility from their increasing rancour. In childhood we were taught the elements of reading at the same school, where the vivacity of our tempers produced many of those—[words illegible]—and I conjecture that she too had entertained some early partiality. However this might have been, she won me by the best of all graces, cheerfulness, good sense, and benevolence. I do not recollect that I reflected much upon that range of qualities which I afterwards found to be constituents of nuptial happiness ; but Providence seemed to be kinder to me than my most deliberate judgment could have been. . . . I desired nothing more than that she should sincerely persuade herself that she would be happy with me.”

Mrs. Randolph brought as her contribution to their fortune, shrewdness and economy. The young people had to depend mainly on remunerations of practice other than the small sums then attached to the two offices. “ His success at the bar,” says Grigsby, “ was extraordinary. Clients filled his office and beset him on the way from his office to the court-house, with their papers in one hand and their guineas in the other.” His working power was not surpassed even by his eloquence. Randolph’s reputation, as Virginians of a certain age have received it from their grandfathers, is unique in the combination of exactness in statement, lucidity of language, and an impressive simplicity which allayed distrust. His unbroken success from the day when he rose as the particular star of the college theatre until, twenty-five years later, he was removed from the forensic arena, cannot appear mysterious to those who have read with care his speeches in the conventions, and his state papers. To make

clear his point, and to carry it, constituted his art. The absence of every thing that might draw attention to himself in his argument, the simplicity of statement, accompanied, as they were, by unconscious charms of presence and manner, must have been very impressive in contrast with the rhetoric of Wirt and sublimations of Patrick Henry. His personal advantages are described by Wirt in the "British Spy."

"A figure large and portly ; his features uncommonly fine ; his dark eyes and his whole countenance lit up with an expression of the most conciliatory sensibility ; his attitudes dignified and commanding ; his gesture easy and graceful ; his voice perfect harmony ; and his whole manner that of an accomplished and engaging gentleman. I have reason to believe that the expression of his countenance does no more than justice to his heart. If I be correctly informed, his feelings are exquisite, and the proofs of his benevolence are various and clear beyond the possibility of doubt. He is a man of extensive reading, a well informed lawyer, a fine *belles-lettres* scholar, and sometimes a beautiful speaker."

This description, however, refers to Randolph in the later years of his life. His appearance, as he stood in the Virginia Convention of '76 is described by Hugh Blair Grigsby: "His noble stature, his handsome face, his unfailing address, insensibly arrest the attention. . . . He spoke with a readiness, with a fulness of illustration, and with an elegance of manner and expression that excited universal admiration."

Randolph's title as Aide to Washington continued, and he kept his chief advised of affairs in Virginia. In a letter before me, of October, 1776, he gives Washington a sad account of the condition of troops at Williamsburg, much sickness prevailing among them. Apparently answering a demand for new levies, he asks: "In Heaven's name, where are they to come from?" He also announces the complete vindication of Col. Harrison, whom some calumnies, attributed to the Lees, had for once caused to be defeated in the choice of Congressmen; and who

not long after supplanted Lee (R. H.) in that body. Soon after this, Randolph repaired to Washington's head-quarters, and on his return to Williamsburg brought with him from Philadelphia the body of Peyton Randolph, who was laid beside his father in the Chapel of William and Mary College 26 November, 1776, with imposing civic and masonic honors. The "excellent oration" on this occasion was given by the Rev. Thomas Davis, who afterwards, while Rector of Christ's Church, Alexandria, delivered the oration before the Free-Masons on the death of Washington. Peyton Randolph had been Provincial Grand Master of Virginia. It may here be added that Edmund Randolph was Grand Master, 1784-88, of Virginia, and, as such on 28 April 1788, founded the Alexandria Lodge, with George Washington for first Master.

Randolph and Patrick Henry were friends personally, though generally antagonists in law cases. Virginia was proud of her two eloquent leaders, and desired for them a larger field than the court-room. They were elected to Congress in the spring of 1779. Henry declined, his law business at home being urgent, and the political affairs of his State being of paramount importance. Randolph accepted, and in July made his way to Philadelphia,—a tedious and dangerous journey. The State still retained him as its Attorney-General.

Randolph visited head-quarters, before the meeting, and was present at the battle which he describes with spirit in a letter to Jefferson, of 27 July 1779:

"The annals of the war, though perhaps they may contain a more important, will not transmit to posterity a more brilliant action than the reduction of Stony Point, which was effected on the 16th instant, under the command of General Wayne. The fort, scarcely more accessible by nature than Quebec itself, was rendered more difficult of approach by abattis and other military obstructions. If the ardor of the assailants could have been damped by human means, the deep morass and strong works in front and flank, which they had to pass and subdue, would have furnished a reasonable excuse. But volunteers alone

being admitted into this dangerous enterprise, they marched up with firmness in the face of a galling fire of musquetry and a twenty-four pounder, loaded with grape shot. The business was done by the bayonet only, for, although the party which was sent to amuse the garrison was directed to keep up an incessant fire, the two columns to whom the real attack was assigned mastered the works without a single discharge of their pieces. What could veterans do more, than to put their whole confidence in cold steel? Indeed, the van consisted of 150, who advanced with unloaded muskets. The wounded on the side of America are one Lt. Col., two Capts., three Lieuts., ten Sergts., three corporals, and sixty-four privates; the killed, two Sergts., and thirteen privates. The killed of the enemy are 63, the wounded 43, and about 441 privates besides were taken, together with several officers. The stores, I believe, were considerable, and are ordered to be appraised, with a view of complying with General Washington's engagement that they should be distributed among the soldiers, if successful. The post greatly annoyed our army, but, requiring too large a number of men to hold it, has been destroyed.

“P. S.—You will oblige me much by suggesting to me such reflections as occur to you on the subject of peace—not on the propriety of making it, if possible, but on the terms necessary for America to insist on.”

Philadelphia was at this time in a singular state, socially, English sympathies being prevalent in society, and the popular radicalism of a rather rude type. A curious picture is presented in a letter of Richard Henry Lee (5 July 1778) to his brother Ludwell:

“We had a magnificent celebration of the anniversary of independence yesterday, when handsome fireworks were displayed. The Whigs of the city dressed up a woman of the town with the monstrous head-dress of the Tory ladies, and escorted her through the town with a great concourse of people. Her head was elegantly and expensively dressed, I suppose about three feet high and proportionate width, with a profusion of curls, etc., etc., etc. The figure was droll, and occasioned much mirth. It has lessened some heads already, and will probably bring the rest within the bounds of reason, for they are monstrous, indeed. The Tory wife of Dr. Smith has christened this figure *Continnella*, or the *Duchess of Independence*, and prayed for a pin from her

head by way of relic. The Tory women are very much mortified, notwithstanding this."<sup>1</sup>

The alternate duties of Attorney-Generalship having recalled Randolph to Williamsburg, he resolved to remain, and (5 Oct. 1779) sent his resignation to the Speaker of the House :

"I repaired to Congress in obedience to the command of the General Assembly at their last session and in conformity to your opinion, that no citizen ought to decline a service to which he might be called by the voice of his country, without a good cause. To such of my friends as urged me to accept the appointment, I respectfully represented my situation in life, and the dependence of my family on the fruits of my profession. They thought that I might discharge both public and private duties, returning from Philadelphia to the different Courts. With this idea, I yielded to their application. But after having made the experiment I find, that to be in Virginia at those seasons when the office of Attorney-General may require my presence, will leave a small portion of my time indeed for my attendance at Congress. This will appear to be the case, when it is remembered that the interests of the commonwealth make an advocate necessary in the Courts of Appeal and Chancery, and in general Court, some one of which will be sitting, with scarcely an interval of two months, from this time to the end of my delegation. I therefore entreat the General Assembly, whose frequent instances of favor towards me would render any defection from the service of my country unpardonable, to consider my embarrassments, and to believe that nothing but my obligations to those who look up to me for support, would induce me to resign a seat so honorable in itself, and as a demonstration of public approbation."

I also found in the loft of the State House at Richmond this account :

DR. <i>The Commonwealth of Virginia in account with Edmund Randolph.</i>		CR.	
1779.	£ s. d.	1779.	£ s. d.
July.	To travelling from Williamsburg to Philadelphia as a delegate to Congress, 320 miles, at 6d. per mile . . . . .	July.	By cash received from the treasury . . . . .
	96 0 0		1,000 0 0
			549 2 0
			Balance due to the Commonwealth . . . . .
			£450 18 0

<sup>1</sup> MS. Lee Papers. Univ. of Va.



## CHAPTER VI.

CONGRESS 1780-1782.

IN the following year (1780) the Assembly insisted on returning Randolph to Congress again, and although he was making money he yielded to solicitations. Among his various qualifications for having tasks imposed on him was a familiar knowledge of the French language. The consideration of communications from France and other European (continental) countries was largely entrusted to him. Among his letters of this period are two to Jefferson,—who had declined the embassy to France on account of his wife's ill-health.

“Phila., 7 Sept. 1781.—By the last post I suggested to you that our European affairs would probably bear greater delay than you had apprehended. What you call your temporary disability will be removed early enough to allow you to reach France by January. From Col. Laurens' account I am induced to believe that Great Britain will never admit an American plenipotentiary into the Congress before which a general pacification is to be agitated, until some humiliating stroke of war; and until such admission France will not negotiate on the subject. These considerations fully answer your objection, and give me an opportunity for wishing for authority to say that you will embark upon the embassy.”

The next letter to Jefferson is dated at Philadelphia 9 Oct. 1781:

“I was much distressed on the receipt of your late favor by Mrs. Randolph, to find your irrevocable purpose of sequestering yourself from public life. If you can justify this resolution to yourself I am confident that you cannot to the world. There remains now no alternative but either to consign Southern interests wholly to the manage-



ment of our present ministers, or to interdict them from the exercise of all discretionary power.

“My distance from Collé prevents me from attending to George Hay so minutely as my knowledge of his genius and application inclines me to do. I must request you, as a friend to rising abilities, to give him a hint of such books as my little stock will afford, and are suited to his progress. I am certain that an apology for consigning this trouble to you is unnecessary.

“Mr. Adams has been harassing the Pensionary of Holland with overtures of a treaty of commerce. He seems to have committed the dignity of America by his importunities, and being so often repudiated. This he has done against the opinion and advice of Count de Vergennes. Our country does not rest, I hope, upon the prospect of a loan from Holland, or of any new pecuniary aid from France. France has embarrassed herself by her advances for America, and forewarned us to rely on ourselves alone for fresh supplies of money. I must entreat you to add one more object to your journey to the Assembly,—enforce the necessity of a statement of our accounts against the continent being forwarded to us and of establishing sufficient funds to enable Congress to carry on the war with effect.

“Capt. Gillon, who took on board of his ship £10,000 sterling worth of clothing, and was supposed to be lost, is arrived at Falmouth, in Casco Bay.

“Mrs. Randolph would tire me with a narrative of Mrs. Jefferson’s and your attention to her since my absence, did I not take pleasure in professing myself to be at all times your friend,” etc.

In the autumn of 1781 the Virginia Assembly, which had previously given its consent to the five per cent. impost required by Congress, suspended its consent until the other States should pass similar laws. To secure reversal of this retrogressive step, and to discharge duties as Attorney-General, Randolph repaired to Virginia early in 1782. A further task of obtaining for his colleagues in Congress moneys due them by the State, is shown to have been pretty hard, by the following notes to his fellow-sufferer, Madison :

“Richmond, April 11, 1782.—My family are now fixed at an humble cottage, about six miles distant from here, which forms a contrast with Philadelphia that nothing can reconcile me to but the presence

of my domestic triumvirate and the pleasure of my library. I might add another cause of consolation, when I address myself to you, who are at this moment perhaps suffering under the severe anguish of the want of money; altho' we have only coarse fare, we wish for much less than we did whilst surrounded by the luxuries of Philadelphia, and have, therefore, less occasion for cash."

"April 19, 1782.—I can assure you that I return to the law with a species of sorrow. It is not often that I lament my want of patrimony; but, when obliged to exchange a pursuit liberal and extensive like politics for reports and entries, I surely do not commit an unpardonable sin in reprehending my father for not handing down a fortune to me. This melancholy reflection paves the way for an answer to your invitation to Philadelphia. I must recover what I expended there, and see a firm establishment for our support, before I set my face northwards. Let the Assembly provide funds; I shall have immediately a violent conflict with prudence."

The Virginia Act provided for its Congressmen handsomely; but unfortunately the treasurer rarely had money to pay them, and it was almost impossible for members with families to live in Philadelphia. Madison, being a bachelor, had managed, with the assistance of his father and the patience of Haym Solomon the broker, to remain; but he was for a time the only Virginian in Congress, and even he must have left but for Randolph's pertinacity at the Treasury in his behalf. The now humorous, but then serious, situation has been described by Rives, (*Life of Madison* I. 521), and Randolph's unwearied services appreciated: appreciation of this statesman's services to others is rare enough to merit mention.

The election of Congressmen by the Virginia Assembly took place in May. At the time of the (second) election of Randolph to Congress (1780), the law of Virginia disqualified a delegate from serving more than three years in any term of six. In 1782 Madison (elected 1779) would have been disqualified, had not the law been repealed in order to continue the old delegation. This was not done, however, without jealousies, as appears by a letter (20 June 1782) of Randolph to Madison.

"My last and preceding communications which spoke of certain manœuvres, alluded to in your letter of the 11th instant, mentioned, I believe, that a design appeared to be formed against the re-election of you and myself to Congress. The attack was unexpected; and the secret suggestions, which were intended to injure, had had their fullest operation before it came to the knowledge of our friends. But it may be triumphantly said that the wicked and malignant did not dare to exclude from their most poisonous reports a respect for our characters. You were assailed under the garb of friendship. It was lamented that the rigor of the law should cut off so valuable a servant from public employment; and to say the truth, there was such a fervency of compliment that it was unpleasant to distrust its sincerity. I, too, was declared to be ineligible, after a preface overflowing with panegyric; and, indeed, the manifesto of hostility never could wear a milder form. However, Patrick Henry propounded the question respecting my eligibility, for he had been informed of their clandestine operations. No man rose to assert the negative, except Richard Henry Lee. He was fulsome in commendation, as I am informed, and protested against every possibility of exception but from that quarter. He had no other coadjutor than the Old Squire [Richard Lee]. The Doctor [Arthur Lee] spoke in opposition to his brother, upon pretty much the same principle as that which actuates two eastern delegates when they divide, namely, an affectation of candor."

The aunt alluded to in the following letter (from Richmond, 16 August 1782), was Mrs Peyton Randolph (sister of Gov. Harrison).

"By a friend, who left Williamsburg on Sunday last, I am informed of the dangerous illness of my inestimable aunt. I fear, when I compare her age, her disorder, and the violence of the present attack together, that I shall be soon deprived of a second mother and a relation having equal affection and partiality for me as if she had been connected with me by the nearest ties of blood. This loss, should it happen, may produce a new arrangement in my affairs, and give a new turn to my resolution with respect to my return to Congress."<sup>1</sup>

<sup>1</sup> On 24 August 1782, Randolph reports an incident similar to one which occurred at Richmond during the Confederate War, humorously described by the late Mr. Bagby.

"Three days ago we were informed that a large fleet, consisting of no less than

In reply to Madison's urgent desire that he should return to Congress, Randolph states (22 Nov. 1782) the difficulties presented by his law business, and adds :

"I shall probably be obliged to remain here for some time in preparing the vindication of our title to the western country, [*words illegible*] and this, too, from the reappointment of Mr. J[efferson], on whose shoulders I wished to throw the penmanship of the work.<sup>1</sup> To keep my name up, therefore, when I must be necessarily absent, would be an obstacle to the reinforcement of a better man."

About this time Randolph resigned his seat in Congress, his place being filled by his friend John Francis Mercer, who, alas, opposed Madison's valiant efforts to secure from the States funds for the general government. "For many reasons," wrote Madison to Randolph (28 Jan. 1783), "which I have not time to explain in cypher, it is my decided opinion that unless such funds be established, the foundations of our independence will be laid in injustice and dishonor, and that the advantages of the Revolution, dependent upon the federal compact, will be of short duration." In order to conciliate the Southern States, which objected that their quota was unjustly estimated by inclusion of non-taxpaying negroes, Madison introduced in Congress (March, 1783) the rule of representing negroes, which afterwards found place in the Constitution.<sup>2</sup> Even Washington's appeal for the impost (June, 1783) could not prevail for some time. "The arrival of Gen. Washington's circular-letter," writes Randolph to Madison (28 June), "excited this hope in the minds of the sanguine; but its effect is momentary; and perhaps it will hereafter be accepted by the Assembly with disgust. For the murmur is free and general against what is called the unsolicited obtrusion of his advice."

eighty sail, were seen within our capes. This story naturally brought to our recollection the embarkation at New York. But it cannot be said to have alarmed us. From the want of confirmation I am well satisfied that a speculator was concerned in its fabrication."

<sup>1</sup> Eventually assisted by George Mason, Chairman of the Committee.

<sup>2</sup> Rives' Madison, I. 424.

By Peyton Randolph's will, dated 18 August 1774, his estates,—three farms, so far as I can discover,—negroes, and other property, were to pass to his wife, next to his brother John, and on the latter's death to Edmund, "subject to the payment of five hundred pounds to each of his sisters, Susanna and Ariana Randolph, for the payment of which sums I allow him four years after the estate shall come into his hands, he paying them interest yearly for such sums as remain unpaid." It is added: "I do hereby empower my executors to sell my books and presses to pay my debts, and, if that is not sufficient, to sell so many of the negroes as they think can be best spared from the use of the plantations to answer that purpose."<sup>1</sup> The management of the property was at once in Edmund Randolph's hands, all his aunt could pay for his services being sent over to his parents and sisters in London. He had great trouble with it in the revolutionary times, when, as he says in one of his manuscripts, "the helpless wives and children were at the mercy not only of the males among the slaves, but of the very women who could handle deadly weapons." It was a relief when he heard that some of the Randolph negroes had gone off to Cornwallis; but these came back, and for many years after were pensioners on the compassionate master.

By the death of Mrs. Peyton Randolph, the estate of her husband fell to his brother John. But John had left a number of debts, the interest on which had accumulated, and though Edmund sent remittances to his parents and sisters, dwelling in poverty in London, the money came from his own pocket. On 1 February 1783, he writes to Madison :

"So deeply am I impressed with the dismal effects of our refusing the five per cent. [*i. e.*, impost demanded of the States by Congress],

<sup>1</sup> The executors are his wife, his brother John, and James Cocke. At probate, 20 Nov. 1775, Betty Randolph and James Cocke made oath thereto, "liberty being reserved for John Randolph, Esq'r, the other executor, to join in the Probat when he shall think fit."

that if I could accommodate some violent altercations in which I am involved by the falling of my uncle's estate into my hands, and I supposed that incessant efforts would accomplish its revival, I would go into the Assembly. But a curious incident has happened to me. My father, who is an alien, having an interest for life in the estate before it of right belongs to me, his creditors, numerous and greedy, are pressing hard upon me for a delivery of the property to their use. Now, if the laws were to justify me in the most exclusive appropriation of those funds to my own use, I would not so apply them ; but I cannot bear the separation of negro families. I have therefore taken a middle mode, to offer the creditors the profits during my father's life. These deductions added to the certain necessity and obligation of supporting his family, will incumber me immensely. However, if I can make a fortunate compromise, I may afford to resign my office and will go into the Legislature."

Randolph continued his labors in behalf of the demand of Congress, and toward the end of the year they were crowned with success. Virginia yielded.

There was a talk in Congress of reimbursing former presidents of that body, and Hon. Arthur Lee wrote to Randolph about a possible claim in behalf of Peyton Randolph. Randolph replied that his uncle's expenses did not exceed those of any other delegate, and nothing existed on which any charge could be built. "As a creditor of my father you shall receive equal measure with others. What that measure will be I do not as yet know."

At John Randolph's death in London, early in 1784, Edmund became heir of Peyton Randolph's estates ; but he also became heir to a patrimony of debt, gathered on their way to him, which, with the thousand pounds to be paid his sisters, was a heavy burden. He could have disencumbered the estates had he been willing to make them scenes of negro auctions. He was urged to this by his wife. Although no wife was more loved, and though she had managed to change the young deist to a churchman, Mrs. Randolph could not bend her husband from his anti-slavery convictions. The anti-slavery sentiments of these old Virginians

were not inconsistent with holding slaves, for at that time there was no region in which they could be free; but they would not sell human beings, and dealt not with slave-dealers. Randolph paid his sisters their uncle's bequest, and, securing the best terms he could with his father's creditors, set himself to hard work. The debts were paid, but Randolph derived little benefit from his uncle's bequest; the produce of the land scarcely sufficed to support the increasing number of negroes. Nevertheless, he had a magnificent law practice, a happy home, troops of friends, and, so long as public duties did not call him from these, Randolph, who had no vices or even luxurious tastes to indulge, was a happy man. His wife was a homely woman in all senses; she was also, it may be suspected, straightlaced. When Jefferson and Wythe came over to play chess with Randolph on Sunday, she remained out of the room, and the amusement was not repeated. She was educated and refined, but not a "society woman," and Randolph's public friends were never able to understand his enthusiasm for her. But she was a devoted wife, and his as loyal a heart as ever beat.

Randolph's dislike of his profession did not include its larger relations, but was based on certain dismal conditions of practice in his region. The two letters following leave little reason for wonder that he should "return to the law with a species of sorrow."

On 30 August 1782, he writes to Madison:

"The laxness and inefficacy of government really alarms me. A notorious robber, who escaped from gaol about a twelvemonth ago, has associated in his villainies a formidable gang of blacks and whites, supposed to amount to fifty. They disperse themselves judiciously for the accomplishment of their work and the elusion of punishment, and have perpetrated some of the most daring and horrid thefts. An attempt has been often made to arrest this prince of banditti, but it has hitherto miscarried. Nay, I do not believe that government can by any means in its power effect the seizure of this man. I live in the

centre of the late depredations, and have no other hope to avoid their wickedness than by the awe which my office may create."

On 28 June 1783, he writes with humiliation at the prospect of being sent, as Attorney-General, to defend his State for repudiating an arbitration :

"You will conceive how little suited to my feelings a mission is, which, I fear, will not redound much to the credit of our country nor myself. Nathan's accounts have been the topic of much vehemence in the Assembly, and the issue is, that the decision of Reed of Bradford is annulled, and other arbitrators are to be appointed in Maryland. Before these I am to appear to press the reputation of Virginia for good faith and to submit to hear just and copious reproaches thrown upon her. The resolution making this arrangement, assigns as a reason for reversing the award of these gentlemen, that no evidence was before them. It binds Nathan to enter into a bond of £15,000, but leaves the State at liberty to ratify or not, whatever may be the result of their deliberations. If we should not succeed in Maryland, it is possible that I may be honored with a trip to North Carolina ; and so on until I visit you in a journey to the States eastward of Phil<sup>a</sup>."

A reference to Call's Reports, IV., will show that among the cases with which the Attorney-General had to deal, some were of profound interest. In 1782 occurred the first case in this country relative to the nullity of an unconstitutional law—that of *Commonwealth v. Caton et al.* In this, Randolph moved successfully for the execution of sentence on three traitors pardoned by a resolution of the House of Delegates, the Senate not concurring. Chancellor Wythe's decision is historical. In another case it became Randolph's official duty to defend, against his conviction, a conditional pardon by Gov. Patrick Henry (*Commonwealth v. Fowler*. Call, V. 35). It was decided that the conditions annexed to the pardon were void. These old arguments and decisions—for there was no more learned Bench in America than that of the Virginia Court of Appeals—will amply repay study.



## CHAPTER VII.

### THREE LETTERS TO JEFFERSON.

THE following letters from Randolph to Jefferson give a lively picture of some of the burdens and problems besetting an Attorney-General of Virginia at the period to which they refer:

“RICHMOND, Jan<sup>y</sup>. 30, 1784.—Your friendly overture of a correspondence, altho’ written on the 31<sup>st</sup> ult<sup>o</sup> did not reach me before the last evening. I pledge myself for furnishing all the intelligence which the barrenness of this place can supply, fit for your attention.

“But for a late occurrence, the executive would languish for employment. A Mr. Geo. Hancock a citizen of this commonwealth, assaulted and beat a Mr. Jonas Beard, a justice of the peace and member of the legislature, of So. Carolina. About a fortnight ago the governor of that State, stimulated by the advice of his council, and the application of the chief justice of the general sessions, demanded his body from our governor, under the fourth article of the confederation; charging the assault to be a high misdemeanor. In support of this demand, the affidavit of Mr. Beard was also transmitted, stating the attack to be extravagantly violent, and to have been made ‘*during the sitting of the court of general sessions*. Nothing farther was said to induce a belief that the injury took place, while Mr. Beard was in the actual exercise of his office of a justice of the peace; nor could I collect from the affidavit or any other communication, what affinity the judiciary system of S<sup>c</sup>. C. had created between Mr. Beard as a justice and the court of general sessions. Much less could I discover, that legislative privilege was in any manner violated by the assault. I was called upon officially on this occasion. At first sight it seemed difficult to determine how far our executive ought to be convinced of Hancock’s guilt before they could deliver him up. This scruple originated from the 76<sup>th</sup> section of Vattel’s 2<sup>d</sup> book. But the quotation of a practice in

Switzerland which deprives the canton, within whose reach an offender may be, from the right of investigating the offence, appeared insufficient to forbid Virginia the exercise of her faculties. For that usage is the effect of mere conventional law, and the general law of nations by analogy holds a different language when it permits a state, from which compensation for damages is required, to judge on the propriety of paying them, instead of swallowing any gross quantum imposed on it. Besides, Virginia and S<sup>o</sup>. C<sup>a</sup>. are as distinct from each other as France and Great Britain, except in the instances provided for by the confederation. And surely that compact does not destroy the right of previous inquiry.

“The next consideration was the definition of a high misdemeanor. But neither in vulgar import, nor in the construction of british law, according to 4<sup>th</sup> Black. is an ordinary assault so styled. I say an ordinary assault; because not a syllable of the accusation advances the offence to the rank of a high misdemeanor. For ‘the sitting of the court of general sessions’ may mean the term, not the being on the bench: Mr. Beard, tho’ a justice of the peace, might not be connected with that court; and the phlogiston of Governor Guerard’s temper, excited as it has been, would have produced expressions far more decided and inflammatory against Hancock, if this circumstance of aggravation had existed. This criticism on the looseness of the impeachment ought to prevail, when the question is concerning the banishment of a citizen for trial to a foreign tribunal.

“If a law of S<sup>o</sup> C. should proclaim every assault to be a high misdemeanor in the sense of an unequivocal attack on the State, what is to be hereafter done, upon the representation of such a law? I answer with hesitation; but I lean to an opinion, that Hancock ought to be surrendered, howsoever absurd such a law would be. For different States may vary in their policy; and the fourth article of the confederation indulges every State with its own idea of safety. If Hancock had been apprehended within the limits of S<sup>o</sup> C., upon the supposition of such a law, he would have suffered for a high misdemeanor without the possibility of a murmur from Virginia. Ought his flight to rescue him from the punishment?

“But on the other hand, if what a state shall choose to call a high misdemeanor, is to rule, there is another desideratum in the informality transmitted. Let the real circumstances, as they may be in future disclosed, constitute the assault on Mr. Beard a high misdemeanor in common and british interpretation; yet as S<sup>o</sup> C. may change the nature

of the crime, a law should be shewn manifesting that its nature is not changed.

“I thought it advisable to point out the mode of arresting the perpetrator of a high misdemeanor in another State, lest the executive should hold sentiments contrary to mine. In this I was embarrassed. The old act of citizenship repeats the passage of the confederation on this subject. The new act omits it on purpose to avoid throwing a doubt on the validity of the other parts not re-enacted. But this omission did not hinder me from viewing the confederation as a law, howsoever clothed in the garb of a compact. My perplexity arose from not knowing, whether the executive should issue a warrant, or a common magistrate. For that this law must be executed, admitted not a doubt; nor yet could it be denied, that the granting of a power by law involves all incidents, necessary for its execution. I therefore recommended, that the executive should in these cases announce that the demand had been made in due form, and require the peace officers to take proper measures for arresting the culprit.

“This is the short state of Mr. Hancock’s perils. You will perceive that I have paid no attention to another part of the fourth article, respecting full faith & credit &c. I passed it by as relating to a matter of another sort.”

Another letter of Randolph to Jefferson, dated at Richmond, 24 April 1784, reports:

“The elections for this year have proved the readiness of the citizens to incorporate the military with the civil. I have heard of the success of seven military candidates in different counties, and of the rejection of one only. This repudiation was effected by Burk’s pamphlet against the Cincinnati; which had circulated very widely thro’ the southern parts of Virginia and particularly Mecklenburg. Perhaps the indisposition of the people towards the society in general was much heightened when applied to Col<sup>o</sup> Hopkins, the candidate who miscarried, by a report that he was deputy to the convention shortly to be holden in Phil<sup>a</sup>. How far General W. patronizes the association, is, as yet, an impenetrable secret. It has, however, been said for him, that in his opinion, neither Burk, nor the author who answered him, understood the principles of the institution.”<sup>1</sup>

<sup>1</sup> Although Randolph’s military career had not been long enough to qualify him for regular membership in the Society of Cincinnati, such was the general esteem for him that he was elected an honorary member. He never quite approved of the institution, however.

“You must remember the inveteracy, discovered by the inhabitants of Essex, against the return of British subjects. In order to shew, how firmly they are resolved in this instance, they have elected Mr. Gatewood, who stands foremost in an indictment found against those who tarred and feathered one Williamson, while he had the governor’s protection in his pocket. What the issue of this ferment may be will probably depend on the views of those, who first set these violences into motion. For I believe that the father of them is indefatigable in his endeavours to suppress the payment of british debts—conceives, that a fixed antipathy against such british subjects, as were formerly here, will more certainly tend to the other purpose, and seems powerful in his influence.

“Mr. Meriwether Smith has on the anvil, I am told, a tract, paralyzing the conduct of the Dutch during their struggles with Spain, and our own in the late dispute with G. B. From thence he designs to prove the propriety of confiscating debts. This chef-d’oeuvre will probably be as eminent for historical learning, as his former pamphlet was for sound policy.

“I have not heard since the election, but I am confident from what reached me before, that our friend Madison will certainly be a member. His aid will be necessary to correct the extravagaries of some plausible men who have many schemes of romance much at heart.”

One more letter of Randolph to Jefferson, of this period, may be quoted here :

RICHMOND, 15 May 1784 :—“Your mission to Europe reached us the day before yesterday, and made me doubt whether you will not have sailed before my answer to your friendly letter by the last post shall get to hand.

“I had begun to transcribe for you the manuscript defence of our claim to western territory. I shall pursue the task, and forward it by some opportunity across the Atlantic. It is probable, that you will have it in your power to correct the defect of documents by papers, to which you may have easy access in Europe. If so, be so good as to inform me.

“The great leaders of the Assembly not being arrived, their business is stagnated. I am told, however, that Mr. Henry is in the neighbourhood. The increase of new members has introduced some of the children of the revolution, who labour to satisfy themselves and disdain dependency on the dictum of any individual or faction. By this.

means, we seem to have obtained another division of party in the Assembly. It was manifest throughout the last session, that H[enr]y had one corps—R. H. L., tho' absent, another, and the Speaker a third, founded on a rivetted opposition to our late enemies and every thing which concerned them. The first class, you know, has always been numerous, and will probably remain so. The second has never varied a single point either way for some years. The third is but a temporary bubble contrived to save the trouble of thinking on true national policy. I suspect, however, that these new legislative guests will want a general to enable them to make head against those of the other parties, who will not fail to impeach them with an affectation of novelty when they only press the result of liberality and reflection. This renders it probable that our friend of Orange will step earlier into the heart of battle, than his modesty would otherwise permit. For he is already resorted to, as a general of whom much has been preconceived to his advantage.

“The demand of the governor of S. Carolina for the body of Hancock has been communicated to the Assembly. But late accounts, not official, inform us, that his conduct on this occasion has been abandoned, if not reprehended by the legislature of that State, as the effect of indelicacy and vehemence of temper.

“The sitting of the chancery has prevented me from hearing the particulars of the governor's budget. But it is supposed, that his letter, and the opinions of those, who are active, will give rise to these questions: 1. a general assessment; 2. restitution of british property; 3. payment of british debts; 4. the introduction of a stamp-act, under a less offensive name; 5. the making of Norfolk, the only port of entry and clearance. The first has H[enr]y for its patron in private; but whether he will hazard himself in public, cannot be yet ascertained. The second will be feebly supported. The negative of the third will be advocated by Mr. Tyler, and Mr. John Taylor within doors, and by the author of the pamphlet without. The two last have originated from Madison. He is placed in a station favorable for enforcing them, being Chairman of the Committee of Commerce.

“My parting wish is for your happiness, it being with the sincerest friendship that I subscribe myself, etc.”

<sup>1</sup> For (unsectarian) religion.

## CHAPTER VIII.

### CORRESPONDENCE WITH WASHINGTON.

A REGULAR correspondence had been kept up between Randolph and Washington, since their confidential relations during the siege of Boston. The General's business affairs in Virginia, sometimes complicated, were entirely entrusted to Randolph. Struggling as he was, Randolph refused compensation from his friend for legal services continued through many years, whose importance may be partly gathered from their letters.

“RICHMOND, 19 Feb. 1784.—Your favor of the 10 inst which I this day received is not the first information concerning Lord Tankerville's power of attorney. I was written to by Lady Tankerville and his Lordship as early as November last, and immediately desired Col. Hooe to state to me the particulars of this new office. He answered that he was ignorant of the duty expected from us, and must remain so until your return to Mount Vernon. I waited for a farther communication from him before I resolved on the part which I ought to take. As you decline the undertaking I shall immediately acquaint Col. Hooe with my determination to join him if the services expected from me can be performed here. For it is impossible that I should be active in the affair. I shall address Lady and Lord Tankerville to the same effect.

“I had prepared a letter to you on the subject of three petitions now depending in the General Court, in the name of Col. Bassett, against you. They were intended I presume to cover some forfeiture of lands for non-cultivation, or non-payments of quit-rents. Will you be so good as to let me know how the cases are circumstanced, that I may be able to decide what conduct I ought to pursue concerning them?

“I left the form of an answer in Savage's suit against you and Mr.

B. Fairfax, with the latter gentleman, in hope of receiving it executed in a proper manner—that I might put the most expeditious end to the business.”

Washington received through Randolph important additions to his estates ; and, on 17 July 1784, his friend thus answers an offer of payment.

“ I received your favor of the 10 July by the last post. You will excuse me, I hope, from accepting fees for any business which I may execute for you in the line of my profession. It is indeed a poor mode of acknowledging the repeated acts of friendship which I have experienced from your hands, but I beg to be gratified in this, the usual way in which lawyers give some small testimony of their attachment. The grants which accompany this letter are of a bulky nature, but I thought I ought to enclose them by the post, the stage having been found in one instance not to be the most certain conveyance.”

In May 1785 there was a conference held, partly at Alexandria and partly at Mount Vernon, on which historians have yet to throw light. It related to the condition of the Confederation, and was preliminary to the Annapolis Convention. From the silence of Randolph's letters concerning the consultations, I infer that they were considered secret. In August of that year he visited “The Rocks,” home of his sister, Ariana Wormeley, and on the 8th of that month writes from that place to Washington, asking if he will accept the presidency of the James River Company: “It is not expected that you should undertake any troublesome part ; but we wish to be considered as having your particular patronage. I hope that before this you are well prepared against your adversaries at Fort Pitt.” From Richmond he writes, September 2: “I endeavored to relieve you from the appointment to the office of President. But the universal suffrage called you to the post, without an expectation, however, that you would undergo more of the business than your own convenience may reconcile to you. Mr. James John Harvie, David Ross, and Wm. Cabell and myself are directors.”

Other letters, whose details might not interest the reader, show Randolph's disinterested activity in Washington's private business, continued amid his arduous public services through the year 1786. Loyalty in friendship was characteristic of him. Many a friend fell away from him, but he was never the first to fall away from one.

On 21 January 1786 Randolph was appointed by the Virginia Assembly at the head of its commission of eight to meet those of the other States for consultation concerning uniformity of commercial regulations in the country. On March 1 he writes to inform Madison of the time and place for "our conversation." Annapolis was preferred "as being most central, and farther removed from the suspicion which Philadelphia or New York might have excited of congressional or mercantile influence." The result of this "conversation" was the Constitution of the United States.

On 7 November 1786, Edmund Randolph was elected Governor of Virginia. The opposing candidates—Richard Henry Lee and Colonel Theodorick Bland—were left in minorities that made them sore. Washington was much gratified. "It gave me great pleasure," he writes (November 19), "to hear that the voice of the country had been directed to you as chief magistrate of the commonwealth, and that you had accepted the appointment. Our affairs seem to be drawing to an awful crisis; it is necessary therefore that the abilities of every man should be drawn into action in a public line to rescue them if possible from impending ruin. As no one seems more fully impressed with the necessity of adopting such measures than yourself, so none is better qualified to be entrusted with the reins of government. I congratulate you on the decision, and, with sincere regard and respect, etc." To which handsome note Randolph responds (November 24):

"I am sensibly affected by your friendly congratulations. You will



readily, I hope, believe that I class them among the auspicious events of my life. But in truth more difficulties are in prospect than prudence ought to have prompted me to encounter. The nerves of government are unstrung, both in energy and money, and the fashion of the day is to calumniate the best services if unsuccessful. What, then, am I to expect? Not much of approbation, I fear; I must be content to ward off censure. However, I shall oppose myself to these risques without shrinking, and make the motives atone for miscarriages in the execution.

"I am also to thank you for the 'Travels of General Chastellux.' Except in his observations on the Natural Bridge, he perhaps has lost by this composition the rank which he deservedly acquired by his essay on Public Felicity. I will return them by Dr. Stewart.

"Upon leaving Mount Vernon we were alarmed at the intelligence from almost every watercourse. Our real wish was to go back, but the horror of meeting the General Court unprepared put every other consideration to flight.

"The part which I prepared to take in your affair with the Hites would have been perfectly consistent with my duty to them.<sup>1</sup> But my new arrangement has rendered it unnecessary to enter now into the detail, as my lips are closed as to a profession which from the earliest moment of my life I abominated, and from which I was determined to escape as soon as I was possessed of a competency.

"On Friday, December 1, I shall become a member of the Executive. During my existence as such I shall trouble you with many communications."

Washington endorses this letter "From his Excellency, Edmund Randolph." Perhaps it may be regarded as unique in the annals of gubernatorial dignity to find a newly elected governor, of thirty-three years, describing himself as "a member of the executive."

Randolph entered on his difficult duties with a boundless popularity. The call for a national convention was before the country, and there was as yet no sharply defined partition between the

<sup>1</sup> The great case of *Hite et al. v. Fairfax* (Call's Rep. IV.) was carried by Randolph against Lord Fairfax, who claimed vast lands, under the grant of the Northern Neck to Lord Culpepper, some of which had not even been discovered when the royal grant was made. Washington's estates were involved.

leading Virginians on the question of relative Federal and State powers. The following letter from Mann Page (of Fredericksburg) to Richard Henry Lee (14 December 1784) fairly represented the feeling of the ablest Virginians:

“ I think it would be wise in Congress to recommend to the States the calling of a Convention for the sole purpose of amending the Confederation. At present the Supreme Council of the Union is so feeble that they have no weight in government. Their recommendations are slighted, and their wisest plans are subject to be rejected, by any one petty insignificant State refusing to accept them. Besides I see no danger in making the experiment, as we are not obliged to part with the old Confederation till the new is adopted. Bad as the present one is, I would not wish to lose it, but would willingly exchange it for a better.”<sup>1</sup>

The first check to this general feeling occurred in the summer of 1786, when the Jay-Gardoqui treaty, for occlusion of the Mississippi, was rumored,—a matter in which Virginia, of which Kentucky was a part, was intensely interested. From that time Patrick Henry, who ruled the heart of his State, became jealous of federal power, and he watched the proceedings at Annapolis for a commercial union with suspicion. But he and Randolph were cordial friends; and on the Mississippi question Virginia was a unit. Richard Henry Lee, sore under his defeat, was conciliated by Randolph, who secured his appointment to the Convention at Philadelphia. Indeed the selection of the Virginian members was mainly that of the Governor. With characteristic impartiality he nominated men of anti-federal tendencies to offset the federalism of himself and others.

The student of our constitutional history, looking back through the vista of a century, sees in the chain of causes that led to our Union two links especially salient; one was the Annapolis Convention, which convinced men representing divergent views and

<sup>1</sup> Lee Papers, Univ. of Va.

interests that they should unite for mutual aid; the other was the consent of Washington to attend the Philadelphia Convention, securing for its work the sanction of his powerful name. Both of these were primarily due to Randolph. Two months before the Convention met, Washington was firm in his refusal to attend,—because of a previous refusal to meet with the “Cincinnati” at Philadelphia in the same month,—but yielded to the Governor’s entreaties.

The following correspondence reveals part of the unrecognized debt which the American Union owes to Edmund Randolph.

“MOUNT VERNON, 19 Nov. 1786.—I thank you for the interesting communications in both [letters]. It gives me sincere pleasure to find that the proceedings of the present assembly are marked with wisdom, liberality, and justice. These are the surest walks to public and private happiness, the display of which by so reputable a part of the Union, at so important a crisis, will, I hope, be influential and attended with happy consequences.

“However delicate the revision of the federal system may appear, it is a work of indispensable necessity. The present Constitution is inadequate. The superstructure totters to its foundation, and without helps will bury us in its ruins. Although I never more intended to appear on a public theatre, and had in a public manner bidden adieu to public life, yet, if the voice of my country had called me to this important duty, I might, in obedience to the repeated instances of its affection and confidence, have dispensed with these objections. But another now exists which would render my acceptance of this appointment impracticable with any degree of consistency. It is this. The triennial general meeting of the Society of the Cincinnati is to be holden in Philadelphia, the first of May next. Many reasons combining—some of a public, some of a private nature—to render it unpleasing and inconvenient for me to attend it, I did, on the 31st ult. address a circular letter to the State Society informing them of my intention not to be there, and desiring that I might no longer be rechosen President. The Vice-President (Gates) has also been informed thereof, that the business of the meeting might not be impeded on account of my absence. Under these circumstances I could not be in Philadelphia precisely at the same moment on another occasion without giving offence to a worthy

and reputable part of the American community,—the late officers of the American Army.”<sup>1</sup>

Gov. Randolph to Washington, with a copy of his appointment and of the Act :

“RICHMOND, 6 December 1786.—By the enclosed Act you will readily discover that the Assembly are alarmed at the storms which threaten the United States. What our enemies have foretold seems to be hastening to its accomplishment, and cannot be frustrated but by an instantaneous, zealous, and steady union among the friends of federal government. To you I need not press our present dangers. The inefficiency of Congress you have often felt in your official character ; the increasing languor of our associated republics you hourly see ; and a dissolution would be I think to you a source of the deepest mortification. I freely then entreat you to accept the unanimous appointment of the General Assembly to the Convention at Philadelphia. For the gloomy prospect still admits one ray of hope that those who began, carried on, and consummated the revolution can yet rescue America from the impending ruin.”

At the same time, 6 Dec. the following were written.

Gov. Randolph to Patrick Henry.

“Under the sanction of the enclosed Act and resolution, I am officially to request what as a citizen I most sincerely wish—your presence at the Fœderal Convention in Philadelphia. From the experience of your late administration, you must be persuaded that every day dawns with perils to the United States. To whom then can they resort for assistance with firmer expectations, than to those who first kindled the revolution ? In this respectable character you are now called upon by your country. You will therefore pardon me for expressing a fear that the neglect of the present moment may terminate in the destruction of Confederate America.”

<sup>1</sup> MS. Dreer Collection. With regard to the Cincinnati, it is probable that Washington shared the misgivings expressed by Randolph in a note written 13 Sept. 1783: “The Society of the Cincinnati have for their object what is truly laudable ; but at some distant day may it not be abused from its present praiseworthy views to something profitable ? Is it not a mode of assembling on any occasion those who belong to the army, from North to South, and to keep alive a distinction between the citizen and soldier ? Much better would it have been for the several States to do justice to their officers, and thus to render an association for the support of their families unnecessary.” (MS.) Randolph was an honorary member of the society.

Brief notifications, each with its cordial word, were sent to other delegates, and the following to the Executives of the States :

“ Sir, My anxiety for the well-being of the federal government will not suffer me to risque so important a consideration upon the safety of a single letter. Your Excellency will therefore excuse me for again intruding on you with the enclosed Act of our Legislature, and repeating the request urged in my letter of the 1st inst. that you would give a zealous attention to the present American crisis.

“ The Gentlemen appointed by Virginia for the Convention at Philadelphia are, General Washington, Mr. Patrick Henry the late Governor, Mr. George Wythe and Mr. John Blair two of the Judges of the High Court of Chancery, Mr. James Madison jun<sup>r</sup> a member of Congress, Mr. George Mason a member of the Legislature, and myself.”<sup>1</sup>

Washington to Randolph.

“ MOUNT VERNON 21 Dec. 1786.—I had not the honor of receiving your Excellency’s favor of the 6th inst. until last night. Sensible as I am of the honor conferred on me by the General Assembly in appointing me one of the Deputies to a Convention proposed to be held in the city of Philadelphia in May next for the purpose of revising the Federal Constitution, and desirous as I am on all occasions of testifying a ready obedience to the calls of my country, yet, sir, there exist at this moment circumstances which I am persuaded will render my acceptance of this fresh mark of confidence incompatible with other measures I had previously adopted ; and from which, seeing little prospect of disengaging myself, it would be disingenuous not to express a wish that some other character, on whom greater reliance can be had, may be substituted in my place,—the probability of my non-attendance being too great to continue my appointment.

“ As no mind can be more impressed than mine is with the awful situation of our affairs,—resulting in a great measure from the want of official powers in the federal head, and due respect to its ordinances—so consequently those who do engage in the important business of removing these defects will carry with them every good wish of mine which the best disposition towards the attainment can bestow. I have the honor, etc.”

<sup>1</sup> A hundred pounds was voted for each of the delegates, and a vessel ordered to convey those residing at Williamsburg,—Blair and Wythe.

Randolph to Washington.

“RICHMOND, 4 Jan. 1787.—Although compelled by duty to lay before the Council your answer to my notification of your appointment to Philadelphia, I was happy to find them concurring with me in the propriety of entreating you not to decide on a refusal immediately.”

Randolph to Madison.

“RICHMOND, 1 March 1787.—The documents to be forwarded to you in my public letter will prove the truth of your suspicion that the occlusion of the Mississippi to Virginia would throw the Western settlers into an immediate state of hostility with Spain. If the subject be canvassed it will not be sufficient to negative it merely ; but a negative with some emphasis can alone secure Mr. Henry to the objects of the Convention at Philadelphia. I have assayed every means to prevail on him to go thither. But he is peremptory in refusing, as being distressed in his private circumstances. General Washington will be pressed again and again ; but I fear ineffectually. My present office is replete with employment.”

Madison, while deeming it essential that Washington's name should crown the delegation, “as a mark of the earnestness of Virginia and an invitation to the most select characters from every part of the Confederacy,” did not think he (Washington) should attend personally, without regard to contingencies. “Would it not,” he wrote to Randolph, “be well for him to postpone his actual attendance until some judgment can be formed of the result of the meeting? It ought not to be wished by any of his friends that he should participate in an abortive proceeding.”

He wrote in this tone to Washington also, who had been still more embarrassed by a letter from Gen. Horatio Gates (19 Jan. 1787), entreating him to continue president of the Cincinnati, and to attend their meeting of May 2. Randolph, convinced that Washington's presence in the Convention would assure success, continued his efforts.

Randolph to Madison.

“RICHMOND, 7 March 1787.—Why has Congress changed the day for meeting in Phil<sup>a</sup>? I rejoice at the alteration ; because it removes the

terror on my spirits that the prospect of my departure from home, *gravida uxore*, has been raising in my mind. I wish it could be postponed still later in the month, that I might carry her with me. I have communicated the alteration of the day to the deputies, and to-morrow press in earnest terms our friend at Mt. Vernon to assent to join us."

Randolph to Madison.

"RICHMOND, 22 March 1787.—Genl. Nelson refuses to join us. Col. R. H. Lee has been appointed in his stead. This seemed proper from the conspicuousness of the character, and the respect due to past services. The objection to his unfederal opinions was so urgently pressed that the council consisting of eight were equally divided. I gave the decision from a hope that himself and his friends might be attached to the Union on those principles which can alone support it. Should Mr. Lee refuse or another vacancy happen, no other appointment will be made."

Randolph to Washington.

"RICHMOND, 22 March 1787.—I must call upon your friendship to excuse me for again mentioning the Convention at Philadelphia. Your determination having been fixed on a thorough review of your situation, I feel like an intruder when I again hint a wish that you could join the Delegation. But every day brings forth some new crisis, and the Confederation is, I fear, the last anchor of our hope. Congress have taken up the subject and appointed the second Monday in May next as the day of meeting. Indeed from my private correspondence I doubt whether the existence of that body through the year may not be questionable under the present circumstances."

Washington to Randolph.

"MOUNT VERNON, 18 March 1787.—Your favor of the 11th did not come to my hand till the 24th, and since then till now I have been too much indisposed to acknowledge the receipt of it. To what cause to ascribe the detention of the [letter] I know not, as I never omit sending once, and oftener thrice a week, to the P. O. at Alexandria.

"It was the decided intention of the letter I had the honor of writing to your Excellency the 21st of Dec. last to inform you that it would not be convenient for me to attend the Convention proposed to be holden in Philadelphia in May next; and I had entertained hopes that another had been, or soon would be, appointed in my place, inasmuch as it is not only inconvenient to me to leave home, but because

there will be, I apprehend, too much cause to charge my conduct with inconsistency in again appearing on a public theatre after a public declaration of the contrary ; and because it will, I fear, have a tendency to sweep me back into the tide of public affairs, when retirement and ease is so essentially necessary for, and is so much desired by, me. However, as my friends, with a degree of solicitude which is unusual, seem to wish my attendance on the occasion, I have come to a resolution to go, if my health will permit, provided, from the lapse of time between your Excellency's letter and this reply, the Executive may not—the reverse of which would be highly pleasing to me—have turned its thoughts to some other character :—for, independently of all other considerations, I have of late been so much afflicted with a rheumatic complaint in my shoulder, that at times I am hardly able to raise my hand to my head, or turn myself in bed. This consequently might prevent my attendance, and eventually a representation of the State, which would afflict me more sensibly than the disorder which occasioned it.

“ If, after the expression of these sentiments, the Executive should consider me as one of the delegates, I would thank your Excellency for the earliest advice of it ; because if I am able, and should go to Philadelphia, I shall have some previous arrangements to make, and would set off for that place the first or second day of May, that I may be there in time to account personally for my conduct to the general meeting of the Cincinnati, which is to convene on the first Monday of that month. My feelings would be much hurt if that body should otherwise ascribe my attendance on the one and not on the other occasion to a disrespectful inattention to the Society, when the fact is that I ever retain the most lively and affectionate regard for the members of which it is composed, on account of their attachment to and uniform support of me upon many trying occasions, as well as on account of their public virtues, patriotism, and sufferings.

“ I hope your Excellency will be found among the *attending* Delegates. I should be glad to be informed who the others are, and cannot conclude without once more, and in emphatical terms, praying that if there is not a *decided* representation in *prospect* without me, that another, for the reason I have assigned, may be chosen in my room without ceremony and without delay ; for it would be unfortunate indeed, if the State which was the mover of the Convention should be unrepresented in it. With great respect, I have the honor to be.”<sup>1</sup>

<sup>1</sup> Dreer Collection. Printed by Sparks, with important omissions.



Randolph to Washington.

“RICHMOND, 2 April 1787.—Solicitous as I am for your aid at Philadelphia, I could not prevail upon myself and wish you to go unless your health could fully permit. But indeed, my dear sir, every thing travels so fast to confusion, that I trust one grand effort will be made by the friends of the United States. There is, indeed, a decided prospect of a representation; and the board have permanently determined not to fill up another vacancy. The members now in nomination are besides yourself, Mr. Madison, Mr. Mason, Mr. Wythe, Mr. Blair, R. H. Lee, and myself.

“You will oblige me by saying how I shall forward the money to be advanced by the Treasury. You recollect that Congress have altered the day of meeting to the 14th of May, at which time I propose to take you by the hand.”

Various interesting matters occupied the Governor up to the hour of his departure for Philadelphia. He issues notification (6 Dec. 1786) to the friends of James Mercier: “James Mercier, who has probably been long considered as dead, is yet alive, and may soon return to you. For some time he has been a slave in Arabia, but lately redeemed by the American Consul.” He informs the Speaker that the Marquis de la Fayette and Mr. Jefferson are industriously employed in directing the preparation of our military stores.” But “there will be a deficiency in the sum voted, from appropriations which he [Jefferson] has made of a part of it to other public uses.” Further appropriation is required for a bust of Lafayette.

James McClurg is appointed April 5 to the Philadelphia Convention, Lee having declined.

On 15 March 1787 more weighty matters are submitted to the House of Delegates:

“The complaints of our merchants against the pressures of the late laws of trade have formed a distressing picture of our commerce. Yesterday was handed to me an address in folio from the mercantile interest at Norfolk, representing among a gloomy group instances of vessels having touched in Virginia and immediately abandoning it for Mary-

land. Unfortunately too they were not acquainted with a tax of 6d per month on Virginia seamen alone for the payment of annuities to the widows of sailors registered, and the necessity of incurring a fee of pilotage, even for the smallest sea vessels. The law imposing the 6<sup>d</sup> being of the revised code, and having passed in Oct. 1785, crept into existence unthought of at the last session, while the assembly were accumulating duties; and the fee of pilotage was certainly unknown to be capable of such desolation in our small shipping."

He reports the militia in a bad condition, and fears that "energy will be long a stranger to our efforts unless the legislature will surrender popular men in favor of able and experienced officers." "Every day brings some apprehensions of an attack on Kentucky. We can assist them no farther than to furnish them with blank commissions for officering the militia."

Meanwhile Gov. Randolph sends the Western Indians his "Indian Talk."

"Brother :

"I never heard until this moment that a number of your people have been lately killed by some white men between Clinch River and Cumberland Mountain.

"If I could open my heart to your eyes, you would behold it bleeding for your sufferings. It is torn asunder when I am informed you accuse Virginians of this wicked deed. But I pray to the great God who permits the sun to nourish with its warmth our tree of peace, that the hands of my countrymen may be found as spotless as the newly fallen snow.

"Brother, hearken to my sayings, and let these words of friendship sink deep into your soul.

"I will immediately direct a strict inquiry to be made into this affair, Whosoever shall appear to be stained with blood, let them be great or small, rich or poor, justice shall be done upon them, that our covenant chain may remain as bright as silver, and your tears may be dried up. Why should we go to war? In the year 1781 we threw the axe into the pit, covered it with earth and stood hard upon it. If I had chosen to dig up the earth, and again to raise it from the pit, I might have demanded satisfaction for the murders committed last October on the Kentucky path, and for the burning of the women who were prisoners in the Chickamogga towns. But I thought it better to believe that

these monstrous cruelties were hated by you because you are brave. I therefore put a large and heavy stone upon the earth which covered the axe. You must also act in this manner, because I will have those punished who may be discovered to be guilty. Brother, remember above all things what I now say to you ; tell all your head men this my friendly talk. Invite them to join with me and make our affections as strong as the mountain which no storm can shake. If, however, what now comes from my mouth should pass through your ears without resting in your hearts, and you kill or injure the property of the Virginians, I shall be obliged to let their vengeance loose upon you, and carry the Tomahawk and fire into all your habitations. But I am sure you will not break one link in the chain. I expect you will send me in return a long and friendly answer. Let no secret in your bosom be concealed from me. I will then cut up all thorns which grow in the path between us, and make it easy and safe for us to travel it together as brothers."

To Col. John Logan the Governor writes, 1 May 1787:

"The late expedition against the Indians said to have been under your command has made an impression disadvantageous to the character of this Commonwealth. I do not undertake to determine how the fact stands. But as the Attorney of Kentucky has been written to according to the inclosed letter, I thought it my duty to give you information of what had been reported to us."

About this time Col. Crockett's application for militia to range the frontiers is refused. A Cherokee woman, discovered to have been kept as a prisoner twelve years, is liberated and restored to her people. The Indians had peace in Randolph's time.

## CHAPTER IX.

### RANDOLPH'S DRAFT OF A CONSTITUTION.

ON the 27 March 1787 Governor Randolph wrote from Richmond to James Madison, as follows:

"I have turned my mind somewhat to the business of May next, but am hourly interrupted. At present I conceive :

"1. That the alterations should be grafted on the old Confederation.

"2. What is best in itself, not merely what can be obtained from the Assemblies, be adopted.

"3. That the points of power to be granted be so detached from each other, as to permit a State to reject one part, without mutilating the whole.

"With these objects, ought not some general propositions to be prepared for feeling the pulse of the Convention on the subject at large? Ought not an address to accompany the new Constitution?"

To this Madison replied (from New York, 8 April:)

"I am glad to find that you are turning your thoughts towards the business of May next . . . I think, with you, that it will be well to retain as much as possible of the old Confederation . . . I am also perfectly of your opinion that, in framing a system, no material sacrifices ought to be made to local or temporary prejudices. An explanatory address must of necessity accompany the result of the Convention on the main object. I am not sure that it will be practicable to present the several parts of the reform in so detached a manner to the States, as that a partial adoption will be binding."

Four years before, Randolph had been searching about the fundamental principles of a constitution. I find a note of 7 March 1783, in which a constitution is defined as "a compact in which the people themselves are the sole parties, and which they

alone can abrogate ; delineating the degree to which they have parted with legislative, executive, and judiciary power, as well as prescribing how far each of the simple forms of government is to be pursued in acts of legislation." He hopes at Philadelphia to secure commercial and financial uniformity for the colonies, under central management and responsibility. The reign of paper money must end at Philadelphia—paper money, which he describes as an "asylum opened in the temple of Fraud." For years he had fought it in Virginia, but from every blow it has "a daily resurrection."<sup>1</sup> The clamor for paper money is in order to pay off British debts, as provided for by a treaty which the British refuse to fulfill while the debts are unpaid. Randolph feels that these debts must be dealt with at Philadelphia, and writes to Madison (from Richmond, 4 April 1787):

"But does the establishment of the treaty as a law provide certainly for the recovery of the debts? Ought it not be paramount to law; or at least to be one of those laws which are, in my opinion, beyond repeal, from being combined with a compact? Again, how will the Virginia debts not reduced to specialties be proved? The declaring of the treaty to be a law will not revive the 5 Geo. 1."

At the close of the Constitutional Convention of 1787, its secretary, William Jackson, made a holocaust of the papers on his table. Many documents of historic value so perished. Fortunately there were some who realized what momentous history was made in those months, and among these was George Mason, of Gunston Hall. By the kindness of one of his descendants, I

<sup>1</sup> "The clamor for paper money is very loud in different parts of the country; and the views of the advocates for the emission are not carried to the same objects. The payment of the military debt is the final cause with some, the increase of a circulating medium with others, and the discharge of British demands with a numerous class. At this moment the report of paper money seems to have locked up the specie, thus lending a fresh plausibility for attempting to augment the medium by paper. Whether a conference between the friends of paper money will produce union I cannot undertake to foretell; but some of the most strenuous are violently opposed to the quality of a tender. From this division, if continued, I argue the downfall of the scheme."—Letter to Arthur Lee, 24 Sept. 1788. (MS.) Lee papers, Univ. Va.

have access to his papers, and among them find one of extreme interest—the draught of a national constitution by Edmund Randolph.

This scheme cannot be compared with the resolutions introduced by Randolph as leader of the Virginia delegation, of which, as he said, “details made no part.” This document is one of details as well as general principles, and covers nine folio pages in Randolph’s small handwriting. It has evidently been used in Committee of Detail, each item being ticketed off when disposed of. There are numerous erasures and interpolations, with notes which I at first supposed to be by his colleague, James McClurg,<sup>1</sup> but which the careful investigation of my friend Paul Ford prove to be by Edward Rutledge. There are indications of blank spaces left to be filled in Philadelphia. At one point the first legislative branch is styled “House of Delegates,” at another, “House of Representatives,” and there are other vestiges of the development of the scheme as the Convention proceeded.

The title “House of Delegates” is one of several indications that the Governor began on the basis of the Virginia Constitution—the first republican constitution ever written,—which he helped to frame in his twenty-third year. Now, in his thirty-fourth year, he was Administrator of the State he had helped to found,—the State to which, John Adams said, all looked up for examples. Randolph’s alterations of his draft, suggesting consultations with one and another leader, the compulsory modifications, the Rutledge notes, make this old document in some sort a composite Constitution.

The instrument opens with suggestions of a general kind. “In the draught of a fundamental constitution two things deserve attention. 1. To insert essential principles only, lest the operations of government should be clogged by rendering those provisions permanent and unalterable which ought to be accom-

<sup>1</sup> *Scribner's Magazine*, Sept., 1887.

modated to times and events. 2. To use simple and precise language, and general propositions, according to the example of the constitutions of the several states.

“ 1. A Preamble seems proper. Not for the purpose of designating the ends of government and human politics : this display of theory, however proper in the first formation of states' governments, is unfit here ; since we are not working on the natural rights of men not yet gathered into society, but upon those rights modified by society, and interwoven with what we call the rights of states. Nor yet is it proper for the purpose of mutually pledging the faith of the parties for the observance of the articles : this may be done more solemnly at the close of the draught, as in the Confederation. But the object of our Preamble ought to be briefly to declare that the present federal government is insufficient to the general happiness ; that the conviction of this fact gave birth to this Convention ; and that the only effectual mode which they can devise for curing this inefficiency is the establishment of a supreme legislative, executive, and judiciary. Let it be next declared that the following are the Constitution and fundamentals of government for the United States. After this introduction let us proceed to the

“ 2. First resolution. This resolution involves these particulars :  
 1. The style of the United States, which may continue as it now is.  
 2. A declaration that the supreme legislative, executive, and judiciary shall be established. 3. A declaration that these departments shall be distinct and independent of each other, except in specified cases.”

It is one thing to aim at “ essential principles only,” another to detach such from the incidents which events have raised into a semblance of eternal principles. No doubt it is largely due to the long struggle of the Virginia Burgesses to keep Governor Berkeley and his royal council from controlling their House that severe severance of the three branches had become the political creed. Like most creeds, it had to be harmonized with practical necessities. “ Soup is not eaten so hot as it is cooked.” Even the Virginia Constitution made justices of the county courts “ eligible to either House of Assembly.” Governor Randolph wished to make further exceptions from the creed, in the

United States Constitution, but the doctrine had to be laid down. And next to it the doctrine of a bicameral legislature. "The mind of the people of America," said George Mason, "is unsettled as to some points, but settled as to others. In two points I am sure it is well settled—first, in an attachment to republican government; secondly, in the attachment to more than one branch in the legislature." Against the bicameral system Franklin stood alone in the Convention, where it was accepted almost without question. The first provision of this Randolph Constitution is for a Legislature which "shall consist of two branches: viz. (a) a House of Delegates; and (b) a Senate." The use of this word Senate might point Lord Bacon's famous saying about the power of words to entangle strongest men. Randolph, alluding to the framers of the Virginia Constitution (1776), says: "The young boasted that they were treading upon the republican ground of Greece and Rome, and contracted a sovereign contempt for British institutions." Some of these young Romans lived to find housed in their "Senate" a peerage of States by which Delaware was made equal with Virginia. The bicameral system did not originate in State equality, as is sometimes said; equality of votes might have been combined with proportional representation in the House of Representatives, as it now is when a presidential election falls to that House.

"1. The House of Delegates shall never be greater in number than —. To effect this pursue a rule similar to that prescribed in the 16th article of the New York Constitution." This New York article limited the Senators to 100, the Representatives to 300. In 1801 the Senators were further reduced to 32 and the Representatives to 150; twenty years later the latter were set at 128. The plan involved repeated redistributions. For its application to the United States Randolph proposed that "each State shall send delegates according to the ratio recommended by Con-



gress; to ascertain this point let a census be taken," etc. The qualifications for Congress were to be twenty-five years of age and citizenship. Whereto Randolph appends: "Qu: if a certain term of residence, and a certain amount of landed property, ought not to be made by the Convention a further qualification." The "delegate's" tenure was two years; the elections being held biennially, on the same day throughout the same State, at a place fixed by each Legislature, from time to time; or, in their default, by the national legislature. "The qualification of electors shall be the same with that in the particular States, unless the legislature shall hereafter direct some uniform qualification to prevail through the States." Here are suggested as qualifications: "Citizenship; manhood; sanity of mind; previous residence of one year, or possession of real property within the State for the whole of one year, or enrolment in the militia for the whole of a year." But some one has run his pen through all of these except the first two, as "not justified by the resolutions." The delegates choose their presiding officer. They shall vote by ballot, unless two-thirds choose to vary the mode. "A majority shall be a quorum for business; but a smaller number may be authorized by the House to call for and punish non-attending members, and to adjourn for any time not exceeding one week." "The house of delegates shall have power over its own members." "The delegates shall be privileged from arrest (personal restraint) during their attendance [and] for so long a time before and after as may be necessary for travelling to and from the legislature." To this is added, but struck out, "and they shall have no other privileges whatever." They shall be ineligible to any office under the authority of the United States during their term. Vacancies shall be filled by writ of their State governor or speaker. The two Houses were arranged much in the same way in the original draft, the provisions being quite legible through the multitude of erasures which followed the victory of unequal representation in

the Senate. Until then "the Legislature" was written of as one body, and the only functional privileges of the two branches are, that the first is to have peculiar powers concerning money-bills, and the Senate those relating to treaties—of commerce, of peace, and alliance. The Senate is also to appoint the judiciary, and send ambassadors. The present rule of rotation in the Senate is taken literally from this Randolph scheme. The provisions for its constitution was: "The Senate shall consist of — members, each possessing a vote." Each State was to use its own discretion as to the time and manner of choosing these "members," presently interlined "Senators." Dr. Franklin, having vainly appealed to the Convention to invoke divine assistance in settling the issue between the large and small States, proposed, as a compromise, that the latter should have their equality of representation if they paid for it. Randolph arranged another compromise, by which the States should vote as equals on a number of subjects that might affect them as States. But when he brought this into the Convention the small States had already gained the day. George Mason intimated a willingness to make this concession to the small States for the sake of the Union; but, in thus yielding did not contemplate the further powers presently vested in the Senate in combination with the Executive.

In the earlier part of the document it is directed that each State legislature shall provide for the support of its congressmen; but elsewhere occurs a provision (struck out) by which the Senators were to be paid per diem the average value of a fixed number of bushels of wheat, on the basis of its value for the previous six years as declared by a special jury of merchants and farmers summoned by the Supreme Court. In this the old tobacco payments of Virginia survive. The legislative power to raise money by taxation, "unlimited as to sum, for the past and future debts and necessities of the Union, and establish rules for collection," is given under restrictions: direct taxation

must be proportioned to representation ; any capitation tax must apply to all under this limitation, and every indirect tax be common to all.

The power to "regulate commerce" is made by Rutledge's addition to include "foreign and domestick."

Here follow some provisions which may cast light on the Slave-trade section of our Constitution (Art. I., Sec. 9).

Randolph, having provided that "no State shall lay a duty on imports," adds, "1. No duty on exports. 2. No prohibition on such inhabitants as the United States think proper to admit. 3. No duties by way of such prohibition." There were already several colonies of foreigners in the country. There is no word in this original draft suggesting that negroes were contemplated in these clauses. The words "United States" prove that Randolph intended a restriction on the States from preventing immigration. But Rutledge has turned the whole into a Slave-trade clause by adding "or People" after "inhabitants," and substituting "several" for "United." Of Randolph's original intent the word "migration," in our Constitution, is probably a survival. In the famous "Kentucky Resolutions of 1798," the fifth, written by Jefferson, declares the "alien" law contrary to the said article ; and, as passed by the Kentucky Legislature the word *migration* is italicized. Mr. Warfield, in his valuable monograph, regards this as "a conscious and most improper wresting" of a clause "only intended to apply to slaves."<sup>1</sup> But this Randolph clause shows Jefferson right in his interpretation of the word "migration" as meant to cover other aliens than Africans.

The history of the clause may be briefly stated. Mr. Rutledge having reported from the Committee of Detail (August 6) the draft of a Constitution, after much debate Luther Martin (Md.) moved (Aug. 21) to allow a prohibition or tax on the im-

<sup>1</sup> "The Kentucky Resolutions of 1798." New York and London : G.P. Putnam's Sons, 1887.

portation of slaves. Against this the members from South Carolina and Georgia protested, while Mason as passionately resisted them. Randolph proposed to refer the clause to a committee, saying: "I can never agree to the clause as it stands; I would sooner risk the Constitution." (The clause freely admitted importation of slaves.) On August 24, the Committee reported the compromise article admitting the "migration or importation" until 1800; "but a tax or duty may be imposed on such migration or importation at a rate not exceeding the average of duties laid on imports." August 25 Gen. Pinckney, against Madison's protest, carried 1808 instead of 1800, by aid of New Hampshire, Massachusetts, and Connecticut. The phraseology was then modified, so that while "migration" is retained in the first clause, only "importation" is retained in the last: the slave might be taxed but not the immigrant.

Randolph's Constitution provides that no Navigation Act is to pass but by a majority of two thirds. The Legislature is to make war, raise armies, equip fleets; to provide tribunals and punishments for offences against the law of nations; to appoint tribunals inferior to the supreme judiciary; "to adjust upon the plan heretofore used all disputes between the States (Rutledge adds respecting territory and jurisdiction)." Randolph had written "Paper prohibit," but the words are crossed out; to the exclusive right of the national legislature to "coin money," Rutledge adds that no State shall emit paper bills of credit without approval of Congress, or make any thing but specie a tender for debts.

Randolph was sharply asked by Pierce Butler, in the Convention of 1787, whether he meant to abolish the State powers altogether. His ideal of a federal system was shared by few if any. The central unity he desired was commercial, financial; judicial too, in a sense; in another sense, military. The federal government was to be a mechanism for keeping order between the States, and for defence of all against any foreign foe. By thus

disburdening themselves of the cost of separate armies, fortresses, and foreign relations, the States were to be left free to devote themselves to education, moral culture, development of resources. The States were to be the arenas of political life and civilization; the central government was to guard their independence of evolution. They were not locally restricted in their choice of representatives. Randolph proposed a "Supreme" government, and his word was struck out; but he would have vested this supremacy in a legislature carefully filtered, by no means in any individual head, or in a peerage of unequal colonies. After the apotheosis of provincialism on July 16, when the local selfishness of the smallest States was enthroned over the cosmopolitan sentiment of the nation, the hope of a real republic died. The statesmen who wished to develop a strong government of pure republican type were thenceforth compelled to sit aloof, while politicians planned the Civil War under a delusion that they were harmonizing State and national authority. The late Mr. Sothern, being driven all night by a tipsy cabman aimlessly about some London Square, cried out at last: "Cabman, keep on in this square; I've been here so long I begin to like it." "Do you mean," asked the man, "for me to go on driving round this square?" "Yes, as much as a man *can* drive round in a square." Since our Constitutional fathers started their ancient State chariot round in a square of national supremacy the inevitable corner collisions have come.

Along with this Randolph Constitution was found a vigorous paper (MS.) by George Mason advocating a plural executive as "the most effectual means of checking and counteracting the aspiring views of dangerous and ambitious men." Randolph's advocacy of the same view made a strong impression on Franklin, who generally voted with him. A blank space had been left in this draft, apparently for the result of this struggle; when it was filled up, no doubt in Committee of Detail, with the single

executive, Randolph's provisions of powers, meant for an Executive Commission, were struck out. The confused look of the MS. here seems sadly typical of the conflicts destined to follow this unrepublican decree of the majority. The title of the Executive appears to have been a subject of anxious discussion. Randolph ignores every title; but Rutledge suggests for the President, "Governor of the United People and States of America." Randolph had provided for the election of the Executive by the Legislature; their term to be seven years, with ineligibility thereafter. They were to command and superintend the militia, to direct their discipline, and to direct the executives of the States to call their militia for the support of the national government. The single Executive having been decreed, Rutledge substitutes: "To be Commander-in-Chief of the Land and Naval Forces of the Union and of the Militia of the several States." Randolph, like Madison, relied much on the power of impeachment. The Executive are to be removable on impeachment by the House of Representatives, on conviction of malpractice or neglect of duty, before the Supreme Court. For "malpractice or neglect of duty" Rutledge substitutes, "treason, bribery, or corruption." Randolph would probably not have accepted this limitation; and he certainly did not agree to the annotator's proposal to give the Executive the pardoning power, even though one not pleadable to impeachment. With Mason he tried hard to except treason from the offences open to presidential clemency. Many in the Convention recognized the danger of investing a President with the power that may be used to shield his own guilt. Madison soothed his fears here, as in the face of other risks, with contemplation of the tremendous efficacy he attributed to the menace of impeachment. Moreover, these patriots were in despair of finding any safer depository of the pardoning power. The time was not ripe for inquiring whether that power is not in itself an anomalous survival from

the ages of autocracy, and whether it is wise to raise any individual into a Supreme Court of Appeal, able to revise and reverse decisions of the highest tribunals in criminal cases. Randolph may be credited by the heretical on this point with having omitted all mention of any pardoning power.

In the Constitution of Virginia the Governor, elected annually by the Legislature, had power, "with the advice of the Council of State [eight, also elected by the Legislature] to grant pardons except where the prosecution shall have been carried on by the House of Delegates, or the law shall otherwise particularly direct." When the Convention at Philadelphia had determined that the Executive should consist of a single person, without even an advisory council, it is certain that Randolph would not have clothed that individual with the pardoning power.

Randolph's long training as Attorney General, judge, and codifier of laws, enabled him to prepare a solid scheme for the judiciary. Important powers, however, intrusted to the Supreme Court were removed from his instrument. One of these was jurisdiction in cases of impeachment. The mention of "cases of impeachment," in Art. III., Sec. 2 of the Constitution, defining jurisdictions of the Court, looks like a relic of this arrangement. The jurisdiction was further to extend "to such other cases [than impeachment] as the national legislature may assign, as involving the national peace and harmony :

"In the collection of revenue ;

"In disputes between citizens of different States ; and

"In disputes in which subjects or citizens of other countries are concerned."

(To this Rutledge adds : "In disputes between State and citizens, or citizens of another State.")

"In cases of Admiralty jurisdiction.

"But this supreme jurisdiction shall be appellate only except in cases of impeachment, and those circumstances in which the legislature shall make it original ; and

“The legislature shall organize it.

“The whole or a part of the jurisdiction aforesaid, according to the discretion of the Legislature may be assigned to inferior tribunals as original tribunals.”

Such powers, and a jurisdiction extending “to all cases arising under laws passed by the general legislature,” were not meant for a tribunal chosen by a President and confirmed by a branch of Congress representing the pride of States instead of the common interests of the American people; and Randolph protested in Convention (July 16) against transfer to such section of the government of powers meant to flow from the nation. “All the powers given in the report from the Committee of the Whole,” he said, “were founded on the supposition that a proportional representation was to prevail in both branches of the legislature.”

The next part of Randolph's draft is devoted to “Miscellaneous Provisions.” The admission of new States is much the same as that finally adopted. Rutledge requires a congressional majority of two-thirds for each such admission, and Randolph is careful to reserve full legislative discretion in each case. On the vexed question of “the guarantee,” Randolph's Constitution engages the national government to (1) prevent the establishment of any government not republican; (2) to protect each State against external invasion, and (3) against internal commotion. To which Rutledge adds: (4) “but this guarantee shall not operate without an application from the legislature of a state.” So it now stands in our Constitution, with the proviso that aid may be invoked by the executive of a State when its legislature cannot be convened. But any internal commotion which should hinder a legislature from meeting might involve an executive also. “The general government,” says Randolph in his historic Letter, “ought to protect each state against domestic as well as external violence.” His original plan does not appear to have been improved. At several periods of our history it has



been shown that the national government might be seriously hampered under the vagueness of the existing clause, which may yet open visions to some fanatical or anarchal mob, headed by a governor, in the recess of a legislature.

The provisions which follow will repay the study of those interested in the relation of States to the Federal Union :

“The legislative, executive, and judiciaries of the States shall swear fidelity to the union, as the national legislature shall direct.

“The ratification of the reform is (by the approbation of Congress) to be made by a special convention in each State—recommended by the Assembly ; to be chosen for the express purpose of considering and approving, or repealing it in toto ; and this recommendation may be used from time to time.”

The State legislature was not to order or authorize, but merely to “recommend” the popular ratifying conventions. That Randolph meant the people as distinguished from their several legislatures to be parties to this delegation of powers to a common government is further shown by the following addenda : “The plighting of faith ought to be in solemn terms.” “The assent of the major part of the people of States shall give operation to this Constitution.” (He had written “birth” instead of operation. Rutledge has substituted “Conventions” for “major part of the people.”)

By these clauses it was arranged : that, on a recommendation of their State legislatures, the people of the States, their supreme authority, should by majorities (“of the people”) ratify or reject ; that when the people of nine States had assented, the Constitution might go into operation among those nine ; that all the State authorities of such assenting States should swear fidelity to “the Union, as the national legislature shall direct ;” that “an alteration may be effected in the articles of Union, on the application of two thirds of the State legislatures, by a Convention.”

The draft concludes with suggestions for an address :

“The object of an address is to satisfy the people of the propriety of the proposed reform. To this end the following seems worthy of adoption : 1. To state the general objects of a confederation. 2. To show by general but pointed observations in what respects our confederation has fallen short of those objects. 3. The powers necessary to be given will then follow as a consequence of the defects. 4. A question next arises whether these powers can with propriety be vested in Congress? The answer is, they cannot. 5. But, as some States may possibly meditate partial confederations, it would be fit now to refute this opinion briefly. 6. It follows, then, that a government of the whole on national principles, with respect to taxation, etc., is most eligible. 7. This would lead to a short exposition of the leading particulars in the Constitution. 8. This done conclude in a suitable manner.

“This is the shortest scheme which can be adopted. For it would be strange to ask for new powers without assigning some reason, it matters not how general soever, which may apply to all of them. Besides, we ought to furnish the advocates of the plan in the country with some general topics. Now, I conceive that these heads do not more than comprehend the necessary points.”

## CHAPTER X.

### THE ENGLISH AND AMERICAN CONSTITUTIONS.

"I FOUND the Convention at Philadelphia very busy and very secret," wrote Richard Henry Lee to his brother Arthur; "it would seem, however, from a variety of circumstances, that we shall have a government not unlike the British Constitution,—that is, an Executive, with two branches composing a federal Legislature, and possessing adequate force. This departure from simple Democracy seems indispensably necessary if any government at all is to exist in North America. Indeed the minds of men have been so hurt by the injustice, folly, and wickedness of the State Legislatures and State executives, that people in general seem ready for any thing. I hope, however, that this tendency to extreme will be so controuled as to secure fully and completely the democratic influence acting within just bounds."<sup>1</sup>

But on learning the way in which the Convention had imitated the British Constitution, Richard Henry Lee wrote, in a letter to Samuel Adams (5 Oct. 1787): "Omnia mala exempla ex bonis orta sunt." And on Oct. 16 he wrote to Randolph: "You are therefore, sir, well warranted in saying that either a monarchy or aristocracy will be generated, and perhaps the most grievous system of government may arise. The only check to be found in favor of the democratic principle, in the system, is the House of Representatives, which I think may justly be called a mere shred or rag of representation."<sup>2</sup>

<sup>1</sup> MS.    <sup>2</sup> MS., Lee Papers, Univ. Va.

Probably a majority of those who signed the Constitution believed it to contain the fundamental principles of the British Constitution. As a matter of fact their only genuine English importation was the now extinct "rotten borough" system, which was boldly upheld in the Convention as justification for making small States equal in representation to large ones! The profound ignorance of the English Constitution, ascribed by some of its expounders to the framers of the American Constitution, was by no means a vulgar, but a sophisticated and educated ignorance. In the case of Hamilton it appears to have been also ingenious. In the 68th *Federalist*, pointing out the "dissimilitude" between an American President and the English King, Hamilton says: "The one would have a qualified negative upon the acts of the Legislative body; the other has an absolute negative. The one would have a right to command the military and naval forces of the nation; the other, in addition to this right, possesses that of declaring war, and of raising and regulating fleets and armies by his own authority. The one would have a concurrent power with a branch of the Legislature in the formation of treaties; the other is the sole possessor of the power of making treaties. The one would have a like concurrent authority in appointing to offices; the other is the sole author of all appointments." And so he goes on, attributing to the English monarch powers which fell from the Crown before or with the head of Charles I.

He ignores the fact that since 1688 the crown has never attempted to govern without Parliament, and that the personality of the sovereign has no place in the constitution. The last attempt at royal veto was that of Queen Anne, in 1707. Even Jay, afterward chief justice, in his pamphlet advocating the constitution, contrasted the presidential with royal powers, without hinting that these were impersonal or extinct.

Extinct, that is, in England; but nations are not careful to

secure for their distant subjects and colonies the liberties they enjoy at home. The Hindu and the New Zealander of to-day regards himself as living under the personal control of the Queen, and their chiefs cannot understand, when they reach London, why they may not treat with her personally. The early life of Hamilton was passed in his native West Indies, the land of slavery, where the exorcised despotism of England found a congenial refuge. Several of our colonial governors made actual fictions fossilized in old law-books in England. When, to the young patriots of '76, the king, as Randolph says, "seemed to stalk like the Arch-enemy of mankind," it was not poor George they saw,—he was but trying to save his country from dismemberment, and with less autocratic measures than some that saved our own; but they beheld the king as tricked out with the audacities of his viceregal agents in this country. Lord Dunmore, for instance, was such an anachronism that he raised anachronistic phantasms. "The seventh [article of the Virginia Bill of Rights]," says Randolph, "against the suspension of the laws by any other authority than that of the representatives of the people, was suggested by an arbitrary practice of the King of England before the revolution of 1688." Such tilts at dead giants, made famous by that first declaration of independence, might easily impress the masses with the notion that the giants were still alive and keenly scenting American blood. These popular fallacies young Hamilton may have shared; at any rate they supplied a quick soil for his political wild oats.

Hamilton and Randolph, as youths, had been members of Washington's military family at the siege of Boston. When Hamilton was in his twenty-ninth year, and Randolph in his thirty-second, they met in the Annapolis Convention (1786), recognized each other as ardent "Federalists," and parted friends. When they met at Philadelphia it was for the opening of a life-long combat, to which they were held by principles competing

for the future of the New World. To their early friendship Randolph remained loyal, and his private letters show him cherishing Washington's confidence in Hamilton while opposing him in the Cabinet. The difference between the Virginia Governor and the New York General was not that the one did and the other did not desire a government fundamentally English; but that, while Hamilton wished for a monarchy resuscitated from England's militant age, Randolph desired to found on the matured principles of the British Constitution. The son of a King's Attorney, Randolph had been Attorney, Judge, Governor, of revolutionary and republican Virginia. He had assisted in forming the first republican Constitution the world ever saw,—the Virginia Constitution of 1776. No American more thoroughly knew the principles of English law and liberty. He had helped to defeat Patrick Henry's effort to invest the gubernatorial office with a negative on legislation, which the English people had wrested from their monarch. He had superseded personal power by a chief magistracy annually created by the Legislature, of authority strictly co-ordinate with a similarly chosen Council, thus forming an Executive Commission of nine members. He had secured to representatives elected by the people absolute power over the purse of the commonwealth.

Randolph's draft of a Constitution, with the frame he introduced in the Convention, and his speeches there, discover a type of republicanism for which the country was not ripe. The government which England had been steadily attaining by placing both purse and sword in the hands of the Commons, reducing its once "Upper" House to a revisory body with power of suspensory veto, and sovereignty to a social decoration, had already been studied by Randolph with good illustrations. The system he aimed to establish for the Union was not very different from what that of England would be to-day without a monarch, and with a second chamber chosen by the Commons. The legislature

elected by the people of the several States was to be—under the Constitution, as interpreted by the Judiciary—creator of all other powers. It was to elect, from men nominated by the State legislatures, their number proportioned to population, a body more permanent than itself, and composed of older men. The same popular House was to elect judges for life or good behavior; also an Executive Commission of several persons, who, in conjunction with the Judiciary, should form a council of revision on laws, with power to veto them unless passed by an increased majority. Randolph's Republic was thus a democracy subjected to successive filtrations. From the ignorant or passionate populace to their executive hand, the need of the nation was to pass through refining criticisms; that executive was not to be a Head, but a Hand, with its own official fingers, obedient to the legislative brain, controlled by the judicial independence.

Despite the pleadings of Randolph, Mason, and Madison, and prayers of Franklin, the Convention accepted the frame which the Virginians had submitted through their Governor and leader, only to establish within it a system which the small philosophical wing regarded as anti-republican. Randolph's brilliant career in the Convention, could it have been observed by the outside world, would have filled the country with enthusiasm. Some of his sentences became proverbs in the Convention. "Presidency is the fœtus of monarchy." "An Executive should be independent, therefore it should consist of more than one man." "We have made a bold stroke for monarchy; now we are doing the same for aristocracy." The latter was said of the proposal that the Executive, if no choice were reached by the State electors, should be chosen by the Senate. The bicameral system had been accepted by Randolph in the belief that a second chamber would check "precipitate" legislation. The English system, organic at home, and in process of evolution to its present virtually unicameral condition, had survived in America in its super-

ficial form; it was a universal political superstition, that states must have two chambers even if they had not enough material for one. There is a tradition that, on his return from France, Jefferson called Washington to account at the breakfast-table for having agreed to a second chamber. "Why," asked Washington, "did you pour that coffee into your saucer?" "To cool it," quoth Jefferson. "Even so," said Washington, "we pour legislation into the senatorial saucer to cool it." Such use of the saucer is now hardly admitted by good society, but even the most old-fashioned coffee-drinker would never have tried to cool his coffee by emptying it into a bowl of hot water. Even if "precipitancy" might have been avoided by submitting the acts of one House to revision of one containing older persons (Seniors, or Senators), chosen for longer periods by the same constituencies,—de-localized by union in a large district,—the same conservative effect can by no means be looked for from a body of totally alien extraction. That were to expect "coolness" from a collision of flint and steel. In Randolph's Republic, a Second Chamber was at best an anomaly,—a fifth wheel to his coach, which required only the State Legislature, the National Legislature, the Judiciary, and the Executive;—he found out too late that colonial provincialism needed only this superfluous wheel to renovate its antiquated chariot. Such was the power of this two-chamber superstition that, even after resisting the irrationality of the State Peerage which found shelter under it, Madison was presently found arguing that this Senate, this conservatory of local jealousies, would be "a defence to the people themselves against their own temporary errors and delusions," (*Federalist*, 63); which is resorting to dynamite to check the explosiveness of gunpowder. It is mere euphemism to describe as a Republic a government in which Rhode Island possesses a legislative power equal to that of Pennsylvania.

The Vice-Presidency Randolph viewed with an apprehension



which must have arisen in many thoughtful minds at various periods of our later history, when our presidents have been sometimes elected by assassins. The strength of the monarchical superstition was shown in this careful provision behind the President of an officer interested in his death, and competent to pardon his murderer. The force of unreason went even further when the Cabinet, a body unknown to the Constitution, was lately given an interest in removing a President. Randolph opposed executive re-eligibility until after the office was lodged in an individual hand; then he thought that a President debarred from legal re-election might be tempted to continue his power by *coup d'état*. In all these matters he exhibited a philosophic insight which won the admiration of Franklin. The clearness and force of his arguments several times won the Convention to his side; but after such favorable votes the smaller States, or the semi-monarchical party, managed to work on committees outside and secured reversals.

Of the fifty-five members who sat in the Convention the names of but thirty-nine were attached to the Constitution. Of the other sixteen three only remained to the end, and among these was Randolph. He had before intimated to the Convention that he could not sign the Constitution in the shape it was assuming, but he knew that it would become the basis of the government. It is melancholy to reflect that the Convention disregarded Randolph's efforts to make the relative State and Federal powers definite and unmistakable. The clause he would have added in ink has since been written in blood. By remaining in the Convention Randolph was able to secure modifications now generally approved, and he gained a prestige which enabled him to urge subsequent amendments. He agreed to sign if the Convention would add a provision for a second Convention after the sense of the country had been taken on the Constitution. This motion was seconded by Franklin, but failed; and Randolph, though appealed to by his

venerable friend, who uttered an encomium on his services and ability, refused to sign. He said, however, that he did not mean by this refusal to decide that he should oppose ratification of the Constitution by his State. He meant only to keep himself free to be governed by his duty, as it should be prescribed by his judgment.

Probably Randolph believed that Virginia would ultimately determine the fate of the Constitution, and that this power might be used to secure important amendments.

## CHAPTER XI.

### THE LAST STRUGGLES OF SOVEREIGNTY.

RANDOLPH'S criticisms of the Constitution partly anticipated those of Mill, Bagehot, Karl Blind, Louis Blanc, and other republican authors of Europe. Indeed, a number of works have recently appeared in our own country, in advocacy of organic reforms, whose writers seem unconscious that they are repeating points made by Randolph a hundred years ago. But, while Randolph's genius was philosophical, his public responsibilities made him practical. There was nothing of the "irreconcilable" about him. He had also the family characteristic of looking on the other side, and making the most of its claims,—the inveterate justice which to partisans seemed indecision. His extraordinary capacity for leadership was liable to suffer through this provoking ability to conceive that he might be wrong. When, two days after the Constitution was signed, it was published in the Philadelphia papers, a tremendous controversy arose. The Virginia members agreed that amendments must be conceded before it should go into operation in Virginia. Mason and Randolph held that after the new instrument had been discussed a new Convention should be called. For this they had the sufficient argument that the Convention had not been chosen for such a radical revolution of the Confederation.

Immediately on the adjournment of the Convention (Sept. 17), Governor Randolph started with his wife on the journey to Richmond. His letters to Madison, who remained in Philadelphia, cast much light on the feeling in the country.

From "Bowling Green (Va.), September 30," he writes to Madison :

"Baltimore resounds with friendship for the new Constitution, and Mr. Chase's election depends, as it is said, upon his opinion concerning it. He waited on me with an expectation, I suspect, of learning something to foster his opposition. I was prepared, because I had heard of his harangue to the people of Wells Point the night before I saw him. It was represented to me that, after he had finished his speech, Col. Wm. [?] Smith and Mr. Zebulon Hollingsworth asked him whether he espoused the Constitution or not. He replied to this effect : 'Here, gentlemen, is a form of government' (pulling out the Maryland Act) 'under which we have lived happily for more than ten years. Shall we make a new experiment precipitately ? Are we to pay taxes indefinitely, have our militia led from one end of the country to the other, and be dragooned by a standing army if we fail in the smallest article of duty ? But—I have not made up my mind.' However, in the discourse between us, although he discovered a tendency to reject the Constitution unless amended, he declared he would labor to establish a federal government. In Bladensburg the Constitution is approved. In Alexandria the inhabitants are enthusiastic, and instructions to force my dissenting colleague to assent to a convention are on the anvil. I wrote to him yesterday suggesting to him this expedient : to urge the calling of a convention as the first act of the Assembly : if they should wish amendments let them be stated and forwarded to the States. Before the meeting of the convention an answer may be obtained. If the proposed amendments be rejected, let the Constitution immediately operate : if approved by nine States, let the assent of our convention be given under the exceptions of the points amended. This will, I believe, blunt the opposition, which will be formidable, if they must take altogether or reject. The re-eligibility of the President and Senate has excited Mr. James Mercer's resentment, and he positively objects to the Constitution without amendments. I learn nothing of Mr. Henry, nor of Mr. Pendleton, except that he is almost perfectly recovered."

From Richmond (October 23) he writes Madison :

"The first raptures in favor of the Constitution were excessive. Every town resounded with applause. The conjectures of my reasons for refusing to sign were extraordinary, and so far malicious as to suppose that I was chagrined at not carrying every point in my own way, or that I sought for popularity. These were the effluvia until the As-

sembly met. A diversity of opinion appeared immediately on the convening of that body, which gave an evidence of the good fruit from one of the revised laws by being punctual to the day. Among the heroes of the opposition were Mr. Henry, Mr. William Cabell, Col. Bland, and Mr. Franck Strother. A great ferment was kept up until Thursday last, when, contrary to my expectations, the debate for calling the convention was conducted with temper, and a vote passed unanimously for that purpose, *to discuss and deliberate on the Constitution*. This is a happy and politick resolution; for I am thoroughly persuaded that if it had been propounded by the Legislature to the people as *we* propounded it, the Constitution would have been rejected and the spirit of the Union extinguished. At present the final event seems uncertain. There are many warm friends for taking the Constitution altogether, without the alteration of a letter; among these are Col. Nicholas and Mr. F. Corbin. But I suspect that the tide is turning. New objections are daily started, and the opinions of Mr. Henry gain ground. He and I have had several animated discourses, but he recedes so far from me that we must diverge after a progress of half a degree further. An incidental question is allotted for to-morrow, by which it will be known how the party positively against the Constitution stands as to number. A motion was postponed until that day for repealing the laws against the recovery of British debts. Much of the repugnance to this motion will be founded on the danger of every defendant being hurried sooner or later to the seat of the federal government. This is the most vulnerable and odious part of the Constitution. I shall therefore conclude, if the acts be repealed, that the majority of the Legislature may be said to have overcome the most exceptionable points. As to the recusants, we have been spoken of illiberally at least. Mr. Mason has declared in Assembly that, although he is for amendments, he will not quit the Union even if they should not be made. I have thought proper to postpone any explanation of myself, except in private, until every thing is determined which may relate to the Constitution. I have prepared a letter and shall send you a copy in a few days. I see the Pennsylvania papers abounding with eulogiums on some and execrations on others, whose opinion they know not substantially. Mr. Pendleton, who is here, has expressed himself to this effect,—that this Constitution is very full of radical faults, and that he would adopt it with a protest as to its imperfections, in order that they may be corrected at a future day. The bar are generally against it; so are the judges of the General Court. So is Wiley Jones, of North Carolina.

In short, I am persuaded that there must be strong exertions made to carry it through, and my letter will not be the least conducive among the other supports to its adoption in the end. Why would you not give me your opinion as to the scheme I proposed in my letter from the Bowling-green? I am now convinced of the imperfections of the idea, but I wish to open to you without reserve the innermost thoughts of my soul, and was desirous of hearing something from you on this head. Col. Mason has said [*illegible*], and you may rest yourself in safety in my hands, for I will certainly repel the smallest insinuation. You were elected by 126 out of 140; for the second year by 137 out of 140; so that, you see, circumcision and uncircumcision avail nothing. I sent your appointment on the other day. The people of this town are still in rage for the Constitution, and Harrison among the most strenuous. I have inquired about reports concerning myself, and if popularity had been my object, as some suppose, I should have over-shot my mark. Pardon this medley written in a crowd, and be assured of my most affectionate friendship."

Mason and Randolph had nearly always agreed on constitutional questions, and similar objections prevented their giving unconditional signatures to the Constitution. But they were attached to the Union and had little doubt of their ability to secure another national Convention, which would possess the advantage of thorough consultation with the country. Randolph's pamphlet in criticism of the Constitution was privately printed (Richmond: Augustin Davis). A copy sent to Washington was accompanied by the following note: "27 Dec. 1787. The enclosed pamphlet speaks so fully for itself, that any explanation of it from me would be useless. I send it to you because I know your friendship for the writer, and because I take pleasure in subscribing myself, at all times, with unfeigned truth," etc. The pamphlet was dated 16 Oct. 1787. On 3 Jan. 1788 it appeared in the *Virginia Gazette*, preceded by a correspondence with Mann Page and three others, who mention a report "that the reasons which governed you in your disapprobation of the proposed Federal Constitution no longer exist," and request

the publication of his views. In his reply (10 Dec. 1787) Randolph says that though he had written a letter for the Assembly he had been "restrained from sending it to them, by motives of delicacy, arising from two questions depending before that body, the one respecting the Constitution, the other myself. At this day, too, I feel an unwillingness to bring it before the Legislature, lest in the diversity of opinion I should excite a contest unfavorable to that harmony with which I trust the great subject will be discussed. I therefore submit the publication of the letter to your pleasure."<sup>1</sup>

In finally resolving to advocate an unconditional ratification of the Constitution, the Governor, without whose aid it could not have been secured in Virginia, acted in pure patriotism. "He chose," says Curtis, "to incur the charge of that kind of inconsistency which a statesman should never hesitate to commit when he finds that the public good is no longer consistent with his adherence to a former opinion."<sup>2</sup> Randolph had experience of the forces, not to say the ferocities, in some regions of the country, the strength of colonial jealousies, of religious antipathies, of rival trade interests; as attorney-general, commissioner on treaties concerning rivers and boundaries, judge, congressman, governor, he had confronted every threatening aspect of the land; he had measured the forces, provincial prejudices, political superstitions, which met in the Philadelphia Convention, after burning the ropes of straw with which the Confederation had bound them together. Frequent popular outbreaks proved how easily the country might be plunged into civil war. The Confederation had gone; its attempts to act after the Convention

<sup>1</sup> For the whole correspondence, see Cary's "American Museum," III., p. 61. Randolph's Letter is in Elliott's "Debates," and also in Mr. Paul Leicester Ford's opportune and excellent collection of similar documents by leading statesmen of that period. A comparative study of the pamphlet, in connection with Randolph's recently discovered draft of a Constitution, will be found of much interest.

<sup>2</sup> "History of the Constitution," II., 356.

was summoned had excited contempt; the ratification conventions took place in an anarchal interregnum. Randolph believed the proposed Union the alternative either of aggressive anarchy or some oppressive dictatorship—to which some powerful leaders were not averse. For it was not constitutional monarchy that reactionists desired, but a despotism long defunct in England. This formidable party had been compelled to make concessions also. It could not secure a life-tenure for Washington I., nor even call him "Serene Highness." The Constitution established a Union, contained an apparatus of self-amendment, and the leading statesmen were pledged to carry important amendments. Moreover, should nine States ratify, Virginia might have to come in after all, but too late for leadership. On its first leaders the new government would largely depend for its permanent character. Governor Randolph weighed all these things with means of knowledge at the command of few of his censors. As a rule, says Whately, the smaller a mind the sooner it is made up. Randolph poised long. It was the opinion of the leading men that on this Governor's decision the Constitution depended. Dread of disunion determined him. Notwithstanding his conviction that "a bad feature in government becomes more and more fixed every day," and fear that the spirit of amendment might be presently considered heretical, he decided to support the Union.

Randolph's former comrades, before his final decision, looked on him as a lost leader. There was something pathetic in the loneliness of Mason. A letter of Arthur Lee to Richard Henry Lee, dated Alexandria, 19 February 1788, written after a visit to Gunston Hall, shows that the great man no longer regarded Randolph as his ally.

"Col. Mason laments very much that you do not stand for the Convention. He says there will be no one in whom he can confide. That you will be regarded as having deserted a cause in which you have published your persuasion of its being of the last moment to your



country. That this belief will be strengthened by a report which some of your friends have propagated, that you have given up all idea of opposing the Constitution because your friends think differently, and have recommended two violent constitutionalists to the freeholders of Westmoreland. He is afraid these things will injure your character so much that, should another general Convention be ordered, you will not be among the delegates, which he shall consider a misfortune to the country. It is his opinion that the Convention will recommend another general Convention.”<sup>1</sup>

During the winter antagonism to the Constitution consolidated itself; it became increasingly plain that the decision would mainly rest with Virginia. Governor Randolph's adherence was coupled with a demand for a second National Convention, which gave Madison and Washington uneasiness. Madison urged on Randolph the indications that among those who desired amendments there was no concord as to what they should be. This opinion was confirmed by the result of the Massachusetts Convention. Mr. Gerry, of that State, stood with Randolph in refusing to sign the Constitution, but the amendments appended to the ratification of Massachusetts filled the Virginia Governor with disgust. The great principles which concerned Randolph were not affirmed to. He began to perceive that few shared his philosophical interest in pure republicanism. His hopes from a second Convention had received a shock.

He writes Madison from Richmond, 29 February 1788, a very hurried letter :

“The decision of Massachusetts, had it been adverse to the Constn. w<sup>d</sup> have damned it here. But as it is, it fixes the event, if New York, New Hamp. and Maryland should follow the example. This must be understood with this restriction, that although 9 states will force Virginia by their assent to come in, there is reason to believe that no intelligence of that sort can reach us before our Convention meets; as South Carolina will sit on the 12 of May only. I received a letter last night from Mr. P. Henry, mentioning his having resumed

<sup>1</sup> MS. Univ. Va.

the practice of law, and his determination to oppose the Constitution, even if only  $\frac{1}{2}$  a state should oppose. The baptist interest and counties on the south side of James River, from Isle of Wight upwards, are highly incensed by Henry's opinions and public speeches, whenever occasion has presented. As to the temper on the north side, I cannot clearly discern it. But upon a review made by Mr. Marshall of their comparative strength, he seems to think that the question will be very nice. The election of Henrico commences on Monday; the persons proposed are Dr. Foushee, Marshall, and myself. Nothing but a small degree of favor acquired by me independently of the Constitution, could send me; my politicks not being sufficiently strenuous against the Constitution. Marshall is in danger; but F. is not popular enough on other scores to be elected, altho' he is perfectly a Henryite.

"But to return to Massachusetts,—what a paltry snare? Some of the amendments are inadmissible, others pointed against the negro states, and others milk-and-water. The first is among the rocks on which the old Confederation has split; the 2nd is aimed against the southern states; the 3rd provides against no real danger; the first part of the 4th is as the 3rd, and moreover destroys an essential idea of a national government. . . . A writer calling himself Plaindealer, who is bitter in principle *vs.* the Constitution has attacked me in the paper. I suspect the author to be Mr. Spencer Roane; and the importunities of some to me in public and private are designed to throw me unequivocally and without condition into the opposition. But pray answer me, what is to become of our debt for the old continental money? shall we not be obliged to compensate the Indiana Company for our legislative violence? does not the exception as to a religious test imply that the Congress by the general words had power over religion? I expect a contention between the high and low federalist; nothing less can save the federal government."

Madison being at his residence, Montpelier, preparing for the struggle, Randolph writes him (17 April) another hurried note; and therewith, it may be remarked, encloses a letter from Col. Hamilton sent to the Governor's care.

"A comparison of the intelligence which centres here from the various parts of Va. persuades me, that he [Col. Nicholas] at least mistakes the degree of the majority, and leads me to suspect that it lies

adverse to the Constitution, so far as previous amendments go.— Two objections have always struck me as deserving consideration on the subject of previous amendments : one, that under their cover a higher game might be played ; the other, that the hope of obtaining them might be frustrated by the assent of too many states. The former I fear more and more, daily ; not knowing how far the scheme of those, who *externally* patronize them, may internally *extend*. Believing that personal irritation has roused some to enlarge their original views of opposition, and having myself no disposition to enjoy the credit of establishing my own opinion at the expense of public safety, I mention these things in confidence ; especially as my final determination will not be taken until I hear something from Maryland at least. The accounts brought hither yesterday by Mrs. Jones, who had them from Col. Hooe of Alexandria are, that Chase, Paca, Mercer and L. Martin are elected in Annapolis, to the exclusion of all the Carrolls ; and that Chase had caused a clerk of his to be elected in another county, which he could not represent.

“ Upon the subject of religion, I have no difficulty. The Indiana claim seriously affects me. My idea of its revival depends not upon any words in the Constitution expressly giving it new birth, but from the jurisdiction which the federal court will enjoy. The question with them will be, is the right of the company an existing right ? The merits cannot be suppressed but by making the decision of the Assembly conclusive. This, I think, is very difficult. But I never can agree to found any conduct of mine upon injustice. I therefore fear the claim, only because it may create a ferment with the settlers in Indiana, or among the citizens, who may eventually make them retribution.”

The continued affection of his State was shown in the incorporation, by Act of Assembly (Dec. 1787), of an Academy at Morgantown, to which Randolph's name was given, and of which he was made a trustee, with Henry and Mason.

## CHAPTER XII.

### HOW VIRGINIA WAS CARRIED FOR THE CONSTITUTION.

ON the 17 September 1887,—centenary of the signing of the Constitution,—a magnificent and representative audience gathered in a vast amphitheatre, constructed on the square adjoining Independence Hall, Philadelphia. On the central platform sat the President, his wife, and members of his government. Justices of the Supreme Court and of State courts, Federal and State officials of high position, literary men and divines were present. I observed on that day a grandson of Patrick Henry, and descendants of Franklin, Randolph, Hamilton, Adams, George Mason, Jay, and other founders of the nation. An especially significant tableau was made by a group of clergymen, who, before the Constitution was adopted, used to bite and devour each other. The religious exercises were conducted by a Cardinal and a Protestant Episcopal Bishop, in their robes, and a Moravian, who cordially greeted each other under a common flag. All this was under a great summer morning, amid trees laden with boys, amid thousands of school children, who will bear to posterity the beautiful scenes of the day. One scene was worthy the pen of Milton. Soon after the President began his oration, the great clock of Independence Hall sounded from the tower over us the hour of noon. It is a slow, deep-toned, far-reaching bell—the same that, a hundred years ago, struck the twelve strokes at which Washington wearily arose from his chair for the last time—when Franklin observed that the sun carved on that chair's back was not, as he had sometimes feared, a setting, but a

rising sun. The President now stood silent, as if awed by this grand music sounding from the past to the present. But every solemn stroke was followed by a ringing cheer from the children; the elders caught the strain; the twelfth stroke was followed by a shout which spread far into the city.

In the mystical mood of that hour one might recall old legends of heroic princes—Arthur, Barbarossa—whom folk-tales said had never died, but were sleeping a charmed sleep in hidden grottos, whence, on the stroke of some appointed hour, they would emerge to lead on some happiest reign for their race. The historic imagination might even have seen emerging from Independence Hall, as its clock struck noon of the republic, a quaint procession of gentlemen in wigs and knee-breeches, filing out on the platform to mingle with the magnates their work had created. How curiously those mighty shades would examine these far-away figures of their constitutional workmanship! How amazed they would be to find how much there was not of their workmanship—the Cabinet, for instance, which they were so resolved the President should not have! Astonished they would be, too, to discover that their ingenious device of providing that the President should not be elected by the people, but by independent “Electors,” had long ago become a mere fiction.

Between the imposing centenaries of the signing of the Constitution and the beginning of its operation, little noted is 1888—the centenary of its ratification by the people of the States. True, three of these peoples ratified in the last month of 1787, and at the celebration in Philadelphia little Delaware had precedence for being first, Pennsylvania and New Jersey following. North Carolina came in reluctantly in 1789. Rhode Island was irreconcilable until the end of May, 1790, with a Constitution which gave her equal power with New York! But it was in 1788 that the great battles for and against the Constitution were fought and its principles sifted. June 21, centenary of the Union, passed silently.

It has required a hundred years and some fearful experiences for the original States to learn that in those constitutional Conventions they were exercising their supreme functions to determine whether those functions should survive or perish. Although the Conventions receive slight centennial attention, their significance was unconsciously celebrated by an arbitration in which President Cleveland decided that the people of a State, acting in constituent Convention, are the essential State. Fifty years ago Nicaragua, by such a Convention, conceded certain territory to Costa Rica, but now reclaimed it on the ground that the treaty was not constitutionally ratified. The Constitution of Nicaragua at that time required that every treaty should be ratified by two branches of the government, and the treaty with Costa Rica was ratified by but one. Costa Rica replied that the treaty, being framed and passed by a constitutionally chosen Convention of the people, required no further ratification. A State is not its legislature, executive, and judiciary; these are the machinery which a people has created to carry out its will, and which a people may abolish. Such a Convention need not therefore submit its decrees to subordinate powers of its own creation. It is supreme. In deciding the case for Costa Rica the President assented to a principle of far-reaching corollaries. The Convention which framed our Constitution was elected by State legislatures, but it expressed the "opinion"—it did not direct—that the ratifications should be by popularly elected Conventions in the States. Those conventions were the last summoned into existence by Congress. The Constitution does, indeed, provide that amendments to it shall be ratified by three fourths of the States through their legislatures or Conventions; but it cautiously reserved to Congress the power to determine which of these two modes shall be used, and it has always proposed the legislative method. Congress has refrained from evoking again the popular Convention—the legitimate apparatus of sovereignty. So far as the nation is concerned,

the State Convention never reappeared again, except for the purpose of resuming a sovereignty long surrendered.

It is interesting to attend these debates of 1788, through the historic perspective of a century. It is probable that the discussion in Virginia was the ablest forensic display that ever occurred in this country. But although first principles and great themes gave the debate its grandeur, the factors of the struggle were not all of equal elevation. One of the most widespread horrors was of the British creditor to whom the Constitution secured the barbarous methods of the time. The ratification carried dread into many a home. I have before me a letter written by St. George Tucker to his step-sons, one of them John Randolph of Roanoke, 29 June 1788, in which he says:

“ You will have heard that the Constitution has been adopted in this State. That event, my dear children, affects your interest more nearly than that of many others. The recovery of British debts can no longer be postponed, and there now seems to be a moral certainty that your patrimony will all go to satisfy the unjust debt from your papa to the Hanburys. The consequence, my dear boys, must be obvious to you. Your sole dependence must be on your own personal abilities and exertions.”<sup>1</sup>

Such a wide range of interests and sentiments and principles being involved in the issue, the “ anti-federalists ” (as they were unfairly called) of Virginia and New York formed Committees of Correspondence, somewhat like those which did service in the Revolution. It appears also that the mails were tampered with, so that their letters were sent under cover to obscure tradesmen in Richmond and New York. The executive chiefs of the Committee in New York were Gov. George Clinton and General Lamb; those of the Richmond Committee, Patrick Henry and George Mason.<sup>2</sup> Their object was not to defeat the plan of forming a Union; though Patrick Henry may have been somewhat heretical even on that

<sup>1</sup> MS. in possession of Mr. Joseph Bryan of Richmond.

<sup>2</sup> Lamb MSS. Hist. Soc. New York.

score, Mason certainly would have countenanced no scheme of dissolution. Jefferson wrote from France (his letter was used in the Virginia Convention) that he hoped nine States would ratify, and four remain out of the Union until a Bill of Rights and certain amendments were conceded. Mason and Clinton thought that the Conventions should exact the amendments previous to ratification, and for that purpose should demand a second national Convention. Madison believed that a second Convention would never agree on any Constitution at all. Randolph, as we have seen, had refused to sign the Constitution except on the condition that it should be submitted to a second national Convention. Nor did he ever give up the hope that there would be such a Convention; but he came to the conclusion that a ninth State should ratify, and the amendments be adopted through the constitutional formula for summoning Conventions. Randolph differed from Mason and Jefferson about a Bill of Rights. He thought it out of place in a National Constitution formed of delegated powers.

The struggle in the Virginia Convention, which opened 2 June 1788, was mainly a combat between Randolph and Henry. In argumentative power they were nearly matched; but now Randolph was heavily handicapped by his record as a recusant, and by the principles he had vainly defended in the Convention at Philadelphia, concerning which Mason was present to supply particulars. Henry, to whom it was Virginia's life-and-death struggle, was able to hurl at his antagonist arrows forged and feathered by himself. The Governor's strongest shield was peril of disunion. In the Union, he urged, amendments could be obtained; out of it, none. Randolph was further burdened by the fact that he profoundly differed from the majority of those around him in the matter of State sovereignty, survivals of which in the new instrument, to him objections, were to his opponents its only redeeming features. The most striking passage in the debate,



perhaps, was that in which national and anti-slavery feelings combined led him to throw away prudence in replying to Henry's prophetic allegation that, under the Constitution, slavery might be abolished by the war-power. Instead of denying it, this statesman (on whose motion "servitude" was struck out of the Constitution) said: "I hope there is none here who, considering the subject in the calm light of philosophy, will advance an objection dishonorable to Virginia,—that, at the moment they are securing the rights of their citizens, there is a spark of hope that those unfortunate men now held in bondage may, by the operation of the general government, be made free."

Randolph was so stung by Henry's insinuation that his change was due to some personal ambition—a foul blow, excusable only by the awfulness of the issue,—that for once his equanimity was lost, and an affront was returned. A duel was anticipated; but the Convention compelled Henry to ask Randolph's pardon. None knew better than Henry the sincerity with which Randolph presently said:

"The highest honors have no allurements to charm me. If he [Henry] be as little attached to public places as I am, he must be free from ambition. It is true that I am now in an elevated situation; but I consider it far less happy or eligible than that of an inconsiderable landholder. Give me peace—I ask no more. I ask no honor or gratification. Give me public peace, and I will carve the rest for myself. The happiness of my country is my first wish."

Apart from his domestic and literary tastes, Randolph's longing for private life was natural; for party rancor ruled the hour, and he was incapable of partizanship. At the outset Governor Randolph announced that the accession of eight States—nine being required—had reduced the question before them to one of Union or no Union; and raising his arm, he cried: "I will assent to the lopping off of this limb before I assent to the dissolution of the Union." At the close of the Convention he said:

“Mr. Chairman, one parting word I humbly supplicate. The suffrage which I shall give in favor of the Constitution will be ascribed by malice to motives unknown to my breast. Although for every other act of my life I shall seek refuge in the mercy of God, for this I request only his justice. If, however, some future annalist should, in the spirit of party vengeance, deign to mention my name, let him recite these truths : That I went to the Federal Convention with the strongest affection for the Union ; that I acted there in full conformity with this affection ; that I refused to subscribe because I had, and still have, objections to the Constitution, and wished a free inquiry into its merits ; and that the accession of eight States reduced our deliberations to the single question of Union or no Union.”

This was said on June 25. Had there been a telegraph it would have informed the Convention that four days before New Hampshire had supplied the ninth State, and the majority of ten by which Virginia ratified would have been on the other side. Four States, representing more than a third of the population of the country, might have been left out of the new compact ; this being the situation desired by Jefferson. That Virginia was carried even by a small majority was unquestionably due to the eloquence and influence of its Governor.

The news which presently came from New Hampshire, showing the baselessness of the plea, “Union or no Union,” which had carried Virginia, was not the only bitter pill which the opposition had to swallow. There had occurred during these events one of those seemingly small but infinitely momentous incidents which sometimes determine human destiny. The story I have now to tell, pieced together from manuscripts found in different States, was not published ; and, but that it is substantiated by unquestionable documents, I should hesitate to disturb its century of slumber, lest it be regarded as romance.

When the legislature of Virginia assembled after the Constitution was framed, it passed a law on the subject, and directed Governor Randolph to transmit it to the governors of the thirteen States, to be laid before their legislatures. The etiquette

between States was severe, and none would have ventured to interfere in the discussions of another unless by invitation. But this friendly transmission of its Act by Virginia to its sister States was intended to supply an occasion for interchange of opinions. On the 27 December 1787 Randolph sent the Act to each governor, "to be submitted to the Legislature of your State." I cannot discover that any miscarried, save one; that one was a miscarriage so serious for the opponents and so helpful to the champions of the new Constitution that it is difficult to repress a suspicion of foul play. The Governor's letter, posted at Richmond on the 27 December 1787, did not reach the Governor of New York until the 7 March 1788. This mysterious delay of two months and eleven days was just sufficient to prevent its being acted on by the New York legislature. The Governor of New York, George Clinton, was a violent opponent of the new Constitution, and a majority of the legislature of his State sympathized with his opinions. Had the enclosure from Virginia arrived in time New York would certainly have responded with an offer of coöperation, which would greatly have strengthened the dissentients in the former State, and in others. Not only did Governor Randolph's enclosure reach him too late to influence the New York legislature, but the Virginia Assembly had adjourned, so that he could make no communication to that.

The Convention of Virginia, to consider the new Constitution, was to meet on June 2; that of New York on June 17. The belated letter from Virginia must have been a subject of long and anxious consultation in the Clinton-Lamb "anti-federalist" committee. It was not answered by Governor Clinton until 8 May 1788, when the following was transmitted to Randolph:

"Your Excellency's letter of the 27th of December, although it appears to have been committed to the post-office at Richmond, did not come to my hands until the 7th of March.

"The Act inclosed was immediately communicated to the Legislature, but it was after they had passed their resolutions for calling a Con-

vention, and so near the close of their sessions, that no order was taken in consequence of it.

“The system of government proposed by the Federal Convention is an object of such vast importance to the happiness of America, that it appears to me essential that the people of the different States cultivate and cherish the most friendly sentiments towards each other, especially during their deliberations on that interesting subject.

“The Convention of this State are to meet at Poughkeepsie, on the 17th of June, to take the proposed system into consideration, and I am persuaded they will, with great cordiality, hold a communication with any sister State on the important subject, and especially with one so respectable in point of importance, ability, and patriotism as Virginia. I think I may venture to assure your Excellency that the people of this State are disposed to keep up that friendly intercourse, and preserve that unanimity respecting any great change of Government, which appears to be the object of the Act of your legislature, and which it is the duty of every good man to promote and cherish, and I have no doubt but that our Convention will possess the same sentiments.

“As the session of your Convention will take place before that of this State, they will, I presume, commence the measures for holding such communications as shall be deemed necessary.

“I can not refrain expressing regret, that a similar conduct has not been observed by the States who have already had the proposed system under consideration. Friendly communications on the subject, and temperate discussions, would, it is to be presumed, have had a most happy tendency in accommodating it much more to the sentiments and wishes of the people of America, than is likely to be the case in the form it is offered by the General Convention, and acceded to by some of the States. Should it be adopted by small majorities in the large States, we can not reasonably hope it will operate so as to answer the salutary purposes designed ; for I presume it may be laid down as a certain truth, that no government can be exercised over this country in its present condition, that is not supported by the affections and confidence of the people in general.

“As I have no direction from the legislature on the subject of your communications, your Excellency will be pleased to consider this letter as expression of my own sentiments, but I have at the same time a well-founded confidence, that a majority of the people of the State over which I have the honor to preside will concur in them.”

This letter of Gov. Clinton was clearly meant to reach the

Virginia Convention, and was so timed. Had it reached that Convention the course of American history might have been different. It was duly received by Randolph; it was by him laid before the executive Council; but the Convention knew nothing of it until the day after it had ratified the Constitution, when the letter was read, amid gnashing of teeth, to the reassembled legislature.

The Convention met on June 2, and the final vote was taken on June 25. An extra session of the legislature had been called for June 23. On this, the first day of its meeting, Governor Randolph sent to the Assembly the following message, enclosing the Clinton letter:

“Richmond, June 23, 1788.—The enclosed letter from Governor Clinton of New York, is an answer to a short circular letter which I wrote to the Executives of the different States, transmitting the acts of the last session concerning the Convention. I laid it before the Board immediately on receiving it, and requested their opinion, whether it was of a public or private nature. They conceived it to be of the former description, and therefore it is now forwarded.”

Thus the letter was sent in two full days before the final vote was taken on ratification. But how could the legislature get a quorum when near by the giants were struggling? By a letter of Madison to Hamilton, 22 June 1788, we know that apprehensions were felt about the legislature: “It unluckily happens that our legislature, which meets at this place [Richmond] tomorrow, consists of a considerable majority of anti-federal members. This is another circumstance that ought to check our confidence.” But there was no danger from a legislature crowding to hear Henry and Randolph. The journals show that, in that extra session, the Senate had no quorum until June 25. The House first had a quorum on the 24th, when the Journal notes the reception of the Governor’s message, and that its enclosures were partly read and laid over till next day.

Till next day! Then this proffer from New York of league

with Virginia might be too late, even could a quorum be got on that last day of the great struggle. The presence of this silent scrap of paper in a deserted hall, during the two days of an historic crisis it might have determined differently, may now lend even more impressiveness to the scene described by Wirt. It was on that same June 24 that Patrick Henry summoned the storm as his ally :

“I see the awful immensity of the dangers with which it is pregnant. I see it. I feel it. I see beings of a higher order anxious concerning our decision. When I see beyond the horizon that bounds human vision, and look at the final consummation of all things, and see those intelligent beings which inhabit the ethereal mansions reviewing the political decisions and resolutions which, in the progress of time, will happen in America, and the consequent happiness or misery of mankind, I am led to believe that much of the account, on one side or the other, will depend on what we now decide.”

Wirt describes his invocation to those celestial beings.

“An invocation that made every nerve shudder with supernatural power ; when, lo ! a storm at that instant arose which shook the whole building. Nor did his eloquence, or the storm, immediately cease ; but, availing himself of the incident, with a master’s art, he seemed to mix in the fight of his ethereal auxiliaries, and ‘ rising on the wings of the tempest, to seize upon the artillery of heaven and direct its fiercest thunders against the heads of his adversaries.’ The scene became insupportable ; and the House rose without the formality of adjournment, the members rushing from their seats with precipitation.”

And all the time the voice which might have saved Henry’s cause was not in the heavens, or the tempest, nor in his own flame, but lay small and still on the table of a neighboring room made vacant by his eloquence. It reads like some fable that might have been told by Plato to justify his exclusion of poets from his Republic. Again on June 25 the orators of the Convention denuded the legislature ; the voice of New York was unheard ; the Constitution was carried.

On June 26 George Mason repaired to the assembly, of which

he was a member, and there heard Gov. Clinton's letter read. I have from one of his descendants roughly drawn resolutions,—written on the back of a page of amendments to the Constitution,—demanding of Gov. Randolph why Governor Clinton's letter was not laid before the Convention at their first meeting; also why the official letter from Gov. Randolph to Gov. Clinton “was delayed from the — day of December to the — day of March, in its conveyance to New York.” But the angry resolutions were never offered. Mason was not a man to pursue a vindictive course, even had it not been probable that the resolutions would have merely proved a lapse in the vigilance of his own party. Besides, it was too late.

On the 6 August 1788 Gov. Randolph wrote Gov. Clinton an inquiry concerning the delay of his original letter, which had excited injurious suspicions against himself; though, as the reader may find from his letters, Randolph, even had he been capable of any trick, was in sympathy with Clinton's policy at the time the delayed letter was written. He writes:

“Your Excellency will oblige me much, if you will turn to the letter, which I wrote to you, inclosing the *law*, concerning our late convention. The original *resolutions* appear to have been transmitted on the 14<sup>th</sup> of Nov<sup>r</sup>. 1787; the *law* on the 27<sup>th</sup> of Dec<sup>r</sup>. 1787. It has been reported here, that the *law* was witholden for a considerable time. The back of my letter will shew the day, on which it was put into the post office; and I am desirous of knowing the date, which is impressed by the postmaster. If your Excellency can inform me of any reasons such as your absence from town &c, which could have prevented the letter from reaching your hands, as soon as it ought, I will thank you to add them. But I must beg your pardon for intruding on you upon a subject which belongs not to the public, but myself only.”<sup>1</sup>

Whether the mystery was ever explained I cannot discover. Gov. Clinton, in a letter to J. Dawson of Virginia, 12 Dec. 1788, has the following allusion to the matter:—“The letter of the legislature of Virginia is not yet received, and I am not without

<sup>1</sup> MS. Dr. Fogg's Coll.

apprehensions that measures may be taken to retard the delivery of it so as to defeat its utility. You will not, I am persuaded, ascribe my suspicions on this occasion to an undue degree of jealousy when you recollect the circumstance respecting my letter which was laid before your convention."

Unless we assume the word "not" accidentally omitted from its last sentence this letter would show that Gov. Clinton had not yet learned the fate of his letter, and supposed it had merely been retarded by Gov. Randolph on its way to the Convention. The note to Dawson proves, however, that the Governor of New York had endeavored to utilize the Governor of Virginia to get a letter before the Convention of Virginia. The letter to Randolph is so artistic that one cannot wonder that its composition should require two months. At once official and unofficial, public and private, speaking for New York but without legislative instruction, Gov. Clinton's letter burdened Randolph with a double responsibility and risk. Randolph was a Governor, responsible to the legislature which elected him. As a citizen he was a member of the Convention. Had he laid before the Convention a communication received in his capacity as Governor, the legislature might have impeached him for violation of its rights. Had he laid it before the Convention as the communication of one gentleman to another, the Convention might resent such interference of a foreigner with their supreme Council of State. Gov. Clinton could explain that he never dreamed of his personal communication being so used, thus escaping the odium while reaping the advantage of his letter,—the reverse being Randolph's situation. Had it really been a personal letter, had he not meant it to carry the weight of New York, he might have written to Henry or Mason, under cover to "Mr. George Flemings, Merchant, Richmond." But, then, had either of these gentlemen undertaken to be the conduit of alien influence to the "sovereign" Convention of Virginia, he might have started a



reaction against his cause without bringing Randolph's official weight to bear. The only possibility of success in the manœuvre was to somehow compel the Governor to lay the letter before the Convention and bear any odium that might result.

Gov. Randolph laid before his Council this ambiguous letter. In that Executive Council, chosen like himself by the legislature, sat Beverley Randolph (who succeeded Edmund as Governor at the end of 1788); James Wood (President of the Society of the Cincinnati, and afterwards Governor of Virginia); James McClurg (member of the Constitutional Convention of 1787); Joseph Jones (of the Continental Congress); and Carter Braxton (signer of the Declaration of Independence). It was necessary for these men to recur to first principles, and to decide, a century before President Cleveland in his arbitration between Central American republics, on the relative authority of a State government and a Convention of the People of that State. What right had any executive, the creature of a legislature, itself the creature of a Convention, to bring its apparatus of gubernatorial correspondence into the affairs of a sovereign Convention? By what authority could the creature try to control his creator? Only as a member of the Convention could Randolph use the letter in that body; and, as it had not been written to him in that capacity, but as a Governor, he and his Council concluded that it belonged to the legislature. To that body it was sent on the earliest day of its legal meeting. It was therefore not retarded at all. It was on the table of the House two full days before the ratification; that it was not taken up and brought into the Convention was due to the neglect of Clinton's allies in Virginia.

## CHAPTER XIII.

### THE INTERREGNUM.

GOVERNOR CLINTON'S circular letter (27 July 1788), in pursuance of the resolution of the New York Convention, inviting the States to unite in their demand for a second national Convention, was promptly published by Gov. Randolph. Under date of August 13 he writes to Madison :

“ Gov. Clinton's letter to me for the calling of a Convention is this day published by my order. It will give contentment to many, who are dissatisfied. The problem of a new convention has many difficulties in its solution. But upon the whole, I believe the assembly of Virginia *perhaps* ought, and probably will concur in urging it. It is not too early ; because it will only incorporate the theory of the people with the theory of the convention ; and each of these theories is entitled to equal respect. I do indeed fear that the Constitution may be enervated if some States should prevail in all their amendments ; but if such be the will of America, who can withstand it ? For my own part, I fear that direct taxation may be too much weakened. But I can only endeavor to avert that particular evil, and cannot persuade myself to thwart a second convention merely from the apprehension of that evil. This letter will probably carry me sooner into the Assembly than I intended. I will prepare a draught upon this subject, and forward a copy to you as soon as I can. My object will be (if possible) to prevent instructions from being conclusive, if any should be offered, and to leave the conventionists perfectly free.

“ The Marquis of Condorcet has sent me some strictures on the Constitution. But they do not appear to me to have a better title to notice than the levities of the Abbé Mably concerning America.

“ North Carolina has rejected by a large majority. The fact may be relied on, though nothing official has come to hand.”

The scheme of a new Convention continued in Randolph's favor, and in that of Pendleton, "the president" referred to in a letter from Richmond, 3 September 1788, to Madison:

"I am much obliged to you for your favor of the 25th ulto. Being in Williamsburg when I received it, I imparted it to our old friend the president, who espouses with warmth an early convention. I sincerely wish that the valuable parts of the constitution may suffer no ill from the temper with which such a body will probably assemble. But is there no danger, that, if the respect which the large minorities at present command should be effaced by delay, the spirit of amendment will hereafter be treated as heretical? I confess to you without reserve that I feel great distrust of some of those who will certainly be influential agents in the government, and whom I suspect to be capable of making a wicked use of its defects. Do not charge me with undue suspicion; but indeed the management in some stages of the convention created a disgustful apprehension of the views of some particular characters. I reverence Hamilton, because he was honest and open in his views.—Perhaps the States may not concur in any particular correction of the new theory. But if dissensions of opinion should prevent an amendment, the constitution remains as it is. If on the other hand they should be in unison as to even one amendment, it will satisfy, and bear down all malcontents.—The Indians have been outrageous on the Southern frontier. I conceive that we shall be obliged to appoint a commission to attend the treaty in South Carolina in defiance of the Confederation.—Mazzei's book is read by some with pleasure and applause; by others as rather preserving the good composition of certain politicians than originating much from himself. I believe the work will sell."

Governor Randolph was at this time preparing for the anxious work of inaugurating the new government in his State.

"An hundred and seven members are assembled," he writes (October 23), "among whom is the leader of the opposition. I have not seen him, but I am told that he appears to be involved in gloomy mystery. Something is surely meditated against the new Constitution more animated, forcible, and violent than a simple application for calling a Convention. Whether the thing projected will issue forth in language only, or the substance of an

act, I cannot divine. But I believe I may safely say that the elections will be provided for, and that no obstruction will arise to the government, or rather will be attempted,—so far as a preparation for organizing it goes.”

I find among the Lee MSS. a letter from Theodorick Bland, probably to R. H. Lee, (Richmond, 28 Oct. 1788), which, as from a former “irreconcilable” to another has significance. After complaining that the discredited Congress should act on important matters (financial, etc.) during the interregnum, and urging the importance of amendments to the Constitution, Col. Bland adds: “We have, however, taken possession of the Capitol. The Chief Magistrate [Randolph] has (though not publicly) announced his resolution to retire from the helm and take a berth among the crew—where he talks of joining the mutineers either to trim the ballast of the new government or put the ship about.”

Patrick Henry was very sore at the defeat of his cause in Convention. His struggle was unparalleled. “Out of the twenty-three days of that splendid tourney,” says Tyler, “there were but five days in which he did not take the floor. On each of several days he made three speeches; on one day he made five speeches; on another day eight. In one speech alone he was on his legs for seven hours.”<sup>1</sup> And, after all, to be defeated by an alleged fact that did not exist, the supposition that the ninth State was needed—and by lack of the Clinton letter close beside him! Sore as Henry and his comrades were they had still one great hope,—that a second national Convention might be summoned. But the “Federalists” were resolved that no such Convention should take place. Madison had taken the optimistic view, and wrote in the *Federalist* against the Madisonianism of 1787.<sup>2</sup> The only possi-

<sup>1</sup> “Life of Patrick Henry.” By Moses Coit Tyler.

<sup>2</sup> The changes of opinion among statesmen were such as to entitle few to charge Randolph with “inconsistency.” Henry had been a devout Federalist until the year 1787; then he became the champion of State sovereignty. Madison, after entreating (in the Convention, 29 June 1787) the small States to renounce their claim to

bility of securing from Congress a Convention was to keep Madison out of it. When the election was held Henry rose in the Virginia Assembly and announced his will, and it was done. This defeat of Madison alienated Randolph, who was the most loyal of friends, from the Henry party, and he was eager to confront them in the Assembly. Writing from Richmond, 10 Nov. 1788, he reports the event to Madison :

“ On Thursday last the candidates for the Senate were nominated ; and Mr. Henry, after expatiating largely in favor of Mr. Lee and Mr. Grayson, concluded that yourself, whose talents and integrity he admitted, were unreasonable upon this occasion, in which your federal politics were so adverse to the opinions of many members. Your friends Page, Corbin, Carrington, and White were zealous, but the last gentleman, having in the connection of his idea something about instructions, acknowledged that it was doubtful whether you would obey instructions which should direct you to vote against direct taxation. ‘ Thus, gentlemen,’ rejoined Mr. Henry, ‘ the secret is out ; it is doubted whether Mr. Madison will obey his instructions.’ The ballot was opened on Saturday, and at least fifty gave you single votes ; that is, threw their other votes on persons not nominated. To the mortification and grievous discontent of the advocates for order and truth, the members were for R. H. Lee 98, for William Grayson 86, for James Madison 77. There was a greater body than we calculated upon—164 having unexpectedly voted. Were I to decide what would be agreeable to my own feelings, the anxiety and affection which were discovered by your friends in-doors and your favorers without, I would prefer the situation of the unsuccessful candidate. A number of those who were with you were absent, and this brought into loss a question which otherwise would have been clear. The faction is, I equality in the Senate, as a “ principle confessedly unjust ; which could never be admitted, and which, if admitted, must infuse mortality into a Constitution which they wished to last forever,” is, as we have seen, found (*Federalist*, 63,) defending the unequal character of the Senate. When at the close of the century Madison was espousing the State sovereignty resolutions of '98, Patrick Henry advanced and gave his last breath to withstand the men who had come over to his side. Wirt reports Henry as saying : “ He had seen with regret the unlimited power over the purse and the sword consigned to the general government, but . . . he had been over-ruled, and it was now necessary to submit to the constitutional exercise of that power.” But the Eleventh Amendment was now a part of the Constitution, and some of the Amendments for which Henry had contended.

am told, endeavoring to arrange the districts for representatives, so as to place Orange to be counterpoised. For this district it is presumed that Strother or Mr. Dawson will be the candidate. In short, nothing is left undone, which can tend to the subversion of the new government. On Friday I shall be a member. I could not get in sooner, as a vacancy could not be sooner created than to-day. Some attempts, and those not a little strenuous, you will hear of from yours most affectionately."

The following to Madison (from Williamsburg, 27 March 1789) announces an interval of repose :

"There is a general calm of politicks. The discontented themselves seem willing to wait with temper, until Congress shall open their views. It gave me much pleasure to read your letter to Col. T. M. Randolph ; as it shows a consciousness of amendments being necessary, and a disposition to procure them. Altho' I am convinced that nothing will soften the rancour of some men, I believe that moderate and conciliatory conduct on the part of our federal rulers will detach from their virulence those who have been opposed from principle. A very injudicious and ill-written publication which you have seen under the signature of 'Decius,' may impede perhaps the salutary effect, by keeping in a state of irritation those minds, which are well affected to the object of his bitterness. His facts are of a trivial cast, and his assertions are not always correct ; and he thus becomes vulnerable in almost every part. The liberty of the press is indeed a blessing which ought not to be surrendered but with blood : and yet it is not an ill-founded expectation in those who deserve well of their country that they should not be assailed by an enemy in disguise, and have their characters deeply wounded, before they can prepare for defence. I apply not this to any particular person."

The philippic of "Decius," which excited much attention, was clearly directed against Henry, who was accused of wishing to make Virginia into one confederacy, with himself for dictator. He was accused of disguising the aim of a tyrant under tricks of the demagogue.

"If," continues Randolph, in the same letter, "the peace of this country is interrupted by any untoward event, one of three things will have a principal agency in the misfortune: the new

Constitution, British debts, and taxes. The two former are not within the reach of any act of Virginia ; the latter, too, will become formidable chiefly by the accumulation of the public burthens on account of federal purposes. I wish you would suggest some expedient by which these dangers can be averted, and in which we can co-operate, in our different legislative functions.

“ I feel here a happiness to which I have been hitherto a stranger, and which is not a little increased by having shaken off a dependence on those who think every man in office to be the servant of the legislature. I enjoy that opportunity, which I long sought in vain amidst the tumult of business, of examining and settling my opinions. But the scarcity of money obliges me to attend the Court of Appeals, and to give advice, which labours, could I avoid, would leave behind them no cares but for public tranquillity.”

## CHAPTER XIV.

### LAUNCHING THE CONSTITUTION.

IN the perspective of a century things loom large. The federal government by no means appeared gigantic to the giants of those days, when its first steps were taken. The Confederation had lowered every thing federal. The lustre investing Congress during the Revolution had faded. The best men could hardly be persuaded to leave their State Assemblies for it; with various results, among them a general irritation in the States when Congress tried to make itself of some consequence. The idea that the States were to be the centres of political life was axiomatic in the South; especially, in Virginia none conceived a greater dignity than to be a leader in its Legislature. For the gubernatorial dignity had not then gained its aureole. The Governor of Virginia was a member of the Executive Council, much after that wise republican fashion which to-day unites the president of the Swiss Council with others in a common esteem dependent on their services and not on their rank. In 1786 Patrick Henry declined to be re-elected Governor, but gladly accepted a place in the House of Delegates. His successor, Edmund Randolph, followed the same course. One main object in his resigning the governorship and entering the Assembly was to conduct the work of revising the Code of Virginia. His political position was by no means so happy as it had been. There was an incessant clamor about the federal monarchy in process of erection, and the ex-Governor was an obvious scapegoat for all actual and fancied follies at New York.



In a letter dated Williamsburg, 19 May 1789, he gives Madison some account of the state of feeling there.

"We had received a confused account of the committee of titles before your accurate information reached me. In it R. H. Lee was represented as having publicly holden a discourse with Arthur Lee, and some of the representatives, asserting the superior pretensions of the Senate to distinction. The simple but dignified address from your house, in which we discover your pen, is a subject of general approbation, and is supposed to have drawn the best answer which the president has yet given. Great, indeed, will be the astonishment of R. H. L.'s confederates here. Richmond now resounds with the report of his opinions, brought hither by young Mr. Randolph; and yet it is an unmerciful style of proceeding that we should enter so heartily into the condemnation of a man in public office without having any ground to insinuate any thing against his integrity in discharging it."

The young Mr. Randolph was John of Roanoke, who had come from witnessing the inauguration of Washington, and listening to the first debates of Congress, and was afire with the excitement of the anti-constitutional representatives of Virginia in New York, some of them his own relatives. A Committee of the Senate had reported that the Executive should be styled "His Highness the President of the United States of America, and Protector of their Liberties." Some were even suggesting "His Majesty," others "Elective Majesty," because he represented the "Sovereignty of the People." A senator was to be styled "Most Honorable," and his wife "Lady of the Most Honorable." Against this nonsense the Representatives, who were not then using their House as a stepping-stone to the Senate, protested with dignity.<sup>1</sup>

Williamsburg was even more charming, for a man weary of the controversies and toils of official life, now that the capital was transferred to Richmond. The University, on whose Board of Visitors

<sup>1</sup> A graphic account of the debates on titles, and of the discreditable part borne therein by Vice-president Adams and R. H. Lee, may be found in William Maclay's "Sketches of Debate in the first Senate of the United States."

Randolph had been since 1777; of which Washington was now Chancellor, and Bishop Madison President; was not indeed so well attended as formerly, but there was a fine literary circle there. Yet, as Goethe thought heaven itself might not be agreeable with pious old ladies saying "I told you so," we may imagine that Tazewell Hall might lose its charm when beset by anti-federalists laying at its door the latest incidents of federal imperialism. In fact Randolph had to face the fact not merely of unpopularity in his State, but of an unpopularity incurable by reason of his philosophical dissent from the political doctrine of the great leader—Henry,—sovereignty of Virginia. His wife's need of a more skilful physician than could be found in that region, joined with this growing feeling of alienage, turned his attention to Philadelphia as a place of residence. He intimates this in a letter to Madison, between whom and himself the most confidential correspondence had continued since their youth:

"I wish that by communicating with a friend I could forget the situation of my wife. She suspects and I fear truly, that she has a cancer in her mouth. . . . In this country real aid is unattainable; nay, even that species of aid, which can merely flatter, is unattainable. I have resolved, if the alarm should prove decidedly true, to carry her to Europe or Philadelphia. The former holds out the best source of hope; but I see no chance of converting property into sterling money. The latter would be visited with more ease. But as I should be obliged almost to become a resident there, should I go upon such an errand, pecuniary difficulties would be equally great. An effort, however, must be made, even at the risque of my whole fortune. Indeed I have sometimes seriously thought of attempting something professional, should I be compelled to visit Philadelphia without being able to raise money from my estate. In that case a new revolution would take place with me. For if I found that I could live there I should emancipate my slaves, and thus end my days without undergoing any anxiety about the injustice of holding them."

Under date of Williamsburg, 30 June 1789 he writes to Madison:

“The amendments, proposed by you, are much approved by the *strong* federalists here and at the Metropolis; being considered as an anodyne to the discontented. Some others, equally affectionate to the Union but less sanguine expect to hear, at the next session of Assembly, that a real amelioration of the Constitution was not so much intended, as a soporific draught to the restless. I believe, indeed, that nothing—nay, not even the abolishment of direct taxation—would satisfy those who are most clamorous. But I confess, I am still in hopes to see reported from your mouth some review of the various amendments proposed, and reasons against the fitness of such as appeared improper for adoption.

“I am now well persuaded, that there is danger of the executive being a feebler member of the government, than I once supposed; I therefore must approve of the power of removal, for which you have lately contended. But the temper of those who boast of being democrats does not relish the fabrication of one great man. They throw out of view, when they manifest their intemperance on this subject, the probable wickedness of faction.”

The præminent position which Randolph had attained at the bar; his fame as the first Attorney General of Republican Virginia, and as chief framer of the constitutional provisions for the judiciary; his experience as a judge in cases immediately resulting from the breaking up of the English law-system in Virginia; all pointed him out as the right man for a place in the legal machinery of the government. His eloquence determined that it should be the part of Attorney General.

It was the cruel part of Henry's insinuation of self-interest, in the Convention of 1788, that it set in motion the very forces which must presently lend it an appearance of justification.

Randolph could not continue in political life in Virginia; his long training and statesmanship could alone find play in the federal government. But how painful the acceptance of any such position had been made, by the insinuations alluded to, is disclosed in the following confidential letter to Madison.

“Williamsburg, 19 July, 1789.—I have received from Col. Griffin a letter, dated July 10, 1789, in which is this passage: ‘I had

yesterday morning a long conversation with our worthy president on the subject of officers of the judiciary and the customs. He appears very anxious to know whether any of the gentlemen who are now in the judiciary department in the State of Va. would prefer the Continental establishment, and mentioned Mr. Pendleton, Mr. Wythe, Mr. Lyons, and Mr. Blair, and ask'd me whether you had ever intimated a wish to serve in that or any other line under the federal government. May I ask the favor of you to sound Mr. W [ythe] & Mrs. B [lair] on the subject. I have written to Mr. Marshall relative to the wishes of Mr. P [endleton] & Mr. L [ee]. So far as his paragraph respects myself, I do not choose to make a direct answer to Col. G., but through your medium ; and I hope you will not find it inconvenient to communicate with him on the subject. The following is a candid exposition of my situation.

“When I quitted my practice I had arranged my affairs in such a manner as amply to justify the measure which I then adopted. The most important debt which I owed had arisen from a purchase of Fry's land [near Monticello], to which I had opposed for payment a tract containing twice its quantity in Charlotte. This I cannot sell to answer my purpose, and thus do, and must, encounter some difficulty. From those circumstances I was led *partially* to resume my profession. Since that time the apprehension with respect to my bosom companion grows stronger, and the disorder itself, from circumstances suggested in a former letter, will probably make a large demand for money. I have lately, too, discovered a debt due from my uncle's estate of about £800, which somewhat alarms me. These pressures must be baffled by some vigorous exertions.

“Col. G's letter has, however, called me to reflect upon a different destination. It would bring with it many conveniences in reference to the complaint of my wife, if a northern journey should be deemed necessary for her. But these could be counterbalanced by the load of calumny which would be poured upon me. I am aware in regard to those whose irritation against the new gov<sup>t</sup> is not to be allayed, as I could not assuage them, so I cannot exasperate them to a greater degree than they already are. But for any emolument or honor whatsoever I would not hazard the esteem of the virtuous, who know my conduct on the great federal topic, and, I flatter myself, acknowledge its consistency, and, above all things, its purity. Yes, my dear friend, its purity. For it has been insinuated (and in defiance of truth) that my espousal of the Constitution had alienated even its

friends from me, who would not elect me to the house of representatives. The insinuation has been carried so far as to apply it to the disposal of offices under the government. My sincere desire then would be to have it in my power to *refuse*, and actually to *refuse*, an office. But as the tender of a post could not be made on such ground, I commit myself to you, and leave you to represent this business to Col. Griffin as you please, if you think that there is no impropriety in my enlisting under federal banners. And yet I ought to add that nothing definitive can be said.

“On the 2<sup>nd</sup> of August I go for Loudon to argue a cause against Mr. P. Henry. Write me an answer to this letter, and direct for Fredericksburg, there to await me.”

Meanwhile Colonel Parker came from New York, and intimated to Randolph that the President desired to appoint him, but was expecting some move on his part. Randolph, who had the offer of a seat on the bench of the Court of Appeals of Virginia before him, was by no means sufficiently inclined to re-enter the political arena as to ask for office. That he did not quite trust Parker appears by a letter to Madison of 23 July 1789 :

“Col. Parker seems to think, but I am persuaded upon grounds in no respect tenable, that the president affects applications from those who are willing to become servants of the U. S. It is too outrageous to be believed, and even when believed, cannot be submitted to by men of real merit. The tincture with which he [Parker] has coloured some subjects has nauseated some of the best federalists here. And the form of the call, with the president’s total alienation (in point of dinners) from the representatives, has awakened a degree of jealousy. In short he represents every thing as marching with furious rapidity towards monarchy,—as far as manners can work such an effect.”

In a letter from Fredericksburg, 18 August 1789, a little episode is described :

“I returned hither from Leesburg. There I was confronted with Mr. Henry, and for three days we lay alongside of each other, with our best cannon in action. It was a diverting scene, taken in the whole. My client, Charles Carter, must have been defeated if a single point of four had gone against him ; and to obtain one, every thing was tried in the way of assertion, declamation, and solecism. In three points

the court were unanimous against Mr. H.; on the fourth we had a bare majority. Thus being mortified with defeats, and willing to disguise them under the name of a compromise, he proposed that his client, Robt. Carter, should surrender 6,000 acres of land and £450. To this I agreed, knowing that two of the four points were in strictness by no means in our favor."

A note from Williamsburg, 26 September 1789, contains the following :

"The president is supposed to have written to Mr. Adams, while titles were in debate, that if any were given, he would resign. Whether it be true or not, it is a popular report. However, I question if even this, added to his services, will draw forth from the assembly an address of congratulation. I will endeavor to prevent any pain to him or imputation in Virginia. But I fear the ardor of those who wish to be conspicuous will not suffer them to be prudent."

While he was writing this to Madison a letter from Washington was on its way to him, to which, after much thought, he replied :

"WILLIAMSBURG, 8 Oct., 1789.—Although it may be improper to express my thanks to the chief magistrate of the union for any act of office, yet you will pardon me, I hope, for assuring you that your very friendly communication of the 27th ult. is truly cordial to me.

"The appointment is by no means unacceptable for its duties : nor will I say as to the salary. My wish, therefore, to obey your summons will be restrained by the following considerations only : an ignorance whether it will require me to remove from the seat of government to attend any court, & a difficulty in arranging my private affairs early enough for the service of the U. S. The former obstruction will, I suppose, be destroyed or confirmed on the inspection of the judiciary bill ; the latter is of a more serious cast. My worthy uncle left me all that he ought to have given me, but it was not much better than a nominal estate ; since the money that I have been obliged to pay for his debts and those of my father, in which he was bound, took three fourths of the value of that property, in actual cash acquired by my profession. But I have added to this mischief by two injudicious purchases of land made after the decline of its price. These are loads around my neck, and are rendered more oppressive by the partition of my bonds into many hands. Time alone can bring this evil to an end.

I pass over other debts, as well as the necessity of putting my plantations, lying in distant counties (Albemarle & Charlotte), on a proper footing. If, however, the act, when examined, should not, as I suppose it does not, contain any provision which I cannot get over, I will repair to New York as soon as I possibly can. I hope that March will be in time, for then I can carry my whole family. In the meantime, if any professional aid should be demanded by the government, I hope there would be no impropriety in soliciting the aid of some gentleman on the spot to render it in my behalf.

“But I cannot conceal a desire to remain in the Assembly until the end of the ensuing session. I have been employed for more than six weeks in completing a revision of our laws upon a scale which alone will please a majority. Their confusion has caused calamities scarcely to be comprehended. Our statute laws are dispersed through six unwieldy volumes, of which ten copies are not to be found, I verily believe, in the State. Our local accounts are in 8 different volumes, amount to at least 1300, and may be reduced to 350. This work will, I am confident, miscarry without the support of some man who has its success at heart. I can signify my acceptance without being disqualified, and finish this indispensable business. With your permission, therefore, I will, should I determine to accept at last, postpone an answer until you drop me a hint on the subject of delay.

“This letter is written under the affliction of a severe fever, into which I have relapsed after a perfect cure, as I presumed, about two weeks ago. But knowing I write to one who has always shown himself regardful of me beyond my deserts, I shall conclude with repeating to you my dear sir, that I am your obliged and affectionate friend,” etc.

To Madison he writes, 10 October :

“There are many causes, however, which, besides the curse of expatriation (you see I am not yet a strict American), must detain me here some time, such as the dispersion of my property, so as to render several agents necessary—the complete arrangement of my old law business—the settlement of an executorship, and the adjustment of my debts. I confess, too, that I wish to be in the next Assembly for some time, in order to reduce the eight volumes of our laws into one. Prepared as I am, this work will not occupy twenty days.”

In a letter to Washington, from Richmond, 22 November 1789, he expresses hope of going to New York on the 15 January, and adds :

“In a fortnight the Assembly will rise. Mr. Henry has quitted rather in discontent, that the present Assembly is not so pleasant as the last. He moved, before his departure, to postpone the consideration of the amendments until the next session. His motion now lies upon the table to be discussed to-morrow. I think the result will be to ratify the first ten, and adjourn the remaining two over on account of their ambiguity. A motion will also be made to-morrow to publish an inflammatory letter, written by our senators to the Assembly. This will be opposed so far as relates to publication under legislative sanction.

“The plan for a revisal of our laws as mentioned in my former letter, has been approved, after a marked malignity shown to it by our demagogues. In a day or two we shall be agitated by a question on the sale of the glebes. The partizans of this iniquity wish to keep it off until next year. But it is determined to prepare an antidote to their misrepresentations by stating the title of the church in a pointed manner. If we find it practicable, we shall draw the Assembly to a final decision.”

On Dec. 15 he reports having probed Chancellor Wythe to find if he will accept a federal judgeship. He says Wythe “sits in a kind of legal monarchy, which to him is the highest possible gratification.”



## CHAPTER XV.

### RES ANGSTA MILITIAE.

THE revolutionary patriots of Virginia were veritable "Cincinnati": they went from acres where they and their children were fed at the very breast of Mother Earth. There they needed little cash. But when they left home, especially when in northern cities, their acres turned to poverty. Patrick Henry's poverty partly prevented his attending the Constitutional Convention at Philadelphia. Washington borrowed money for the journey to his first inauguration. Randolph suffered sadly from impecuniosity from causes somewhat peculiar.

From his twenty-second to his forty-second year, Randolph was never out of office, although he never sought it. Offices are now lucrative, but at that time they were costly to the occupant. While Randolph had been at the same time Attorney of Virginia and Member of Congress, receiving from both together little more than would pay for his journeyings between Williamsburg and Philadelphia, his private business was necessarily neglected. For many years he was overloaded with public work,—ill-paid and often unpaid,—and sometimes work he disliked: he must work on every State committee, vindicate the title to Western lands, settle boundaries, revise the code, besides being dragged into enterprises for the profit of others, such as the Potomac and James River Company. At the same time he was the dependence of a number of relatives and a horde of negroes. He was the attorney of a large connec-

tion whose fees when offered were often refused, and he managed without payment the interests of Madison and the more complex affairs of Washington. Perhaps, had he known more of Randolph's affairs, Washington might have insisted on paying him for his legal services, especially in the case of lands added to his estate. When Jefferson went to France he turned over a number of his most important law-cases to Randolph, as is shown by his books at Edgehill. The State Attorney might, indeed, have made money enough to support even an invalid wife and growing family, during the intervals of official duty inconsistent with private practice, had it not been for his generosity toward his friends. And especially towards Washington, whose letter-books in the State Department, in documents passed over by historians, confirm Randolph's manuscripts now before me, showing that during the time of the latter's performance of his overwhelming duties as Attorney General he was attending to the President's private law-business in Virginia; and to the last without remuneration.

The first step of Randolph towards New York was to mortgage his farm in Charlotte County to William and Mary College for £1,200, Virginia currency.

The salary of the Attorney General, fixed by the Senate at \$2,000, had been, perhaps to punish Randolph's federalism, reduced by the House to \$1,500. Madison was unable to find a house in New York fit for his friend to live in for less than \$250, though Randolph had begged him to get one for less. "Frugality is my object, and therefore a house near the town which is cheap in point of rent would suit me. An hundred and sixty-six  $\frac{2}{3}$  dollars, £50 Va. currency, is what I think I may allow per annum." Having gone on to make arrangements for the reception of his invalid wife, he made report 14 Feb. 1790:

"My dearest Betsy: I can now inform you with certainty that I shall return to Virginia to bring my treasures thence; and indeed if

the importunity of the President with me to stay had not been overwhelming I should not have hesitated about a resignation. I hold my purpose to leave this place on Sunday next (the 21st). Nothing appears probable in the form of an obstacle unless the river here should be frozen. . . . The President insists, and I have promised to be here by the 20th April precisely. We must therefore without fail begin our journey on the first day of April. . . . I am afraid it may be inconvenient and indeed painful to you, my dear wife, but I candidly tell you that I shall not be able to return to accompany you after the present trip. Let us not, I beseech you, be longer separated than the strange vicissitudes of life render indispensable. Prepare yourself and the girls for the trip. I shall provide the conveyances. I have a house at a mile and a half or thereabouts from the Federal Hall ; that is, from the most public part of the city. It is, in fact, in the country, is airy, has seven rooms, is well finished and gentlemanlike. The rent, £75 our money. Good water is difficult to be found in this place, and the inhabitants are obliged to receive water for tea, and other purposes which do not admit brackish water, from hogsheads brought about every day in drays. At our house there is an excellent pump of fresh water I am told. . . . I am resolved against any company of form, and to live merely a private life. I confess I [*torn*] our house in Williamsburg [*torn*] pleasing to me than [*torn*]. If Molly can be prevailed on to come with us it would be very grateful to me, as I am sure you will want her aid. My two chief anxieties on this subject are the difficulty of your travelling in your present situation, and the preference you would give to being confined in Virginia rather than here. But what am I to do, thou dearest object of my soul ? I will consent to any thing but an absence from you. I will provide you with a gentle and easy passage. I undergo a mixture of sensations when I think of our new plans. But it comforts me to think that my affectionate bosom friend will be with me, and that I really believe she may be happy. Until we meet, keep in remembrance my never-failing love for the best of women. Adieu, my dearest girl. Yours most affectionately and eternally,  
E. R."

But while the President proposed, Mrs. Randolph was in a condition to dispose. Randolph found his entire family ill in Williamsburg. His wife had suffered a miscarriage, and for more than a month was so low that her life would have been imperilled by mere mention of his leaving her. He had no alternative but to offer his resignation, if his absence were considered

injurious to public business; but this was not accepted by the President, who wrote him a generous letter. Early in May 1790 the Attorney General arrived with his wife and children at the suburban seven-roomed house in New York.

He soon found the salary (\$1500) insufficient for his support. The most casual reference to the early State papers, and the large number of difficult legal questions with which he dealt, show Randolph's herculean work at a time when he was compelled to oscillate between Virginia and New York in order to keep his income to the point necessary for the plainest subsistence. Concerning the inadequacy of his salary he unbosoms himself to his most intimate friend (the note is only dated "Sunday evening," but was written in 1790):

"With every frugality, almost bordering on meanness, I cannot live upon it as it now stands. Why I cannot make much advantage for practising the law, you have heard from me at the beginning of the session. This is not all. I am a sort of mongrel between the State and the U. S.; called an officer of some rank under the latter, and yet thrust out to get a livelihood in the former,—perhaps in a petty mayor's or county court. I cannot say much on this head without pain, which, could I have foreseen it, would have kept me at home to encounter my pecuniary difficulties there, rather than add to them here. I meditate a letter to the President,—and yet I know not what he could do but lay my letter, which would be interpreted into a supplication, before Congress. I am ready to be confined to the federal service,—how extensive soever; though, by the way, I do more in that way with my own hands than one of the departments with its clerks."

Virginia had sent to the first Congress a very Vigilance Committee of "anti-federalists," and there was little chance that they would favor any proposal to raise the salary of the man who had been the means of securing the ratification of the Constitution by their State. However, they presently began to be proud of him, and on March 3 of the following year, \$400 was voted in addition. (This sum seems to have been added, by a special annual vote, up to 1797, when the salary, for Charles

Lee, was made \$2,000.) On \$1,900, then, Randolph had to support a wife in constant need of medical attention, to educate his children, and to approach as nearly as he could the style suitable for an Attorney General of the United States. Probably this would have been impossible had it not been for rigid economy, and the attention given to his affairs in Virginia by his always devoted brother-in-law, Hon. Wilson Cary Nicholas. For some years Randolph was steadily losing money by his unwearying services to the nation.

At Philadelphia Randolph had three youths entrusted to him for instruction in law. They did not reside in his house, but intimacy with their families caused anxieties concerning them. One was Lawrence Washington, the President's nephew, for whom Themis vainly contended with the charms of a Philadelphia beauty. Washington suspected that the youth's neglect of study was due to incipient vices, but Randolph discovered his betrothal to Miss Emlyn, daughter of a wealthy gentleman. Randolph informs Washington that Lawrence proposed to wait a year before marriage, the young lady being but sixteen; but meanwhile, his professional studies being evidently at an end, the instructor returns so much of the prepaid £100 (Va. money) as would belong to the rest of his time.

This was a mild trouble compared with that undergone with another pupil, known to fame as John Randolph of Roanoke.

On the fly-leaf of Hume's "Treatise on Human Nature," was found some years ago: "I was sent to Philadelphia in the year 1790 to study law with the then Attorney General of the United States (Edmund Randolph). This book was the first he put into my hands, telling me that he had planned a system of study for me, and wished me to go through a course of metaphysical reading. After I returned the book he gave me Shakespeare to read, then Beattie on Truth, after that Kaime's 'Elements of Criticism,' and fifthly Gillies' 'History of Greece.'

What an admirable system of study! What a complete course of Metaphysics! *Risum teneatis?*—J. R. Jr., June 30, 1795, 23d year." Unpublished letters of this youth are before me, showing that he had no idea of applying himself to law; with the prospect of a fortune before him he cared only for pleasure and politics that first year. He had a turn for poetry, however, and Edmund Randolph's course was not a bad one for his solidification, even had it been accurately reported.

John of Roanoke's insanity showed itself in youth in an intense hatred of every teacher who tried to instruct him, and gradually few benefactors remained unsuspected by him. Among others even his devoted step-father, St. George Tucker, one of the best men of his time, was ultimately maligned by him. I have before me an unpublished letter of St. George Tucker to this youth (18 Aug. 1791), enclosing \$268 for his gambling debts, and patiently adding: "This, I hope, my dear son, will be the last demand of the kind you will ever have to pay, and I rely on your promise that it shall." The following sentences in the same letter show what this learned man thought of Edmund Randolph's course with his wayward relative: "I can now only add that I am pleased with the course of study you tell me you have been pursuing. I wish you to pursue Mr. Randolph's advice in respect to the mathematics,—a study of all others the best calculated to qualify the mind for close reasoning." The Attorney General's other student, John Bryan, got John Randolph out of a scrape so serious that neither would reveal it.

John Randolph of Roanoke's life-tragedy was the sum-total of his lost opportunities. The influence of the Attorney General on him—symbolized even in the imitation of his handwriting—was greater than the pupil appreciated. While the young man was sitting at the feet of Jefferson, and imbibing French radicalism—so that he dated his letters "Floreal," and named his horse "Jacobin,"—Edmund made him read Burke, and

instructed him in the principles of the English Constitution, which few statesmen of the time understood.

When John Randolph of Roanoke was in Congress, denouncing the revolutionary imperialism of France,—riding now his horse “Radical,” no longer “Jacobin,”—his occasional expositions of the English Constitution were such as his law-instructor had taught him. Such was his rebuke of those who used the President’s name to influence votes in Congress, and his regret that the Cabinet did not here, as in England, occupy seats in the House of Representatives.

It is probable that, from his salary, law students, and all other sources, the income of our First Attorney General, after his first year, averaged \$3,000.

To conclude: it may be fairly said that in those early days, when eminent men freely sacrificed their private fortunes to the public service, Edmund Randolph suffered more than others through his indulgence to negroes who did not support themselves, through the friendship which gave so much time to unpaid professional services, the expensiveness of farms whose produce could neither be used nor profitably taken to any market, and through money sent to his mother, in London.

## CHAPTER XVI.

### THE FIRST ATTORNEY GENERAL.

BEFORE me lies George Mason's copy of the Constitution, on the blank pages of which are written his objections. One is prophetic: "The President has no Constitutional Council (a thing unknown in any safe and regular government). He will therefore be unsupported by proper information and advice, and will be directed by minions and favorites; or he will become a tool to the Senate; or a Council of State will grow out of the principal officers of the great departments—the worst and most dangerous of all ingredients for such a Council in a free country." This statement was afterwards printed and amplified.

Not only did the first President at once create a Council out of the heads of the great departments, but he sometimes abdicated in its favor the executive functions. Few instances are known of his deciding against a majority of this unconstitutional "Cabinet," and he several times wrote to his friends that he followed the vote of his Cabinet against his judgment. Through a necessity of his mental constitution, as moulded under Virginia versions of the English Constitution, he held the idea that a governor is presiding officer of an Executive Board, of which he is a member; but with this he had combined the Commander's sense of individual prerogative. Add to this the large patriotism which, once having created a Cabinet, must needs bring into it the chiefs of hostile political clans, and the mongrel nature of the first administration is manifest. Speaking of the Constitution, Randolph



once wrote : " From the texture of the system, many powers are vaguely granted without regard to accuracy in their nature and uncircumscribed in their extent." Washington's government was open to the competition of contending principles popularly but erroneously supposed to have been settled by the Constitution. The representative of the democratic idea, unconscious of the imperialism at its heart, was Jefferson. With much theoretical subtlety and radical enthusiasm, he was what Napoleon would have called an " ideologist " (until he became Napoleon's idolator). But Jefferson was timid, as his great antagonist, Hamilton, was daring. In this small West Indian, reared in pride of the British flag, there dwelt a pluck which easily passed to recklessness. The ambitious personality which made him an adventurer in New York at fifteen, the egoism at twenty-four which rebelled against the inferiority of being an Aide even to Washington, had been concentrated at thirty in an idea of American nationality of the military type. As the United States government, born of revolution, was long under menace of foreign war, and as the President was a half-military, half-civic officer, with a separate constitution related to each half, Hamilton found little check in the peaceful forms of that document to the autocracy of a president holding the sword, while his treasurer held the purse, of the nation. Jefferson trembled before this man with sword thinly sheathed in his tongue. The big, easy-going Knox, Secretary of War, became one of Hamilton's fingers ; so also did Timothy Pickering, when he succeeded Knox. And young Bradford, when he became Attorney General, at once surrendered to the West Indian bow and spear. Randolph, however, had as much courage as Hamilton ; and as, at first, Jefferson and Washington voted together, there was much truth in what the Secretary of State wrote to Madison : " The government is now solely directed by Randolph."

Upon the Attorney General devolved also the whole legal

service and advice of the Administration. For fifteen generations eminent Randolphs, in the old world and the new, had officially represented English law and equity. To the judicial genius thus inherited had been added, in the first Attorney General of this country, a cumulative culture in constitutional law, English and American. The antediluvian notions of the English Constitution diffused by Blackstone through this country, as Justice Wilson complained, or Hamilton's fallacies (*Federalist*, 68) concerning British monarchy, for which an Eton schoolboy would be flogged, were impossible to a man who had studied law with two King's Attorneys. Peyton Randolph, at the opening of his career, had learned by a severe fall that English justice was ready to overrule the intolerance lingering in English colonies. Edmund Randolph was old enough to remember when John Mercer of Marlborough, first editor of Virginia laws, came to Williamsburg with an elaborate written argument proving the Stamp Act unconstitutional, an opinion which produced that unanimity with which the Act was confronted, and which prevailed in England.<sup>1</sup> In the same way, as we have seen, his uncle Peyton had successfully pleaded before the King's Bench in London the unconstitutionality of the pistole fee on Virginia land patents. No American understood better than Randolph the unconstitutionality of the British vice-regal oppressions which the Revolution resisted. As the first Attorney General of republican Virginia, taking up for the commonwealth the task for the crown fallen from his father's hand, Randolph had acted an important part in inaugurating the judiciary system which was largely incorporated in the Federal Constitution. In addition to this he had made a special study of French law. His grandfather had been under the tuition of a learned Huguenot, and French studies had been of traditional importance in the family. Jefferson's letters from Paris show him procuring works in that language for Randolph. Such studies

<sup>1</sup> MS.

could be little available in the small contests which made lucrative practice in Virginia, but while he found this irksome Randolph loved the science of law. He and his friend in Williamsburg, Joseph Prentis, had many a happy day in Tazewell Hall, digesting and revising the Code, published in Richmond, 1794. The President's invitation to enter the Federal service found him unwilling to abandon this task, whose completion was his parting gift to Virginia; or, in the language of the subjoined letter (28 June 1790), to "his country"; for he has not yet unlearned that filial phraseology which survived as a Virginian creed long enough to be engraved on monuments of her martyrs. "I do myself the honor to inform you that Mr. Prentis and myself have subscribed our names to the report which is to be made to the next Assembly concerning the laws. . . . If contrary to my expectations any thing further should be required to be done in that business, I shall not hold myself excused from engaging in it by any distance from my country, which will have a right to command my humble services under all circumstances and at all times." This was written apparently to Beverley Randolph, who had succeeded him as Governor.

The first Attorney General had not only to create his office, but to adapt the whole judiciary apparatus of the country to its work. The organizing Judiciary Act of 1789, drawn by Ellsworth, was still to be tested by experience, and there had been sufficient friction to cause the House of Representatives to request its revision by Randolph. A critical perusal of Randolph's comprehensive report was graciously undertaken for me by Mr. Justice Matthews,—the first to take an interest in my researches into the life of one who, to use his words, "was certainly a most interesting character, and played a very important part in that period of our history which above all others deserves study." I am permitted to print Judge Matthews' letter, though not written for publication, concerning Randolph's report.

" I have examined the report of Edmund Randolph in 1790 to the House of Representatives on the judiciary system, to which you called my attention. The object of the reference seems to have been to bring about a revision of the judiciary act of 1789, prepared by Oliver Ellsworth, and then in force. Randolph's report seems to be an accurate and perspicuous analysis of the judicial power as it might be vested under the Constitution, and a very carefully drawn bill embodying his ideas.

" The principal point of divergence in his scheme from that of the Ellsworth act seems to be this : By the 25th section of the judiciary act of 1789, provision was made for a writ of error from the Supreme Court of the United States to the highest court of a State in all those cases generally described as turning in their decision upon a federal question ; that is, a question involving the construction of the Constitution of the United States, or of any act of Congress, or of any treaty. Mr. Randolph, in the document under consideration, without expressing his own opinion, states the grounds on which objection had been made to that provision as constituting the Supreme Court of the United States an appellate tribunal as respects the State courts. To obviate this objection, Mr. Randolph's scheme omits altogether that provision, but he provides for the exercise of exclusive jurisdiction in such cases by federal tribunals by granting to the Circuit Courts of the United States, on the application of either party, power by a writ of *certiorari* to remove suits from the State courts, in which a federal question is involved, for trial and determination before final judgment in the State tribunal. No change, however, was made in the judiciary act in this particular. It was subsequently called in question as being unconstitutional, in the case of *Martin vs. Hunter's Lessee*, decided in 1816, reported in 1 Wheaton, 305, in which the opinion of the Supreme Court, affirming its constitutional authority under that section, was delivered by Mr. Justice Story. The question was afterwards re-argued in the case of *Cohens vs. The State of Virginia*, 6 Wheaton, 264, in which the opinion was delivered by Chief Justice Marshall.

" Another suggestion contained in Mr. Randolph's report was that the Judges of the Supreme Court should cease to be the Judges of the Circuit Courts. This suggestion has never been formally adopted in any subsequent legislation, but its purpose has been practically attained by the creation of Circuit Judges, on whom, in conjunction with the Judges of the District Courts, the principal labor of circuit work now rests. Such a relief had come to be a necessity.

'The other principal suggestion made by Mr. Randolph is that Congress should provide for its own judicial tribunals a federal code of law. This code, it would seem, was to embrace, 1st, a uniform practice and procedure in the administration of justice in those courts; and, 2nd, a body of law which should constitute a rule of decision upon the rights of litigants in those courts. Of course this was not intended to interfere with the operation of the principle that the Constitution, laws, and treaties of the United States were the supreme law of the land, and that in many cases the laws of the States, and sometimes the laws of foreign States, according to the nature of the transaction, would, upon the principles of private international law, be looked to as fixing the rights of the parties. In reference to such a code, Mr. Randolph says in the document referred to: 'It would probably be pointed to the following leading objects, 1st, the provisions which already exist by the Constitution and the federal laws; 2nd, such laws as may still be necessary for the further execution of the Constitution, and the completion of federal policy; 3rd, the common law and statutes; and 4th, the law of the several States as involved in questions arising therein.' Nothing has ever been undertaken in pursuance of this suggestion."

The first Supreme Court was not easy to deal with. This was especially impressed on the Attorney General by a case which threatened at the time a serious conflict of authorities. An act of Congress having made the United States Circuit Courts referees, under the Pension Law, on matters of fact to be acted on by the Executive, the Circuit Judges of Pennsylvania and New York declined to exercise the authority conferred upon them. They maintained that it was not competent for Congress to impose upon them any duties not strictly judicial. The matter itself was of less importance than the question thus raised. By the Constitution the President alone is authorized to decide on the constitutionality of a law passed by Congress. When the President has added his signature it becomes a law of the land, which the parties are bound to sustain equally with the Constitution. They have no right to pass on the competency of Congress to pass the law; that is a privilege monopolized by

the Executive ; their sole escape from a conflict between any law of Congress and the Constitution is through some strained interpretation of the one or the other. In this Pension Law case the Circuit Judges would appear to have set an example of successful nullification. The question before the Supreme Court was then on the right to issue a *mandamus*. It was argued the first week in August 1792.

“ I pressed,” says Randolph in a letter to Madison (12 Aug. 1792), “ an examination of the conduct of the New York and Pennsylvania circuit courts on the pension law. On Wednesday, after I had finished my exordium, which was strong and pointed, and after it was foreseen that I should speak with freedom, Mr. J[ay] asked me if I held myself officially authorized to move for a *mandamus*. I assigned reasons in the affirmative, and refused to make the motion until the official question was decided. It continued from day to day, until yesterday, when Johnson, Iredell, and Blair were in favor of my power, and the other three against it. The motion was therefore necessarily waived for the present in an official form. But being resolved that the court should hear what I thought the truth, I offered it, as counsel for the invalids. The sum of my argument was an admission of the power to refuse to execute, but the unfitness of this occasion. After much consultation on the bench, it was agreed that the final decision should be made at the next court. I shall report the case, and show it to you ; and therefore will not now be more minute. An opinion, which has been long entertained by others, is riveted in my breast, concerning the C. J. He has a nervous and imposing elócutioñ ; and striking lineaments of face, well adapted to his real character. He is clear too in the expression of his ideas, but that they do not abound on legal subjects has been proved to my conviction. In two judgments, which he gave last week, one of which was written, there was no method, no legal principle, no system of reasoning.”

The Attorney General seems to have been supposed a general possession of all the States, and, about the time when he was arguing this question of the Circuit Court duties, and preparing for the tremendous question of State suability, he was engaged in determining whether Jay or Clinton had been elected governor of New York. "One of the parties," he writes to Madison, 12 Aug. 1792, "has consulted me on the late election of a governor. I am travelling in the investigation, and I suspect a result. Although I hate to be compelled to say a word in favor of the governor [Clinton], the facts will probably induce the ex-governor to believe, in opposition to what I feel, that I am actuated by motives personally adverse to him." The pains so characteristic of Randolph, whatever his task, are abundantly illustrated by his opinion in this case; and as it is now generally inaccessible, the following extract may be made here, if only for its interest to the law-student. It also discloses Randolph's freedom from prevailing fallacies concerning the rights and limitations of the crown in England. The Clinton-Jay gubernatorial canvass of 1792 resulted in a disputed election. It mainly turned on the question whether an annually appointed sheriff could still fulfil his function as protector and deliverer of the ballot-box after his term had ended, his successor having not yet qualified. Randolph, being one of the referees, decided that the ex-sheriff was not competent.

"When we pass on to the statutes of England, several occur to us. It is acknowledged that the 14 Ed. 3 St. 1, ch. 7; 28 Ed. 3, ch. 7; 40 Ed. 3, ch. 9; 46 Ed. and 23 Hen. 6, ch. 7, forbid a sheriff to tarry or abide in office above one year; and yet it hath been said that a sheriff may be appointed during the king's pleasure. 1 Black, Com. 341. These statutes, and consequently the decisions on them, never carried any intrinsic authority to contest the Constitution, as may be seen in the 25 section of that instrument. Nor did the statutes themselves exist after the first day of May, 1788. Vide the law of the 27 of Feb. 1788. They can be used, therefore, only as illustration; but injure not my position. Abstractedly from the opinion of judges, few would

hesitate to pronounce that no king of England could legally grant a commission which should go over the year. Blackstone himself, though unwilling to declare this explicitly, presents a contrary opinion to the public eye; not as his own, but in that doubtful phraseology which betrays his disapprobation—"It is said." Nay more. He quotes Milton's case in 4 Rep. 31 as the basis of this saying. The determination was preceded by another in the year-book of 2 Hen. 7, 6, which was built upon the dispensing power of the crown. 2 Hawk, P. C. C. 37, Sec. 29. The dispensing power was recognized at the time of Milton's adjudication; and under such auspices, no statute could thwart the royal pleasure. In what part of the Constitution of New York is this tremendous attribute to be discovered? In none. The very recurrence to the prerogative, as the reason for a sheriff holding over, announces that the limitation of one year would otherwise have been accepted as the natural interpretation of the statutes."

Among the important opinions of Randolph in 1791, was one against the constitutionality of Hamilton's Bank scheme. The President, Madison says, signed that bill against his judgment, and in apprehension of a serious crisis. But that was the last important victory which Hamilton gained over the President so long as he was confronted by both Randolph and Jefferson.

Washington's life was rendered a burden by the gossipy attacks made on him on account of matters alluded to in a conversation with Jefferson, recorded by the latter in his "Anas": "He [Washington] expressed the extreme wretchedness of his existence while in office, and went lengthily into the late attacks on him for levees, etc., and explained to me how he had been led into them by the persons he consulted at New York; and that could he but know what the sense of the public was he would most cheerfully conform to it." To questions of this kind the following extract from a letter of Randolph to Washington relates:

[Phil., 18 Feb. 1793.]—"Upon the other subject, of a private nature, this has been the course of my reflection. To yield what is useful in the discharge of your public functions merely because they



may be exhibited in print in an uncomely attitude, is, I am sure, as little expected by the world as it is repugnant to your sense of duty. To refuse to accept acts of compliment, as being capable of perversion, does probably depend wholly on the disposition of the person to whom they are offered. However, there may be situations in which the forms of this city demand an abstinence from unnecessary crowds, and which, if not attended to, may be egregiously misinterpreted into a countenance of what you only acquiesce in, but do not approve. I may add, that if at a future day you should think proper to repel this species of civility, the present circumstances produce an adequate opportunity of commencing a retreat from it."

When Gouverneur Morris, in Paris, officially used the expression "ma cour," and came to grief, he did but use language familiar around the President and "Lady Washington" when he (Morris) left home. Senator Maclay's diary leaves no doubt that the "republican court" sometimes rendered itself ridiculous, and that the President was misled by Hamilton and Vice-President Adams, whose letters of advice Maclay quotes, into assuming a false position. His strictness in small etiquette now and then appears in the Randolph papers. "Col. Innes," writes Randolph to Washington, "will have the honor of dining with the President to-day. He was dressed, except as to shoes yesterday afternoon to wait upon him in the public room; but could not get a pair." In the same note Randolph excuses himself from the same dinner on account of the pressure of public business.

Randolph's inflexible justice, never in any case warped by personal or party prejudices, rendered him the private counsellor of Washington in matters of State not properly within the Attorney General's department. In the affair of Gouverneur Morris, then at Paris, Washington could not trust so strong a partisan as Jefferson. Morris' consideration for the monarch to whom he was sent, and horror at his execution, angered the revolutionists, and their complaints were transmitted, through M. De Ternant, to the Secretary of State. By him they were communi-

cated (20 Feb. 1793) to the President, who consulted Randolph. But De Ternant being superseded by Genet, Randolph advised delay.

“The charges,” he writes to the President (22 Feb. 1793), “have come in an ambiguous form, half-private, half-public; and it must be uncertain, until the arrival of the new minister from France, to what extent these charges are to be pressed. To seize so imperfect an opportunity for dismissal might argue an eagerness to get rid of the officer; and before such a stroke is given to the reputation of any man, ought he not to be heard?”

This advice was followed, and Gouverneur Morris remained in France another year. Genet, when he arrived, and before he had delivered his credentials, began those enlistments and fitting out of privateers in the South which caused every thing else to be forgotten. Out of the large number of letters written at this time by Randolph to Jefferson, the following from one of 2 May 1793 shows how necessary it was, at times, to hold the Secretary of State to his responsibilities :

“There is, without doubt, a protection due to foreign built vessels, owned by American citizens; altho’ they cannot claim the privileges belonging to vessels of the U. S. For the former are no less neutral property, than the latter. The usual evidence of the neutral ownership of vessels is a certificate from the officers of the customs. Is it then expedient to call upon the President to take a part in this business? The President’s name would not go farther in a court than that of a collector, under the seal of office; cruisers would therefore be as free to dispense with his testimonial as that of the collector; and if he should happen to certify that a vessel is neutral property, when in truth she is not, will not the character of government be committed?”

On 17 May 1793 Randolph wrote an opinion on the British demand for restitution of a prize made on the high seas by a French privateer fitted out at Charleston, S. C., manned in part by Americans, the ships being at Philadelphia. It was the opinion preferred by Washington to those proposed by the other

members of his Cabinet. "If," he maintained, "this be considered as a contest between France and Great Britain upon a mere question of prize or no prize, the 17th article of our treaty with the former stands in the way of the inquiry; because it prohibits the officers of the U. S. from '*making examination concerning the lawfulness of such prizes.*' And indeed the duty of a neutral nation shuts up its courts against all such decisions. The captor's commission, even if suspended during the stay of the vessel at Charleston, became active and lawful at the very moment that the privateer entered upon the high sea. If the commission is deemed defective, it must, in any case, be determined, not by the President, but by the courts of the U. S. according to the rules of the Admiralty. What relates to the dignity of the U. S. is not an affair of any foreign nation. If they thought proper to waive satisfaction to themselves for the affront and injury, they cannot be called to an account by any foreign power; and, if they do require satisfaction, its degree and kind depend upon their discretion. A remonstrance to Genet and punishment of the citizens who have entered on board of the privateer may, in some measure, be a justice due to the powers warring against France. A citizen of the United States receiving such a commission is a pirate under the treaty with Holland. It cannot be affirmed that the U. S. are in any other manner responsible for the offenses of their citizens than to bring them to punishment. To say then that Great Britain can impose upon the U. S. a certain rule and measure of procuring satisfaction for the insult by requiring the surrender of the vessel and restitution to the British subject, is to admit an unwarrantable intrusion into their internal police. France has her rights as well as Great Britain. Although she will be content to offer concessions to the U. S., yet might she justly refuse to do so, if an estimate of the reparation was compounded, not only of the indignity to them, but also of the loss to the British subject. At least she

might with reason denominate it a departure from strict neutrality. The situation of the U. S. is extremely peculiar. They are bound to pursue a different conduct to the different warring powers. To France they must give the preference by treaty; to Holland they must assign the next rank of favor by treaty; Great Britain stands upon the law of nations, pure and unqualified. Hence in this disparity of relations they will be often thrown into great perplexities. Nothing can lead them with safety and honor through the labyrinth but an adherence to sound principle, which is always uniform. Upon principle therefore restitution ought not, in my judgment, to be attempted."

In June 1793 Randolph went on a little journey through Delaware and Maryland, consulting the leading men as to the feeling concerning the French Revolution and the President's proclamation; all of which were favorably reported to Washington in a "private" letter of June 11, from Annapolis. The further journey supplied material for a more important "private" letter, dated at Richmond 24 June 1793. The public excitement concerning the discussions of State amenability before the national courts, by Henry in Richmond and Randolph at Philadelphia,—the decisions, elsewhere considered, favoring English creditors,—will explain some of the allusions in this private report to Washington, at whose desire the journey was undertaken.

"Soon after I had the honor of writing to you from Annapolis, I found an occasion of entering into discussion with the Governor of Maryland on the subject of our political situation. He appeared to have been caught by the same apprehensions as had taken hold of the people of Baltimore, and was very minute in his inquiries. Some hours afterwards he called at my lodgings, and in the presence of several gentlemen spoke to this effect: that the executive of the United States seemed to have proceeded on principle, which was the surest guide of its conduct. From the communications, too, which I received from the gentlemen of the bar, I am persuaded that the temper of Maryland goes with the Government. At George-Town and Alexandria I heard but little. At Dumfries Mr. Alex'r Henderson called upon me and

uttered a multitude of fears and discontents. Knowing him to be a talkative man, who would circulate pretty quickly whatever he should hear from me, I endeavoured to impress upon him that information which I was at liberty to give, and those opinions which for the sake of harmony ought to be entertained. Altho' I never did count much on his sincerity, yet he so often repeated the happiness which he felt of being able to remove the anxiety of his neighbourhood, that I cannot forbear a hope that he was in some degree sincere. The clamour increased at Fredericksburg, and was principally confined to the Secretary of the Treasury. But the Proclamation was also censured for using the term friendship, and the prosecution against Singleterry &c was condemned as illegal. I saw no person who supported these sentiments as his own; but I explained to Mr. Fitzhugh and Mr. Charles Carter the views in which these criticisms presented themselves to me. Fredericksburg is inflamed by the doctrines and representations of Col. Taylor of Caroline, the Senator of the U. S. It would astonish you, sir, to learn the success which has attended his efforts to rouse the cool and substantial planters. Even Mr. Hoomes of the Bowling-Green, who is respectable and intelligent, and has a great deal to lose, was animated to a degree which changes his nature essentially. It was necessary to be particular with him, and I delayed my journey that I might examine all his dissatisfaction. As I advanced in stating facts he declared that he had never heard one half, and that his information was expressly the contrary. I pledged myself for the truth of what I said to him, and he confessed that, if it was true, the government had been grossly calumniated. This remark came twice from him, while I was speaking of the proclamation and the prosecution. He begged me to stop at Col. Pendleton's, with an earnestness which shewed a friendly disposition to the federal government. I spent an evening and morning with that gentleman, who approved the Proclamation in all its parts and language, and thought that too much could not be done to ward off a rupture with the European powers. His complaints were wholly against financial operations; but he had never scrutinized the reports. I gave him a set, and obtained his promise to write me without reserve as soon as he has comprehended the questions in their full extent. My next stage was at Mr. Lyons. With him scarcely any thing was right, except the measures adopted to repel the war. He assented to the propriety of all these; but other proceedings, whether legislative, executive, or judicial, he certainly did not spare.

“In this place [Richmond] parties are strong; the friends to the general government are far inferior in *number* to its enemies. But

among its enemies not a dozen can be named who are not averse to war. I was told that Judge Tucker and Judge Tyler talked in this strain ; and I accepted a dinner from the General Court in order to ascertain to what lengths they would go. But politics were kept out of sight, and I can only report from the mouth of others that there are not more than two of *all* the judges who are not highly irritated against the federal administration. The late debates concerning British debts have served to kindle a wide-spreading flame. The debtors are associated with the antifederalists and the discontented federalists ; and they range themselves under the standard of Mr. Henry, whose ascendancy has risen to an immeasurable height. But I was happy to learn from Col. Innes that he has been loud in reprobating the decapitation of the French King, and is a friend to peace, and the steps pursued for its security ; adding that nothing would induce him to vote for a war, but the redemption of the Marquis de La Fayette. He grows rich every hour, and thus his motives to tranquillity must be multiplying every day. Mr. Jay is considered here by some under very unfavourable aspects. But everybody agrees in his ability as a judge. It was reported and believed that he was insulted on the road by a drunken man, who had been present at the trial in the circuit court. Nothing could be more unfortunate than the false hopes which the decision of that court has inspired in regard to payments into the Treasury. Mr. Wythe indeed, as chancellor, has determined against the British debtor ; but his decree will, it is conjectured, be reversed in the court of Appeals, unanimously. The people will therefore be fortified in their opposition when they perceive so many advocates of character.

“ I have had very full communications with those who are attached to the general government, and since our conversations they think themselves armed in its defence. These are Col. Innes, Col. Harvie, Dr. McClurg, Mr. Marshall, Capt. Singleton, and some few others. But I am now rivetted in my persuasion that the best administration upon the face of the earth may be vilified, and almost ruined, unless they be protected by frequent and candid publications. Last night I was informed that an inhabitant of this place expatriated himself, while Mr. Genet was here, and immediately took the oath of a French citizen before him. I shall inquire into this business more accurately, but I have little doubt of its truth.”<sup>1</sup>

<sup>1</sup> Concerning this tour Jefferson wrote to a friend : “ E. R. brings flattering information of the loyalty of the people of Virginia to the general government, and thinks the whole indisposition there is directed against the Secretary of the Treasury *personally*, not against his measures. On the whole he has quieted uneasiness here.”

In September 1793 the yellow fever raged in Philadelphia. Randolph remained in the neighborhood until Oct. 13. On that day he wrote Washington (at Mount Vernon) some account of the plague, adding: "I cannot satisfy the anxieties of my family without carrying them for the present to Lancaster." On Oct. 22 he is back again from Lancaster and reports to Washington his negotiations for a house for him (the President). Major Funks demands £150, he says, which is "excessive," as there is little furniture. On Oct. 24 he expresses to the President doubts of the fever's having sufficiently abated to justify a meeting of Congress at Philadelphia, and advises the selection of Lancaster. On Oct. 28 he announces his arrangements for Washington's board (*minus* dinner) at \$10 per week with a German clergyman outside the city.

Amid these personal services Randolph had before him the difficult task of outlining the President's message. As it must deal chiefly with foreign affairs in general and Genet in particular, this properly devolved on the Secretary of State. But Jefferson was not the man to burn his mouth with the President's porridge. The following shows the Attorney General thus engaged, and also collecting materials for a history of Washington's administration. The letter is dated at "Spencer's," 10 Nov. 1793. After exhorting Washington not to resume his abode in Philadelphia too soon, he writes:

"I have examined the addresses, resolutions and answers, which are now returned. In many of them the Proclamation is called a declaration of neutrality; and therefore confirms the opinion that the speech might (as it clearly may) put this paper upon its true, and a satisfactory footing. What has been published concerning it, united with numberless misrepresentations in other instances, determined me some months ago to begin a history and review of your administration. I had made some progress in it, and should have advanced farther had I not found some difficulty in asking from the Secretary of State access to the public archives without communicating at the same time my object.

However, had it not been for the interruption which has been given for some time past to every business connected with Phil<sup>a</sup> I should have persevered, and endeavoured to procure the means of full and accurate information. The essay of Agricola convinces me of the importance of such a work, upon public as well as other interesting considerations ; and let my future movements be as they may I shall not relinquish it. But I am extremely apprehensive that the pestilence of Phil. will reduce the practice of the law within the city to such a modicum as to force me to think of reëstablishing myself in Virginia. For altho' I do not doubt that were I to go into as large field as some others of the bar here my share of profit would content me, yet, as that cannot be done consistently with my office, the share which I had must be considerably diminished. Whatever delay may proceed from this circumstance the work itself shall proceed ; and I have now taken the liberty of saying thus much to you, in confidence, only to prepare the way, if on some occasion I shall find it necessary to beg the communication of any particular information.

“ I will thank you for the Va. Gazette containing Agricola, as I wished to write to Col. Carrington. I inclose to him some remarks which may tend to disabuse the public mind.”



## CHAPTER XVII.

### THE FOUNDING OF RELIGIOUS FREEDOM.

IN 1796 George Washington sent to the Senate, which ratified the same, a treaty with Tripoli whose opening words are these :

“As the Government of the United States of America is not in any sense founded on the Christian religion,—as it has in itself no character of enmity against the laws, religion, or tranquillity of Mussulmans,—and as the said States have never entered into any war or act of hostility against any Mahometan nation, it is declared by the parties that no pretext arising from religious opinions shall ever produce an interruption of the harmony existing between the two countries.”

So bravely did the first President of the United States celebrate the seventh centenary of the first Crusade,—wherein six millions of armed Christians moved against Islam.

When Jefferson became President he shrank from so clear an assertion of his own early principles, and the Tripoli treaty was renewed without the words “not in any sense founded on the Christian religion.” But Washington set up the landmark of religious liberty at the place where the justice and the courage of his noblest comrades had borne it.

In early life Edmund Randolph was a deist. Such was his father, who was twice nominated by Lord Dunmore as a Visitor of William and Mary College, and in each case rejected through the pious opposition of John Page, afterwards Governor, on account of his not being a Christian. Peyton Randolph, I suppose, was of the same belief, since his will is notably free from the pro-

fessions of faith usual in such documents at that time, its only religious phrase being "In the name of God, Amen. I, Peyton Randolph," etc. Such liberalism was not deemed inconsistent with respect for the established Church. But in the Revolution the English Church in Virginia could not be broken to the measure of the era on which it fell; and presently the era fell on it and ground it to powder. Of all this there are very interesting traces in these Randolph papers, extending through a generation, in which the religious vicissitudes were rapid and confused. It may appear incredible to those intimate with the Virginia of to-day, with its unbroken orthodoxy, and its severe type of religion, so well portrayed by Virginius Dabney,<sup>1</sup> that at the time of the Revolution its chief towns,—especially Williamsburg and Fredericksburg,—were the especial centres of freethought in this country. Jefferson and Wythe used to play chess on Sunday, and did so at Tazewell Hall until Mrs. Edmund Randolph refused to countenance such proceedings. Randolph, under such domestic *régime*, became a member of the English Church at the time when it was undergoing a process of disestablishment and puritanization. There was a good deal of confusion attending this process, and it is so far reflected in Randolph that his notes contribute to the religious history of America.

The following is his picture of the relative condition of the English Church and Presbyterianism at the beginning of the Revolution:

"The two sects were contrasted by some striking circumstances. The Presbyterian clergy were indefatigable. Not depending upon the dead letter of written sermons, they understood the mechanism of haranguing, and have often been whetted in dispute on religious liberty, as nearly allied to civil. Those of the Church of England were planted on glebes, with comfortable houses, decent salaries, some perquisites, and a species of rank which was not wholly destitute of unction.

"To him who acquitted himself of parochial functions those com-

<sup>1</sup> "Don Miff." A novel.

forts were secure, whether he ever converted a Deist, or softened the pangs of a sinner. He never asked himself whether he was felt by his audience. To this charge of lukewarmness there were some shining exceptions, and there were even a few who did not hesitate to confront the consequences of a revolution which boded no stability to them. The dissenters, on the other hand, were fed and clothed only as they merited the gratitude of their congregations. A change or modification of the ancient *régime* carried no terrors to their imagination."

Although the draft of the Bill of Rights in George Mason's handwriting is preserved in the State Library of Virginia, and the whole is ascribed to him, Randolph, who was a member of the committee, declares that the clause concerning religious liberty was proposed by Patrick Henry. "The Fifteenth, recommending an adherence to, and frequent recurrence to, fundamental principles, and the Sixteenth, unfettering the exercise of religion, were proposed by Mr. Henry. The latter coming from a gentleman who was supposed to be a dissenter, caused an appeal to him whether it was designed as a prelude to an attack on the established Church, and he disclaimed such an object."

The point is a contested one. I have been favored with careful statements of Henry's learned grandson, William Wirt Henry, who supports Randolph's narrative, and Miss Kate Mason Rowland, who impeaches its accuracy. It appears to me not improbable that Mason, as he says, brought with him to the Convention, where he appeared on its eleventh day, the Bill of Rights, and thought it prudent to entrust presentation of the free religious section to Henry,—a member of the established Church, but associated with the Presbyterians by marriage as well as inner experiences. He would carry the sympathy of both churches.

"It has been seen," says Randolph, "that the friends of the established Church were apprehensive of the force of their own principles, to which they had assented in the bill of rights, and how they were quieted by the assurances of Mr. Henry. But they were patriots who dreaded nothing so much as a schism

among the people, and thought the American principle too pure to be adulterated by religious dissension. They therefore did in truth cast the establishment at the feet of its enemies; not extending their view to times when Mr. Henry might not be able to confirm his word by stemming the torrent of opposition; nor having sufficiently learned that, if secular interests impel when they rule by themselves, they overthrow all resistance when allied with religion. An indiscriminate taxation, for a long series of years, had been laid upon dissenters, who renounced all hopes of ascending to salvation through the gates of the church. The sums drawn from their pockets, though small and not harshly inconvenient in the periods of payment, were certainly unjust and oppressive. The dissenters were no less ambitious than the members of the church, and were eclipsed by them. Henry was in the executive chair, and therefore was disqualified to vindicate his former assurances to the church; though probably he might have acquiesced in the insidious form which a projected law was assuming. It did not *profess* to *abolish* the establishment, but it sapped it by suspending the stipends of the clergy. The first fracture in a chain forged by an unjust principle cannot easily be closed. In support of this law the severest persecutions in England were ransacked for colours in which to paint the burthens and scourges of freedom in religion, and antiquated laws in England, against the exercise of which the people would even there have recoiled, were summoned up as so many demons hovering over every scrupulous conscience not bending to the church. The votaries of that church were entrapped by an expectation that the new law would be a permanent anchor to its existence, although the parochial salaries might never be revived. In this they were sacrificed to the poverty of their own intellect, in not discerning the nature and condition of their own sect. It had almost always been on the side of monarchy, while the hearts of the dissenters might truly be said to be in covenant with those

who were clamorous against the threats of civil oppression. The lower country was the principal residence of the protectors of the establishment, and it was apparent that these must soon be outnumbered in the legislature, where petitions were readily granted for the division of the upper counties, and the consequent multiplication of the representation of dissenters. The advocates for the church were apparently unconscious of its imbecility. It was enervated by mental inactivity, and it was palpable that a blow like this must stun it into a state of lingering from which it could never wholly recover.”<sup>1</sup>

The large majority of those who inaugurated independence in Virginia, and enacted the Declaration of Rights, were vestrymen. But the unction with which they overthrew the established Church was so distinctly Presbyterian that even at the present day doubts recur concerning the religious affiliations of some of the eminent actors in those events. Not only was Patrick Henry, whose oratorical glow has been attributed to the inspiring eloquence of Samuel Davies, the apostle of Presbyterianism, “supposed to be a dissenter,” but Madison also. “I was diverted yesterday,” wrote Randolph to Madison, “by Mr. John Pierce of James City (the delegate) asking whether you had not become a *Methodist*. After I had recovered from my surprise I inquired from whom the rumor sprang. His account in reply was nothing more than that it was a general report in James City. It will be no easy matter to impress upon some of your friends that you have fastened yourself to any sect.” It would appear from this that Randolph did not regard connection with the Episcopal Church as membership of any “sect,” although it had been disestablished fourteen years when this note was written (1790). It is probable that it was due to the alienation of his father from the rationalistic and worldly spirit of the establishment that James Madison Jr. was sent to Princeton instead of to William and Mary Col-

<sup>1</sup> MS. Hist. Va.

lege; for in Orange County, where these Madisons lived, persecution of dissenters was rife. That the clergy were not themselves generally persecutors is certain. Young Madison was prepared for Princeton by the parish clergyman (Rev. Thomas Martin), inmate of the old mansion Montpelier. From Princeton Madison brought a terrible touchstone for the establishment in Virginia, as well as an evangelical devoutness; so that at the very time when his rationalistic relative, Bishop Madison, was the last buttress of the English Church in Virginia, James Madison Jr. was undermining it from within. Only an eye of Princeton or Paine could have detected a germ of intolerance in that article for "the fullest toleration," in the Bill of Rights. By striking out the equivocal "toleration" Madison anticipated the principle affirmed by Thomas Paine: "Toleration is not the opposite of intolerance, but is the counterfeit of it. Both are despotisms. The one assumes to itself the right of withholding liberty of conscience, the other of granting it."

The use of this word "toleration," and some other phraseology, in this clause of the Declaration of Rights, as originally drafted, rather points to Henry's authorship; for the subsequent course of that orator proves that, although in favor of toleration and "Christian forbearance," he was by no means prepared for the perfect freedom secured by Madison's amendment.<sup>1</sup> Few

<sup>1</sup> *Original Draft.*

That religion or the duty we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence: and therefore that all men should enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience, unpunished and unrestrained by the magistrate, unless, under color of religion, any man disturb the peace, happiness, and safety of society. And that it is the mutual duty of all to practise Chris-

*Madison's Amendment.*

That religion, or the duty we owe to our Creator and the manner of discharging it, being under the direction of reason and religion only, not of violence or compulsion, all men are equally entitled to the full and free exercise of it, according to the dictates of conscience, and, therefore, that no man or class of men ought, on account of religion, to be invested with peculiar emoluments or privileges, nor subjected to any penalties or disabilities, unless, under color of reli-

indeed were ready for Madison's radicalism, by which the clerical emoluments and glebes would be instantly uprooted; so his amendment was pruned in committee. The Convention was unconscious of having disestablished the Church, and before adjourning modified its liturgy by substituting the Commonwealth for the King, in the prayer, leaving it otherwise in force. In the autumn session following the Assembly suspended the tax for support of the clergy. It was to be many years yet, however, before realization of the true and full meaning of the principle adopted in the Bill of Rights. It was not until 1780 that a marriage in Virginia could legally be celebrated outside of the English Church!

Thomas Jefferson perceived that there was nothing to prevent the reestablishment of undenominational religion, and in 1799 induced the Committee on Revision of the Laws to report his famous statute securing absolute religious freedom as well as equality. The statute, however, had to be submitted with the rest to the revision of the people. Meanwhile a number of excellent people, headed by Patrick Henry, alarmed by reports of declining morality, made a determined effort to establish religion in Virginia. The first sign of reaction was noted by Edmund Randolph in 1783. On May 15, writing from Williamsburg he informs Madison: "Religion, which has hitherto been treated with little respect by the Assembly, was yesterday incorporated into their proceedings. Mr. Hay moved for a chaplain, and that a prayer should be composed adapted to all persuasions. The prayer has not been reported, though several trials, I am told, have been

tian forbearance, love, and charity towards each other.	gion, the preservation of equal liberty and the existence of the state be manifestly endangered.
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*As Finally Adopted.*

That religion, or the duty we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence, and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the duty of all to practise Christian forbearance, love, and charity towards each other.

made." A year later petitions poured into the legislature in favor of a general assessment for the support of religious teachers. In the May session of 1784 the House of Delegates appointed a standing committee to consider the matter, on which they made a favorable report. In the October session a bill for the assessment was introduced, which Henry supported. It was claimed that Washington, Richard Henry Lee, Marshall, and other great men were in favor of the assessment. For this new religious establishment the Presbyterians were more eager than the Episcopal clergy. "They seem," said Madison, writing from the Assembly to Monroe, "as ready to set up an establishment which is to take them in as they were to pull down that which shut them out. I do not know a more shameful contrast than might be found between their memorials on the latter and former occasion." The utmost that the friends of freedom could secure was a postponement of the bill until constituencies could be consulted. Madison prepared a powerful "Memorial" against it, which was scattered throughout the State, and the tide turned. By 24 September 1785 Randolph was able to announce to Arthur Lee that the Presbyterians had changed their tone. "Religion too will form a capital figure in the debates of the next Assembly. The Presbyterians will have a sufficient force to prevent the general assessment, possibly to repeal the act of incorporation. The delegates from those counties in which the majority is of their persuasion are expected with full and pointed instructions on both heads." While Madison had been wrestling with the reactionary Presbyterians, Randolph appears to have been laboring with the Episcopalians, who had largely favored the reestablishment of religion, although colorless, under a belief that, along with incorporation, it might amount to a practical restoration of their authority. On 17 July 1785 (Richmond), Randolph, writing to Madison, says: "I dedicate to you, as the patron of the protestant Episcopal Church, the enclosed journal. Between friends, my experience in



the last convention [Episcopal] does not make me anxious to step forward in another. We have squeezed a little liberality from them; but at a future day they will be harder than adamant, and perhaps credulous that they possess authority."

When the hour of battle arrived Henry had left the Assembly to become Governor; George Mason and James Madison stood ready for the struggle; but in presence of the pile of petitions on the table against the proposal it was abandoned without a struggle. Instead of the assessment bill Jefferson's statute establishing religious freedom, lying on the table since 1779, was taken up and passed into law.<sup>1</sup>

In this contest Randolph, State Attorney at the time, was heart and soul with Madison and Mason, but his views on a related matter then before the Assembly diverged from those of Madison. In 1784 the Assembly granted petitions of the Episcopal and Presbyterian churches for incorporation, and offered similar incorporation to other religious societies. The Episcopal Church alone availed themselves of the concession, and a bill was introduced by Mr. Henry which, after elimination of some clerical "survivals," was passed. The object of the bill was to enable the church to hold and manage its lands. Madison voted for this measure, but he only meant it as a nail to drive out a rustier one—the religious assessment,—and when this was removed straightway addressed himself to repeal the act of incorporation. "I cannot," wrote Randolph to Arthur Lee, "I cannot but consider the act of incorporation in the light of a compact; which legislative authority may dissolve by the arm of power, but not by the rules of justice and honour." Madison aimed to repeal the act, as recognizing the principle of legislative interference with religion, but admitted that each sect should be secured its property. Such was the effect of the Act of Jan. 1786. (In 1802 even this concession was withdrawn, and the glebes ordered to be

<sup>1</sup> For a painstaking history of this prolonged struggle, see Rives' "Madison," vol. I.

sold; but the order was decided to be unconstitutional, and Randolph's view confirmed, by the United States Supreme Court. *Terrett v. Taylor*. 9 Cranch, 53.)

Randolph always cherished the service of his Church, and was generally consulted by the clergy. I have before me a letter written from Portsmouth (15 Feb. 1787), to the Rev. Thomas Davies:

“I have often wished that the reading of the liturgy had been less an act of indifference and languor with the ministry of the protestant episcopal church. For, as it contains sentiments happily fitted to true devotion, its dignity is debased when by an impropriety of delivery it fails to promote religious fervor. These impressions would naturally prompt me to favor any scheme tending to rescue this excellent composition from the degraded state into which it has been reduced by inattention. And it gives me particular pleasure to find that by lending my name to your intended publication I can also indulge private friendship. I shall be ready to peruse what you may think proper to give to the world. The plan which you mean to pursue seems to be well adapted to your purpose; and altho' I could not form an accurate opinion of the whole work (it being not yet finished and hastily heard by me yesterday), I have sufficient reason to believe that it will be useful, from being present at your performance of service on sunday last.”

While thus personally affectionate towards his Church, Randolph was jealously vigilant in the matter of religious liberty. It was, I suspect, an impulse of gratitude for Franklin's support in his political heresies, which caused him to second the aged philosopher's proposal that sessions of the Constitutional Convention should be opened with prayer,—wherein the two stood alone. But those who realize the vast step taken when the United States was constitutionally severed from religion, will be interested to know that this is due to Edmund Randolph. In a letter to Madison of 29 February 1788 he calls his attention to a dangerous implication of Art. VI., Sec. 3, “no religious test shall ever be required as a Qualification to any office or public Trust under the United States.” In this letter he asks: “Does not this exception as

to a religious test imply that the Congress, by the general words, had power over religion?" This led to their agreement on the XVIth and XXth amendments, accompanying the Virginia ratification, which were combined in the first article added to the Constitution. It is probable that but for this article Washington might not have been able to write the Treaty with Moslems on that historic landmark of religious freedom referred to at the beginning of this chapter,—“The Government of the United States of America is not in any sense founded on the Christian Religion.”<sup>1</sup>

<sup>1</sup> In quoting this Dr. Philip Schaff omits three pregnant words—“in any sense” (“Church and State in the United States,” 1888, p. 41). Other errors occur in Dr. Schaff’s useful essay. Washington is said to have favored assessment for religion in Virginia (p. 29). He was so reported, but wrote a disclaimer (see Rives’ “Madison”). On p. 40 Dr. Schaff says that the Constitution, in requiring an official oath, “recognizes the Supreme Being, to whom the oath is a solemn appeal.” The constitutional alternative of affirmation is here omitted; also the care with which divine sanction is excluded from the special oath of the President. From p. 62 it might be inferred that use of the Bible, in administering an oath, is constitutional. Interpretations of the law are often erroneous. Dr. Schaff claims that the Supreme Court decision, in *Reynolds v. the United States*, would exclude from toleration “the public exercise of Mohammedanism which sanctions polygamy.” It is not the sanction but the practice of polygamy which is prohibited. On the legal relation of this nation to religion the most important volume is “The Bible in the Public Schools” (Cincinnati, 1870), which contains exhaustive arguments by George Hoadly, Stanley Matthews (now Justice), J. B. Stallo, and others. The judicial opinions, especially that of Judge Taft, are very able.

## CHAPTER XVIII.

### STATE AMENABILITY.

THE previous chapter opened with a brave word from Washington. The present may open with a paragraph from Jefferson, to be pondered by those who would cover the immunity of repudiation with a Jeffersonian mantle. Writing from Paris, 3 August, 1787, to Edmund Randolph, then in the Constitutional Convention, Jefferson says :

“ I am anxious to hear what you have done in your federal convention. I am in hopes at least you will persuade the States to commit their commercial arrangements to Congress, and to enable them to pay their debts,—interest and capital. The coercive powers supposed to be wanting in the federal head, I am of opinion, they possess by the law of nature, which authorizes one party to an agreement to compel the other to its performance. A delinquent State makes itself a party against the rest of the Confederacy.”

At the close of the Revolution the citizens of the United States found themselves loaded with “ British debts.” The treaty of peace with Great Britain required that these obligations should not be impaired. The foreign bonds were largely transferred to citizens of the United States, in order that they should not be escaped by State assumptions of their citizens’ debts. The constitutional prohibition (Art. I.) against “ impairing the obligation of contracts” was one of the compromises of the Constitution. The eloquence of Henry and the ingenuity of Marshall (not yet Justice) were vainly expended to maintain an escape for the debtor through collusion with his State. (*Jones v. Hylton*. Curtis.

Decisions i., 164.) In March 1789 Randolph wrote Madison that if the peace of this country ever suffered a main cause would be these "British debts." When he became Attorney General he was confronted by a case involving the amenability of a State to an alien creditor, at a time when Henry's passionate arguments, in the case at Richmond, had rekindled the sentiment of State sovereignty. On 12 August 1792 he writes to Madison from Germantown :

"I was engaged during the whole of last week in the Supreme Court of the United States. Our business was rather preparatory to some great discussions at the succeeding term than decisive of any question. The amenability of a state is fixed for debate on the first Monday in February. The State of Georgia applied for an injunction to stop in the Marshal's hands a sum of money which had been recovered in the last circuit court by a British subject, whose estate had been confiscated. It was granted, with a demonstration to me of these facts : that the premier aimed at the cultivation of Southern popularity ; that the professor knows not an iota of equity ; that the North Carolinas repented of the first ebullitions of a warm temper ; and that it will take a series of years to settle with such a mixture of judges a regular course of chancery."

This famous case, of *Chisholm ex'r. v. Georgia* (2 Dallas Rep. 419), was submitted to the Supreme Court at the August term, 1792, when Randolph moved its postponement, on account of its vast importance and to avoid precipitancy. The remonstrance of Georgia against the jurisdiction of the Federal Court excited attention, and efforts were successfully made to get up a "State-Sovereignty" agitation in the interval. When the case came on in February 1793, Randolph moved that Georgia should be ordered to appear at next term, or judgment then entered against the State. "I did not want the remonstrance of Georgia," he said, in opening the case, "to satisfy me that the motion which I have made is unpopular. Before that remonstrance was read I had learned from the acts of another State, whose will must be always dear to me, that she too condemned it. On ordinary occasions

these dignified opinions might influence me greatly, but, on this, which brings into question a constitutional right, to surrender it would be in me an official perfidy."

Having shown the suability of a State under Art. III., Sec. 2, Randolph adduces the spirit of the Constitution :

"Are States, then, to enjoy the high privilege of acting thus eminently wrong without control? . . . The Common Law has established a principle that no prohibitory act shall be without its vindicatory quality, or, in other words, that the infraction of a prohibitory law, although an express penalty be omitted, is still punishable. Government itself would be useless if a pleasure to obey or transgress with impunity should be established in place of a sanction to its laws. This was a just cause of complaint against the deceased Confederation. In our solicitude for a remedy we meet with no difficulty where the conduct of a State can be animadverted on through the medium of an individual. For instance, without suing a State, a person arrested may be liberated by *habeas corpus* ; a person attainted, a convict under an *ex post facto* law, may be saved ; those who offend against improper treaties may be protected, or who execute them may be punished ; the actors under letters of marque and reprisal may be mulcted ; coinage, bills of credit, unwarranted tenders, and the impairing of contracts between individuals, may be annihilated. But this redress goes only half way, as some of the preceding unconstitutional actions must pass without censure unless States can be made defendants. What is to be done if, in consequence of a bill of attainder or *ex post facto* law, the estate of a citizen shall be confiscated and deposited in the treasury of a State? What, if a State should adulterate or coin money below the Congressional standard, emit bills of credit, or erect unconstitutional tenders for the purpose of extinguishing its own debts? These evils, and others which might be enumerated like them, cannot be corrected without a suit against the State. It is not denied that one State may be sued by another, and the reason would seem to be the same why an individual who is aggrieved should sue the State aggrieving. A distinction between the cases is supportable only on a supposed comparative inferiority of the Plaintiff ; but the framers of the Constitution could never have thought thus. They must have viewed human rights in their essence, not in their mere form. They had heard, seen—I will say felt—that Legislators were not so far sublimer than other men as to soar beyond the region of passion. Unfledged as America was in

the vices of old governments, she had some incident to her own new situation. Individuals had been victims of the oppression of States."

Randolph then proceeded to justify his doctrines, first, by the relation between the Federal and State governments.

"I acknowledge and shall always contend that the States are sovereignties, but with the free will, arising from absolute independence, to combine in government for their own happiness. Hence sprang the Confederation; under which indeed the States retained their exemption from the forensic jurisdiction of each other, and, except under a peculiar modification, of the United States themselves. Nor could it be otherwise, since such a jurisdiction was nowhere, according to the language of that instrument, expressly delegated. This government of supplication cried aloud for its own reform, and the public mind of America decided that it must perish of itself, and that the Union would be thrown into jeopardy unless the energy of the general system should be increased. Then it was that the present constitution produced a new order of things. It derives its origin immediately from the people; and the people individually are under certain limitations, subject to the legislative, executive, and judicial authorities thereby established. The States are, in fact, assemblages of the individuals who are liable to process. The limitations which the Federal Government is admitted to impose upon their powers are diminution of sovereignty at least equal to making them defendants. It is not pretended, however, to deduce from these arguments alone the amenability of States to judicial cognizance; but the result is, that there is nothing in the nature of sovereignties, combined as those in America are, to prevent the words of the Constitution, if they naturally mean what I have asserted, from receiving an easy and natural construction. But pursue the idea a step farther, and trace one of a multitude of examples in which the General Government may be convulsed to its centre, without this judicial power. If a State shall injure an individual of another State, the latter must protect himself by a remonstrance. What if this be ineffectual?"

After showing that, in the absence of any authority for judicial adjustment, the arbitrament of strife is invited, and the tranquillity of the nation left at the mercy of every State, Randolph argues, secondly, the law of nations. He cites Bynkers-

hoeck (III. 4) to prove that a prince may be summoned before a tribunal in a foreign kingdom wherein he has property; and proceeds: "Now although each State has its separate territory, in one sense, the whole is that of the United States in another. The jurisdiction of this court reaches to Georgia as well as Philadelphia. If therefore the process could be commenced *in rem*, the authority of Bynkershoeck would justify us; and whether it be commenced *in rem* or *in personam*, the principle of amenability is equally assured." His third and final point is that this amenability of a State is not weakened by want of special provision in the Constitution for execution; since there is no such provision even where States are in litigation.

"By the 14th Section of the Judiciary Act the Supreme Court, as one of the Courts of the United States, has power to issue writs of *scire facias*, *habeas corpus*, and all other writs not specially provided for by the statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law. Executions for one State against another are writs not specially provided for by the Statute, and are necessary for the exercise of the jurisdiction of the Supreme Court in a contest between States; and although, in neither the Common Law or any Statute, the form of such an execution appears, yet it is agreeable to the principles and usages of law that there should be a mode of carrying into force a jurisdiction which is not denied. If, then, the Supreme Court may create a mode of execution when a State is defeated at law by a State, why may not the same means be exerted when an individual is successful against a State?"

In answering the question, what species of execution could be devised against a State, Randolph suggests that it would depend on the specific matter involved.

"What if the State is resolved to oppose the execution? This would be an awful question indeed. He to whose lot it should fall to solve it would be impelled to invoke the God of wisdom to illuminate his decision. I will not believe he would recall the tremendous examples of vengeance which in past days have been inflicted by those who claim against those who violate authority. I will not believe that in



the wide and gloomy theatre over which his eye should roll he might perchance catch a distant glimpse of the federal arm uplifted. Scenes like these are too full of horror not to agitate, not to rack, the imagination. But at last we meet still on this result : there are many duties, precisely defined, which the States must perform. Let the remedy which is to be administered, if these should be disobeyed, be the remedy on the occasion we contemplate. The argument requires no more to be said. It surely does not require us to dwell on such painful possibilities. Rather let me hope and pray that not a single star in the American constellation will ever suffer its lustre to be diminished by hostility against the sentence of a court which itself has adopted.

“But after all, although no mode of execution should be invented, why shall not the Court proceed to judgment. It is well known that the courts of some States have been directed to render judgment and then stop ; and that the Chancery has often tied up the hands of the Common Law in a like manner. Perhaps if a government should be constituted without mingling at all the three orders of power, court should, in strict theory, only declare the law of the case, and the subject upon which the execution is to be levied, and should leave their opinions to be enforced by the Executive. But that any State should refuse to conform to a solemn determination of the Supreme Court of the Union is impossible, until she shall abandon her love of peace, fidelity to compact, and character.”

Finally, after arguing that the service on the Governor and the State Attorney of Georgia was competent, Randolph concludes :

“With this discussion, though purely legal, it will be impossible to prevent the world from blending political considerations. Some may call this an attempt to consolidate. Before such an imputation shall be pronounced, let them examine well if a fair interpretation of the Constitution does not vindicate my opinion. Above all, let me personally assure them that the prostration of State rights is no object with me ; but that I remain in perfect confidence that with the power which the people and the legislatures of the States hold over almost every movement of the National Government, the States need not fear an assault of bold ambition, or any approach of covered stratagem.”

The opinions of the Justices will repay the attention of historical students ; that of Justice Wilson, especially, which solemnly repudiated the phrase “State Sovereignty.” “In an instru-

ment well drawn as in a poem well composed silence is most expressive"; "to the Constitution the term sovereignty is totally unknown"; "the term 'sovereign' has for its correlative 'subject.'" "The citizens of Georgia, when they acted upon the large scale of the Union, as a part of the 'people of the United States,' did not surrender the supreme of sovereign power to that State, but, as to the purposes of the Union, retained it to themselves. Therefore, Georgia is not a sovereign State." "A State like a merchant makes a contract; a dishonest State like a dishonest merchant wilfully refuses to discharge it; the latter is amenable to a court of justice; upon general principles of right, shall the former, when summoned to answer the fair demand of its creditor, be permitted Proteus-like to assume a new appearance, and to insult him and justice by declaring, 'I am a Sovereign State'?" "The sovereign when traced to his source must be found in the man." Justice Blair (Virginia) in the course of his opinion said: "Let us go on as far as we can; and if at the end of the business, notwithstanding the powers given us in the 14th Section of the Judicial Law, we meet difficulties insurmountable to us, we must leave it to those departments of Government which have higher powers." Justice Cushing (Massachusetts) said: "The rights of individuals and the justice due to them are as dear and precious as those of States. Indeed, the latter are founded on the former; and the great end and object of them must be to secure and support the rights of individuals, or else vain is government." Chief Justice Jay observed that Georgia was at that very time suing two citizens of South Carolina in that court, and pointed out the correlation between the right to sue and liability to be sued.

The temptation to invest with patriotic pride a disinclination to pay debts was strong. Sovereignty, trembling at once with dignity and terror, hastened to answer the Supreme Court with the XIth Amendment.

This Amendment, the bitter fruit of Randolph's success, contained seed which have borne results so important that I venture to append here some brief historic and legal episode concerning them. It is quoted for the reader's convenience: "The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State."

This Amendment, on which States rely to shelter unconstitutional laws "impairing the obligation of contracts" (Art. I., Sec. 10), was introduced into the Senate on 2 January 1794. On the 14th Albert Gallatin tried to amend the amendment, first, by adding: "Except in cases arising under treaties made under the authority of the United States"; that having failed, by adding: "Where the cause of action shall have arisen before the ratification of this amendment." Perhaps this effort to strip repudiation of its patriotic purple, by revealing while professing to satisfy its dread of "British debts," was one cause of unseating Gallatin. One other name, Rutherford of New Jersey, stands on this small roll of honor in the Senate. This *ex-post facto* law, infraction of treaty, and impairing of contracts, all in one, passed in the Senate by 23 to 2. In the House, Elias Boudinot of Pennsylvania moved to add: "Where such States shall have previously made provision in their own courts whereby such suits may be prosecuted to effect." Notwithstanding the gallant fight made by Boudinot and his comrades, the original passed by 77 to 8. The names stand in two columns on the House Journal (Vol. II.), one headed with the name of Fisher Ames, the other with that of James Madison. The phrase "commenced or prosecuted" in the XIth Amendment was avowedly contrived to have a retrospective bearing on the Georgia case. Chisholm was, therefore, defrauded of his judgment by the very court which awarded it, no further action being taken until after the proclamation of the

ratified Article in 1798, when that, and all suits against States were swept from the records by the unanimous decision of the Justices, in *Hollingsworth, et al., v. Virginia*.

It was an inevitable result of this XIth Amendment that plaintiffs against States were driven to seek redress by devices—chiefly by avoiding the use of the State's name on the record. The decision of Chief Justice Marshall (*Osborn v. Bank of the U. S., 9 Wheaton*) established a *modus vivendi* with the new Article, and the principles laid down bear equally on the liability of a State to its own citizens and those of other States. The Chief Justice asked where we are landed by a denial of the liability of the agents of States to suits, and as we are just now in danger of being landed there the summary is of present interest.

“A denial of jurisdiction forbids all inquiry into the nature of the case. It applies to cases perfectly clear in themselves; to cases where the government is in the exercise of its best established and most essential powers, as well as to those which may be deemed questionable. It asserts that the agents of a State, alleging the authority of law void in itself because repugnant to the Constitution, may resist the execution of any law of the United States. It maintains that if a State shall impose a fine or penalty on any person employed in the execution of any law of the United States, it may levy that fine or penalty by a ministerial officer without the sanction even of its own courts, and that the individual, though he perceive the approaching danger, can obtain no protection from the judicial department of the government. The carrier of the mail, the collector of the revenue, the marshal of the district, the recruiting officer, may all be inhibited under various penalties from the performance of their respective duties. The warrant of a ministerial officer may authorize the collection of these penalties. The person thus obstructed in the performance of his duty may, indeed, resort to his action for damages after the infliction of an injury, but cannot

avail himself of the preventive justice of the nation to protect him in the performance of his duties. Each member of the Union is capable at its will of attacking the nation, of arresting its progress at every step, of acting vigorously and effectively in the execution of its designs, while the nation stands helpless, stripped of its defensive armor, and incapable of shielding its agent or executing its laws, otherwise than by proceedings which are to take place after the mischief is perpetrated, and which must often be ineffectual from the inability of the agents to make compensation."

In October 1887 Marshall's finely built refuge from all these liabilities crumbled. The Supreme Court decided, in the Virginia "Contempt Cases," that it must go behind the record and find whether any State is the real party interested. It must thus be concluded that so far as aliens or citizens of other States are concerned the nation can secure them no protection from wrong by any State until after the wrong is done. Such is the evolution of the XIth Amendment,—or devolution, one may say better, for it has carried us back to the least civilized time of the country. Our Justices have resumed the term "sovereignty," so carefully left out of the Constitution, which even monarchies disown except as legal fiction. And why not? They who may be wronged by a State and have no redress are to that extent its "subjects." And, as the great Justice Wilson said, the correlative of subject is sovereign. It is a long descent from that to the mediæval utterance of a present justice, that immunity of a State from suit is "a privilege of sovereignty."

The courageous speech of Randolph bears on issues of present importance. In the draft of a national constitution, elsewhere considered, Randolph had inserted the following clause: "All laws of a particular State repugnant hereto shall be void, and in the decision thereon, which shall be vested in the Supreme Judiciary, all incidents without which the general principle cannot

be satisfied, shall be considered as involved in the general principle." Had such a provision been adopted nullification would have been impossible, because if the general principle could not be satisfied without direct restraint on the authorities of a State that restraint could be applied. The Supreme Court was, indeed, given the balances between laws and individuals threatened by them; it had power to protect an individual from damage before the damage was done. But on the first exercise of that just power, so far as aliens were concerned, it was snatched away. The equation between power to sue and liability to be sued was overthrown by a provincial notion of "sovereignty" which no European monarchy is petty enough to hold.

It is important to call attention to one part of Randolph's argument which bears on the question of the suability of a State by its own citizens. On this point we have some *obiter dicta* from our Supreme Court, and as I write there is pending before that tribunal a case (*North Carolina v. Alfred H. Temple*) which directly involves that question. It can hardly fail to impress any one who scrutinizes the XIth Amendment that all reference to a citizen's right as against his own State must have been omitted on full consideration. But, as the spirit of the Constitution is adverse to the assumption of powers by the Federal Government by implication only, unless when such powers are essential to others distinctly given, the question remains whether the framers of the Constitution really intended to institute or to deny the right of a citizen to sue his State.

The case of *Chisholm v. Georgia*, read by the light of Randolph's letters, bears on this same point.

In Article III., Sec. 2, the jurisdiction of the Supreme Court in cases between a State and aliens is so clear that it may excite astonishment that Georgia should have denied it. Chief Justice Jay said, in giving his opinion: "Georgia refuses to appear and answer to the plaintiff because she is a sovereign [*sic*]

State, and therefore not liable to such actions." Now, if the reader will observe the phraseology of the Attorney General, in the letter to Madison quoted above, he will see that "the amenability of a State" is declared to be in question, not merely amenability to a foreign plaintiff. The whole course of the proceedings prove that the amenability of a State to one of its own citizens was included in the general question whether a State could be involuntarily made a party in a suit. For the Judiciary Act (Sec. 13) said: "The Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature, when a State is a party, except between a State and its citizens, and except, also, between a State and the citizens of other States, or aliens, in which latter case it shall have original but not exclusive jurisdiction." From this it is clear that the jurisdiction of the Court extended to civil actions between a citizen and his State where a Federal question was involved. Otherwise the Constitution could not have enforced its provisions against a citizen's injury by infraction of contract or deprivation of liberty or property without due process of law. That the suability of a State by one of its citizens is not among the specifications of jurisdiction in Art. III., Sec. 2, is explicable by the fact that these are limited to issues involving probable conflicts between two or more other jurisdictions—such, for example, as those of a State and a foreign State. Where an individual citizen and his own State are in question the issue is between the single jurisdiction of the State and its revising Federal branch, whose authority is therefore established by the first clause of the section. "The judicial power shall extend to all cases, in law or equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."

In the Articles of Amendment III., IV., V., VI., VII., VIII., the United States has entered into compact with its individual citizens which cannot be fulfilled, in some cases, without sanction-

ing suit against a State. What is "due process of law," where a citizen is deprived of property; what is "just compensation" where private property is "taken for public use"; what are "excessive fines,"—cannot be determined without making a State responsible after the old English fashion, through its ministers. The relative dignity of State and citizen is inadmissible. Justice is no respecter of persons. Apparently the right of a citizen to sue his own State was carefully excluded from the reclamations of the XIth Amendment because Congress was not willing to turn the American citizen into a subject, leaving him without redress against the local government under which he lives.

Indeed, no Englishman, since Magna Charta, has been a "subject" so helpless as an American would be without legal redress from local wrong. Whence did the Ministry of the American State derive an irresponsibility unknown in the English State? Our Revolution transferred to each State the sovereignty previously possessed by the British nation within its limits. This sovereignty was not inherited by a governor, or a legislature, or a bench, but by a people. The old world emperor said: "I am the State"; the new world answered: "No, the people are the State." It was the answer of Englishmen who found themselves free to harmonize institutions with English principles. But we are now threatened with relapse into barbarous notions of "privilege" and "sovereignty." The English sovereign can do no wrong, because, as a person, he can do nothing affecting the right of any citizen; he can act only through his Ministry, and through them alone is responsible. The Crown is the symbol of a nationality which can be reached only through its agents. It is not a question of dignity but of practicability. The Crown is *bound* by a "petition of right." This phrase is sometimes used in America as if equivalent to "petition *for* right" to sue. In this connection the word "petition" is relic from a period when authority might withhold justice; so also is



the word "sue," originally meaning to petition; but neither now implies any such authority. It is mere mental confusion to say "no State can be sued without its consent." If a government be meant it is untrue. The English government may be sued by the humblest individual; any American State government may be sued by another State. If the people of a State be meant it is true that it cannot be sued without its consent; but its consent was given here, as in England, long ago; in neither country can it be withdrawn, or need it be asked for again,—unless ceremoniously, as a lawyer "submits" his case without implying that the judge has any choice in the matter. Can a State now choose whether it will or not be sued by another State? The consent given by the American States to be sued by aliens has been constitutionally withdrawn. The right of an American citizen to claim the shield of his country against local legislative or ministerial oppression has never been taken away, and it remains to be seen whether we have lost, by our independence, a safeguard possessed by every "subject" of Great Britain.

Should it now be decided that a State has immunity from suit by its own citizens, the results may prove more serious than the disaster of English bondholders. There could be nothing to prevent the virtual re-establishment of slavery by any State. Prudence would, of course, suggest some other name for it; it might be called Readjustment of Labor, for instance; but, unless a State can be held responsible through its ministers, what could prevent it from turning any portion of its population into serfs? What could be the procedure were a State to enact some property-qualification for suffrage, along with an act disqualifying negroes from holding the requisite property? The law might be unconstitutional, but, be it remembered that under the recent decisions there can be no test cases. If Sambo can obtain the means to reach the Supreme Court and secure his rights, then Sambo is righted; but it does not help Cuffee, who must go through the same process; and when Sambo, Cuffee,

and a handful of others have secured justice, in the course of many years, all that will not have helped the mass of sufferers. Of course, if these consequences flow from the remnants of antediluvian "sovereignty" left to the States by our Constitution, they must be admitted. But the fact that the right of a State to repudiate alien claims had to be secured by an amendment, necessitated by a decision against such right, indicates that the spirit of the Constitution is on the other side. Except in the particulars altered—affecting suability by an alien, or a citizen of another State—the instrument may be regarded as harmonious with security of citizens from loss of life, liberty, and property without due process of law, and with the obligation of contracts. As suits between a State and its citizens are expressly recognized in the Judiciary Act (Sec. 13), and such citizens are not included among those disqualified from suing by the XIth Amendment, we may forecast with some confidence the ultimate judicial decision. It is obvious that the sense of the Constitution cannot be determined by the absence of any specified mode of execution against a recalcitrant State. As the Attorney General argued in *Chisholm v. Georgia*, a similar absence does not affect the unquestioned right of one State to sue another. That argument has never been answered. His further argument on the possible potency of a judgment even without execution is proved by the success of such unexecuted judgments in Virginia to-day. The first Attorney General of the nation was, indeed, too confiding in his trust that character and fidelity to compact would prevent States from refusing to conform to solemn decrees of the Supreme Court; but the "love of peace," on which his hope also rested, has become a stronger motive to our States than when he spoke; and the need of credit and equality would forbid any State to rest under the criminal sentence of all the other States uttered through their common tribunal. In America State sovereignty must surrender to Man sovereignty.

## CHAPTER XIX.

### HENFIELD'S CASE.

A BRIEF chapter, preliminary in a sense to that which follows, may be given here with regard to a case of critical importance which arose during the Genet troubles.

One need only read the numerous letters written by Jefferson in those days to discover that the perilous proceedings of Genet absorbed his attention. That it was impossible at the moment to determine whether enthusiasm for the new French minister, representing a new-born republic, might not outweigh an administration haggling with the gallant ally of America in her revolution, was sufficient cause for putting off on Randolph a proclamation which might not prove popular. Things involving risk were generally confided to Randolph; it was a Cabinet custom. Randolph was the only man that did not want to be President.

In pursuance of the Proclamation of 22 April 1793,—quickly followed by the vigorous circular from Hamilton warning all against infractions of “our neutrality,”—two Americans, Gideon Henfield and John Singleterry, were arrested on a French privateer in American waters, and imprisoned. Randolph's opinion, being required, was given to the effect that the offence charged was punishable. On June 1, Genet, his blushing honors thick about him in Philadelphia, indignantly demanded the release of the prisoners. Henfield alone was held for trial, and the case came before a jury in Pennsylvania, where, though Hen-

field had enlisted at Charleston, S. C., the offence was technically committed. The trial caused popular excitement, and the jury acquitted Henfield, who pleaded that he was ignorant of the illegality of his conduct, and who had served the country honorably in the Revolution. The triumph made Genet and the French party bolder than ever, and it was proclaimed that no law existed under which an American could be punished for rendering such assistance to France as Lafayette and his men had rendered to America. The United States had treaties with three of the nations opposing France, and of these one, Great Britain, was in rather a formidable mood. The administration being in a dilemma between the necessity of repressing Genet's enlistments and the importance of not offending Genet's sympathizers, resolved on an informal manifesto; and Randolph (as usual!) was put forward to make a statement through the press, which, of course, any individual in the Cabinet might disclaim at convenience. The following, therefore, appeared in the *Federal Gazette* :

“It must not be supposed that because, on the indictment against Gideon Henfield, there was a verdict of acquittal, it is therefore lawful for any citizen of the United States to enter on board French Privateers, and commit hostilities against the subjects of Great Britain. On the contrary, the Court, with whom the law rests, most explicitly and unanimately declared that such conduct is in violation of our treaty with his Britannic majesty, and that the treaty is not only a law, the breach of which is criminal and punishable, but by the constitution, it is the *Supreme law of the land*, more solemn, more obligatory, than an act of Congress itself. The jury have acquitted Gideon Henfield—but as the law is so undeniably clear and explicit, it may be presumed, it must be presumed, that it was owing to some deficiency in point of fact, or some *equitable* circumstances attending this case, which are the points of consideration for the jury. I do not mean to argue the case over again. To me it is clear, a conviction should have taken place, although I would most heartily have wished a remission of the punishment. I mean merely to let it be understood that this verdict does not by any means amount to a decision that it is not unlawful to enlist on board French privateers.”

The embarrassment caused by Genet's claim, that no law of the United States existed to restrain its citizens from warring against the enemies of France, lay largely in the amount of truth it contained. By reference to the review by Justice Matthews of Randolph's Report to the House of Representatives, it will be seen that he had recommended the provision by Congress of a Federal code of law. The need of such a code was notably shown in the trouble with Genet. For want of it the Attorney General's pronouncement in the *Federal Gazette* was easily seen by the astute Frenchman to be *brutum fulmen*. Henfield's offence was created by a treaty, and no penalty had been attached to it by Congress or court. The general provision of the Judiciary Act authorizing the United States Courts to make use of all common law writs necessary to the exercise of their jurisdiction, left it still a subtle question what could be the penalty affixed to conduct not provided for under the treaty which alone made into an offence what, but for the treaty, had been applauded.

Under these difficulties the Attorney General could only rest his case on the general principle of law, that jurisdiction carries with it a right to affix penalties necessary to give effect to the law of the land. Leaving in doubt, as the Constitution left in doubt, the question of execution, whether State or Federal, he contended that the law against misdemeanor, of the State where the offence was committed, should apply. Several years later, when the doctrine which so outraged Jefferson was defended, that Federal courts possessed the right to enforce the whole common law, it was claimed that, in the Henfield case, Randolph had maintained that doctrine. In reply to some questions by Madison (1799), Randolph returned the following interesting recollections of the case:

"1. On such a question the opinion of no individual is of weight.

"2. On no occasion would it be quoted by those who will

quote it but to show, that at a moment when party had not taken deep root, and consequences to one or the other side were not foreseen, the opinion was sincere.

“3. Genet demanded Henfield’s liberation. It was enough to say to a foreign minister, that the laws (no matter whether State or federal) justified his trial.

“4. It is probable, therefore that the general question, now under discussion, never came into my consideration, being unnecessary. I think, that it was certain ; but at this distance of time I can rely on no recollection of what passed in my mind, and must stand upon what the words import.

“5. This must have been the idea, if I meant to say that he was triable at common law in the federal court ; that the treaties, by stipulating for peace with the U. S., in substance prohibited the citizens of the U. S. from engaging in a war against the nations with whom the treaties subsisted : that treaties being the supreme law, and the judicial act (p. 74) having provided that the laws of the States should be the rule of decision, that they should apply : the laws of Pennsylvania, within whose boundaries the offence was committed, comprehending the common law, would aid the treaty, which had specified no penalty for Henfield’s crime, by one of its general principles, namely, that when a statute forbids a thing to be done, without annexing a penalty, the common law makes it indictable and punishable, as a misdemeanor. This, I believe, was the doctrine which I urged at the trial.

“6. This opinion does not bring up the common law as the law of the U. S. ; because the treaty created the offence, which it might do in regard to the intercourse with foreign nations ; and the common law only annexed the mode of prosecution and penalty ; whereas the common law, as the law of the U. S., would *create* offences.

“7. Suppose the judicial act to be unconstitutional in adopting

the common law penalty, and annexing it to the offence by treaty. Could the Attorney General advise the President to pronounce that law unconstitutional, when a foreign nation was the litigant party? When Henfield himself was in the ordinary channel of having the question of unconstitutionality decided by the judiciary?

“8. Whether an offence against the U. S. be cognizable in a State court, I know not; much may be said on the subject.

“9. But after all, the opinion imputed, even if it were fixed in the Attorney General (which it cannot be), was abominably wrong.

“Preserve these hasty notes.”<sup>1</sup>

The sincerity of Randolph, and of the Supreme Court, which nearly always confirmed his opinion, did not satisfy a Cabinet of partisans. As a Cabinet had been created where the Constitution provided none, one of its members now wished to make the Supreme Court into an occasional appendix to that council. By a solemn call from Jefferson the Justices were convened and asked whether they might with propriety be consulted from time to time on legal questions, connected with the law of nations, stated in an abstract way. The Judges, of course, declined to fall in with any such unconstitutional arrangement. Jefferson then thought of asking Congress to appoint a Board of Advice for the Executive on such questions, and asked Randolph to prepare a bill. Randolph answered that such a Board could only be connected with his own office, and as that was just what Jefferson wanted to escape, the subject was dropped. But from that moment Randolph was a doomed man, even in the house of his friends.

<sup>1</sup> MS. McGuire Collection.

## CHAPTER XX.

### RANDOLPH AND JEFFERSON.

THE Secretary of State and the Attorney General, in Washington's first administration, were not only relatives by blood but by intertwined personal histories. Jefferson, ten years older than Randolph, had been, as we have seen in an early chapter, the intimate friend of Edmund's father. In a letter (MS.) Jefferson refers to his "long habits of intimacy with this family." Edmund was a sort of trust to Jefferson. Their friendship was strengthened by political sympathies. Together they struggled for religious freedom, and every high principle of the Revolution. When Jefferson, charged with cowardice, while Governor, for retreating before Arnold, was superseded by Nelson, and in some disgrace at Monticello, Randolph sprang forward as his champion. By referring to a letter written by him from Congress to Jefferson (9 Oct. 1781) protesting against his declared purpose of sequestering himself from public life, following one urging on him acceptance of a mission to France, the reader may see with what loyalty and tenderness Randolph lifted the cloud which had settled around the humiliated statesman. By reference to subsequent letters it will be seen that Jefferson had solicited a regular correspondence, and it would be difficult to find letters more delicate and entertaining than those of Randolph. Collé, where Mazzei brought his Italians, in the neighborhood of Monticello, had come into Randolph's hands. The family were often there, and were most intimate with the Jeffersons. When Jefferson's wife died, and he was so overwhelmed that he could not see one



of his children without swooning away, as Randolph states in a letter, his young relative was devoted in friendship, and induced him to accept the mission to France. Thus Randolph drew Jefferson back into public life. When Jefferson went to France he turned over his law-business to Randolph. While he was abroad their correspondence was constant and cordial. In the two years of his governorship Randolph kept the name of Jefferson, in his absence, before the State. He is complimented on all possible occasions. When Jefferson was to return Randolph got up and headed a deputation of the Virginia House of Delegates to welcome him back. This love and loyalty to Jefferson was continued in the Cabinet, nor did it ever cease. In 1791, when Paine's "Rights of Man" appeared with Jefferson's "private" note for preface, and Jefferson was trying to make his peace with the Vice-President through the President, Randolph was enthusiastic for the "new departure," as it might now be called. He writes to Madison, 21 July 1791:

"I need not relate to you, that since the *standard* of republicanism has been erected, it has been resorted to by a numerous corps. The newspapers tell you how much the crest of aristocracy has fallen; and I should rejoice that the controversy has been excited, were it not that under the character of Agricola (? Publicola), he, who was sufficiently depressed before, is now irredeemable in the public opinion without being the real author.<sup>1</sup> Were he in a condition to do harm, I should anxiously strive for his disgrace. For however meritorious, I think him towards the U. S. I should hold it necessary to sacrifice any man who could propagate his doctrines with success. But he is impotent, and something is due to past services.

"Mr. J[efferson] and myself have attempted to bring [Thomas] Paine forward as successor to Osgood [Postmaster General]. It seems to be a fair opportunity for a declaration of certain sentiments.<sup>2</sup> But

<sup>1</sup> The letters of Publicola, really by John Quincy Adams, were ascribed to his father. As the best known "Agricola" was Jeffersonian, Randolph's reference is probably a clerical error.

<sup>2</sup> Paine's religious heresies were not yet published. He was the typical radical republican. In a letter from Randolph to Washington, 13 July 1791, his name is first in a list of six persons suggested for Postmaster General. (See Jefferson to Madison 10 and 21 July 1791.)

all that I have heard has been that it would be too pointed to keep a vacancy unfilled until his return from the other side of the water. The contest seems to lie between Pickering, Peters, and F. A. Muhlenberg,—who most probably cannot be reëlected.”

In the summer of 1792, when Hamilton opened his anonymous batteries on Jefferson for appointing and maintaining in office, in the State Department, an editor (Freneau) engaged in assailing the government to which he (Jefferson) belonged,—accusing Madison of making the bargain,—Randolph at once took up the gauntlet.

“Fenno’s paper of yesterday,” he writes to Madison (12 August) “has made a virulent assault on Mr. Jefferson; and you are involved in it, as having been connected with him in the establishment of a paper for party views. The paper itself will reach you as soon as this letter. I have been greatly embarrassed on this occasion. For although I should not scruple, with my open name, to vindicate you against every shaft of malignity; yet was I at a loss which line you might wish to have pursued, and what was the state of the facts. I cannot, however, forbear to say to you what I trust is unnecessary on my part, that no consideration upon earth shall prevent me from being useful to you, where you concede that I can be so.”

His vigorous replies appeared in *Fenno’s Gazette*, and he is duly thanked by both gentlemen, who were absent from Philadelphia at the time,—by Madison on September 13, and by Jefferson on September 17.

There was thus no failure of friendship or loyalty on Randolph’s part, nor is there any indication in his letters that he was conscious of any change in Jefferson’s feelings towards him. Posthumous publications, however, prove in a painful way that from the third year after their entrance into the Cabinet, Jefferson wrote confidential letters to the most influential statesmen calculated to undermine their confidence in Randolph. If, indeed, he had forfeited Jefferson’s confidence by his course in the

Cabinet, and been frankly shown it, the victim of these secret missives might have been on his guard; or if the missives had been based on verifiable facts, instead of on insinuations combined with misrepresentations, those who received them might have been on their guard. But the facts, the representations, and the insinuations, must now be brought together for judgment before the tribunal of historic truth.

It has amply appeared in the foregoing pages that Randolph and Madison had been comrades from their youth. Their correspondence extends over thirty-seven years, during which time they never parted but on two issues,—one, the glebe compacts in Virginia, whose annulment Randolph believed illegal, his opinion being finally confirmed by the United States Supreme Court; the other, the signing of the Constitution, which Randolph refused for the sake of amendments with which Madison equally sympathized. During their life-long intimacy and cooperation Madison never wrote any word implying a doubt of Randolph's firmness and devotion to principle. By his urgency Randolph had entered the Continental Congress, and at a later period overcome his reluctance to enter the Cabinet. It was to this mutual friend that Jefferson, with cautious provision for secrecy, addressed his most injurious insinuations. On the 11 Aug. 1793 Jefferson wrote a letter which his friend Judge Tucker has so altered and veiled that it can hardly be identified, while other biographers have suppressed it altogether.

“I can by this confidential conveyance speak more freely of R[andolph]. He is the poorest cameleon I ever saw, having no color of his own, and reflecting that nearest him. When he is with me he is a whig, when with H[amilton] he is a tory, when with the P[resident] he is what he thinks will please him. The last is his strongest hue, though the 2d<sup>1</sup> tinges him very strongly. The first is what I

<sup>1</sup> Here a side note by Jefferson: “When he is with people whom he thinks he can guide, he says, without reserve, that the party in opposition to the fiscal system are anti-federal, and endeavoring to overturn the Constitution.” (This was actually

think he would prefer in his heart if he were in the woods where he could see nobody, or in a society of *all whig*. You will remark an expression in the enclosed paper with respect to him. It has in some degree lessened my apprehensions of the estimation in which the Pr. held him : still it is not the less true that his opinion always makes the majority, and that the President acquiesces *always* in the majority ; consequently that the government is now solely directed by him. As he is not yet openly thrown off by the Whig party, it gives to the public a false security that fair play is given to the whiggism of the Pr[esident] by an equal division of whig and tory among his counselors. I have kept on terms of strict friendship with him hitherto, that I might have some good out of him, and because he has really some good private qualities ; but he is in a station infinitely too important for his understanding, his firmness, or his circumstances. I mentioned to you that we had convened the judges to consult them on the questions which have arisen on the law of nations. They declined being consulted. In England, you know, such questions are referred regularly to the Judge of Admiralty. I asked E. R. if we could not prepare a bill for Congress to appoint a board or some other body of advice for the Executive on such questions. He said he should propose to annex it to his office. In plain language, this would be to make him the sole arbiter of the line of conduct for the U. S. towards foreign nations."

Having myself been brought up a devout Jeffersonian, I for a time found some mitigation of the injustice of the above letter in its solecism—of describing as the "poorest cameleon" one we are to consider a perfect chameleon. This, and other literary lapses, made me hope that the soreness of a moment might have uttered what reflection would have revoked. But this theory disappeared before further facts, showing the letter to be part of a systematic determination to poison the minds of Randolph's friends against him, while keeping "on strict terms of friendship with him that [he] might have some good out of him." It will

written after Jefferson had conspired with Hamilton, at his (Jefferson's) own dinner table, to corrupt Congress and secure the Treasurer's scheme of assumption of State debts, in exchange for the location of the Federal city on the Potomac ! Also, when this was written to Madison, it was already recorded by Jefferson that Randolph was the first to declare Hamilton's Bank scheme unconstitutional !)

be observed that no fact is mentioned to support the charge that Randolph in the Cabinet was a chameleon. It is a tissue of insinuations that he is vacillating; that he is incompetent; that he is too poor for his position. The only fact mentioned in the letter at all is one which, but for the insinuations, would appear creditable at once to Randolph's competency as Attorney General, and his courage in opposing the absurd variant of a scheme which the Justices snubbed. Jefferson's proposal that Congress should create a new judiciary, without foundation in the Constitution, could only have astounded a strict constitutionalist like the Attorney General. It could only have been as a body of consulting practitioners called in to aid the constitutional law-officer, as Randolph suggested, that the proposal could have even been entertained. That Jefferson realized the immensity of the power he wished to establish is shown by his remark that, if attached to the Attorney General's office it would have "made him the sole arbiter of the line of conduct for the United States towards foreign nations!"

Although the "chameleon" insinuations are not connected with any facts in the letter of August 11, they were sufficiently pointed by a previous letter of 2 June 1793 to Madison, through whom the Secretary of State had endeavored to poison the mind of another statesman—Hon. Wilson Cary Nicholas—against the Attorney General, his own brother-in-law.

"E. R.," says Jefferson, "sets out the day after to-morrow for Virginia. I have no doubt he is charged to bring back a faithful statement of the dispositions of that State. I wish, therefore, that he may fall into hands which will not deceive him. Have you the time and the means of impressing Wilson Nicholas (who will be much with E. R.) with the necessity of giving him a strong and perfect understanding of the public mind? Considering that this journey may strengthen his nerves, and dispose him more favorably to the proposition of a treaty between the Republics

[*i. e.*, France and the United States]; knowing that in this moment the division on that question is four to one, and that the last news has no tendency to proselytize any of the majority, I have myself proposed to defer taking up the question till his return."

(Can it be believed that, when this was written, the proposal for a French treaty had been killed by Jefferson himself, because it came from Hamilton, and that he never proposed one at all? Such will presently be proved the fact on his own testimony.)

Letters in a similar spirit were written to Monroe and to Giles, certainly, and to how many others who held the keys of Virginia politics, is not yet known. When Randolph was stricken down in the Cabinet, these were the men who could have set him on his feet again. Jefferson had provided against that; and to consummate his secret services wrote (31 Dec. 1795) to Senator Giles—leader of the Republican party—a confidential review of the fallen Secretary's "Vindication."

"Though he [Randolph] mistakes his own political character, in the aggregate, yet he gives it to you in the detail. Thus he supposes himself a man of no party (p. 57); that his opinions, not containing any systematic adherence to party, fell sometimes on one side and sometimes on the other (p. 58). Yet he gives you these facts which show that he falls generally on both sides, and are complete inconsistencies.

"1. He never gave an opinion in the Cabinet against the rights of the people (p. 97), yet he advised the denunciation of the popular societies (p. 67)

"2. He would not neglect the overtures of a commercial treaty with France (p. 75), yet he always opposed it while Attorney General, and never seems to have proposed it while Secretary of State.

"3. He concurs in resorting to the militia to quell the pretended insurrection in the West (p. 81), and proposes an augmentation from 12,500 to 15,000 to march against men at their ploughs (p. 80); yet on the 5th of August he is against their marching (pp. 83, 101), and on the 25th of August he is for it (p. 84).

"4. He concurs in the measure of a mission extraordinary to London (as is inferred from p. 58), but objects to the men, to wit, Hamilton and Jay (p. 58).

"5. He was against granting commercial powers to Mr. Jay (p. 58); yet he besieged the doors of the Senate to procure their advice to ratify.

"6. He advises the President to a ratification on the merits of the Treaty (p. 97), but to a suspension till the Provision Order is repealed.

"The fact is that he has generally given his principles to the one party and his practise to the other, the oyster to one, the shell to the other. Unfortunately the shell was generally the lot of his friends, the French and republicans, and the oyster to their antagonists. Had he been firm to the principles he professed in the year '93, the President would have been kept from an habitual concert with the British and anti-republican party. But at that time I do not know which Randolph feared most, a British fleet or French disorganizers. Whether his conduct is to be ascribed to a superior view of things, and adherence to right without regard to party, as he pretends, or to anxiety to trim between both, those who know his character and capacity will decide. Were parties here divided merely by greediness for office, as in England, to take a part with either would be unworthy of a reasonable or moral man. But where the principle of difference is as substantial, and as strongly pronounced, as between the Republicans and the Monocrats of our country, I hold it to be as honorable to take a firm and decided part, and as immoral to pursue a middle line, as between the parties of honest men and rogues into which every country is divided."

Here may be remarked consecutive contrasts between the assertions, as numbered by Jefferson, and the facts.

1. Randolph never gave an opinion against the rights of the people. He not only affirmed the legality of the Popular Societies, but discouraged moral condemnation of them until after their agency in the riots was notorious. I may here insert an interesting letter of Randolph's (to Washington) of which, indeed Jefferson could have known nothing, as it has never been published; but the contents of which represent a position taken by the writer so well known that the inexactness of confusing it with opposition to the rights of the people is hardly pardonable. The letter was written at Philadelphia, 11 Oct. 1794, the President being at Mount Vernon:

"He [Mr. Izard] mentioned to me that a society under the demo-

cratic garb has arisen in South Carolina with the name of *Madisonian*. It is a great grief to me, because it must place Madison under embarrassment either to seem to approve by silence what I am confident he must abhor, or to affront those who intended to evince their respect for him. I hope that he will not hesitate to adopt the latter expedient ; for I shall with the freedom of friendship bring before him the general state of my mind concerning it. As I remarked to you in conversation, I never did see an opportunity of destroying these self-constituted bodies until the fruit of their operations was declared in the insurrection at Pittsburg. Indeed I was, and still am, persuaded that the language which was understood to be held by the officers of government in opposition to them contributed to foster them. They may now I believe be crushed. The prospect ought not to be lost."

2. The astounding character of this statement, concerning Randolph's course on the French treaty-negotiations, may be gathered from Jefferson's narrative, and the State Archives.

The following is from Jefferson's "Anas" :

" 1791.—Towards the latter end of November, Hamilton had drawn Ternant into a conversation on the subject of the Treaty of Commerce recommended by the National Assembly of France to be negotiated with us, and, as he had no ready instructions on the subject, he led him into a proposal that Ternant should take the thing up as a volunteer with me, that we should arrange conditions, and let them go for confirmation or refusal. Hamilton communicated this to the President, who came into it, and proposed it to me. I disapproved of it, observing that such a volunteer project would be binding on us, and not them ; that it would enable them to find out how far we would go, and avail themselves of it. However, the President thought it worth trying, and I acquiesced. I prepared a plan of treaty for exchanging the privileges of native subjects, and fixing all duties forever as they now stood. Hamilton did not like this way of fixing the duties, because, he said, many articles here would have to be raised, and, therefore, he would prepare a tariff. He did so, raising duties for the French from twenty-five to fifty per cent. So they were to give us the privileges of native subjects, and we, as a compensation, were to make them pay higher duties. Hamilton, having made his arrangements with Ternant to pretend that though he had no powers to conclude a treaty of commerce, yet his general commission authorized him to enter into



the discussion of one, then proposed to the President, at one of our meetings, that the business should be taken up with Hammond in the same informal way. I now discovered the trap which he had laid, by first getting the President into that step with Ternant. I opposed the thing warmly. Hamilton observed, if we did it with Ternant we should also with Hammond. The President thought this reasonable. I desired him to recollect I had been against it with Ternant, and only acquiesced under his opinion. So the matter went off as to both."

The matter was not taken up again. Even Jefferson had become disgusted with Genet, and too bewildered by French politics to venture on any negotiations with such shifting sands. His own feeling, as well as that of the whole government, was represented in his Report, as Secretary of State, to the House, 16 December 1793: "France has, of her own accord, proposed negotiations for improving by a new treaty, on fair and equal principles, the commercial relations of the two countries. But her internal disturbances have hitherto prevented the prosecution of them to effect, though we have had repeated assurances of a continuance of the disposition."

From these facts it appears that the only time in which a new French treaty came squarely before the Cabinet, it was defeated by Jefferson, through fear that Hamilton would initiate the like with England.

Randolph never voted against a French treaty. Genet's successor, Fauchet, did not renew the subject, and does not seem to have been authorized to do so; but on the arrival of Adet, Randolph at once pressed—repeatedly—the subject of a commercial treaty with France corresponding to that which had been arranged with England. Randolph's urgent endeavors were not known to Jefferson on his pillow of blissful ignorance at Monticello, but they fully appeared in the volume of papers relating to France, published by order of the House in 1797 (p. 51 *seq.*). Randolph's enemy and successor (Pickering) therein proves his predecessor's "eagerness to enter on the negotiation" with the French minis-

ter, who, on account of the British treaty, sullenly declined. Jefferson did not know this, but he might have known it. He was in correspondence with Randolph. It might have been well enough to write his remonstrances to his former colleague and relative rather than pervert his known, and suspect his unknown, actions in confidential letters to Madison and Giles.<sup>1</sup>

3. Jefferson's phrase "pretended insurrection," now that the history of the Pittsburg rebellion is known, reminds me of a sentence in his letter to Randolph after retirement to Monticello: "I think it is Montaigne who has said that ignorance is the softest pillow on which a man can rest his head. I am sure it is true as to every thing political, and shall endeavor to estrange myself to every thing of that character." The endeavor seems to have been successful. For the rest, Randolph's willingness to resort to the militia, "if the laws were inadequate"—a virtuous "if" unnoticed by Jefferson,—followed by unwearied efforts on his part to adjustment without military menace,—needs no defence. It is perfectly consistent with a proposal to augment the force, "hoping that the unhappy people would be intimidated by so large a force." That the 15,000 were meant to overawe the insurrectionists, and secure a surrender without bloodshed, is stated both in the "Vindication," which Jefferson was reviewing, and in the President's speech, written by Randolph. The ex-secretary's "ignorance" was therefore as ingenious as it was blissful. It is, further, perfectly consistent that after agreeing to the raising of the militia Randolph should oppose their marching at one period and favor it at a later. The reader need only refer to Randolph's letter to the President (5 Aug. 1784), contained in the "Vindication," to suspect that Montaigne-pillow at Monticello of a softness unfavorable to candor. A more humane and statesmanlike letter is not to be found in the annals of America.

<sup>1</sup> For an account of Randolph's unremitting efforts to bring about a commercial treaty with France, see, in addition to the official volume of 1797 already referred to, Randolph's letter to Monroe at Paris, 1 June 1795 (State Papers, Foreign Relations, vol. I.).

4. Where is the inconsistency in advising a mission and opposing certain appointments to it?

5. It is one thing to oppose granting certain powers to an agent; quite another, when overruled in that, to oppose all that agent's work.

6. Even put in this misleading way there is no inconsistency. In fact, Randolph desired ratification of the treaty with exception of an important clause; but he gallantly and successfully resisted the entire Cabinet for forty-seven days after it came to them from the Senate in their demand for the President's unconditional signature,—the outrageous Provision Order having become known *after* the Senate's action. The base surrender of American ships to British seizure was secured only by the political assassination of Randolph, who had been left by this Censor "of the soft pillow" to battle alone.

So much for the precise counts of "complete inconsistencies." Let us now consider the general charges that Randolph has generally given his principles to the one party and his practice to the other, and that "he falls generally on both sides." Setting aside this pretty example of "inconsistencies" (the real consistency being in laying the blame of all his failures on Randolph), let us examine the fact, and find whether the Cabinet scapegoat did "generally," or at all, do either the one or the other of the two incongruous things ascribed to him.

During the time when Randolph and Jefferson were in the administration together, from the foundation of the government to the end of 1793, the important party divisions in the Cabinet were about 19 in number.

On 16 of these 19 issues Randolph voted with Jefferson. In one or two cases he accepted modifications, comparatively unimportant, for the sake of the main point; but on every important question of practical action, especially in foreign affairs, Randolph voted with Jefferson.

The 3 differences of Randolph from Jefferson were; 1, on the proposition to convene Congress immediately, in the early part of August 1793, which Jefferson favored; 2, on the propriety of establishing a military academy, which Randolph favored; and 3, on the retention of four words in the Secretary of State's letter to the American Minister at Paris, asking for the recall of Genet,—words not affecting the purpose of the dispatch.

Randolph voted with Jefferson against (1) Hamilton's U. S. Bank, and whole fiscal policy (1791); (2) against the new apportionment of Representatives (1792); (3) against an expression approving excise, in the President's proclamation concerning the first resistance to it (1792); (4) against Hamilton's scheme for an alliance with England and Spain on the Mississippi (1792); (5) in favor of the continued validity of the treaty with France after the change of government (1793); (6) in favor of the reception of the new French minister, Genet, without qualification or reservation (1793); (7) in favor of omitting the word "neutrality" from the President's Proclamation, on the breaking out of war between England and France; (8) in opposition to Hamilton's proposal that revenue officers should report infractions of neutrality to himself; (9) against restitution to England of a prize taken by a French privateer on the high seas, the privateer having been fitted out in an American port; (10) in favor of continuing payments to France of debts due that country; (11) in favor of purely legal dealings with infractions of the impartiality proclaimed between the European belligerents; (12) against publishing the correspondence with Genet, and making it the basis of an appeal to the nation; (13) against dismissing Genet, without awaiting his recall; (14) on the expressions to be used in the President's speech in explanation of the proclamation; (15) against Hamilton's project of fortifications; (16) in favor of Jefferson's manifestoes to England and France.

On these sharply contested questions the Secretary of State

and Attorney General had scored fourteen successive victories after their first defeat,—on the Bank.

Nor does it appear that in these conflicts Randolph was a timid or passive lieutenant, Jefferson of the "Anas" being witness against Jefferson the secret letter writer. Jefferson's account of the negative of the Apportionment Bill is that after it was drawn up by Randolph, Madison, and himself, Randolph took it to the President. "He [Washington] walked with him to the door, and, as if he still wished to get off, he said: 'And you say you approve of this yourself?' 'Yes, sir,' says Randolph, 'I do upon my honor.' He sent it to the House of Representatives immediately." When the first proclamation concerning the excise troubles was submitted to the Cabinet, Jefferson was at Monticello. Randolph objected to words approving the excise law. When the proclamation was sent to Monticello to be countersigned, it was returned with the words to which Randolph had objected underscored, and objected to. On the question of publishing the Genet correspondence Jefferson says that he "chose to leave the contest between them" (Hamilton and Randolph). On the question of dismissing Genet, Jefferson was similarly reserved, but, he says, "Randolph opposed it with firmness and lengthily."

Under these facts it becomes difficult to comprehend Jefferson's charges that Randolph was generally on both sides, and generally gave his principles to one party and his practice to the other. His statement can hardly be accounted for by Randolph's dissent from him on the expediency of convening Congress three weeks earlier than it was to meet, or by his consenting to the Military Academy. The other point of difference was indeed a smart wound to Jefferson's *amour propre*, which he might easily confuse with a political principle. Jefferson's draft of the letter asking the recall of Genet was unanimously approved with the exception of the concluding phrase of the following sentence:

“An attempt to embroil both, to add still another nation to the enemies of his country, and to draw on both a reproach which it is hoped will never stain the history of either, that of *liberty warring on itself*.” Hamilton moved to strike out these last words; the President defended the phrase; but Randolph (the trimmer!) opposed the President, and the words were stricken out. With Robespierre in power, and on the morrow of a massacre, Randolph was not willing to identify American with French liberty. He could not see with Anacharsis Clootz that the democratic principle would be cheaply purchased by the destruction of the whole human race; nor join Jefferson’s echo of the sentiment in his letter to Short, Minister in Holland: “My own affections have been deeply wounded by some of the martyrs of the cause, but rather than it should have failed I would have seen half the earth desolated: were there but an Adam and Eve left in every country, and left free, it would be better than it is now.”

It has a brave sound, but one must bear in mind that Jefferson wrote such things in private, and if perchance any such utterance of his reached the public—as in the note prefixed to Paine’s “Rights of Man,” and the Mazzei letter—he fell on his knees before the aggrieved Tory. Never did man issue so many secret circulars. It appears to have been his method to remain almost silent in the Cabinet, while confronting Hamilton and his party, or offer a feeble opposition, and then write to his Republican friends that it was all due to Randolph that their side did not completely triumph. If it did triumph, Randolph’s part in the matter was not alluded to. This statement is substantiated by the following account of the action of the two men in the matter of the President’s proclamation of impartiality between the European belligerents, and the Hamilton circular which followed. To understand the case fully the general situation must be borne in mind. In the War of Independence the United States had incurred a debt to France larger than any historian

has recognized. Had it not been for French generals and soldiers, French gold (near seven million dollars), and the diversion of English force by the hostility of France, the result of the American Revolution might even have been different. The gratitude of the people to France was boundless, and when, in April 1793, tidings reached this country that war had been proclaimed by France against England, as head of the alliance of sovereigns against her, the spontaneous sentiment of the masses was that the occasion had arrived for returning to their European ally the assistance she had so freely and bravely rendered. A treaty bound the United States to guarantee France the maintenance of her West Indian possessions in a defensive war, but to do this now was to incur risk of war with England. The two British sympathizers in Washington's Cabinet had, however, to confront the inconvenient French treaty. Thus the questions arose whether the war proclaimed by France was a "defensive war"; and whether a treaty formed with the royal government was obligatory towards its successor. Randolph believed that the condition of things in France was such as to warrant a suspense of action under the treaty, but did not doubt that its force would be binding in case of a settled government following that of the king. But suspense was not to be allowed. On the 9 April 1793 the Minister of the new government, Genet, arrived at Charleston, S. C.; before presenting his credentials to the President he assumed an American alliance with France, and began to fit out privateers and enlist Americans in its service. These proceedings caused a sufficient reaction in public feeling to enable the "British sympathizers" to secure a proclamation of virtual neutrality. Jefferson and Randolph were able, however, to keep the word "neutrality" out of it. As Secretary of State Jefferson had the right to frame the proclamation; but the delicate task was entrusted to Randolph. The Attorney General showed the draft to the Secretary of State, who, in writing

privately to his friends, pronounced the proclamation "pusillanimous," and said that when the draft was shown him by Randolph he was too busy to examine it beyond observing that the word "neutrality" was omitted. Some historians have assumed that the drafting of the proclamation was withdrawn from the Department of State by the President because he wished it to be by a more moderate hand than Jefferson's. It appears incredible that the task should have been entrusted to another except by Jefferson's desire. He was remaining in a Cabinet which he described as a cock-pit, only through Washington's entreaties, and no slight could have been offered him. Jefferson nowhere intimates that the proclamation was confided to the Attorney General against his advice. It is also incredible that Jefferson should have failed to scrutinize the draft which Randolph brought him of a brief proclamation, in which an unweighed word might have had momentous results.

The most important paragraph in the proclamation is the first: "Whereas it appears that a state of war exists between Austria, Prussia, Sardinia, Great Britain, and the New Netherlands, of the one part, and France on the other; and the duty and intent of the United States require that they adopt and pursue a conduct friendly and impartial toward the belligerent powers." When Randolph showed this to Jefferson, there is little doubt that its every word was weighed by the Secretary of State, however convenient it may have become, amid the Genet ovations, to describe it to a French sympathizer (veiled by Jefferson's biographers) as "pusillanimous," and to profess that preoccupation prevented his own scrutiny of the language.

In view of these things, Jefferson's protestations can hardly outweigh those of Genet, who declared that the Secretary of State had privately encouraged his enlistments of Americans in the service of France until the administration pronounced them illegal.

In pursuance of the proclamation of "neutrality"—as it was at



once labelled by the public—the question of its adequate execution came before the Cabinet. Hamilton prepared a circular to the revenue officers commanding them to be vigilant and report all infractions of neutrality to himself. Randolph insisted that such reports should be made to the district attorneys to be forwarded to his own—the Attorney General's—office. This change of Hamilton's scheme prevailed. To Randolph's surprise, Jefferson afterwards remonstrated privately against the circular. The gracious answer of the Attorney General shows that the Secretary of State had expected Randolph to pull his French chestnuts out of the fire, himself tacitly consenting to their remaining there. The letter, dated 9 May 1793, begins :

“ I cannot suffer my engagements in business, to interfere with a reply to the observations with which you favored me on the proposed letter to the collectors. For while I shall support, within my limited sphere, every just energy of government, I am solicitous that my friends should ever believe that I do support it because it contributes to the essence of republicanism, and our federal safety. You recollect that I was on the point of making your very objection, as deserving consideration, when you mentioned it. It was impossible not to have heard, that the revenue-officers have been suspected to be a corps trained to the arts of spies, in the service of the Treasury. Awake as I was to this conjecture, I wished not only to guard against the practice, but to submit it to an accurate inquiry. I accordingly asked Col. H. whether his correspondence has at any time been directed to the prying into the conduct of individuals or even an inspection over the legislatures. He solemnly appealed to his letter-books for a proof of the negative. Viewing then his draught, as unconnected with past suspicions, I could discover nothing opposed to my judgment.”

After showing that every government must gather information from its *executive* officers, or else proceed blindfold, incurring peril from the violations of neutrality, he points out that the collectors are from their positions near the water, the scenes of those violations, best qualified to discover and to assist Congress if further legislation be necessary.

“It would be a vain pretense, and wholly unsatisfactory to the warring powers, to make a request of the kind to all officers, so as to comprehend the very excise officers on the top of the Alleghany. You ask, why this class of offences may not be left to the usual course of offences? They will not be wrested from the usual course. For as a collector might always inform the attorney, consistently with law, without being required to do so, the stimulus to his vigilance would be no otherwise different than to infuse a warmer incentive unknown to the cold duty of a private citizen. As soon as the attorney possesses the case, the grand jury, judges, and the rest of the judicial apparatus, which I esteem with you as bulwarks, will travel in the work according to the forms, which you have delineated. It is true, that the original draught proposed that a report should be made to the Secretary of the treasury. But this was agreed to be erased upon my suggestion: so that the intercourse was confined to the attorney alone. This correction goes very far into your main objection. The impropriety of the treasury-department entering into this business was so slightly hinted by you during the consultation, that it did not pass thro’ any discussion in my mind. It is a misfortune, that the line of partition is not always obvious between the different departments. In this particular instance, the correspondence being relative to infractions of law committed by our own citizens, might seem to devolve on the *domestic* branch of the department of State; or as relative to the violation of the rights of foreign nations, on the *foreign* branch of the department of State; or as being directed to the collector to whom the Secretary daily writes, was barely important enough to be turned out of that channel. At the same time it will be better, I believe, that on those occasions, which do not evidently belong to one department rather than another, the President should specially instruct whom he pleased; and that the letters should express that they are written by his direction.”

It will then be seen that the impropriety of the treasury department entering into this business was “so slightly hinted” by Jefferson in the Cabinet consultation, that it did not “pass through any discussion in [Randolph’s] mind”; and that the reception of reports by the treasurer (Hamilton) was erased on Randolph’s suggestion.

Such are the facts, however painful their discovery, behind the secret accusations of Randolph circulated by Jefferson among

their mutual friends, and leaders of the republican party. To Randolph himself Jefferson wrote in a way to disarm suspicion if any had invaded a mind so loyal. "We hear," he writes from Monticello (1794), "that your land (Fry's) is sold to Mr. Champ Carter. This deprives us of the hope those lands had kept up of your ultimately fixing in our neighborhood." The unconscious Randolph was chivalrously anxious, as he had been when Jefferson was in disgrace thirteen years before, to keep him before the country, and combated those protestations, entirely credited, of an everlasting retirement at Monticello. He affectionately entertains him, in a letter of 28 Aug. 1794, elsewhere published, to accept the position of Special Envoy to Madrid to negotiate on the subject of the free navigation of the Mississippi, which Virginians particularly had at heart. His letters contain no word intimating that there was ever any break in their friendship. Others wondered that when Jefferson became President no opportunity was given Randolph to rehabilitate himself. But Randolph asked no help of him, not even while attending Jefferson's legal affairs. When he (Randolph) was summoned to Chancellor Wythe's dying bed (1806) to write his will, he accompanied a gift of remembrance to Jefferson with words of warmest friendship, probably using his (Randolph's) own language. In his "History of Virginia" he is careful to show in its best light the part borne by Jefferson, and records with animation his triumph in the Assembly, where the charges had been preferred by Col. George Nicholas and Patrick Henry. Such was Randolph's faith in Jefferson to the last. It is some satisfaction to reflect that the tragedy of his life was not embittered by knowledge of the hidden hand which had smitten him even more fatally than those of Hammond and his conspirators in the Cabinet.

The inconsistent accusations of Jefferson have supplied the pigments from which Randolph's portrait has been painted.

In a letter to Washington, 19 April 1794, by which Jefferson

attempts to justify his description, Randolph says: "I know it, that my opinions, not containing a systematic adherence to party, but, arising solely from my views of right, fall sometimes on one side and sometimes on the other; and the momentary satisfaction produced by an occasional coincidence of sentiment does not prevent each class from occasionally charging me with inconsistency."

Randolph's admission, at its worst, would merely show him an early "Mugwump." Randolph's course in advocating the ratification of the Constitution he had refused to sign, lent a certain plausibility to the slander. But it may be remarked that, since that period, no contemporary save Jefferson, and his youthful parrot,<sup>1</sup> appears to have discovered any deficiency of decision in Randolph. Elbridge Gerry, of Massachusetts, described him as daring "to think for himself, and to speak his opinion (without pouring libations on the altar of popularity) though it should militate with some of the most accomplished and illustrious characters." One may look in vain through the letters of Washington, Adams, Hamilton, Wolcott, Pickering, for any intimation that Randolph was vacillating or temporizing. Hammond vainly tried to bend Randolph; and when a modified memorial was handed him he wrote home that the alterations indicated the decline of Randolph's influence. Pickering writes of Randolph's "persevering opposition." Wolcott writes Marshall a theory that the President wrote a letter concealing his purpose because he "knew that this would be Randolph's advice, and he might not think it proper to control that opinion at that time." According to which even the veracity of Washington bent before the inflexibility of Randolph. Washington's "entire faith," as Pickering repeats his words, was reposed in Jefferson's "chameleon." Hamilton found him unyielding, and suggested sending him

<sup>1</sup> John Randolph of Roanoke, writing in early youth from the feet of Jefferson, calls Randolph a "chameleon." It was about the same time that Jefferson used the word to Madison.

(Randolph) as Minister to France at a time when the utmost nerve was needed there.

It was left to Jefferson to make the discovery that Randolph was a chameleon, though he did not have sufficient faith in his discovery to proclaim it. It was reserved for those unacquainted with Cabinet councils, and to these it was a whispered secret. But, after pondering the allegation that this chameleon generally gave his opinions to one side (France) and his practice to the other (England), and searching some two thousand Jefferson papers, I have arrived at the conclusion that the real trouble of the Secretary of State was the Attorney General's inflexibility. Randolph represented the Constitution of the United States, and however much his "principles might be on the side of France, his "practice" was given to the laws and treaties of this country. It fell to the lot of the first Attorney General to affirm and elucidate the law of land and sea, at home and abroad. In its hundred years the nation has never had to reverse or disown one of the principles or precedents established by his voluminous opinions. Among those opinions were a considerable number which compelled the Secretary of State to apply the law against his French revolutionary friends. I find among Jefferson's papers a number of letters from the Attorney General, some not printed among the State Papers, holding the Secretary of State to duties which threatened his leadership of the French party. He (Randolph) now points out (May 14) that an English vessel, the *Grange*, being captured on neutral ground, must be restored. On May 26 he points out that some flour and meal belonging to Americans, being shipped two months after France declared war, cannot be wrested from English captors. His opinion in one case, cited in the previous chapter (2 May 1793), is suggestive of an attempt by Jefferson to disburden himself of responsibility for certain too impartial offices, by introducing the President's direct authority to counteract Genet's scheme of shielding

French cruisers by calling them American. In his embarrassed replies to Genet Jefferson throws the responsibility, as far as possible, on the Attorney General and the courts for all action not agreeable to France; but he was sore about it. To my mind it appears plain that he wanted Randolph to be a Jeffersonian factotum instead of an Attorney General, and that the only ground for his complaint, of the latter being now on one side and now on the other, was that his friend was following the law, and could by no influence be brought to bend it in favor of Jefferson's sentiments or his own.

I have suggested this explanation for the sake of Jefferson's memory. One would be glad to suppose that his long-continued private defamation of Randolph arose from even unjust considerations of public policy, rather than from a desire to lower an eloquent and popular rival in the affections of the South, strong in the confidence of Washington. Whatever judgment may be formed of his motives, the fact remains that by that skilful hand Randolph's portrait has been given to the world as he was not, and endures to this day. Other portraits by the same hand have been rejected. The "Ana" is a gallery of repudiated political portraits. In the very letter to Senator Giles, of 31 Dec. 1795, from which the accusations above refuted are cited, Washington's "infatuated blindness" is described; and he [Washington] is accused of travestyng an address of the House to himself so as to appropriate to himself thanks meant for others also. But however generally Jefferson's portraits of Washington, Hamilton, and others may be rejected, this "chameleon" caricature of Randolph has been accepted. On a canvas of Cabinet secrecy it was painted; on a wall of popular ignorance of its subject it has been preserved. The records of this history prove the portraiture untrue. Edmund Randolph had indeed a refining mind. His conscience was apt to split what to partisans were hairs, to him combinations of truth and error. His training had been in

the quasi-judicial duties of the State and the National Attorney. His right place, from which only his affection for Washington and his duty to his country in an emergency withheld him, was the Supreme Bench. The judge cannot precipitate action like a party politician. He will poise longer. But when the poise was over, and action was determined, Randolph precipitated all. His courage and independence had been shown from the hour when he parted from parents and sisters on the Virginia shore and went to ask for a place at his hero's side in the siege of Boston,—the only place he ever asked for in his life. They were shown equally in his refusal to sign the Constitution at Philadelphia where it was popular, and defending it in Virginia where it was unpopular; in his maintaining the suability of the State against the protest of Virginia, and in the face of such unanimity of feeling as that which carried the XIth Amendment; in his espousing the Jay treaty while the populace were burning it, but arresting its ratification when the British Provision-Order was issued. In every act of his career the courage of his opinions was shown. Had Randolph been vacillating, there would have been no need of a conspiracy between the British and American Cabinets to strike him down. Had he been a "trimmer" he might have been corrupted. He was broken at last because he could be neither bribed or bent.

## CHAPTER XXI.

### SECRETARY OF STATE, 1794.

“YOU must not make your final exit from public life till it shall be marked with justifying circumstances which all good citizens will respect, and to which your friends can appeal.” So wrote Madison, most gracious of friends, to Jefferson, when the latter announced his purpose of retiring from the Cabinet. To this reproof Jefferson made an angry reply, ending: “Never let there be more between you and me on this subject.” The President also warmly remonstrated against this abdication, urging that it would destroy the balance of influences in his administration. The reason for Jefferson’s retirement was no doubt stated by the astute French Minister, Fauchet, to his government: “*Il s’est retiré prudemment pour n’être point forcé à figurer malgré lui dans scènes dont tôt ou tard on dévoilera le secret.*”

Under the circumstances Jefferson’s suggestion to Washington that Randolph might take his office *par interim* bears some resemblance to the remark of a fair “salvationist,” that finding her jewelry was carrying her to the Devil, she gave it to her sister. Nor did the retiring Secretary, as he records in his “Ana,” fail to contribute *suo more* something to the burden bequeathed to his successor; though he did not venture to suggest that Randolph lacked nerve, or was a chameleon, since Washington was well acquainted with the course of his ministers. A small deposit of mistrust in the President’s mind, and a large mass of unanswered letters—especially of such as involved committal on French questions—were Jefferson’s bequests to his successor.



Randolph was not the man for cat-and-dog fights in the Cabinet. For fair diplomacy he was as well fitted as his famous ancestor of Elizabeth's court; he spoke French fluently, was handsome, affable, of imperturbable temper: a man of the world, without the slightest inclination for its trivial pleasures. The poverty alluded to by Jefferson—who, as attorney for Randolph's mother, well knew the self-denials by which the son was enabled to forward her annuity—might fairly have elicited from him some word of sympathy; and it may be assumed that it rendered Washington, whose large law-business in Virginia Randolph had attended to without remuneration, the more willing to assign his friend the more lucrative post. The salary of the Secretary of State, \$3,500, sufficed for a man so abstemious, and a family accustomed to economy. So there were no personal reasons why Randolph should not have a successful career in the State Department.

And, indeed, he was successful, up to the hour of his political assassination. For more than a year and a half, after Jefferson had abandoned the storm-tossed ship of state, Randolph was the hand with which Washington repressed the forces which each instant threatened to break into civil war. The so-called "federal" and "republican" principles, which had struggled like Jacob and Esau in the womb of America, were now full-grown. The war between England and France was reflected here in a conflict verging on bloodshed. During its first generation the United States had no domestic politics. American trade with the two chief European belligerents was involved; each threatened this country with war if it did not break with the other. Washington was doing his best, as he said, to steer between Scylla and Charibdis. In this aim his only possible pilot was Randolph, whose sober republicanism had revolted from the reign of madness and lust polluting the temple of liberty in France, while his appreciation of the English constitution was qualified by remembrances

of colonial despotism. He was in love with neither; he had a cautious respect for both. He loved his country; his affection for Washington was filial. Nothing but this affection induced him to undertake a part which Jefferson found intolerable—one which contending partisans regarded as essential to their purposes. To each party a non-partisan Secretary of State was a Polonius behind the arras, to be thrust through at convenient opportunity, while the dispute for this picture or that raged to its termination. As for the pictures, each was a Hyperion to the other's Satyr. But Randolph was too much of a gentleman to regard any man as a Satyr.

On qualifying as Secretary of State, 2 Jan. 1794 Randolph wrote to the President :

“I must entreat you, sir, to receive my very affectionate acknowledgements for the various instances of your confidence, and to be assured that, let the consequence be what it may in this perilous office, no consideration of party shall ever influence me; that nothing shall ever relax my attention or warp my probity; and that it shall be my unremitted study to become an accurate master of this new and important business.”

By his retirement to Monticello, Jefferson escaped the brunt of the storm raised by the British “Provision Order” (6 Nov. 1793) for seizing neutral ships carrying supplies to France or to any French colony, and made furious by a report of Lord Dorchester's speech at Quebec inviting the Indians to join the English in their approaching war with the United States. Then unpleasant rumors came from France; the American Minister there, Gouverneur Morris, was charged with friendship for the aristocratic party; and a resolution of the Senate called for his correspondence. The President—to whose military *penchant* for secrecy our government partly owes a bad habit—hesitated to comply with this resolution. Randolph consulted Judge Wilson and Madison as to the right of the Executive to withhold, and a communication

of selections from the correspondence, under injunction of secrecy, was resolved on. A letter from Monroe to Jefferson, 16 March 1794 (unpublished), refers to this matter :

“Prior to the exclusion of Mr. Gallatin several votes had been taken and carried in the Senate which indicated a change in the general measures of that body. A particular one calling for the correspondence of G. Morris was more especially felt in a certain quarter. At that period R [andolph] informed us that a certain person began to doubt the views and principles of a certain faction and to think more favorably of others, and the members of that faction began to express similar doubts of him. But from the time of his removal we have heard nothing further of those doubts on his part, and on theirs the antient spirit of confidence and affection has survived. What will be the issue of our affairs time can only develope, but certain it is that at present the prospect is most wretched and gloomy. I had like to have omitted mentioning that as a remedy it was talked of by the fiscal party to send an Envoy Extraordinary to England to complain of the injuries and seek redress, and that H [amilton] was spoken of for this mission. As the situation is in some measure a paralell one I should think it more suitable to employ John Dickinson, who, I believe, drew the last petition of Congress to the King in the course of the late revolution.”

Senator Monroe did not attach much importance to these consultations of “the fiscal party” (Hamiltonians), but Randolph did, and at once made the proposal to the President. In this way he made the envoy policy his own before the “fiscal party” had arranged their scheme. On the 4 April 1794 news came of the partial revocation, in response to Randolph’s remonstrances, of the odious “provision order,” and the excitement somewhat subsided. On the 6 April 1794 Randolph, after reminding the President that he had originally proposed an Envoy Extraordinary to England, renews the proposal :

“1. Because the representations made by your Minister in Ordinary seemed to rest on the British files among the business which, if ever entered upon, would be entered upon at extreme leisure : 2. Because the recent accumulation of injuries called for pointed notice : 3. Because the merchants and insurers would suspect an inattention in gov-

ernment if their great interests were left to the routine and delays of common affairs, and would, on the other hand, be highly gratified by the movement : 4. Because the British nation, without whose affections the Minister can do nothing of any importance in war, ought by the strongest demonstrations to be retained in the persuasion that we mean peaceable negotiation rather than war : and 5. Because a distinguished character, sent fresh from the feelings of the United States, would with more confidence assert and with more certainty impress.

This compact argument,—whose fair corollary, by the way, would be the abolition of Ministers altogether, unless specially needed,—recommended itself to the President ; but he was afraid of hurting Mr. Pinckney's feelings by taking British negotiations out of his hands ; and also of exciting the French party in America. The President, his misgivings removed, suggested Hamilton as the proper Envoy to England. Certainly it would have made things easier in the Cabinet had Hamilton been out of the country,—Hamilton being a real dictator to a majority of the administration, while Washington was in painful decline.<sup>1</sup> But personal considerations had no place in the statesmanship of Randolph. As the President had brought together antagonistic parties in his Cabinet, described by Jefferson as a “cockpit,” so his idea of foreign embassies was to send each country its champions. Randolph, the only Minister who ever deliberately risked the President's displeasure, incurred it on this occasion. The President was so strenuous in favor of Hamilton for an Envoy that Randolph stated the situation to that gentleman himself. Either Randolph's arguments, or the probability that his nomination would not be confirmed, induced Hamilton to write to the President declining the expected appointment and urging Jay. Meanwhile, however, Monroe (Senator at the time) had

<sup>1</sup> Writing of the President at the close of 1793, Jefferson says : “ His memory was already sensibly impaired by age, the firm tone of his mind, for which he had been remarkable, was beginning to relax, its energy was abated, a listlessness of labor, a desire for tranquillity had crept on him, and a willingness to let others act, or even think for him.”—“*Ana.*”

written to the President, 8 April, 1794, a remonstrance against Hamilton's appointment, and asked for an interview. The propriety of such interview was submitted to Randolph, who proposed:

"That the Secretary of State inform Col. M. verbally that his station entitles his communications to attention; that it is presumed that he has considered and made up his mind as to the kind of interference which a senator ought to make in a nomination beforehand; that upon this idea the President will be ready to afford an interview at a given time."

Events, however, rendered the interview unnecessary. Hamilton was placed on the rack by a Commission of the House, which he had challenged to investigate charges concerning his administration of the Treasury. The charge of applying to one purpose a loan ordered by Congress for another, was not denied. But Hamilton sheltered himself under Washington, who, while on a tour in the South, had written him two letters which amounted to a sanction of the Secretary's misappropriation. Randolph's communication of the matter to Washington is marked "private."

"April 1794.—The intelligence, as derived from Mr. G<sup>[lies]</sup> thro' Mr. N<sup>[ichols]</sup>s stands thus: Col. H<sup>[amilton]</sup> was asked by the Committee, what authority he had for drawing the money borrowed in Europe over here. His answer was "I have verbal authority from the President, and fortunately written also." It is supposed by Mr. G., that the written authority, or rather the letter from Mount Vernon, which is referred to, does not support the assertion; but that a reliance will be wholly placed on the verbal. A question is now depending (as is further said) before the Committee, whether they have any right to enquire into a verbal authority, given by the President. It is also said, to be one, made by Col. H<sup>[amilton]</sup>. The next week must bring this business to a point; when we shall be able to ascertain facts, without drawing them from any source which is not well affected to the gentleman in question. The object in mentioning the thing to the President was to give him time to examine into the fact, from his own memory, and papers."

The importance of this affair induces me to insert here two letters written by Randolph to Madison many years afterwards :

“LEXINGTON, Virginia, 9 July 1811.—Without one feeling left of the character of a partisan, but still living to friendship, a man, whose hand is known to Mr. Madison, asks him whether he recollects or ever heard, that after Col. Hamilton had been severely pressed for a supposed misappropriation of the money, devoted by law to special purposes, he, Col. H., produced a letter authorizing it, signed by President Washington while on his tour to South Carolina ; that the President at first denied its existence in positive and vehement terms, *not having preserved a copy of it*, but that it was afterwards acknowledged by him, and registered in the treasury department, *ut valeret, quantum valere potuit ?*”

“CHARLESTOWN, Jefferson Co., Virginia, 8 August 1811.—Having removed hither to pass the fall and winter under the roof of my daughter Taylor, I did not receive your last letter until yesterday. If the analogy between the case at Philadelphia, and the more recent one at Washington, be strong enough to merit the application of it, with the following clue a second search at the Treasury may perhaps succeed. Giles's resolution had been defeated before Col. H. suggested, thro' one of his indirect conduits to the ear of the President, that during his tour in the South he had sanctioned by two letters the measure which was so severely criminated. He mentioned the circumstances to me, with surprise and passion, declaring in the most excluding terms, that he never did write or cause to be written letters to that purport. Some days afterwards, Col. H. put them into the President's hand and by him they were communicated to me with an instruction to write to Col. H. avowing them. This I did, and it would seem impossible that, upon a subject on which his sensibility was so much kindled, a document of justification should have been laid aside as a private paper. These facts are most distinctly recollected.”<sup>1</sup>

When this matter was under inquest in 1794, it is probable that Randolph was convinced that the President—usually so careful to copy official letters—had been unaware of the gravity of the answers made to Hamilton while he (Washington) was on a tour. In his letter, therefore, written at the President's request, avowal

<sup>1</sup> This letter closes : “Adieu, my ancient friend, from whom neither time nor circumstances shall ever sever me.”

of the correspondence was made in a way at once artistic and unpleasantly truthful. The President could not charge his memory with all communications ; no doubt it was as he said, and the letters were his ; but the President always understood that whatever was done would be within the laws.<sup>1</sup> Hamilton recognized the Secretary of State in this reply, and in his angry answer alludes to him.<sup>1</sup> His soreness was natural. When Randolph quietly circulated the fact that Washington was not aware of his letters, some believed that Hamilton had taken advantage of the President's hurries and worries while on a journey. The affair had been humiliating to the President, whose gratitude to Randolph for his services, measurable by the bitter words (undisclosed) of the Treasurer, elicited a letter.

“ 19 April 1794.—Your friendly remarks add to the many obligations which I owe to you, and also present an opportunity, which I cannot forego, of unbosoming myself to you without reserve. I have often said—I still say—that nothing shall sway me, as nothing has yet swayed me, to depart from a long-settled determination never to attach myself to party. I believe that I might appeal to you, Sir—nay, I should not distrust an appeal to any man with whom I have acted, that this determination has been conscientiously pursued. What has been the consequence? I know it—that my opinions, not containing any systematic adherence to party, but arising solely from my views of right, fall sometimes on one side and sometimes on the other ; and the momentary satisfaction produced by an occasional coincidence of sentiment, does not prevent each class from occasionally charging me with instability. But I had much rather submit to this tax, than to the more painful sensations which a contrary conduct would excite.

“ I am no less apprized, that my connections by friendship, by marriage, by country, and by similitude of opinions, where republicanism and good order meet, with the leaders of the southern politicks, give birth to suspicions. But if I were here to enumerate the great subjects which, since the organization of the government, have agitated the public mind, it would appear that even those connections have not operated upon me beyond the weight of their reason. They are inestimable to me ; and while I retain a consciousness of my ability to

<sup>1</sup> Sparks' Washington, X., 396, 554.

resist an undue influence, I cannot deny the satisfaction which I feel in maintaining them. And yet, Sir, there is one fact, of which I beg you to be persuaded, that with them I have no communication on matters of government, which I would not have with others : I converse freely, but without imparting official intelligence which is not of an absolutely public nature. I commit myself by no opinions, and, above all, I shall never attempt to use those persons as engines of any measure which is a favorite with me. While I was writing this last sentence, a question springs up : 'What views can I have?' The answer is, peace, liberty, and good government.

"When I contemplate the other party, I see among them men whom I respect, and who, if their duplicity be not extreme, respect me. I see others, who respect no man but in proportion, to his subserviency to their wishes. Some of these are well informed that I have opposed in several instances things which they had at heart. I have no reason to suspect Col. Hamilton of any unkind disposition towards me—he has none on my part with relation to himself ;—even to your confidential ear have I never disclosed an idea concerning him which he might not hear, and which in many instances and particularly a late one he has not heard from my own mouth. But I have reason to suspect others—if you pause upon a measure which they are anxious for, I am supposed to embarrass you with considerations of a popular kind.

"But I have said enough—perhaps too much. Suffer me, however, to add one word more, of the sincerity of which I ask no other judge than yourself. Your character is an object of real affection to me ; there is no judgment, no disinterestedness, no prudence, in which I ever had equal confidence. I have often indeed expressed sentiments contrary to yours. This was my duty ; because they were my sentiments. But, Sir, they were never tinged by any other motive, than to present to your reflection the misconstructions which wicked men might make of your views, and to hold out to you a truth of infinite importance to the United States, that no danger can attend us, as long as the persuasion continues that you are not, and cannot become, the head of a party. The people venerate you, because they are convinced that you choose to repose yourself on them. Let me entreat you, only to look round the continent, and decide if there be any other man, but yourself, who is bottomed upon the people, independent of party? There is surely none ; and the inference which I submit to your candor is, that the measures adopted by you should be tried solely by your own and unbiassed mind."



Hamilton disposed of, Jay was favored by the President for the special mission to England. Randolph objected to the appointment, "because it was a bad precedent that a chief-justice should be taught to look up for *executive* honors, flowing from the head of it, while he retained his judicial seat." Personally he liked Jay, and thought he would serve the country better as a foreign minister than as a chief-justice. A private note to the President, 28 April 1794, suggests Jay's resignation before his nomination, and that he should be resident instead of envoy.

"28 April 1794.—I sincerely believe that Mr. P[inckne]y would be agreeable to France; tho' not so agreeable, as Mr. L[ivingsto]n. The arrangement of Mr. J[a]y as resident in London might be a fortunate circumstance, if he would assent to it. But I doubt this, because he has his eye immediately on the government of N. Y.—and ultimately on the Presidency. Besides his present office is an abundance for his wants, and he can educate his children in their own country; which of itself is an immensity. However, if he could be consulted, without Mr. L[ivingsto]n knowing it, I still repeat, that it would be a fortunate circumstance, should he remove the objection which has been made to his nomination as envoy."

This, however, was before it was finally determined to confer eventual powers of commercial negotiation on the envoy. For that he did not consider the over-polite negotiator with Gardoqui adapted. Not until after Jay's appointment was confirmed did the "British party" urge that the envoy should be empowered to negotiate a commercial treaty. Against this Randolph stood alone. His opinion was given 6 May 1794:

"The Secretaries of the Treasury and War Departments, being of the opinion that it is constitutional and expedient to empower Mr. Jay to conclude a treaty of commerce with Great Britain, the powers are drawn conformably with these ideas.

"But as they entertain sentiments different from mine, and have committed them to paper, permit me to assign a few of the most operative reasons on my mind. 1. To permit such a treaty to be signed by Mr. Jay, and transmitted for ratification, is to abridge the power of the Senate to judge of its merits. For according to the rules of good faith

a treaty which is stipulated to be ratified ought to be so, unless the conduct of the Minister be disavowed or punished. 2. If he be permitted to sign a treaty of commerce, no form of expression can be devised to be inserted in it which will not be tantamount to a stipulation to ratify, or leave the matter as much at large as if he had no such power. 3. Though I believe the people of the United States desire a proper treaty of commerce with Great Britain, and we could enumerate so many articles as to ensure their approbation, yet am I persuaded that no man can undertake to say that they would be contented with one or two articles only ; as is proposed by the gentlemen."

Despite Randolph's powerful letter of 1 May 1794 to the English Minister, Hammond, defending the right of neutrals to carry provisions, the arrogant course of England continued. Randolph proposed some effort for alliances. With Denmark especially, since that country suffered much from English cruisers. Randolph's colleagues in the Cabinet, hostile to any measure that would render a treaty with England less necessary, were against him. On 9 July 1794 he submitted their opinions with the following note :

"The Secretary of State has the honor of enclosing to the President of the United States the opinions of the Secretary of the Treasury and of the Attorney General upon the propriety of intrusting to Mr. Jay eventual powers for some minister who may concert with Denmark and Sweden a proper arrangement for the defence of neutral rights. These gentlemen, as well as the Secretary of War, are against the measure. Unless, therefore, the President sees the subject as strongly as it is impressed upon the mind of the Secretary of State, he will probably let it rest for the present."

Genet's reign of terror was suppressed so far as making Charleston a basis for direct hostilities against England was concerned, only to break out in another direction. Spain and England were now allies, and Genet began to work upon the hostile feeling of southern Indian tribes towards Spain, and on the chronic wrath and jealousy of Kentuckians at Spanish command of the Mississippi. Spain owned all the western bank, and the eastern to 31°

north latitude. The growing resources of Kentucky were hungry for the freedom of the great highway.<sup>1</sup> Kentuckians threw themselves with enthusiasm into Genet's scheme for an expedition against Louisiana; democratic societies of the Jacobin kind held noisy meetings; General Clark, of revolutionary renown, was dubbed "Major-General in the Armies of France, and Commander-in-Chief of the Revolutionary Legions on the Mississippi." This was the situation towards the close of 1793. In it Jefferson did not bear a part. It was one of those bequests to Randolph whose large number Washington remarked. The new Secretary of State wrote two letters to Genet (13 Jan. 1794), in reply to unanswered communications to Jefferson, giving him his final quietus; but also transmitting to Genet's successor a legacy of distrust towards himself (Randolph). Nevertheless he secured from that successor a repudiation of Genet's proceedings in the West, on the strength of which he wrote the famous letter to Gov. Shelby of Kentucky, which ended the military schemes in that State.<sup>2</sup>

However, the government had its warning as well as Kentucky. Gov. Shelby, enclosing Randolph's letter to John Breckenridge, says: "Mr. Secretary has not given that information on the subject of the treaty for the navigation of that river as you had reason to expect." (MS.) In truth none knew better than Randolph the critical situation. He invited the Commissioner of Spain, Jaudenes, from New York for a consultation, which occurred 25 Aug. 1794. A memorandum of it shows that Randolph suggested an envoy, and Jaudenes said he ought to be one of, "character, conduct, and splendor."

"By character he meant a diplomatic grade (no matter what) invested with full powers for all objects; by conduct, a proper attention to the Court and a proper behaviour in the management of the negotiation; by splendor, personal dignity and self-respect. Splendor as

<sup>1</sup> See Dudley Warfield's very interesting historical sketch in "The Kentucky Resolutions of 1798." New York, 1887.

<sup>2</sup> American State Papers, Foreign Relations, I. p. 458.

the effect of honorary birth, or proceeding from such considerations was not included."

Three days after the interview this memorandum was sent to Jefferson, with a letter urging him to undertake the mission to Madrid.

"Notwithstanding you have fenced out from the purlieu of Monticello every thing which assumes a political shape, you must permit me to bring before you a subject once extremely near to your heart, often the employment of your pen, and always a deep interest to the United States. The delays and evasions which you know to have been practised towards our Commissioners at Madrid have at length terminated in an absolute stagnation. The people of Kentucky, either contemning or ignorant of the consequences, are restrained from hostility by a pack-thread. They demand a conclusion of the negotiation, or a categorical answer from Spain."

After stating that the President had concluded to send a special envoy to Madrid, the letter proceeds:

"Motives, public and personal, induced the President to designate you for this distinction. He did indeed feel some hesitation in instructing me to offer it to you; as your ardor for retirement has predominated in all your late arrangements. But he yielded to this consideration: that, from the declaration of Mr. Jaudenes, and the actual position of our affairs with Spain, your separation from home could not be of any considerable duration. Will you therefore suffer me to say to the President that it would not be unacceptable to you to undertake this important office? For myself, I see reasons to wish your acceptance, derived from very interesting sources. What if the Government of Kentucky should force us either to support them in their hostilities against Spain, or to disavow and renounce them? War at this moment with Spain would not be war with Spain alone: the lopping off of Kentucky from the union is dreadful to contemplate, even if it should not attach itself to some other power. The people there ripen daily, I fear, for one or the other of these alternatives; and the progress of the mischief cannot be stopped but by a vigorous effort of our government thro' the medium of one possessing their confidence."

After warm expressions of confidence and friendship, the letter concludes:

"Should it be impossible to persuade you once more into the diplomatic field, I must request you to forward by the express the enclosed letter addressed to the Postmaster at Richmond. It contains another, intended eventually for Mr. Patrick Henry, with a similar object."<sup>1</sup>

To this Jefferson returned the "soft-pillow" refusal (Sept. 4) which has been mistakenly referred to an invitation to re-enter the Cabinet. The President never desired Jefferson's return to the Cabinet.

The excitement in Kentucky did not abate, and indeed the persistent failure of negotiations at Madrid gave the Secretary of State slight prospect of repressing it. A Kentucky Senator, to whom the sacredness of secrecy had not been revealed, was cross-examined before the "Democratic Society" of Lexington, and although he gave no satisfaction it was chiefly because there was none to give. "Will you not be chagrined," writes Randolph to Washington, "to hear that Mr. Edwards should so far lose all sense of public dignity and self-respect as to suffer himself to be interrogated by the democratic society there concerning the negotiations at Madrid? The creature was so debased as to answer to the best of his understanding; but Providence has kindly interfered as usual in the cause of the United States by denying him any understanding, or even the appearance of it, except when under the first influence of his whiskey dram in the morning."

The following confidential note of Randolph to Washington, apparently at Mount Vernon, 14 October 1794, may close these papers on the Spanish complication:

"The exterior and manners of Mr. Freira, if it were possible to draw any conclusion at first sight, would indicate him to wish to impress the belief that he is in no habits of intimacy with either the

<sup>1</sup> This invitation to Henry, with which his biographers do not appear acquainted, followed a letter from Gov. Henry Lee to Washington, in which he describes Henry as under an impression that the President considered him (Henry) "a factious, seditious character," being thereby "deeply and sorely affected."—See Tyler's "Patrick Henry," p. 355.

English or Spanish diplomatic characters here :—that he is averse to every entanglement of etiquette :—that he is sent to render himself agreeable :—He speaks English well, tho' he means to correspond in French. He talks affably ; but at the same time, if he be not a man of art, under the garb of a disdain of it, and if he be not liable to be used as an instrument in the hands of other ministers, I shall be wonderfully mistaken. The course of chit-chat leads me to say that our friendship for her faithful majesty would have rendered a representative from her acceptable at all times. He saw, that I had in my mind the long rumour of his being commissioned, and acknowledged it ; adding, that he was prevented by some urgent objects. The fact is that he has been travelling backwards and forwards for eighteen months between Lisbon and London ; and I feel a persuasion, that he would never have come hither, had he not been assured that there was no danger of a rupture between us and Great Britain. I shall dine him next week with the principal gentlemen in town, as *Mr. Freira*. His Lady, whom he calls, *Madam*, will probably not exhibit herself in public for some days, her voyage having indisposed her greatly.

“There was an idle rumour, that some of the insurgents were determined to do you some private mischief. Mr. Beckley stated it to me in so formal a manner, that I thought it advisable to interrogate the person from whom it was said to have come. Finding that what he had said was of more than a month's standing, and did not bear the construction which was put upon it, I passed it over as too ridiculous to notice further than in this way. But I took care to let the person see that there was nothing like solemnity in my inquiries.”

## CHAPTER XXII.

### A WINTRY SUMMER.

THE Jay-Gardoqui negotiations, by which the South and West saw the Mississippi River politely handed over to Spain, could not easily be forgotten by the man who was then Governor of Virginia, now Secretary of State. It was conceded to his protest that Jay's powers of commercial negotiation should be "eventual" only; but this character made those powers a snare. It gave excuse for concealing from the Senate, at Jay's nomination, what to a majority of the Cabinet was the main purpose of the mission. Thus, while Randolph went on writing to London his fourscore letters, representing labors unsurpassed in our ministerial history, urging reclamations announced as the object of the mission, factors were introduced which made the commercial negotiation primary and the proclaimed object eventual. While the Executive, after publishing Jay's memorial and Grenville's fine promises, could announce no tidings of redress, the prolonged negotiations of the envoy excited suspicion. Lord Grenville and Jay cautiously conducted their interviews alone, and without pen or pencil. As usual, secrecy was the atmosphere of suspicion. The jealous charges of France that some treaty was forming could not be denied, and fierce attacks were made on the administration. Amid the "democratic societies" an American Jacobinism was generated. Its diatribes fanned the popular excitement, and it burst into flame. The combustible material had been prepared by the Excise laws which bore heavily on the western distillers.

The insurrection broke out in the early summer of 1794; the collectors were tarred and feathered; the inspector's mansion was burned and he was forced to fly. The flame fomented by the American Jacobins was fed by the English. So the President instructed Jay. Nothing could conduce more to make the English masters of the situation, so far as the treaty was concerned. The alcoholic conflagration at Pittsburgh not only spread easily among the distilleries along the Ohio, but found fuel in anti-Spanish and disunionist agitations in Kentucky, and in Indian animosities of the northwest. The Governor of Canada was exciting these, and offering alliance to the savages. The alternative English offer was that of alliance with the United States on terms dictated to Jay.

In Randolph's letters to Jay, published among the American State Papers,<sup>1</sup> may be found the history of internal events during the envoy's absence. The inside story, however, is disclosed in Randolph's "Vindication" of his resignation. His opponents in the Cabinet desired to make a signal example of the insurrectionists in Western Pennsylvania. Hamilton induced Washington to ask for an army, and start out at its head, taking himself (Hamilton) along as an officer. Randolph, convinced that a collision would lead to a combined civil, savage, and foreign war, entreated Washington to first exhaust every means of legal and peaceful repression. He succeeded in securing a compromise by which commissioners were appointed to treat and prosecute, while the army showed its teeth without using them.

The insurrection was thus suppressed without further bloodshed, but the *sequela* survived. A commercial treaty was signed in London. France was enraged; her champions in America were furious; for though the treaty's contents were unknown, all were certain that it was dictated by England. Opposition was made to an appropriation for expenses of mobilizing the

<sup>1</sup> Foreign Relations, vol. I.



army of 15,000 men. It became necessary for the President to denounce the "democratic societies,"—the American Jacobins, —and at the same time to conciliate France.

From the unpublished confidential correspondence between Randolph and Jay, which the Hon. John Jay has kindly placed in my hands, the difficulties of the Secretary of State in that terrible year may be partly inferred. The envoy tells him, Sept. 13, of the "uneasy sensation" caused in London by his amicable letter to the French government,<sup>1</sup> by the grand reception of Monroe, and his response. "It is not pleasant for me to say these things, but so is the fact, and it is proper that you should know it." In his answer, Nov. 12, Randolph cordially thanks Jay for his candor, and continues :

"In one sense I learn with regret that my letter to the committee of public safety in France should create any uneasy motions in the breast of the British Ministry. I should regret that I have been made the instrument of weakening the good disposition which the majority

<sup>1</sup> "Philadelphia, June 10, 1794. The undersigned Secretary of State for the United States of America has the honor of representing to the committee of public safety for the French Republic, that, on the 25th of April, in the present year, it was unanimously resolved by the House of Representatives, as follows: 'That the letter of the committee of public safety of the French Republic, addressed to Congress, be transmitted to the President of the United States, and that he be requested to cause the same to be answered on behalf of this House, in terms expressive of their sensibility for the friendly and affectionate manner in which they have addressed the Congress of the United States, with an unequivocal assurance that the Representatives of the People of the United States have much interest in the happiness and prosperity of the French Republic.'

"The President of the United States has consigned this honorable and grateful function to the Department of State. In no manner can it be more properly discharged than by seizing the occasion of declaring to the ally of the United States, that the cause of liberty, in the defense of which so much American blood and treasure have been lavished, is cherished by our republic with increasing enthusiasm; that under the standard of liberty, wheresoever it shall be displayed, the affection of the United States will always rally; and that the success of those who stand forth as her avengers will be gloried in by the United States, and will be felt as the successes of themselves and the other friends of humanity.

"Yes, representatives of our ally, your communication has been addressed to those who share in your fortunes, and who take a deep interest in the happiness and prosperity of the French Republic."

of them appear to bear towards us. For I was among the first who expressed a solicitude for the appointment of an envoy to Great Britain. I am second to no man in believing that harmony with that country is of immense value to the United States; in my small sphere I have labored to avert a war with it; my efforts in the line of my department have been directed to the maintenance of perfect neutrality, and you will therefore credit me when I say that I shall rejoice in your success. The British minister here and some other British agents have taught their correspondents on your side of the water to expect from me acts not consistent with the impartiality which we profess. But surely I may appeal to the intercourse between us for a refutation of such a suspicion. And yet, under the influence of even these sentiments, my tranquillity is in no manner disturbed by an apprehension that the British government, if pure in their views, would be checked in the spirit of amity, when they have before them the most striking example of amity on our part in your mission, which was instituted in the moment of the most aggravating injury and insult.

“But, sir, notwithstanding these considerations, I should hold myself to blame if in my letter I had overleaped the degree of strength intended by the house of representatives. For it is not enough that a public officer should merely suppress the vehemence of any predilection or prejudice which he may entertain, but he ought also to be watchful lest they should steal from his pen. Conscious as I am that I restrained my affections, and was upon my guard against their impulse, when that letter was written, I have this morning compared it with the resolution on which it was founded, with that calm attention arising from the persuasion, that if an error has been committed, it was no more. But I frankly own that I discover no error. The house did not mean that the resolution only should be transmitted. They gave it as the text of the letter. This text required the draught to contain terms expressive of *sensibility* for the friendly and *affectionate* manner in which the committee had addressed Congress; and an unequivocal assurance that the house have much interest in the happiness and prosperity of the French Republic. The address of the committee was naturally adverted to; and it became my duty to make a response to the matter of it. The word *unequivocal* imposed the necessity of a pointed development of sensation. The happiness and prosperity of the French Republic implied a defeat of the allied powers; and that the happiness and prosperity of the French people was connected with the republic in contradistinction to monarchy. If a scope was not pre-

sented here for much more than was said, censure would have been liberally bestowed (and probably not without cause) ; if less had been said I could indeed have reduced the language to the coldness of death. But this would have been hardly expressive of sensibility. I could have made it lukewarm ; but this would not have amounted to an unequivocal assurance. In short it is, after all, not easy to form a scale for graduating the set of words to the precise fervor of another. All which can be taken with certainty is, not to transgress wilfully the standard which is proposed. My conclusion therefore is, that if a fault has existed anywhere, it belongs to the house of representatives."

In a postscript to this letter Randolph says : "Since my public letter of the 8th inst. we have received no intelligence of consequence from the army. But it is impossible that things should be otherwise than right." The conflict had, however, been transferred from Pittsburgh to Philadelphia. At the opening of Congress, Nov. 3, the President alluded to the influence of "certain self-created societies" in fomenting the insurrection. The Senate cordially responded, the House did not, and, after much discord, an answer was returned omitting any pointed reference to the societies impugned. The President's attack on the societies was bitterly resented in the press, and his position had to be defended in that field. A "private" letter from Randolph to Washington, Oct. 21, reports Wilson Cary Nicholas and Madison agreeing that the insurrection deserved "every animadversion." That they would have advised the form it took,—a denunciation of the "Societies"—is doubtful. The unpopular task of defending this was left to Randolph. His next letter to Washington is dated Nov. 6,—while the conflict over the address was raging in Congress :

"Col. Griffin tells me, that Parker and Blount are feeling the pulse of the members upon the article of expense incurred by the late expedition. This circumstance enables me to say to you, without forcing an opportunity, that I am determined, let it cost what labor it may, to follow with answers all the observations of Mr. Bache's correspondence *on the matter of the speech*. I hold the present to be in some degree a new

era in our government ; and that if the measures, which you will impart to Congress, be properly supported against misrepresentation, you will establish perfect tranquillity to the government and (what to my private feelings is truly interesting) your administration will be found to have passed thro' a trying crisis with dignity. You will, I am sure, believe me, when I say, that the fame of him who has so long been my patron is more dear to me than any connection with any other man. I am carried into this remark by foreseeing, that the fermentation of parties will be great during this session ; and that I may not trouble you again with any thing personal, I will just add, that a review of your administration, which is all but finished, will appear, without some unforeseen impediment, soon after the rising of Congress."

Randolph's answers to the President's assailants appeared in a series of thirteen powerful letters signed "Germanicus," which were afterwards circulated in pamphlet form. It was a fatal blow to American Jacobinism, and, his style being pretty well known, it was not likely to be forgiven. It marks his conception of the difference between American liberty and what then called itself liberty in France, that whilst the French government was suppressing Jacobinism by enactments, Randolph opposed any such measures. He believed that in a republic unrepugnant organizations could be effectually met by appeals to the reason and heart of the people. At the same time he used the French decrees against Jacobins as a warning of what such societies might lead to in the United States.

The Randolph-Jay confidential correspondence may now be resumed. The London commercial negotiations were kept entirely secret, but the remonstrance against Randolph's letter to France became known. A severe attack in the *Aurora* against Jay followed. Randolph writes Jay, 19 Nov. 1794, as follows :

"By a triplicate I have already acknowledged your unofficial favor of the 13th September 1794. Nor should I have resumed the subject of it but for a little sally of some dissatisfied man in Bache's paper of this morning, which can have no other effect than to produce some unpleasant sensations in your mind with respect to myself. I speak of

it as the composition of some dissatisfied man ; because I entertain the fullest persuasion that you will not for a moment believe that I have in the most distant manner contributed to its publication ; that I ever read, saw or heard of it in whole or in part, until it appeared ; and that if I had obtained the smallest hint of it, I should have endeavored to suppress it. This I solemnly aver to be the fact. But there is something more, which I have at heart. It is, that you may not suppose me to have put the materials into the hands of those who would make an improper use of them. No, Sir. This is the simple history of the affair. After receiving your private letter in which you mention your having omitted through delicacy to me, in your public dispatch, the uneasiness produced by the letter written in behalf of the House of Representatives, I communicated it verbally to some of your friends and of mine, who were members of the House of Representatives ; in order that I might ascertain whether I had in their judgment transgressed the purpose of their House. Indeed I saw no reason why the thing should not be spoken of ; and I felt a reason for doing so arising from an unwillingness to be thought to go beyond the text which was given to me, But it was impossible that I should have used the terms "*severally remonstrated.*" If I had doubted the propriety of mentioning the affair, my doubt would have been entirely removed on finding that a merchant from New York had written the same thing to his correspondent here, as coming in a letter from London. I ought to say further in justice to myself, that no person has regretted more the observations which have been scattered through the newspapers respecting your memorial to Lord Grenville ;<sup>1</sup> and that whenever you shall return, and can obtain the truth of facts from any source in which you can confide, you will find that, far from enabling others to indulge any indisposition towards you, I have never suffered remarks made in my presence, upon your conduct of the mission, to pass without notice, nor yet without refutation ; as far as it was proper to communicate the state of the negotiation."

The following note by Randolph, 16 Dec. 1794, may be inserted as a curiosity, surviving from the time when ambassadors were regarded as personal agents of the Secretary of State, to be paid out of his purse.

"You promised, before we parted, to inform me, what would prob-

<sup>1</sup> A mild memorial complaining of the English spoliations, in reply to which Grenville advised that the several sufferers should prosecute their claims in the Admiralty.

ably be required by you for your expenditures over the eighteen thousand dollars; that I might lodge a proper sum for you in Amsterdam. The situation of that place makes me apprehensive of the fate of some bills, which I have sent thither<sup>1</sup>; and exchange is so high upon London that it seems prodigality to purchase London bills. However, the thing must be done; but I must beg you by the earliest opportunity to drop me a line upon your pecuniary subject."

The next note also is a curiosity in its way.

23 Dec. 1794.—"My respect for your recommendation of Messrs. Talleyrand, Beaumetz and Liancourt, and for the character of each of them, induces me to write you the reasons why I have not been able to pay them that attention which I personally wished. It was a fact unknown to you, but too often impressed upon me indirectly to escape notice, that the French Republic would have learnt with disgust that they had been received by the President. He having resolved not to receive them, I held it to be my duty to do violence to my individual regard for their characters by merging it in political considerations. I am sure therefore, that you will accept this letter as an adequate apology for not indulging myself on this occasion with a demonstration of my esteem for your recommendations. I have not failed to cause to be conveyed to them the favorable sentiments which I entertain of their worth.

To this Jay replies, 2 March 1795 :—

"I am much obliged by your private letter of 23 Decr last, on the subject of the Duke de Liancourt. As to Messrs. Talleyrand and Beaumetz, I do not recollect having written any Letters to introduce or recommend them; and therefore presume that, (having recd Letters of that kind) you was mistaken as to their having been from me.<sup>2</sup> There certainly are occasions on which personal ought to give way to public considerations; and on Reflection I am satisfied that the occasion in question was of that nature. Such friendly explanations tend to preserve and encrease confidence, and to confirm those sentiments of Respect and Esteem which I wish to cherish, and with which I have the honor to be" etc.

The treaty, signed 19 Nov. 1794, was despatched next day on the Tankerville, and was cast into the sea to escape French hands.

<sup>1</sup> Apprehensions sadly justified in the end!

<sup>2</sup> The letters were afterwards said to have been written by Pinckney.

On Nov. 21 Jay had despatched a duplicate by Captain Blaney, a Virginian, whose ship was also overhauled by a French privateer, but who managed to conceal the treaty. After a stormy voyage it arrived in Philadelphia March 7, and for three months was kept secret even from all members of the Cabinet except Randolph.

Randolph writes Jay 26 April 1795 :

“ The 8th of June is fixed for the meeting of the Senate, to deliberate on the treaty. It has remained an inviolable secret between the President and myself. Papers are prepared to accompany it to the Senate ; and I am persuaded, that, when I tell you that we do not propose to send any of my letters, subsequent to the receipt of the two projects on the 11th of November, you will appreciate the views of government, as they are intended. For the discussion of the treaty, we ought to be provided with a demonstration of our conduct towards France, and an answer to the questions arising upon the treaty itself. I am engaged in both these points ; and upon the latter in particular, I am anxious to confer with you.”

The following is a note from Mrs. Jay to Randolph :

“ Mrs. Jay presents her comp<sup>ts</sup> to Mr. Randolph, and altho' sensible that gentlemen of business should be spared unnecessary interruptions, yet she cannot but think the delicate attention he has shown (altho' much engaged in business) to her peculiar situation, demands *acknowledgment*, as well as a sensibility of the politeness—she therefore begs his acceptance of her thanks for his note of the 19th inst., as well as the preceding one. New York, 21st May, 1795.”

A very important letter from Randolph, May 30, welcomed Jay on his return.

“ I am this moment honored by your letter of the 28th instant ; and am extremely happy, for the sake of the United States, yourself and family, that you have returned to your native country. This is an event, for which I have been anxious, on account of the approaching discussion of the treaty. My own *private judgment* is, I confess, *made up* as to the *propriety of ratifying it*. But a conference with you would enable me to present to those, with whom I may converse, views more striking than those which have originated with myself. Had you ar-

rived sooner, I should undoubtedly have visited New York, that I might have saved you the trouble of an immediate journey. But the short interval between this day and the 8th of next month forbids me, for many reasons of public importance, which will occur to you. Some of them consist in the *eclat* of so rapid a journey, and the possibility of an accident, which may prevent me from being present when the Senate meets.

“As a substitute for a personal interview, permit me to hope for a reply to the following questions, as soon as your fatigue will suffer you to take up your pen.

“1. Were the views of G. Britain really hostile to us, when you arrived ?

“2. Was not every effort made to shorten the time for the surrender of the posts ; and did not the year 1796 appear to you to be an ultimatum with Lord Grenville ?

“3. Was it indispensable to stipulate for the prohibition of the sale of prizes in our ports ?

“4. Does the treaty prohibit the reëxportation of West India commodities, imported from the French islands ?

“5. Is not the adjustment of the naval depredations placed upon the same footing as the adjustment of the spoliations of the Danish commerce ?

“6. What time will be necessary for completing the discussions in the admiralty ?

“7. What orders may be expected from the British court to their cruisers, for preventing the impressment of our seamen, and the capture of our property in case of a ratification.

“These queries are thrown together from memory only, and I do not undertake for their accuracy. Perhaps I may trouble you again a day or two hence. But I will thank you to add what you heard from France, relative to the Treaty.

“I shall take no copy of this letter and you will be pleased to consider it only as proceeding from a wish to give effect to the result of your labours, and not to be placed on an official file.”

Jay's answers (Am. State Papers, i. p. 5-19) were not reassuring. English hostility was virtually admitted and palliated ; the worst possibilities of the treaty were confirmed ; probabilities of redress for spoliations by procedures in the Admiralty minimized ; and as for impressment and capture of American property by cruisers,



“such orders,” says Jay, “may be expected as the treaty according to its intent and meaning shall dictate. I believe it will be fairly and liberally executed unless new causes of irritation and disgust should arise.”

What Lord Grenville's interpretation of the intent of the treaty on this last point was may be inferred from the fact that about the time when the returned envoy was writing his answers to Randolph, (June 1) the order to seize provisions on American ships was issued. No new cause of irritation had arisen. It is now certain that Lord Grenville insisted on holding our north-western posts until 1796, and now renewed the captures, in order to increase inducements to ratify the treaty. There is no complaint to be made against his lordship, whose ability and patriotism were unquestionable. He rightly judged that the treaty could not be ratified in America except under compulsion. His method was successful. None the less he twisted Jay around his finger beyond escape. This Randolph now realized. He believed the Senate and President *bound* to ratify, as a matter of international “propriety.” He considered, however, that the House might refuse means for the treaty's execution,—little dreaming that the representative's right would be crushed by executive authority.

Mr. Jay's answers to his questions convinced Randolph that the treaty should be ratified only with exception of some Articles. He could only obtain suspension of the Twelfth, relating to the West Indian trade. This, however, was a momentous exception. Not only did it involve the rights of American commerce, but the integrity of the treaty with France. Futhermore, it must naturally reopen negotiations, with a possibility of mitigating other bad features. In this expectation, also, Randolph was destined to disappointment.

## CHAPTER XXIII.

### FAUCHET.

FAUCHET replaced Genet on the 21 February 1794. He was thirty-one years of age, and is variously described in French authorities as a lawyer and a strolling player. A native of St. Quentin, he appeared in Paris in 1792, when he published a pamphlet defending the Revolution. It is stated that in the earlier part of the Reign of Terror he saved several lives. He was appointed Minister to the United States by Robespierre, and was received with caution by the President and Secretary of State. Gouverneur Morris' portraiture of the ballet-queen Saunier posing as a goddess of Reason, worshipped with incense from the burning bones of saints, amid bloody sacrifices, had caused a reaction in the minds of these men against the French Revolution stronger than they were conscious of. Fauchet was accompanied by Le Blanc, as Secretary of Legation; a man of fifty years, previously head of the Police Department in Paris. With these came M. de Laforest, as Consul-General, and M. Petrie as Consul at Philadelphia. Gouverneur Morris had ascertained that Fauchet was to take no important step without authority of this whole Commission, which would be chiefly swayed by Laforest and Petrie. He suggested that a quasi-diplomatic character be accorded these consuls.

On the 23 February 1794, Randolph wrote a confidential note to Washington :

“ E. R. took occasion last evening to introduce the President's invitation to the Minister Fauchet, omitting the consul, with a view to

ascertain the participation which the latter may have in the functions of the former. It was quickly ascribed by them to the established etiquette, without any title being urged on the part of the consul from the circumstance of having a diplomatic connection. But from the manner in which they spoke; from Petrie's running before Fauchet in very confidential intercourse; and from a very animated contest between them whether they had brought over a paper which belonged to the ministerial character alone; I cannot doubt they are associated. Fauchet did not see Mr. [Gouverneur] Morris before his departure; barely gave a tolerable account of his not doing so; was ignorant of the name of his residence,—he said that he understood it to be in the country. This leads me to suspect that something is to come. When Fauchet speaks of Genet he slips over the instructions which have been published as lightly as possible, saying that whatever appearance of truth may be worn he knows nothing of their truth."

In a later note (May 22) Randolph informs the President that "Fauchet did not appear to know Franklin, nor his character, nor yet to feel any attachment to him."

However, Fauchet moved the President by his expression of his country's attachment, and the President declared his "affectionate solicitude for the success of the Republic," with "great emphasis," asking Randolph to repeat his words in French.<sup>1</sup>

Fauchet had been instructed to demand that Genet should be sent to France, a prisoner. This the government refused, it being certain that he would be executed for having incurred the displeasure of Washington and Jefferson.<sup>2</sup> Another demand was the recall of Gouverneur Morris, and this, in view of the prompt recall of Genet, could not be refused.

Intimations of dissatisfaction with Morris had preceded Genet to America. It is not to be wondered that this brilliant and polished ambassador, who had been such a favorite with the king, should suffer disfavor of the revolutionists. Even Thomas Paine

<sup>1</sup> Writings of Madison, II., 3, 4.

<sup>2</sup> Genet prudently remained in America, and married the daughter of Gov. George Clinton; his second wife being a daughter of Postmaster-General Osgood. He died in 1834.

was too conservative for them, and was imprisoned. Morris also was at one time in danger. Randolph, with characteristic management, softened for Morris an inevitable blow. He wrote to the President (26 January 1794) approving of much of Morris' correspondence with the French government, and expressing surprise—considering the complaints—at finding so little exceptionable. "He speaks indeed of *his court*, a phrase which he might as well have let alone."

But after Genet's recall that of Morris had to be conceded. In his response to Fauchet, 21 April 1794, Randolph says: "I beg you to accept this measure as a fresh proof of our sincere desire to maintain friendship with your nation; and to assure you at the same time, that, as no delay occurred after the communication which you have made, so would a similar communication have been complied with on any occasion, and in relation to any person."

The delicacy of this sentence, both towards Fauchet and Morris, is characteristic of Randolph's despatches. The tenderness with which he recalled Gouverneur Morris may be read in their correspondence on the subject, and shows the perfect liberality of Randolph towards a frank political opponent. Morris was of the same spirit. Randolph's accession to the State Department had greatly pleased him.<sup>1</sup>

On 19 April 1794 Randolph informed Mr. Jay of his appoint-

<sup>1</sup> See "Letters of Gouverneur Morris." Edited by Anne Cary Morris, 1888. In Sparks' "Life of Gouverneur Morris" (vol. II., pp. 391-2; 428) may be noted a contrast between Jefferson's colorless reference to his successor in announcing his own resignation, and Randolph's warm tribute to his predecessor. And Gouverneur Morris' opinion of the two men may be gathered from his remark (letter to Randolph, 15 April 1794): "Permit me, my dear sir, to congratulate you on your appointment. It is honorable to you, and will, I believe, be useful to the United States. . . . I flatter myself also that your habits of attention to business will produce a more active correspondence with the public servants abroad." That this is not a mere agent's compliment appears from an even more pointed assertion that "the United States will gain by the change in your department," written after his recall was received. Sparks, II., 449. See Roosevelt's "Morris" (Am. Statesmen), p. 292.

ment as special envoy to England. Two days later he assures the disturbed Fauchet: "We have been anxiously seeking a successor [to Morris] who may be as acceptable to the French republic as the successor of Mr. Genet is to our own." The President requested his secretaries to suggest persons for this French mission. Among those presented by Hamilton (19 May 1794) was Edmund Randolph. The man most urged from outside was Aaron Burr. Against him, however, Randolph was resolute. Livingston, his preference, having declined, Randolph urged Monroe. On 26 May 1794 Randolph verbally offered the mission to Monroe, who answered that he could not permit his name to be proposed in opposition to Burr. Randolph declared Burr out of the question, and that if Monroe should decline the position it would be offered to William Paca, of Maryland, or to some person not yet mentioned. Under these circumstances Monroe accepted the post.<sup>1</sup>

The first few months after Fauchet's arrival covered the period of supreme anger in the administration against England. The despatches to Jay, written under eye of the President, reveal his anxiety and vexation, as every day brought some new insult from Lord Dorchester or Hammond, and some fresh instance of outrage on American commerce. Never in all history did a nation have to submit to such humiliations and injuries as the United States, at the very time that Jay was reporting the friendly sentiments he found in London. The President's instructions to Monroe were: "Let it be seen that in case of a war with any nation upon earth we shall consider France as our first and natural ally." In this spirit he had welcomed Fauchet. So late as 4 June 1794, when Fauchet offered the intervention of his government to relieve "the truly unhappy situation of your commerce in the Mediterranean . . . which has put the finishing stroke to its [the British] proofs of malevolence towards

<sup>1</sup> This interview is reported in an unpublished letter of Monroe to Jefferson, May 27.

free people," and spoke of "that barbarous regency," the President received his communication with gratification. Replying on 6 June 1794, Randolph says :

"The letter which you did me the honor of writing to me yesterday has been laid before the President of the United States, who accepts with pleasure such a testimonial of your attention, and whose sentiments upon the great subject of your revolution can never be doubted. Your other letter of the fourth of June is a powerful demonstration of the interest which the Republic of France takes in our welfare."

This fourth of June is the exact date, as I have ascertained from Paris, of Fauchet's despatch No. 3, in which he represents Randolph as saying to him in April that the President is the mortal enemy of England and the friend of France, and that the dark manœuvres of some men, who wished to make a monarch of him, could not dissuade him from pronouncing with vigor against the ministry of England. Whether they were said or not, no words could have been truer at the time, however inconvenient their discovery after the treaty was ratified.

The great trouble of Fauchet and his commission was impecuniosity. Within three weeks after his assumption of office he asked the Secretary of State for a million dollars,—the debt to France being then \$2,300,000. Randolph promised him \$300,000 in September, and \$200,000 in November. But on the day after (12 March 1794) Fauchet pleaded personally, and Randolph suggested to the President that the request for a million might be submitted to Congress.

"He [Fauchet] described his distress produced by the various drafts of the French consuls with great force, and in strong colors, and begged that he might be permitted to state it on paper. This, of course could not be opposed. But as he was to write, I asked him to say whether the demand of a million dollars did not exceed the pressing exigencies of the moment. He assured me that this sum actually fell short of them. . . . The French debt is entitled to every exertion in our power to relieve the embarrassments of the French government."

There are other letters showing Fauchet at the Secretary's door *in formâ pauperis*.

The concessions made to Fauchet may have been partly due to a service he had the luck to render on his arrival. He disowned the proceedings of Genet and revoked his commissions to American citizens against Louisiana and the Spanish. This enabled the Secretary of State to deal effectually with Kentucky. The President was relieved by this, and Fauchet got into his good graces. Randolph gave the new Minister credit for finer qualities than he possessed, and conversed with him at first without the caution presently found necessary. It would appear that Fauchet also got into the good graces of Monroe, who uttered with freedom those criticisms on Hamilton and his adherents which, as repeated in Fauchet's famous Dispatch 10, recoiled on Randolph, the Sebastian of all arrows. The trouble experienced by the President from the "democratic societies," lent plausibility to Fauchet's apologies for the excesses of the Parisian democracy, which he alluded to as the misfortunes of the Republic

But this amiability did not continue. Fauchet was a shrewd and suspicious diplomatist, and knew how to make the most of American obligations to France. The United States and France being both without any fleet, it was physically impossible for either to grapple with the remorseless cruisers of England on our coast, where no sail could unfurl without British permission. The United States had as much as it could do to fulfil even technically its treaty-stipulations with France. Fauchet had in his service Genet's agents, who indoctrinated him with the theory that Jefferson was restrained from doing great things for France by Randolph's inconstancy. This was soon confirmed. Randolph would not bend the law for Fauchet any more than for Jefferson or Genet. At the same time England, backed by adequate force, was strictly exacting from the United States neutral obligations which rendered it impossible to reciprocate the services France

had rendered in the Revolution. This was a cause of general soreness. The people thought tenderly of Lafayette, without always remembering what he and Madame Lafayette had suffered from the "republic." The natural French theory was that in suppressing equipment of French privateers in its ports, and enlistments, the United States was ungratefully violating the 17th Article of its treaty. Fauchet became angry. Perhaps he was also personally jealous of the English ambassador, whose wealth was displayed beside his poverty. The imposing reception of Jay by the king and queen excited French jealousy. Rumors of his commercial negotiation kindled such indignation that Monroe could hardly remain in Paris. As they were able to discern from the embarrassed silence of Monroe what was—and much that was not—going on, so Fauchet could detect it in the triumphant tone of the "British Party" in Philadelphia. To the bliss of these, groans of the damned were essential. They did not conceal their happy relations with the British Minister. Fauchet was so indignant that he at one time shook the dust of Philadelphia from his feet and found some Schuylkill juniper to sit under. His jealousy and anger were shared by a majority of the American people, who regarded Jay's mission as kissing the rod which fell equally on France. The "democratic societies" multiplied, and answered the secrecy of the government with strategies of their own. When insurrection flamed out on the Ohio, the "British Party" attributed it to the seditious influence of the societies, the "French Party" to machinations of the English. Washington and Randolph believed it due to both. Such was also the belief of Congress. Jay was officially informed that General Wayne fully expected to meet English soldiers among the Pittsburgh rioters.

There was little sympathy in Randolph's breast with the course of France just then. "There is great reason to fear," he writes, "that the French are making rapid strides towards Amsterdam,



notwithstanding the interruption which Breda and Maestricht are likely to give them." Probably Fauchet recognized the reaction caused by the ferocities in Paris and the military ambitions displayed. At any rate he had become alarmingly suspicious and morose—not without some reason, be it admitted—and Washington warned Monroe of what might be reported to his (Fauchet's) government. "The French Republic to be kept in a good humor!" Such were the President's words to Monroe, who was hardly able to stay in France, much less restore its good humor.

In pursuance of like instructions, Randolph was applying to Fauchet what syrup might still exude from the cherry-tree of veracity. That Frenchman's sharp pen sheathed a potential sword. For a time the Secretary was successful; but complications ensued; soft words could not stop British cruisers. Fauchet attempted to ship gunpowder to France under passports of the United States. Randolph had to call him to account for it. Fauchet protests that he knows nothing of it and that he has never abused the indulgence of the government,—"*indulgence au surplus dont, vous le savez bien, je n'ai profité qu'après que les agens des puissances avec les quelles la Republique Française est en guerre en ont profité euxmêmes, indulgence qui a procuré aux anglais et aux espagnols des recrues françaises dans les colons qui ont été transportés sur des vaisseaux américains pendant le tems de l'embargo aux Iles que la perfidiere allait defendre.*"<sup>1</sup>

Fauchet's tone became increasingly shrill after this. On the 26 Aug. 1794 he wrote to Randolph complaining of wrongs generally, and of a new one at Newport, where the customs officers had seized from the French *Sanspareil* its lawful prize, the *Perseverance*. He reminds the Secretary of State that a letter he (Fauchet) had written to him "requesting indemnity for the ship *William*, which has been suffered to decay in the port of Philadelphia, upwards of a year, for the want of a decision, remains without an answer."

<sup>1</sup> From a letter of "4 Messidor," (3 July) 1794.

Ten days after this, perhaps not expecting the restoration of the *Perseverance*, which was made, Fauchet wrote home his despatch No. 6, saying that the Secretary of State had made an overture to him concerning the use of French money to defeat British machinations and save the country from civil war.

In April 1794, when the announcement of Jay's mission had aroused the susceptibilities of Fauchet, the President had directed Randolph to confide to that minister the part of Jay's instructions declaring the inviolability of the engagements of the United States with France. The possession of an extract which Fauchet's employés and Monroe had vainly sought to obtain in Europe, was a diplomatic achievement which the Frenchman naturally made the most of. This was done in despatch No. 3. But the hopes held out in that despatch had been disappointed. The humiliated minister had been able to report only failure of all attempts to withstand British cruisers and the influence of Hammond, whose means were unlimited. At this moment of vexation, and of cynical indifference to Randolph's fate,—if not indeed with intent to injure him,—Fauchet wrote Despatch 6, whose date, as I learn from Paris, is 5 Sept. 1794.

This despatch appears to me a transparent effort to get cash from his government. That Fauchet could have done more for his country if less straitened in means is certain. To be a pauper at the moment of competition with the resources of Hammond was a sufficiently unhappy position. Fauchet's communications being necessarily with the Secretary of State, it was natural that he, otherwise inadequate to French demands, should be utilized to draw to America part of the moneys with which France was just then purchasing friends in Europe. The money did not come, however, but tidings of Robespierre's fall did, and forecast of Fauchet's recall. The recall however did not arrive until his relations with Randolph had become much more embittered. On 7 Sept. 1794 Randolph, in answer to an outrageous letter, re-

minded Fauchet of Genet's fate, and in doing so hastened his own. Fauchet's venom culminated in Despatch 10, which even had it not been intercepted, would probably have returned on Randolph's head.

Rumor of Robespierre's execution in July reached America early in October 1794. On Oct. 9 Randolph writes the President: "I endeavored to throw myself in Mr. Fauchet's way yesterday without effect, for, at so delicate a moment, our interview, if Robespierre should become the subject, must be perfectly accidental. If Robespierre is no more, Fauchet totters." Eight days later:

"It is circulated here [Philadelphia] that Mr. Fauchet has declined doing any business until he shall learn his real position under the new turn of French affairs. I have not been able to see him, as he is said to be confined in the country by a bad leg. The late abominable sacrifice of females in Paris led me to inquire after Madame de Lafayette. I can hear nothing of her except a pretty general agreement that as she was arrested some time ago she must have fallen."

Oct. 18: "Since I wrote yesterday Mr. Fauchet has resumed by letter business of the smaller kind with my department."

Fauchet's bad leg may have brought him the leisure to write his elaborate Despatch 10, without improving its moral tone. It was dated Oct. 31. Fauchet's recall had not come; this despatch was calculated to delay it. Randolph's allusion to Genet's end had a good effect on his behavior, however much it rankled within. But when it leaked out that the treaty was signed by Jay and was favorable to England, Fauchet accused Randolph of having deceived him. An outwitted diplomat must of course be recalled. The President was anxious as to what representations he might make in France. But not until after his recall, in February 1795, was the hostility of Fauchet to the President and himself suspected by Randolph.

From its stormy voyage of three and a half months, the treaty entered on its career, in an atmosphere which secrecy

made sultry with suspicion. Two months before publication evoked the general storm, sharp flashes were exchanged between the French Minister and the Secretary of State. On May 2 Fauchet writes :

“She [France] sees her enemies admitted to an intimacy with you at the moment in which your commerce and your sovereignty are alike insulted by them. . . . I cannot entirely pass in silence transactions to which the Republic is no stranger, because they are directed against her. . . . Examine, I pray you, sir, whether this neutrality can be said to exist when, on the one hand, you can no longer maintain your treaties, and, on the other, you are obliged to abandon your relations exclusively to the discretion of England, who, doubtless, will soon declare all the universe blockaded except her possessions. What account do you conceive I can render to the French government of the means you take for rendering your neutrality respectable? Yet on that my instructions insist, and it is on that, more especially, that France is uneasy. I shall not remind you of the conversations which I have had the honor of having with you on this subject, still less should I call to your recollection the verbal promises which you have repeatedly made, especially at a certain period of a more honorable state of things.”

On May 23 Randolph returns :

“I repeat in the name of the President the promises which I admit myself to have often made to you, that our treaties with France shall be sacred. No nation upon earth can control our will, unless preceding engagements be violated. To save the rights of the French republic was an ultimatum in the instructions of our envoy. . . . We confide that the wisdom and magnanimity of the French republic, which resisted past machinations to disturb our harmony, will receive with caution suspicions which may be hereafter thrown on our fidelity. For her happiness we pray, and may our connection be perpetual.”

This second allusion to Genet, with whom Fauchet was believed to be now in league, elicited in reply :

“I cannot believe that the President *had me in view* when you insinuate, on his part, that endeavors are still making to injure the harmony existing between the two nations. Still less can I admit, not-

withstanding some of your expressions, that your object was to inspire me with fear as to the manner in which I have conducted."

It will be remembered that Genet remained in America to escape probable execution in France. Fauchet had been recalled four months before this last letter was written (June 8); and Randolph closes his last official letter to him, June 13, with the following words:

"As you again disclaim an approbation of Mr. Genet's excesses, so am I not scrupulous to confess that I should not have recurred to them had I not inferred from your letter an inclination to bring them up with some share of countenance to them. But this being, as you inform me, the moment of our *official* separation, I am compelled by candor to *intimate* to you what, under other circumstances, would have been stated to you more formally and minutely. The citizens of the United States have a right, and will exercise the right, freely to investigate the measures of government. A foreign minister has a right to remonstrate with the Executive to whom he is accredited, upon any of these measures affecting his country. But it will ever be denied as a right of a foreign minister, that he should endeavor, by an address to the people, oral or written, to forestall a depending measure, or to defeat one which has been decided. This remark is made *now*, because it cannot be erroneously wrested into a defense or outwork of the treaty with Great Britain; and because it is an assertion of the sovereignty of the United States, consistent with what is past and, we trust, not likely to be contradicted hereafter."

The treaty was shown to Fauchet, in good time, before its submission to the Senate (June 8). It passed the Senate, conditionally, June 24. A "Memorandum of facts to be recorded" (27 June 1795), in Randolph's writing, states that, on the 8 June 1795, Fauchet wrote requesting that the vote of the Senate on the treaty should be suspended until his successor (Adet) should arrive, and impart his instructions. The letter was communicated to the President on the same day, "and it did not seem advisable to take any measures upon that subject then." On June 13 Adet arrived, and took lodgings in Phila-

delphia. On June 15 Fauchet accompanied him to Randolph's house.

"On the next day I returned Mr. Adet's visit; and as we were walking together in the garden at Aellers's hotel, about a quarter before two, he informed me that he should send me, the next day, some act of the French government relative to commerce."

Nothing having arrived, he (Randolph) visited Adet June 22, and alluded to the expected enclosure. "He said that it was copying, and gave me reason to suppose that he should forward it on that day." Nothing was forwarded. On June 23 he accompanied Adet to the President's room, and informed him that the Senate would rise the next day. "But I have not at this moment received from Mr. Adet any other communication of business, than what is stated above. The Senate rose about 12 o'clock yesterday" (June 26).

The vessel on which Fauchet sailed for France was waylaid by an English ship, and he left it, taking his papers, at Stonington. It was overhauled near Newport, with the hope of finding Fauchet and his papers on board. The United States promptly punished those who committed and connived with this affair. Thus Fauchet presently sailed back to France a living witness of the promptness with which the President had avenged an outrage on the flag of France, as well as its own.

Indeed the United States had, by Randolph's skill, made a defensible record towards France, up to the hour when the British treaty was signed. Insomuch that in 1797, when warlike recriminations supervened, Pickering, the Secretary of State, who had laid Randolph low and got his place, planted himself absolutely on the record with which his fallen predecessor had surrounded the President as with a fortress. He proved his every point by an appeal to Randolph's actions and despatches, and in no case was any one of these disowned. He (Pickering)

proved that Randolph had done perfect justice to France in every particular; that he had urged a commercial treaty with France; that he had communicated to the French Minister so much of Jay's instructions as candor and propriety required; that his legal course with regard to cruisers and prizes was always just and wise. *Sic vos non vobis.* While all this was being done and said, Randolph was in disgrace, and Fauchet was at home serenely writing a philosophical pamphlet about the United States.

## CHAPTER XXIV.

MS. BY WASHINGTON.

THE following *resumé* of Randolph's despatches to Monroe, is an unpublished MS. in Washington's handwriting :

" 25th September 1794.—Relative to the case of spoliations ; and the embargo at Bordeaux ; discontents occasioned thereby. Case of the ship *Laurens* particularly referred to ; also the ship *Fame*.

" A detail account of the Western Insurrection. Measures taken to suppress it. The effect of Commissioners, who were sent among them, and the general sense of the people, reprobating the conduct of the Insurgents.

" He is anxious to hear from him. Mr. Le Blanc is the bearer of oral commns. wch. Mr. Fauchet would not commit to writing, must therefore be important. Fauchet supposes that there is British influence prevailing in some members of the government. He [Monroe] has the means to confront this. Mr. Jay restricted. Does not expect compensation for spoliations, nor the surrender of the posts. The French Republic to be kept in good humor.

" Spain, by a similar conduct to that of G : B : has imposed the necessity of sending an Envoy extraordinary to her. They coöperate, cordial in their hatred, and agreed to employ the Indians against us.

" 2d December, 1795.<sup>1</sup>—Rec'd his letter of the 15th of Septr. last, the only official note of his having entered upon the duties of his office.

" Duvernet superceded. Pitcairn appointed consul in his place at Paris.

" His [Monroe's] speech to the National Convention is disapproved on account of the place where it was delivered—in the National Hall—the publicity of some expressions which were contained therein as coming from the representative of a neutral power being liable to give offence to the enemies of France ; particularly G. Britain, with

<sup>1</sup> Error for 1794.



whom we were then negotiating ; & whom it was known had suspicions of our attachments to France to her prejudice.

“ He is still to cultivate the good will of the French government, these remarks having no other objects than to recommend caution. . . .

“ Many of Mr. Fauchet’s discontents are removed, the documents concerning the failure of the salute & supposed insult to the favorite are transmitted.

“ 13th February, 1795.—Concern’d at the recall of Mr. Fauchet from the change in France—Their Ministers here should lay aside all Intrigue.

“ Expect he has done all he can to strengthen the friendship between the two Nations—Every thing, on our part, is done for this purpose—proof, Mr. Fauchet, by a legislative act is enabled to anticipate the installments of the French debt.

“ The Minister here, & the French nation, may have been urged to believe that the treaty with G : B : interferes with our engagements to France. It is not come to hand. But the Instructions to Mr. Jay forbid this :—surrender of the posts, spoliations on our commerce, and British debts are the principal heads in wch. France can have no concern. Commercial may also be regulated, wch. you may mention. France will enjoy all the advantages of the most fav’d nation & we have been long ready to discuss, & settle new commercial arrangements with France—but none have been proposed.”

“ 8th March, 1795.—Last night the treaty with G. Britain arrived. It will remain undivulged until the meeting of the Senate, the 8th of June. Mr. Fauchet is uneasy, but upon what grd. is not known. Posts, spoliations, cannot require war instead of negotiation, & if it did we are the judges. Our trade also be regulated by any treaty that does not derogate from the rights of other nations. Nothing of this is perceived (in a cursory reading of the present one) and you know Mr. Jay was instructed not to weaken our engagements with France. He is not to judge from what has been said that the treaty will, or not be ratified.”

Randolph’s despatch to Monroe of 1 June 1795, may be read in Monroe’s history of his mission, where it occupies 26 pages. Washington’s abstract of it is therefore omitted here with exception of the closing part :

“ Mr. Monroe seems to think that *he* has been deceived, because *he* was not told in explicit terms that one of the objects of Mr. Jay’s mission was a Treaty of Commerce ; when this was an eventual measure

*only*, and might have been inferred from the previous communications which had been made to Congress. This idea of his, is treated as erroneous & improper, & reasons assigned.

“By this time it is supposed he must be (thro' Mr. Trumbull) made acquainted with the Treaty; & must have determined, in his own mind, the probable effect it has had upon the French Republic. Ratified or rejected, he will receive an immediate & copious communication of the result, especially in relation to his inquiry, whether the Treaty affords just cause of offence to France. At present this is waved, in consequence of information that the French Minister is concerting an attack on the ratification and that sentiments no less eccentric than fatal to our independence are to be scattered at random, from a confidence in the popularity in the F. cause.

“Be the issue what it may, we shall neither renounce our professions, nor conduct towards France, nor ascribe to it, the intemperance of its agent here. But you ought to put the government on its guard. A late letter from him bears every symptom of an inflamed mind. The answer to it (which will accompany this letter) is our refutation. We acknowledge nothing to be undone on our part wch. friendship would dictate, our faculties could accomplish, and our neutrality would permit.”

“The foregoing letter,” adds Washington, “goes much more into detail than is here extracted; and contains an important exposition of facts interesting to, and worthy of being known to the public; to show how different the conduct of this government towards France has been from the assertions and writings of those who have endeavored to sow the seeds of jealousy and discontent between them.”

The preceding letters were written under the eye of the President. He left for Mount Vernon July 15, and returned August 11. The two letters following, written in his absence, were placed in his hands on Aug. 13. The abstracts of both are in Washington's handwriting.

“21st July 1795.—Want of precedent, for such a mode of ratification as has been advised by the Senate—doubts whether they meant to sit in judgment upon it again, upon the article to be added. Whether the President can ratify without re-submitting the new article to them;

whether he can ratify before he himself inspects the new article, after it shall have been assented to by the British King ; and what effect the suspension of the 12th Article will have upon all those subsequent to the 10th ; created difficulties and delays, even independent of the *Real merits* of the Treaty.

“The Newspapers show the unpopularity of the Treaty at Boston ; the same at New York the day before yesterday, and probably in Philadelphia to-morrow, and will travel perhaps further. The Friends of the Treaty complain that the condemnations of it proceed from unfair practices. Upon this he can say nothing as yet, but will await till some counter assemblies wch. are said to be contemplated shall have published their appeal to the world.

“When I inform you that the President has not yet ratified the Treaty ; his character will convince you that nothing will deter him from doing what he thinks right and that the final question lies open from causes unconnected with any considerations, but the interests and duties of the U. States. He is at present in Virginia, and will doubtless very soon take his conclusive step. If I were permitted to conjecture, what that would be ; I should suspect, that at any rate he would not sign it, until it should return from England with the addition of the suspending article ; and probably not even then, if a late British order for the capture of Provisions, going to France should have been issued as we suppose, and increase the objections, which have been lavished upon it.

“The present may well be considered as a crisis. If no ratification, the result with G. Britain is not so easily foreseen. If ratified, the result in our own country is involved with many delicate and hazardous topics.

“29th July 1795.—This letter ought to reach you as early as Mr. Fauchet’s arrival ; being thoroughly persuaded that he has wrapped himself round with intrigue, from the first moment of his career in the U. States. He found in me a temper in no wise turned towards Britain, but warm towards France ; affected a confidence in me, communicated machinations in New York against Govr. Clinton & myself—Mr. Hammond & some of our own countrymen the authors of them ; asserted his conviction that Mr. *La Forest* was perfidious, & confederated with the enemies of France ; expressed disgust against Genet ; pretended great attachment to the President. The reverse of all this is now fixed upon my mind. His chief associates have been the enemies of the Government and of the administration. His con-

versation steadily hostile to the Executive, believes he has been instrumental in many of the printed attacks upon it. Is in close league with Genet, has plotted how to embroil this country with France, and under the charges against *La Forest* has endeavoured to procure some information from some members of the Executive to whom he has resorted. I was not one of them.

“Since his departure he has reason to suppose he put into the hands of Bache a declaration that I told him a Treaty of Commerce was no part of Mr. Jay’s mission. Denys this. A counter declaration is enclosed.<sup>1</sup>

“For months before Mr. Fauchet left this he absented himself from the ordinary respect to the President. He except on business rarely saw him. Having no letters of recall he could not be presented in form to the President but had an opportunity given him informally to take leave as he seemed to wish it. On this occasion, he dealt out his assurances of veneration to the chief Magistrate, & attachment to ye Secy. of State.

“Supposing he wanted an exculpatory letter for pledging the public purchases of flour; & his having intimated, that he expected something complimentary in answer to his having announced the arrival of his successor, he was promised a letter, but the Presidt. was to be consulted. This however was not done, and it is doubted whether Mr. Fauchet had not forfeited his title even to a letter of ceremonious civility. The object of this statement is to remove any impression of a failure in a point of propriety.”

<sup>1</sup> 8 July 1795. Am. State Papers, vol. I. (Foreign Relations.)

## CHAPTER XXV.

### A FATAL VICTORY.

THE British Treaty was a national humiliation. Its ratification was an admission that Downing Street was still master of Independence Hall.

“The objects in view in opening a negotiation, with Mr. Jay as special envoy, were as follows :

“(1) The vacating by the British authorities of the border ports on United States Territory, including Fort Erie, Detroit, Oswego, and Michilimackinac, which they still held in defiance of the treaty of peace, and which they used, not only to retard the progress of United States settlement in those quarters, but to keep the adjacent Indian tribes in subjection to Great Britain and in hostility to the United States. (2) The recognition of the maxim : ‘Free ships make free goods.’ (3) The establishing of a restricted system of contraband. (4) The placing of Great Britain on a position of equality with France so far as concerns belligerent rights, and so far as it could be done consistently with the treaty with France. (5) The surrender of impressment. (6) The opening of the West India trade. (7) The surrender of the rule that no trade could be allowed to a neutral in war which he could not carry on in peace.

“(1) The first of these proposed concessions was the only one which was obtained, and it was granted in a way peculiarly ungracious. The treaty of peace required an immediate surrender of these ports. Great Britain refused to surrender them, and made them the basis of unjustifiable encroachments on the United States. Jay’s treaty not only condoned this outrage, but permitted the ports to be held by Great Britain until June, 1796.

“(2) So far from ‘free ships and free goods’ being recognized, it was agreed, in gross contravention of the treaty of alliance with

France, that French goods in United States merchant vessels should be subject to seizure by Great Britain.

“(3) So far from the list of contraband being restricted it was expanded so as to include ‘timber for ship-building, tar or rosin, copper in sheets, sails, hemp, and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron and fir planks only excepted’; and this was followed by the statement that provisions could be confiscated, subject to a right on the part of the owners to claim payment at a rate to be fixed at the British port to which the vessel was taken, a right which, of course, turned out to be illusory.

“(4) So far from Great Britain being raised by the treaty to equal privileges with France, she was, by virtue of her maritime supremacy, given advantages over France which virtually destroyed those to which France was entitled by treaty. Thus, while France, by treaty, was precluded from seizing British goods while in United States vessels, Great Britain, on the other hand, was permitted to seize French goods, or goods going to France, on United States vessels, and even to seize United States provisions going on United States vessels to France, or French colonies, as contraband. The stipulation for compensation for such seizures, even if it had been carried out, which it was not, would have been no relief to France, since the result was to advance the British scheme of starving the French population, provisions sent from the United States to France and to French colonies being in this way carried to England. Article XXI, also, precluding citizens of the United States from serving under France, and providing that, if a citizen of the United States should take a commission to act as a French privateer he could be treated by Great Britain as a pirate, was as much in conflict with the law of nations as with the treaty of alliance with France.

“(5) Impressment was not surrendered.

“(6) Although Jay's instructions required him to sign no treaty which did not, in some measure, open the West India trade, the treaty he signed opened that trade only to United States vessels of 70 tons, whose cargoes had been received in ports of the United States. This concession, however, was more than neutralized by the admission of British vessels, of any tonnage, to the United States ports for West India commerce; and then it was made useless by the condition that United States vessels should not transport to any foreign country, except Great Britain, sugar, cotton, coffee, or molasses. The only

excuse offered for this last extraordinary condition was that Jay was not aware (though Lord Grenville, who negotiated the treaty with him, was) that cotton was, or could be, produced in the United States.

"(7) The rule that there should be no trade by the United States, in war, with ports with which she could not trade in peace, was not surrendered.

"It is true that the treaty provided for a commission to determine the indemnity due for prior British spoliations of United States commerce. But for this a price was paid vastly exceeding the value of any spoliation indemnity that could possibly have been received. Aside from the enormous concessions above stated we bound ourselves to assume, in a mass, British debts, many of which were incapable of proof. It is true that United States vessels were allowed, under the limitation specified above, to trade with the West Indies, but they were shut out from the East India coasting trade, and United States merchants were not permitted to make East Indian settlements. The United States, 'in return for so paltry a favor, opened all the ports she controlled, and surrendered her own commercial advantages in the existing war, with scarce a qualification.'—(I. Schouler's "Hist. U. S.," 292.)"<sup>1</sup>

It will be seen by (4) of the above analysis that the principle of the Provision Order was conceded by Jay. This was struck out by the Senate. But even with that elimination, it amazed the country that even the bare two thirds by which it passed could be secured in the Senate, or that Washington should sign it. The astonishment might have been less, and the indignation greater, had the secrets of the English Foreign Office been known. It will be seen that Lord Grenville dexterously used his possession of the northwestern posts, and influence over the Indians, harassing the United States, as a pistol to be held at the Envoy's head, and at the President's head, while the treaty was dictated. Immediately after Jay signed the treaty, Grenville admonishes his minister at Philadelphia to negotiate with Hamilton, without the Secretary of State's knowledge, about an

<sup>1</sup> Wharton's "Digest of the International Law of the United States," Vol. II., § 150a. For Jay's instructions, his despatches, etc., see I. Am. State Papers, Foreign Relations.

arrangement of the Indian troubles. But he (Hammond) must not be too eager, and the troubles must end only through English mediation. "The strongest inducement to be held out to that government [the United States] will be the shewing them that if the Indian war should be satisfactorily concluded by the interference of His Majesty's government in America, it would naturally follow that His Majesty and the United States might then enter into a mutual guaranty of such arrangements." Randolph and consequently the President were to be left out of these negotiations, because the former had written a firm remonstrance to Hammond on English connivance with the Indian hostilities, and Washington had laid the correspondence before Congress. This publication angered his lordship, and he instructs Hammond to work confidentially with others for Randolph's removal from office. He has expressed to Mr. Jay the sentiments of H. M.'s government about the Secretary of State, and thinks it "not improbable that Mr. J. will represent it in a proper point of view to his government." Whether Mr. Jay justified this expectation, or whether Hamilton consented to carry on secret negotiations with Hammond,—transferring the administration to the Treasury department,—does not appear. Certainly Randolph had no suspicion of either gentleman. "The President being at Carlisle," he writes Jay (10 Oct. 1794), "I forwarded to him copies of your letters noticed above, together with another which I presumed to be private, and, therefore, did not open under the general license which he left with me." Jay may have felt compelled to lay before Washington, privately, Lord Grenville's desire for Randolph's removal,—especially as he (Jay) had, without instruction from Randolph, suggested Hammond's removal.<sup>1</sup>

<sup>1</sup> Randolph's jealousy for the President caused him to mention to Jay (30 Aug. 1794) that Mr. Hammond was in New York, "where he has been for a considerable time, and whither he went, after an intermission of visits to the President for more than two months, without taking leave." The sentence was underscored. A similar jealousy for Washington may have induced Jay's unauthorized request for Hammond's removal, which, however, could only recoil on Randolph. Hammond would never ascribe his recall to conciliatory Mr. Jay.



Randolph's career had been one of unbroken success. He was never beaten in an election; he had filled the highest offices with honor. But now the apparently invulnerable political Ajax was entering on the critical combat of his life in the dark. "Grant me but to see, and Ajax asks no more." But Randolph, alas, was unconscious that any thing was hidden from him. He never knew until too late that Fauchet was conspiring against him; and never to the day of his death that the British Prime-Minister had instructed Hammond, in case Randolph could not be turned from his course, to conspire with others for his downfall.

In this matter Lord Grenville had recommended "prudence and delicacy," and for a time there appeared no reason for overthrowing Randolph. Jay had sent Randolph, 13 Sept. 1794, the main features of his agreement with Grenville. Randolph returned his criticisms, but before they arrived the treaty had been signed (Nov. 19). The delay of the treaty, until March 7, may have prevented its receiving so full a consideration as it merited. But Jay had much credit with the President; and his despatches left no doubt that the treaty was England's ultimatum, and that it was the alternative of war. For war with England the country was by no means prepared. The President and Randolph considered the treaty in secret, not even confiding it to other members of the Cabinet. They drew the line against its injustice to both France and the United States at the twelfth article, already referred to, and concluded, reluctantly, that the rest must be submitted to. The only question, after the Senate's conditional ratification, related to the mode of procedure proper in such case. While Randolph was considering the advice he should give, a rumor came of the renewal by England of the Provision Order. By this Great Britain not only put in operation the clause suspended by the Senate, but did so in the most arbitrary manner. By it American commerce would be swept from the seas; for France, in retaliation, must seize all provisions bound for England, as the

latter did all bound for France. Although renewal of the Order, rumored soon after the Senate had ratified, was not yet officially confirmed, Randolph felt that it was true; it was no doubt among the "circumstances" alluded to in the opinion he submitted to the President.

"A qualified ratification being a new thing in diplomatic history, our forms of proceeding may be accommodated to the newness of our situation. But the President would manifest excessive ardour by overleaping the usual forms so far as to delegate to an individual in London the ratification of an inserted article which neither the Executive or Senate had ever seen. . . . The propriety of putting the final seal on an Act before it is complete, or of delegating to another the power of seeing that it is complete, is, to say the least, very doubtful. And if the President ought not to do this for himself, ought he to apply to the Senate to do it for themselves? The propriety of this proceeding will be determined by the public according to the effects intended to be produced. These will be clearly seen to be, to prevent a future Senate from negotiating the ratification, as they may do, if the question be not settled now, and to cut off delay. Whether the latter is so important as to counterbalance the impressions arising from the former, the President will determine. Perhaps it will be incumbent upon the President to satisfy himself on these two questions: 1. Will he bind himself now to ratify upon the change being made in the West India article, so that he cannot refuse to ratify, let other circumstances be as they *will*? 2. What kind of person, and who is to be employed in this new business?"

No sooner had the Senate ratified the treaty than the President found secrecy a burden. Notwithstanding the vote of the Senate as to secrecy he desired that public opinion could be heard, and (June 29) instructed Randolph to give a copy to Mr. Brown for publication. But Randolph presently learned that it had appeared that same morning in the *Aurora*, which had received it from Senator Thomson Mason. Another Senator, Rufus King, had shown it previously to Hammond. Randolph, by Washington's order, had given a copy to the French Minister. The President did not have long to wait for popular opinion. The treaty was

burnt by mobs, the British Minister insulted, addresses from leading cities poured in,—demanding rejection. The President saw the grim visage of war with England on one hand; that of war with France—possibly complicated with civil war,—on the other; and was thrown into a cruel dilemma.

Notwithstanding Jay's suggestion, Lord Grenville had reasons for keeping Hammond in America until this business was ended. This minister faithfully represented the proud attitude of his country, and the menace under which the treaty was concluded. Conscious that it held the northwestern frontiers, that the undefended American coast was lined with its cruisers, that the Mississippi was in the power of its Spanish ally, the lately humiliated and wounded Lion growled its haughty mastery of the situation. Hammond had a good deal to exasperate him. A correspondence placed at my disposal by Mr. Rawle shows the Philadelphians somewhat frantic. The mere normal hauling down, for the night, of the American flag of a vessel on which were British officers, captured and paroled by a French ship, was supposed to be an insult to the flag. Though there was no physical outrage the officers were insulted by a crowd. The vessel being moored at the time, the matter, as District Attorney Rawle pointed out, could only be prosecuted under State law as a misdemeanor. This was by no means sufficiently dignified for the Lion. There had been, before the "burning" treaty question, other incidents, beyond redress which might humble the United States, that must naturally rankle in the Minister's breast.

That which chiefly encouraged Hammond's high tone was its success in bringing to his feet the merchants and ship-owners. While British cruisers kept such in perpetual panic, the British Treaty was carefully contrived to stimulate their hope of indemnity for past losses,—at whatever cost to the rest of the country. Along with this bribe, the Governor in Canada and Hammond in Philadelphia kept over these a suspended sword. Subservi-

ence to England was the price of peace. The immense advantages of the treaty to England were indicated in the extreme determination of its ministers to secure ratification. Failure of the treaty was to be a *casus belli*. The Cabinet representatives of the terrified were Oliver Wolcott (Treasury), Timothy Pickering (War), and William Bradford (Attorney General). The first of these, the favorite of Hamilton, had been especially chosen by Hammond as an ally (in pursuance of Grenville's intimation about Randolph); and their intimacy is shown by the fact that the secret debate of the Senate was substantially secured by Wolcott, and reported to the British Minister on the day after its conclusion. He was even told how each senator voted.

Towards Randolph Hammond displayed animosity, and sometimes rage. He was indeed imprudent in this; for in consequence of his violence the President's indignation overcame his habitual deference to the majority in his Cabinet. He stood beside Randolph, whose constant dignity and good temper had elicited his admiration, and that of Jay also. "I have read," writes the latter, "your thirty odd papers to and from and respecting Hammond and his complaints. You have, in my opinion, managed that matter well. Continue, by all means, to be temperate, and to put him in the wrong."

While, in the Cabinet, opinion stood three to one in favor of immediate and unconditional signature, the masses were apparently three to one against it. But the minority camp consisted of strong and wealthy men, largely interested in the result. During Washington's twenty days of hesitation there was imminent danger of civil war. It is a notable fact that neither of the Cabinet Ministers favoring ratification, so far as their published correspondence shows, said a word against the odious Provision Order, which alone stood in the way.

Randolph's influence had been in favor of a conditional ratification by the Senate. This had been given by that body "on

condition that there be added to the said treaty an article whereby it shall be agreed to suspend the operation of so much of the twelfth article as respects the trade which his Majesty thereby consents may be carried on between the United States and his islands in the West Indies, in the manner, and on the terms and conditions therein specified." This was a large condition. Had the President, as the Senate further requested, "continued negotiations on that basis," the French treaty and American interests might have been guarded by a new article. But in this Randolph was overruled. Not only did the President, against the advice of both Hamilton and Randolph, decide that the new article might be framed and ratified in London, without its submission to himself or the Senate, but he now held in consideration a signature which would virtually override the senatorial exception; for the Provision Order was the Twelfth Article in practical operation, and worse. Randolph must now have sorely regretted that he had counselled even a conditional ratification, and no doubt even rejoiced that the renewal of the Provision Order held out some chance of an escape from a treaty only too likely to be manipulated to a ruinous one in London. However, there was nothing left now but to insist on previous withdrawal of the Provision Order. There he stood. But the agitation speedily assumed party aspects in which its foreign bearings were lost sight of. The "Democrats" were furious that the treaty was not spurned altogether. The "Federalists" were angry that one Virginian should outweigh for a moment the three northern men in the Cabinet. There was already a "north" and a "south,"—the latter (such is the irony of fate!) representing all manner of radicalism, the former all "Toryism." Randolph belonged to neither party, but the effect of his present advice was to strengthen the democracy; and therein the French as against English tendencies. To his three colleagues this meant ruin. The treaty became their flag in a crusade against "Jeffersonian

ism," of which Randolph, *malgré lui*, was the momentary embodiment. Jefferson was enjoying his "soft pillow" at Monticello.

But to Washington and Randolph some things were known which were unknown to the others, new-comers into the Cabinet. By the instructions to Monroe in Paris, and by communications to the French Minister in Philadelphia, the President had committed himself deeply to France, as, in his own phrase, "our first and natural ally." It was uttered at a period when the outrages of England seemed to render war inevitable. Three of his ministers, backed by Great Britain, were now asking him to eat his words, of which they knew nothing. The French Scylla and British Charybdis had each a sharp dragon-eye on him in Fauchet and Hammond. Fauchet, as the President well knew, had on file assurances that nothing would be signed inconsistent with engagements to France, and other soothing communications. Fauchet's powers for mischief were now fully appreciated.

Such was the situation in the early part of July, 1795. It was evident that the President was inclining to Randolph's side, and that the treaty would not be signed, unconditionally, unless the Secretary of State could be got out of the way. It should be said for young Bradford, Randolph's successor as Attorney General (who died as this struggle ended), that he seems to have been desirous of removing Randolph to an honorable and more congenial position,—the Supreme Bench, from which Justice Blair was retiring. In view of the fate which overtook the Secretary a few weeks later, the following "private" letter, written to the President 7 July 1795, possesses a pathetic interest :

"I this morning received the inclosed letter. It relates to a subject, which, notwithstanding the suggestions of Mr. King, Mr. Burr, Mr. Bradford, and some other gentlemen, I positively forbid to be mentioned to you. Why I forbid it, the reasons are very, very many ; for altho' the wish of the most respectable of the bar in this city might have seemed to countenance it ; yet one reason overpowered in my mind any other : that I did not think it right in itself, and that the

world would not think it so. It shall never be said, that I would ask for myself what would be improper for your character to grant.

“ But this letter has really led me into a train of reflection, which I have endeavored to suppress, but which pours too rapidly into my mind to be resisted.

“ I foresee, as I believe, with certainty, that the present Chief-Magistrate will not be prevailed upon to continue in office after the expiration of this term; and I cannot well reconcile to myself the idea of serving where I now am under any other. This is not all. With an abstinence from company, which does not comport with my station, I run in debt, and hazard again those difficulties from which the sales of my estate are likely to relieve me. The incessant anxiety of my wife, founded upon the experience of the last eighteen months, urges me even now to adopt an alternative, either to put down my carriage, and live in a very circumscribed style; or to go again into the practice of the law. That the latter is the most lucrative course is to me obvious. But it would inevitably throw me into the lower parts of Virginia, and I do not wish to go further south than Alexandria at any rate. The former does not correspond with public expectation; and public expectation must, in a degree, be consulted.

“ Time has rolled so fast and unperceived over my head, that I have not, until a year or two past, calculated how few remain for very active exertion. Nor have I, until a year or two ago, been persuaded that, if an accident should befall you, the Union is split in twain unless it should be placed above the machinations of its enemies during your administration. In the event of a dissolution, Virginia will not be, for me or my family, a proper country to dwell in.

“ Thus circumstanced, and looking to all events, I think I ought to capacitate myself to take my position in whatsoever part of the United States I may find most comfortable. Philadelphia is at present the most so; and no place appears likely to come into competition with my wishes, until the federal city shall receive Congress. There, if the Union should remain intire, I mean to fix the fortunes of my son.

“ I am now brought to that stage of my reflections, at which my sensibility is most alive. A transposition into Mr. Blair's office would seem to separate me rather more from you. As to yourself, my continuance on my present ground can be no further important, than to close the weighty matters now depending. This I would not quit for my own honor, if I could not go through them notwithstanding. It is among the most pleasant of my sensations, that in spite of the ferment

raised by a few wicked men, I shall have some future credit in being in your confidence until you have established peace and order in the United States."

On the 2 July Randolph wrote Monroe, "under the President's correction," that "the President has not yet decided upon the final measure to be adopted by himself." By July 12 the opinions of the four Ministers were handed to the President. Randolph's paper embodied an address to Hammond declaring that "the President cannot persuade himself that he ought to ratify during the existence of the Order." On July 13 the President directed Randolph to address Hammond as he had proposed, and he at once did so. The British Minister asked him if it would not be sufficient to remove the "provision order," and after the ratification renew it. Randolph replied with warmth that "this would be a mere shift, as the principle was the important thing." "He then asked me," writes Randolph, "if the President was irrevocably determined not to ratify if the provision-order was not removed? I answered that I was not instructed on that point. He said that he would convey my observations to Lord Grenville by a vessel which was to sail the next day; and then left me. I immediately returned to the President's room, and acquainted him with the foregoing circumstances. He said that I might have informed Mr. Hammond that he would never ratify if the provision-order was not removed out of the way. He then directed me to prepare the memorial of which I had spoken to Mr. Hammond, the form of ratification, and instructions for the person who was to manage the business in London."

Randolph's policy having thus prevailed, was fortified by an unexpected ally. Alexander Hamilton, indignant at the provision-order, wrote from New York recommending that the treaty, though signed, should not be exchanged until the odious order were revoked. The President, however, preferred Randolph's plan; regarding the question as settled, he departed July



15 for Mount Vernon. From Baltimore, July 18, he wrote Randolph to lay before his colleagues an address answering one from the people of Boston. The President's resolution was then announced to the Cabinet. A memorial in this sense to the British Minister was then drafted by Randolph and sent to Mount Vernon. Before its receipt the President wrote to Randolph, 22 July, a letter of historic importance :

"In my hurry I did not signify the importance of letting those gentlemen [the secretaries and attorney-general] know *fully* my determination with respect to the ratification of the treaty ;—and the train it was in ;—but as this was necessary in order to enable them to form their opinions on the subject submitted, I take it for granted that both were communicated to them by you, as a matter of course.—The first, that is the conditional ratification, *if the late order, which we have heard of, respecting provision vessels is not in operation*, may, on all fit occasions, be spoken of as my determination, unless from any thing you have heard, or met with since I left the city, it should be thought more advisable to communicate with me further on the subject ;—my opinion respecting the treaty is the same now that it was, that is, not favorable to it,—but that it is better to ratify it in the manner the Senate have advised (*and with the reservation already mentioned*), than to suffer matters to remain as they are,—unsettled.—Little has been said to me on the subject of this treaty along the road I passed ; and I have seen no one since from whom I could hear much concerning it—but from indirect discourses I find endeavors are not wanting to place it in all the odious points of view of which it is susceptible, and in some which it will not admit."

This was passed on the way by a note from Randolph of July 24 :

"I hinted in a past letter that there was something mysterious in one part of the business. What I allude to is that the advice given to you from New York [*i. e.*, from Hamilton], as to the withholding of a ratification until the order for seizing provisions was rescinded, does not appear to have been circulated among the particular friends of the gentleman from whom the advice came. Permit me, sir, to suggest the propriety of knowing how far the same views may have been taken *by others*."

He writes again on July 25 :

"The post brought me, about an hour ago, the letter which you did me the honor of writing from Mount Vernon on the 22 instant.—I had

communicated to the gentlemen fully your determination with respect to the ratification. I have no doubt that the order for seizing provision vessels exists. Nothing has occurred to prevent the speaking of that determination. But as the final meeting here is to be this afternoon, it will not be spoken of immediately, lest it should be supposed that we wish to thwart their proceedings."

"July 29, 7 A.M.—As soon as I had the honor of receiving your letter of the 24th inst., I conferred with the Secretaries of the Treasury and of War upon the necessity or expediency of your return hither at this time. We all concurred that neither the one nor the other existed; and that the circumstance would confer upon the things which have been, and are still carried on, an importance which it would not be convenient to give them.

"The translation of the French letter will show it to be only thanks for some information transmitted from my office by your direction.

"Mr. Hammond yesterday received his letters of recall. He came over to state to me that he had several things to communicate, by order, relative to the treaty on the supposition of its being ratified, and that he would impart them to me in a few days, as he expects to be ready for his departure in about a fortnight or three weeks. We entered into some conversation on the occurrences at Charleston, upon which he spake with moderation, and declared that he should represent, when he returned to England, the sincerity of this government in the business of the treaty."

The French letter alluded to I have not been able to discover. Although Randolph was probably supposed by Hammond to have caused his recall, personal motives are not traceable in the latter's conduct. Lord Grenville had manifested extreme anxiety for the ratification of the treaty, and had sent him, as we shall see, the ace with which the immense stake could be won. It was not fairly played, but it was for his country. It must be admitted also that he made an effort to win without it.

But Hammond and his allies in the Cabinet won in the end. In a letter of 31 July the President approved Randolph's memorial to England, demanding revocation of the provision-order as a condition of ratification, as "well designed to answer the end proposed." Fourteen days later he signed the treaty without the stipulation he had repeatedly declared essential.

## CHAPTER XXVI.

### THE INTERCEPTED LETTER.

ON 28 March 1795, the *Jean Bart*, a French corvette, was captured by the *Cerberus*, a British man-of-war, off Pesmarque. An officer of the French vessel threw overboard a packet of papers, which was picked up by a boat from the *Cerberus*. In it were found despatches of the French Minister in America (Fauchet) to his government. Of these copies were sent to the English Minister in America, and reached him shortly before July 26. The President was at Mount Vernon. On July 25 the Cabinet heard the President's ultimatum from the letter of July 22. This ended all hope of ratification without revocation of the provision-order. But on July 26, Hammond invited Wolcott to dinner, and revealed an intercepted letter which promised a change in the situation.

“The first circumstance, [wrote Wolcott] connected with the discovery of M. Fauchet's letter, now in possession of the President, in which I was concerned, was an invitation from Mr. Hammond, the British Minister, to dine with him on Sunday the 26th day of July, which invitation I accepted. At the time appointed I found the company to consist of Mr. Hammond's family, Mr. Strickland, an English gentleman, Mr. Thornton, the late Secretary to the British legation, and Mr. Andrew Allen, of Philadelphia. Before dinner Mr. Hammond took me apart and informed me that he had just received despatches from Lord Grenville, transmitting certain letters from M. Fauchet to the French government, which had been intercepted. The history of these letters, as related by Mr. Hammond, was that they were thrown overboard from a French packet named the *Jean Bart*, on the approach of an English vessel, but were recovered by an Eng-

lishman who plunged into the water after them.<sup>1</sup> After dinner Mr. Hammond in a private room read to me in English the letter, upon which I observed that the information, however new and surprising to me, was attended with circumstances which could not fail to establish a belief that something highly improper had been proposed by Mr. Randolph, and that I considered the information as highly interesting. At the same time I remarked that a discovery of such magnitude could not be permitted to remain with me, and that it could not be communicated unless I was put in possession of the document necessary to support my allegations. After considerable conversation at that time, and at one subsequent interview, it was agreed between Mr. Hammond and myself that the original letter should be delivered to me, upon condition that I should give to Mr. Hammond a copy with my attestation of having received the original, and that it was my true and sincere belief, founded on an acquaintance with M. Fauchet's handwriting, that the said letter was genuine. With this condition I complied, and accordingly on the 28th of July I received the letter and certified a copy which had been prepared by Mr. Thornton.<sup>2</sup> On the morning of July 28th I presented the said letter to the Secretary of War and informed him of the foregoing circumstances, who approved of the steps I had taken, and it was agreed by us that, considering the absence of the President, the letter ought to be shown to the Attorney General as soon as possible. On the 29th of July the Secretary of War and myself visited the Attorney General at his house in the country, and explained the subject fully. It was then agreed that a letter should be written to the President requesting him to return to Philadelphia. This was done by the Secretary of State on the 31st of July, in consequence of a special application by the Secretary of War and myself for that purpose. On Thursday the 11th of August the President returned to Philadelphia, and in the evening of the same day I presented M. Fauchet's letter, before mentioned, with a translation by the Secretary of War, to him, narrating the facts before stated."

The English State Archives do not contain any of the intercepted Fauchet despatches. The only one found among Hammond's papers is the transcript of No. 10, with Mr. Wolcott's

<sup>1</sup> Here Mr. Wolcott seems to follow "Peter Porcupine." Cobbett raised this gallant but mythical tar into an heroic figure of the kind whose "customary attitude" is well known on H. M. S. Pinafore. Our English records (Chap. XXVIII.) show the despatches picked up by a prosaic boat.

<sup>2</sup> The certificate is dated July 29.

certificate, a copy of which, made by his (Hammond's) son in 1855 for Mr. Buchanan, afterwards President, is here used, the accents only added. The French original has never been published.

Légation de Philadelphie  
Relations Extérieures,  
Correspce. Pre. du Ministre.  
Politique. No. 10.

Philadelphie le 10 Brumaire l'an 3me.  
de la République Française,  
une et indivisible.

Joseph Fauchet, Ministre Plénipotentiaire de la République Française, pres les États-Unis. Au Commissaire du Département des Relations Extérieures.

CITOYEN:—Les mesures que la prudence m'ordonne de prendre, vis-à-vis de mes collègues, ont présidé encore à la rédaction des dépêches signées d'eux ; qui traitent de l'insurrection des pays occidentaux et des moyens répressifs adoptés par le gouvernement. J'ai souffert qu'elles se bornassent à donner un récit fidèle, mais nû des évènements ; les reflexions qui y sont consignées ne passent guères les resultats qui se tirent aisement du caractère que prennent les papiers publics : je me suis réservé de te donner autant qu'il est en mon pouvoir la clé des faits que nos rapports détaillent. Quand il s'agit d'expliquer, soit par des conjectures soit par des données certaines, les vues secretes d'un gouvernement etranger, il serait imprudent courir la chance des indiscretions, et de se livrer a des hommes, qu' une partialité connue pour ce gouvernement, une similitude de passions et d'intérêts avec ses chefs, peuvent entrainer a des confidences dont les suites sont incalculable. D'ailleurs les precieuses confessions de Mr. Randolph jettent seules surtout ce qui arrive une lumière satisfaisante: je ne les ai point communiqués encore à mes collègues. Les motifs que je cite plus haut conseillaient cette réticence, et ne permettaient encore moins de m'ouvrir à eux dans ce moment. Je vais donc essayer, Citoyen, de donner un but à toutes les mesures dont les dépêches communes te rendent compte, et de découvrir les véritables cause de l'explosion qu' on s'obstiné à réprimer avec de grands moyens, quoique l'état des choses n'ait plus rien d'alarmant.

Borner la crise actuelle à la simple question de l'excise c'est la réduire bien au dessous de sa véritable echelle ; elle tient indubitablement à une explosion générale preparée depuis longtemps dans l'esprit public ; mais que cette éruption locale et precipitée fait avorter, ou récule au moins pour long temps. Pour en voir la cause réelle, pour en calculer l'effet et les suites, il faut remonter à l'origine des parties qui existent dans l'État, et se retracer leurs progres.

La système du gouvernement actuel a fait des mécontents : c'est le sort de toutes les choses nouvelles. Mes prédécesseurs ont donné des renseignements très détaillées sur les parties du système qui ont particulièrement éveillé des clameurs et acquis des ennemis à l'ensemble. Les divisions primitives d'opinion, quant à la forme politique de l'état et à la limite de la souveraineté du tout sur chaque État individuellement souverain, avaient crée les fédéralistes et les anti-fédéralistes. Par un contraste bizarre entre le nom et l'opinion réelle des parties, contraste jusqu'ici peu entendu en Europe, les premiers tendaient et tendent encore de tout leur pouvoir à anéantir le fédéralisme, tandis les derniers ont toujours voulu le conserver. Ce contraste fut crée par les *consolidateurs*, ou les Constituans, qui se donnant l'initiative des dénominations (chose en révolution si importante !) prirent pour eux celle qui était la plus populaire, quoique elle contredit au fonds leurs idées, et donnèrent à leurs rivaux celle qui devait prévenir contr'eux les oreilles du Peuple quoiqu' ils voulussent réellement conserver un système dont ses préjugés chérissaient au moins la mémoire et la nom.

Au surplus, ces divisions premières, de la nature de celles que le temps devait détruire à mesure que la nation aurait avancé dans l'essai d'une forme de gouvernement, qui la rendait florissante, auraient aujourd'hui complètement disparu, si le système de finances qui naquit dans le berceau de la Constitution ne leur eût donné une nouvelle vigueur sous des formes différentes. Le mode d'organisation du crédit national, la consolidation, la foundation de la dette publique, l'introduction dans l'économie de la méthode des États qui ne prolongent leur existence ou ne diffèrent leur chute que par des expédients, créèrent imperceptiblement une classe financière, qui menace de devenir l'ordre aristocratique de l'État. Plusieurs citoyens, et entr'autres ceux qui avaient aidé à l'indépendance ou de leurs bourses ou de leurs bras, se sont prétendus lésés par ces arrangements fiscaux. Delà une opposition qui se déclare entre l'intérêt foncier ou agricole, et l'intérêt fiscal, le fédéralisme et son contraire qui se fondent sous ces dénominations nouvelles à mesure que la fisc usurpe la prépondérance dans le gouvernement et la législation : delà enfin l'État divisé en partisans et en ennemis du trésorier et de ses théories. Dans cette classification nouvelle des partis, la nature des choses livrait la popularité aux derniers : un instinct inné, pour ainsi dire, revolte les oreilles du Peuple contre les seuls *de fisc* et *d'agiotage* : mais le parti contraire par suite de son habileté s'obstinait à laisser à ses adversaires le nom suspect *d'anti-fédéralistes*, pendant qu' au fonds ils étaient amis de la

Constitution, mais ennemis seulement des excrescences que les théories financières menaçaient d'y attacher.

Il est inutile s'arrêter longtemps à établir que le système monarchique était lié à ces nouveautés de finances, et que les amis des dernières favorisaient les tentatives que l'on faisait pour y arriérer la Constitution par des gradations insensibles. Les écrits des hommes influens de ce parti le prouvent ; et les journaux du Sénat sont dépositaires des premiers essais.

Franchissons donc les espaces intermédiaires, où se signalent les progrès du système, puisqu'ils ne peuvent rien ajouter à les preuves de son existence,—passons sur sa sympathie avec nos mouvements régénérateurs, tant qu'ils parcourent des sentiers monarchiques,—arrivons à la situation où notre révolution republicains a placé des choses et les partis.

Les anti-fédéralistes se débarrassant d'une dénomination insignifiante, et prenant celle des Patriotes et des Républicains. Leurs adversaires deviennent *aristocrates*, malgré leurs efforts pour conserver le prestige avantageux des vieux noms ; les opinions se frottent et se pressent ; on rappelle des essais d'aristocratie qui autrefois avaient paru insignifiants ; on attaque le trésorier qu'on en regarde comme la source première ; on dénonce ses opérations et ses plans à l'opinion publique ; on réussit même à obtenir dans la session de '92 et '93 une enquête solennelle dans son administration. Cette première victoire devait en produire une autre, et on espérait que fautif ou innocent, le trésorier ne s'en retirerait pas moins, par force dans le premier cas, par amour propre dans l'autre. Celui-ci, enhardi par le triomphe qu'il obtient dans l'enquête inutile de ses ennemis dont les deux finis avortèrent également, séduit d'ailleurs par des revers momentaires du Republicanisme en Europe, lève le masque et annonce le prochain triomphe de ses principes.

Cependant les Sociétés populaires se forment, les idées politiques se centralisent, le parti patriotique se réunit et se serre ; il gague une majorité redoutable dans la législature ; l'abaissement du commerce, l'esclavage de la navigation, et l'audace de l'Angleterre le fortifient. Il s'élève un concert de déclarations et de censure contre le gouvernement ; ce dernier lui-même en est étonné.

Telle était la situation des choses vers la fin de l'année d<sup>re</sup> et au commencement de celle-ci. Parcourons les griefs qui s'articulent le plus généralement dans ces instans critiques. Ils t'ont été envoyés à différentes reprises et en détail. On s'élève partout contre la mollesse

du gouvernement envers la Grande Bretagne, l'indéfense du pays contre invasions possibles, la froideur envers la République Française. On attaque le système de finances qui menace d'éterniser la dette sous la prétexte d'en faire la garantie du bonheur public ; la complication de ce système qui soustrait à la surveillance générale toutes ses opérations, le pouvoir effrayant de l'influence qu'il procure à un homme dont on regarde les principes comme dangereux, la prépondérance que cet homme acquiert de jour en jour dans les mesures publiques, et enfin les modes immoraux et impolitiques de taxation qu'il présente d'abord comme expédiens et qu'il exige ensuite en permanence.

En touchant à ce dernier point nous atteignons le principal grief des occidentaux, et le motif ostensible de leur mouvement. Républicains par principe, indépendans par caractère et par situation, ils doivent accéder avec enthousiasme aux criminations que nous avons esquissées. Mais l'excise surtout les affecte. Leurs terres sont fertiles, arrosées par les plus belles eaux du monde : mais les fruits abondans de leurs travaux risquent de périr faute de moyens de s'échanger, comme le font ceux de cultivateurs plus heureux contre des objets que le désir indique à tous les hommes qui ont connu seulement les fruissances que procure l'Europe. Ils transforment donc l'excédent de leurs produits en liqueurs grossièrement fabriquées, qui remplacent mal celles qu'ils pourraient se procurer par l'échange. L'excise naît et atteint ces transformations consolantes ; on répond à leurs plaintes par le seul prétexte qu'ils sont d'ailleurs inaccessible à tout impôt. Mais pourquoi laisse-t-on au mépris des traités porter depuis douze ans au Mississippi le joug du foible espagnol ? Depuis quand un peuple cultivateur subit-il l'injuste loi du caprice d'un peuple exploitateurs de métaux précieux ? Ne peut-on pas supposer que Madrid et Philadelphie se donnent la main pour prolonger l'esclavage du fleuve, que les propriétaires d'une côte inféconde craignent que le Mississippi une fois ouvert et ses nombreuses ramifications rendues à l'activité, leurs campagnes ne deviennent désertes, et enfin que le commerce redoute d'avoir sur ces dernières des rivaux des que leurs habitans cesseront d'être sujets ? Cette dernière supposition n'est que trop fondée : un membre influent dans le Sénat, M. Izard, l'a énoncée un jour en conversant avec moi sans déguisement.

Je ne m'entendrais pas autant sur les murmures qu'excite le système qui préside à la vente des terres. On trouve injuste que ces pays vastes et féconds se vendent par provinces à des capitalistes qui s'enrichissent ainsi et détaillent avec d'immenses bénéfices aux cultiva-



teurs des possessions qu'ils n'ont jamais vues. S'il n'y a pas un dessin caché d'arrêter l'établissement rapide de ces contrées, et de prolonger leur état de l'enfance, pourquoi ne pas ouvrir dans l'ouest des bureaux de vente de terre où tout le monde soit indistinctement admis à acquérir par petite ou grande quantité ? Pourquoi de réserver de vendre ou de distribuer à des favoris, à une classe de flatteurs, de courtisans ce qui appartient à l'État et devrait être vendu au plus grand profit possible de tous ses nombres.

Telles étaient donc les parties de la plainte publique sur lesquelles les Peuples de l'Ouest appuyaient d'avantage. Or comme te le disent les dépêches communs, ces griefs étaient systématisés par les discours d'hommes influens retirés dans ces contrées agrestes, et qui par principes ou par suite d'aigreurs particulières animaient des mécontentemens déjà trop près de l'effervescence. A la fin l'explosion locale s'est opérée. Les occidentaux comptaient être soutenus par des hommes marquans dans l'Est, et croyaient même avoir dans le sein du gouvernement des fauteurs qui partageassent ou leurs griefs ou leurs principes.

D'après ce qui j'ai établi plus haut ces hommes pouvaient en effet être supposés nombreux. La session de '93 et de '94 avait donné de l'importance au parti Républicain, et de la fixité à ses accusations. Les propositions de M. Madison ou son projet d'acte de navigation, dont M. Jefferson était originairement l'auteur, savaient l'intérêt Britannique, part integrante aujourd'hui du système financier. Mr. Taylor, membre Républicain du Sénat, a publié vers la fin de session trois pamphlets où ce dernier est exploré dans son origine, développé dans son progrès et ses suites avec force et méthode. Dans le dernier il assurait que l'état de choses décrépît qui était le resultat de ce système ne pouvait sous un gouvernement naissant présager qu'une révolution ou une guerre civile.

La première se préparait : le gouvernement qui l'avait prévue reproduisait sous diverses formes la demande d'une force disponible qui le mit sur une respectable défensive. Dejoué dans cette démarche, qui peut assurer qu'il n'ait point hâté l'éruption locale pour faire une diversion avantageuse, et conjurer l'orage plus générale qu'il voyait se former ? Ne suis-je pas autorisé à former cette conjecture sur la conversation que le Secrétaire d'État eût avec moi et Le Blanc seuls, et dont ma dépêche No. 3 le rend compte ? Mais comment peut-on espérer d'exécuter ce nouveau plan ? Par des mesures exaspérantes et sevéres, qu'on fut autorisé à prendre par une loi qui ne fut sollicitée

qu' à la fin de la session. Cette loi donnait à la première loi sur la perception de l'excise une force coercitive qui jusques là lui manquait, et qu'on n'avait point osé demander encore.<sup>1</sup> Au moyen de cette loi nouvelle on fit poursuivre avec une rigueur subite tous les citoyens refractaires à l'ancienne ; grand nombre d'assignations furent émises ; on attendait sans doute les suites naturelles d'une conduite si brusque et si tranchante ; on préparait déjà les moyens de répression avant qu'elles fussent déclarées ; c'était indubitablement ce que M. Randolph entendait en me disant que *sous prétexte de donner de l'énergie au gouvernement, on voulait introduire le pouvoir absolu et fourvoyer le Président dans des routes qui le meneraient à l'impopularité.*

Soit que l'explosion ait été provoquée par le gouvernement, ou que le hasard l'ait fait éclaire, il est certain qu'une émeute de quelques centaines d'hommes qui ne se sont pas trouvées rassemblés depuis en armes, et la réunion très pacifique des comtés aux champs de Braddock, réunion qui ne s'est pas renouvelée, n'étaient point des symptômes qui justifiasent la levée d'une force aussi grande que 15,000 hommes. Les principes énoncées d'ailleurs dans les déclarations jusqu'ici rendues publics, annonciaient plutôt des âmes ardentes à calmer, que des anarchistes à réduire. Mais pour obtenir quelque chose d'une opinion publique prévenir contre les demandes que l'on se proposait de faire, il fallait grosser les dangers, défigurer les vues de ces peuples, leur attribuer le dessin de s'unir avec l'Angleterre, alarmer les citoyens sur le sort de la Constitution, tandis qu'au fond la révolution ne menaçait que les ministres. On réussit par cette démarche, on leva une armée ; cette partie militaire de la repression est sans doute de Mr. Hamilton ; la partie pacifique et l'envoi des commissaires sont dus à l'influence de Mr. Randolph sur l'esprit du Président, que j'aime toujours à croire et que je crois véritablement vertueux et l'ami de ses concitoyens et des principes.

Cependant lorsqu'on était sûr d'avoir une armée, il fallait s'assurer encore de cooperateurs parmi les hommes dont la reputation patriotique pouvait influencer leur parti, et dont l'inertie ou le tiédeur dans les conjunctures actuelles aurait pu compromettre le succès des plans. De tous les gouverneurs qui devaient paraître à la tête des requisitions, celui de Pennsylvanie jouissait seul du nom du Républicain : son opinion sur le Secrétaire de la trésorerie et ses systèmes était connue pour n'être pas favorable. Le Secrétaire de cet État

<sup>1</sup> On a mentionné cette loi au travail sur les lois de la dernière session joint au No. 9 de la correspondance du Ministre.

possédait beaucoup d'influence dans la société populaire de Philadelphie, qui à son tour influençait celles des autres États : il méritait par conséquent de l'attention. Il paraît donc que ces hommes avec d'autres que j'ignore, tous ayant sans doute Randolph à leur tête, balançaient à se décider sur son parti. Deux ou trois jours avant que la Proclamation ne fut publiée, et par conséquent que le Cabinet eût arrêté ses mesures, Mr. Randolph vint me voir avec un air fort empressé et me fit les ouvertures dont je t'ai rendu compte dans mon No. 6. Ainsi avec quelques milliers de dollars la République aurait décidé sur la guerre civile ou sur la paix ! Ainsi les consciences des prétendus patriotes en Amérique ont déjà un tarif ! Il est bien vrai que la certitude de ces conclusions pénibles à tirer existera éternellement dans nos archives ! Quelle vieillesse aura ce gouvernement s'il est d'aussi bonne heure décrépité ! Telle est, citoyen, la conséquence évidente du système de finances conçu par M. Hamilton. Il a fait du Peuple entier un Peuple agrioteur, spéculateur, intéressé. Les richesses seules fixent ici la considération ; et comme personne n'aime à être méprisé, tout le monde les poursuit. Cependant les excès de ce genre n'ont point encore passé à la masse du Peuple ; les effets de ce système pernicieux n'ont fait que jusqu'ici que l'atteindre encore légèrement. Il y a encore des patriotes dont j'aime à avoir une idée digne de ce titre imposant. Consulte Monroe ; il est de ce nombre ; il m'avait prévenu sur les hommes que le courant des événements a entraînés comme des corps dénués de substance. Son ami Madison est aussi un homme probe. Jefferson, sur lequel les Patriotes jettent les yeux pour remplacer le President avait prévu ces crises. Il s'est retiré prudemment, pour n'être point forcé à figurer malgré lui dans des scènes dont tôt ou tard on dévoilera le secret.

Sitôt qu'il fut décidé que la République Française n'achetait point des hommes à leur devoir, on vit les individus sur la conduit desquels le gouvernement pouvait former des conjectures inquiétants, se livrer avec une ostentation scandaleuse à ses vues et seconder de même ses déclarations. Les Sociétés populaires émirent bientôt des résolutions teintes du même esprit et qui malgré qu'elles ayant pu être conseillées par l'amour de l'ordre, auraient cependant pu s'omettre, ou s'articuler avec moins de solemnité. Alors on voit sortir des hommes mêmes qu'on avait accoutumé de regarder comme peu partisans du système de taxation et de trésorier, des harangues sans fin pour donner une direction nouvelle à l'esprit public. Les milices cependant témoignent de la répugnance, particulièrement dans la Pennsylvanie pour le ser-

vice auquel elles sont appellées. Plusieurs officiers résignent : on obtient enfin par excursion ou par discours des requisitions incomplètes, et des corps de volontaires semés de tous les partis que comblent les déficits. Combien plus intéressants que les hommes versatiles que j'ai peints ci-dessus, étaient ces citoyens simples qui répondaient aux sollicitations qui leur étaient faites de prendre parti dans les volontaires : " Si nous sommes requis, nous marcherons *parceque nous ne voulons pas de ne point avoir de gouvernement* ; mais nous armer comme volontaires, ce serait en apparence souscrire implicitement au système de l'excise que nous reprouvons."

Tout ce que j'ai dit plus haut autorise donc à ce qu'on s'arrête à l'opinion devenue incontestable, que dans la crise qui a éclaté et dans les moyens employés pour ramener l'ordre la question véritable était l'anéantissement ou le triomphe des plans du trésorier. Ceci une fois établi, passons sur les faits racontés aux dépêches communes et voyons comment le gouvernement ou le trésorier va tirer du coup même qui a menaçé son système l'occasion sur le parti adverse, et de faire taire ses ennemis ouverts ou secrets. L'armée se met en marche : le Président déclare qu'il va la commander : il part pour Carlisle ; Hamilton à ce que j'ai appris demand à le suivre ; le Président n'ose le refuser. Il n'est pas besoin de beaucoup de pénétration pour diviner le but de ce voyage : dans le Président il est de la sagesse ; il peut même être de devoir. Mais dans M. Hamilton c'est une suite de la politique profonde qui dirige tous ses pas ; c'est une mesure dictée d'ailleurs par une connaissance exacte de cœur humain. De quel intérêt n'est il pas pour lui, pour son parti qui chancelle sous le poids des événements au dehors, et des accusations au dedans, d'afficher une intimité plus parfaite que jamais avec le Président dont le nom est un bouclier suffisant contre les attaques les plus redoutables ? Or quelle marque plus évidente peut donner le Président de cette intimité qu'en souffrant que M. Hamilton dont le nom seul est entendu dans l'ouest comme celui d'un ennemi public, vienne se montrer à la tête de l'armée que va pour ainsi dire faire triompher son système contre l'opposition de ce Peuple ? La présence de Mr. Hamilton à l'armée devait le rattacher à son parti plus que jamais ; on sent quelles idées ces circonstances font naître des deux côtés, tout cependant à l'avantage du Secrétaire.

On avait campé depuis trois semaines dans l'ouest, que pas un homme armé ne s'était montré. Cependant le Président ou ceux qui voulaient tirer parti de cette nouvelle manœuvre firent publier qu'il

allait commander en personne. La session du Congrès étant très prochaine, on voulait se l'on aurait pu obtenir à ce sujet des presses qu'on croyait changées, un silence d'où l'on aurait pu conclure la possibilité d'enfreindre la Constitution dans sa partie la plus essentielle ; dans cette qui fixe les rapports du Président avec la législature. Mais les papiers patriotiques relevèrent cette tentative adroit : J'ai la certitude que les bureaux du Secrétaire d'État qui restait seul à Philadelphie (car pendant que le Ministre des finances était à l'armée celui de la guerre visitait la Province du Maine à 400 miles du Philadelphie) soutenaient la polémique en faveur de l'opinion qu'on voulait établir. On parla de comparaison entre le Président et le Monarque Anglais, qui quoiqu' éloigné de Westminster, remplit cependant exactement son devoir de sanction ; on insistait aussi beaucoup sur ce que la Constitution prononce que le Président commande la force armée ; on a conspué la similitude ; la conséquence du pouvoir de commander en personne qu'on tirait du droit de commander en chef (ou diriger) la force de l'État, a l'éte ridiculisée et reduite à l'absurde, en supposant une flotte à la mer et un armée sur terre. Le résultat de cette polémique a été qu'on a annoncé quelques jours apres, que le Président viendrait ouvrir la session prochaine.

Pendant son sejour à Bedford, le Président a sans doute concerté les plans de campagne avec M. Lee auquel il a laissé le commandement en chef. La lettre par laquelle il lui délègue le commandement est celle d'un homme vertueux, au moins quant à la majorité des sentimens qu'elle contient ; il est parti ensuite pour Philadelphie, où il vient d'arriver, et M. Hamilton reste avec l'armée.

Cette dernière circonstance dévoile tout le plan du Secrétaire ; il préside aux opérations militaires pour s'acquérir aux yeux de ses ennemis un relief redoutable et imposant. Lui et M. Lee, le commandant en chef, se conviennent parfaitement de principes. Les Gouverneurs du Jersey et du Maryland s'harmonisent entièrement avec eux ; celui de Pennsylvanie, dont on ne l'aurait jamais soupçonné, vit avec intimité et publiquement avec Hamilton. Un pareil assemblage serait pour produire de la resistance dans les occidentaux dans le cas même où ils ne songeraient à en faire aucune.

Les soldats eux mêmes sont étonnés de la scandaleuse gaieté avec laquelle ceux qui possèdent le secret, affichent leur prochain triomphe. On se demande à quoi serviront 15,000 hommes dans ces pays où les subsistances sont rares, et où il n'y a que quelques hommes turbulents à aller saisir à leur charrue. Ceux qui conduisent l'exposition le sa-

vent, il s'agit de faire une forte défense; quand on viendra à la répartition des sommes, personne ne vondra payer, et ce sera en maudissant les principes insurrecteurs des patriotes qu'on payera les quotes imposées.

Il était impossible de faire une manœuvre plus habile à l'ouverture du Congrès. Les passions, l'indignation généreuse, qui avaient agité dans la dernière session les esprits, allaient renaître avec plus de vigueur encore; on n'avait rien à annoncer des brillants succès qu'on avait promis. Des hostilités de la Grande Bretagne sur le Continent si longtemps déguisées et devenues évidentes, un commerce toujours vexé, des négociations dérisoires trainant à Londres en attendant que des tems nouveaux autorissassent de nouvelles insultes; tel était le tableau qu'on allait avoir à offrir aux Représentans du Peuple. Mais cette crise et les grandes mouvemens qu'on fait pour en prévenir les suites changent l'état des choses. Avec quel avantage on va dénoncer une attaque atroce sur la Constitution, et faire valoir l'activité qu'on a remise à la réprimer; le parti aristocratique aura bientôt entendu le secret; tous les malheurs vont être attribués aux Patriotes; le parti de ces derniers va être deserté par tous les hommes faibles, et cette session entière aura été gagnée.

Qui sait jusqu'ou l'on ne portera point ce triomphe? Peutêtre en profitera-t-on pour obtenir des loix qui renforcent le gouvernement et précipitant encore la pente déjà visible qu'il a vers l'aristocratie.

Telles sont, citoyen les données que je possède sur ces événemens et les conséquences que j'en tire: je souhaite que nos calculs soient déçus, et le bon esprit du Peuple, son attachement aux principes me le font esperer. J'ai peutêtre dans cette dépêche tombé dans la répétition des réflexions et des faits déjà contenues ailleurs; mais j'ai voulu te présenter l'ensemble des vues que je suis fondé à supposer au parti dominateur et des manœuvres habiles qu'il invente pour se soutenir. Sans partager les passions des partis, je les observe; et je dois à mon pays un compte exact et sévère de la situation des choses. Je me ferai un devoir de te tenir au cours de tous les changemens qui pourraient survenir; je vais surtout m'appliquer à pénétrer l'esprit de la Législature. Il ne déterminera pas peu l'idée finale que l'on doit avoir de ces mouvemens, et ce qu'on doit réellement en craindre ou en esperer.

Salut et Fraternité.

(Signed)

J<sup>h</sup>. FAUCHET.

## CHAPTER XXVII.

### THE ORDEAL.

FIVE days after the "fortunate discovery," as Mr. Wolcott called it, Col. Pickering, Secretary of War, writes to the President :

"On the subject of the treaty I confess that I reel extreme solicitude ; and for a *special reason*, which can be communicated to you only in person. I entreat, therefore, that you will return, with all convenient speed, to the seat of government. In the meantime, for the reason above referred to, I pray you to decide on no important political measure, in whatever form it may be presented to you.

"Mr. Wolcott and I (Mr. Bradford concurring) waited on Mr. Randolph, and urged his writing to request your return. He wrote in our presence ; but we concluded a letter from one of us also expedient.

"With the utmost sincerity I subscribe myself, yours and my country's friend,

TIMOTHY PICKERING.

"This letter is for your own eye alone."

The unwitting Randolph having written his letter, the President arrived in Philadelphia on August 11. He sent for Randolph to dine with him, and the two were sitting cheerfully at the table when Col Pickering arrived. Taking a last glass of wine Washington "winked" at him (so Pickering says), and they withdrew into another room, where the Secretary of War said : "That man is a traitor," and gave, in his own fashion, an intimation of what Fauchet's despatch said of Randolph. "Let us," said Washington, "return to the other room to prevent any suspicion of the cause of our withdrawing." On August 12 there was a heated discussion of the treaty, Pickering declaring the opposition a "nefarious conspiracy." The President at rising said : "I will

ratify the treaty." Randolph was astounded, but there was no intimation that this change of front had any thing to do with himself. On the next day Randolph gave to the President the despatches he had sent Monroe in his absence,—those of July 21 and 29. Notwithstanding the assertions of Fauchet's treachery in the latter, no hint was given by Washington that any thing was on his mind. After Randolph had gone, Wolcott, Bradford, and Pickering came, and there was a consultation over the intercepted despatch. This continued from day to day. Washington kept by his side the intercepted despatch and the translation by Col. Pickering, who says he did not understand French, but made it out with help of a dictionary.

In 1806 Mr. Wolcott, at Judge Marshall's request, wrote his account of the Fauchet-Randolph affair :

"That you may judge for yourself of the President's impressions, I shall transcribe a note in his handwriting which he delivered to me, and which has constantly remained in my possession.

"At what time should Mr. F's. letter be made known to Mr. R. ?

"What will be the best mode of doing it? In presence of the Secretaries and Attorney General ?

"If the explanations given by the latter are not satisfactory, whether, besides removal, are any other measures proper to be taken, and what ?

"Would an application to Mr. A. to see the paragraphs in Nos. 3 and 6, alluded to in Fauchet's letter, be proper ? These might condemn or acquit unequivocally. And if innocent, whether R. will not apply for them if I do not ?<sup>1</sup>

"If upon the investigation of the subject, it should appear less dark than at present, but not so clear as to restore confidence, in what light, and on what ground is the removal to appear before the public ?

"What immediate steps are necessary to be taken as soon as the removal of R. is resolved on, if that should be the case, with respect to the archives in that office ?

"If the letter of F. is the only evidence and that thought sufficient to the removal, what would be the consequence of giving the letter to

<sup>1</sup> That is just what Randolph did.



the public without any comments, as the ground on which the measure of the Executive respecting the removal is founded? It would speak for itself; a part, without the whole, might be charged with unfairness. The public would expect reasons for the sudden removal of so high an officer, and it will be found not easy to avoid saying too little or too much upon such an occasion, as it is not to be expected that the removed officer will acquiesce without attempting a justification, or at least to do away by explanation the sting of the letter of accusation; unless he was let down easily, to do which I see no way; for if guilty of what is charged, he merits no favor, and if he is not, he will accept none; and it is not difficult to perceive what turn he and his friends will give to the act, namely, that his friendship for the French nation, and his opposition to a complete ratification have been the cause.'

"The two first of these questions were decided by the President, uninfluenced, as far as my knowledge and belief extends, by any suggestions from the officers of government. He was greatly dissatisfied that the instructions and memorial had not been prepared and submitted to the consideration of the Secretaries and Attorney-General that their reports might be formed, and he peremptorily resolved that whether Mr. Randolph was innocent or culpable, he would require of him the performance of a service which was his official duty, and which ought to have been long before completed.

"It was my earnest wish to be excused from being present at the interview, when Fauchet's letter was delivered to Mr. Randolph. The President, however, determined otherwise, and inserted his decision on the note I have transcribed. He observed, that Fauchet's letter had necessarily excited suspicions; that it was proper that the officers of government, equally with himself, should possess the same opportunities of having those suspicions removed or established; and that notwithstanding the long connection which had subsisted between Mr. Randolph and himself, he was persuaded that any explanations that would satisfy his own mind would also be satisfactory to the officers of the government. After mature consideration it was considered to be improper to make any application to Mr. Adet; that it was improbable Mr. Adet would permit his records to be inspected; that neither Fauchet's dispatch nor any certificate of the French Minister could be regarded as conclusive evidence in favor of or against Mr. Randolph; that Mr. Randolph's conduct at the time an explanation was required would probably furnish the best means of discovering his true situation and of duly estimating the defence he might make.

“When the letter was delivered to Mr. Randolph, the President requested him to read it and make such observations thereon as he thought proper. He silently perused it with composure till he arrived at the passage which refers to his ‘precious confessions,’ when his embarrassment was manifest. After a short hesitation, he proceeded to look over the letter with great attention. When the perusal was completed, he said with a smile which I thought forced: ‘Yes, sir, I will explain what I know.’ He then commenced reading the letter by paragraphs, and though a great part of it contained nothing interesting to himself, yet he commented on every part. His remarks were very desultory, and it was evident that he was considering what explanations he should give of the most material passages. As he was not interrupted it was, however, impossible to speak with precision on one subject while his reflections were employed on other subjects. When he arrived at the passage in which Fauchet refers to the overtures mentioned in No. 6, and the tariff which regulated the consciences of certain ‘pretended patriots,’ his conduct was very remarkable. He expressed no strong emotion, no resentment against Fauchet. He declared that he could not certainly tell what was intended by such remarks. He said that he indeed recollected having been informed that Mr. Hammond and other persons in New York, were contriving measures to destroy Governor Clinton, the French Minister, and himself, and that he had inquired of Mr. Fauchet whether he could not by his flour contractors provide the means of defeating machinations. He asserted, however, that he had never received or proposed to receive money for his own use or that of any other person, and had never made any improper communications of the measures of government.

“One question only was put to Mr. Randolph, namely, how he intended to be understood when he represented Mr. Hammond as contriving to destroy Governor Clinton, Mr. Fauchet, and himself? His answer was, that their influence and popularity were to be destroyed.”

Pickering’s testimony is as follows :

“The President desired us to watch Randolph’s countenance while he perused it. The President fixed his eye upon him; and I never before or afterwards saw it look so animated. Randolph (to whom the French language was familiar) read through the long letter without any visible emotion. This was admitted by the President, Wolcott, Bradford, and myself, as soon as Randolph withdrew. When

the latter had reached the end of the letter he very deliberately said to the President : ' If I may be permitted to retain this letter a short time, I shall be able to explain in a satisfactory manner every thing in it which has reference to me.' ' Very well,' answered the President, ' retain it.'<sup>1</sup> But, instead of giving the preposed explanation, Randolph sent in his resignation."

The only contemporary narrative is that of Randolph.<sup>2</sup> On August 19, on his way to the President at 9 A.M., the usual hour, he met the steward, who said the President desired his visit postponed till 10.30. Arriving at this time he learned that Wolcott and Pickering had been there some time, and supposed the steward had made a mistake. The President rose with great formality, and after a few words handed him the French despatch, saying: " Mr. Randolph ! here is a letter which I desire you to read, and make such explanations as you choose."

" On reading the letter I perceived that two of the most material papers, which were called the dispatches Nos. 3 and 6, were not with it. . . . Being thus suddenly, and without any previous intimation, called upon before *a council*, which was minutely prepared at every point ; not seeing two of the most essential references ; and having but an imperfect idea of most of the circumstances alluded to, I could only rely on two principles, which were established in my mind : the first was, that according to my sincere belief I never made an improper communication to Mr. Fauchet ; the second was, that no money was ever received by me from him, nor any overture made to him by me for that purpose. My observations therefore were but short. However, I had some recollection of Mr. Fauchet having told me of machinations against the French Republic, Gov. Clinton and myself ; and thinking it not improbable that the overture which was spoken of in No. 6, might be, in some manner, connected with the business, and might relate to the obtaining of intelligence, I mentioned my impression ; observing at the same time that I would throw my ideas on paper. The President desired Messrs. Wolcott and Pickering to put questions to me. This was a style of proceeding to which I would not have submitted had it been pursued."

<sup>1</sup> A mistake. Randolph in his resignation asks for the letter, and Washington in reply (Aug. 20) promises a copy.

<sup>2</sup> In his *Vindication* ; the material facts of which are used.

The President was called out during the interview, and on his return desired Randolph to step into another room, while he should converse with Messrs. Wolcott and Pickering upon what he had said. Randolph was recalled after three quarters of an hour. Few words passed. The evening (Aug. 19) brought the President Randolph's resignation.

"Immediately upon leaving your house this morning I went to the office of the Department of State, where I directed the room, in which I usually sit, to be locked up, and the key to remain with the messenger. My object in this was to let all the papers rest as they stood.—Upon my return home I reflected calmly and maturely upon the proceedings of this morning. Two facts immediately presented themselves; one of which was, that my usual hour for calling upon the President had not only been postponed for the opportunity of consulting *others* upon a letter of a foreign minister, highly interesting to my honour, before the smallest intimation to me; but they seemed also to be perfectly acquainted with its contents, and were expected to ask questions for their satisfaction. The other was, that I was desired to retire into another room, until you should converse with them upon what I had said.—Your confidence in me, sir, has been unlimited; and I can truly affirm, unabused. My sensations then cannot be concealed, when I find that confidence so immediately withdrawn without a word or distant hint being previously dropped to me! This, sir, as I mentioned in your room, is a situation in which I cannot hold my present office, and therefore I hereby resign it."

Randolph's colleagues were surprised by his resignation. So little could they appreciate the man they struck down. But even their sensibilities might have recognized their colleague's situation had they known all that had passed, between Washington and his comrade of twenty years, during the eight days between the arrival from Mount Vernon and the sacrifice of that comrade. Twice during that period had Washington invited Randolph to dine with chosen friends, and given him the seat of honor at his table. On August 14 Washington went from the secret consultation to Randolph's house—for once disregarding the etiquette so carefully observed,—and dandled the children on his knee.

Wolcott intimates that the reason for this suppression of the letter was that the President was resolved that Randolph should prepare and sign the memorial. In a letter to Randolph of Sept. 27 the President says: "Your signature as Secretary of State to the ratification of the treaty having been given on the 14th of August—and your resignation not taking place until the 19th, it became necessary, in order to be consistent (the original being despatched), that the same countersign should appear on the copies—otherwise this act would not have been required of you." But Washington never explained why he did not reveal the letter to Randolph when he received it, or why, disregarding custom, he visited the Secretary in his home, on the day when the terrible task was imposed of humiliating himself before Mr. Hammond.

On that day, August 14, Hammond transmitted the altered memorial to Lord Grenville, adding: "When he delivered it to me Mr. Randolph did not attempt to conceal his chagrin upon the occasion, but voluntarily confessed that his opinion had been overruled in the President's Cabinet."

So much was Edmund Randolph able to endure from simple loyalty and affection for the man at whose feet he was to fall as a victim five days later. "Of my fidelity you never entertained a doubt," said Randolph confidently to Washington, in that tragical hour. There was no reply.

Randolph was, indeed, brought down with arrows feathered from his own filial breast. Jealousy for the President's dignity had caused him to inform Jay in London of Hammond's affronts, thereby causing that minister's recall, and earning his resentment. A similar disrespect in Fauchet had estranged him from that Minister, whose calumnies returned on him. Without payment he had built up Washington's estates, while his own went to ruin; he was unwilling to accept fees which might have lessened the difficulties utilized by enemies to render the charge of venality

plausible. In Washington's defence he had assailed the "democratic societies" which censured the President, so earning the distrust of the French party. By Washington's desire he had pursued Fauchet into the country, and soothed his anger with the assurances of the President's friendship for France, which the Frenchman utilized to suit himself. When Hamilton revealed Washington's letters sanctioning his use of the loan, Randolph shielded the President in the only way possible, but one which turned the wrath of Hamilton on himself. This is but a partial list of Randolph's self-forgetting services to Washington which came back on his devoted head. At an earlier period of life Washington might have had the delicacy to realize these things. The weakness of age which Jefferson remarked in the great man in 1793 had terribly advanced under two years of unceasing worry. "When thou shalt be old thou shalt stretch forth thy hands, and another shall gird thee, and carry thee whither thou wouldst not."

## CHAPTER XXVIII.

### REVELATIONS FROM ENGLISH ARCHIVES.

THE Foreign Office Archives in London, hospitably opened to me, have yielded facts, hitherto unpublished, essential to the right understanding of this history.<sup>1</sup>

Mr. Jay and Lord Grenville affixed their signatures to the treaty on the 19 Nov. 1794. On the day following, three despatches (Nos. 20, 21, 22), were written from Downing Street to Hammond. No. 20 encloses the signed treaty; says that Jay's conduct has been entirely satisfactory. "Some points which remain unadjusted will be the subject of a communication from him (Jay) to Mr. Randolph, with whom, it is hoped, the same spirit will prevail." No. 20 seems meant for the eyes of Jay and Randolph. No. 21, of the same date, is confidential. It states that the Indian war on the northwest frontier had been discussed with Mr. Jay. It is desirable that the war should be concluded. Lord Grenville suggests that Hamilton (Secretary of the Treasury) should be conferred with confidentially with a view to concluding some arrangement with the Indians.

"There are many reasons for wishing that the discussion of this important business may if possible pass between you and Mr. Hamilton without any communication of it being made to Mr. Randolph, at least until it shall have been brought to a state in which it may be rendered public; as the whole conduct of that gentleman since his first appointment to the official situation he now holds has given the greatest dissatisfaction here; and particularly as with respect to the Indian war

<sup>1</sup> In the summaries I follow nearly the language of my intelligent English copyist, my own occasional comments being given in foot-notes.

and to the unfounded assertions on that subject which he has thought proper to bring forward in his correspondence with you and to circulate through the whole of the country by the publication of that correspondence.<sup>1</sup> I have not failed to express to Mr. Jay the sentiments of H. M. government on this conduct of the American Secretary of State, and I think it is not improbable that Mr. Jay will represent it in a proper point of view to his government ; but, in order to put the business on a proper footing, and to remove any impressions which may have been made in America by such false representations, it has been agreed between Mr. Jay and me that he shall write me a letter on this subject, in answer to which I shall have the opportunity of disclaiming the fact of any instructions having ever been given from hence to stir up the Indians against the United States. You will observe that what I have hitherto stated applies with equal force to almost any mode by which the Indian war may be terminated ; but it is much to be desired that this object may be accomplished by the assistance and through the mediation of this country. You will therefore not fail to exert yourself to the utmost to bring forward this point, which must however be done with caution and delicacy ; as too great an eagerness on our part may give room to unfounded jealousies on that of the American government. The strongest inducement to be held out to that government will be the showing them that, if the Indian war should be satisfactorily concluded by the interference of H. M. government in America, it would naturally follow that His Majesty and the United States might then enter into a mutual guaranty of such arrangements."

No. 22, of the same date, refers particularly to Mr. Randolph's conduct in the publication of official correspondence between the public ministers of two governments, as "perfectly improper," "unusual," "fraught with obvious inconveniences," increases irritation and animosity in minds of people at large.<sup>2</sup> The style of Mr. Randolph's letters is equally blamable. "These letters uniformly breathe a spirit of hostility towards Great Britain and a

<sup>1</sup> The correspondence was laid before Congress by the President and so given to the world. Jay must have known this.

<sup>2</sup> The President, in publishing the correspondence, dealt with a popular animosity already awakened by the menaces of Dorchester and Simcoe, and which could not be satisfied without knowledge of the stand he had taken. As Grenville writes under a king who can "do no wrong" save through his ministers, allowance must be made for his laying every thing at Randolph's door.



desire of turning to that object every event which has occurred." Expressions of the letter addressed by Mr. Randolph to the French convention go far beyond the resolution of Congress on which they are grounded, and are inconsistent with assurances of friendliness. Publication by Mr. Randolph of list of American shipping supposed to have been taken by Great Britain highly improper and inflammatory. The insinuation that the Indian war has been promoted and encouraged by England cannot be proved by conduct of a few unauthorized individuals joining the Indians. It is impossible that friendship and harmony prevail while conduct of this kind continues. Lord Grenville suggests that, "without making any ministerial remonstrance, you should converse confidentially on this subject with those persons in America who are friends to a system of amicable intercourse between the two countries; in the view that some steps may be taken in respect to this affair, so as either to convince Mr. Randolph of the necessity of his adopting a different language and conduct, or at least to replace him in a situation where his personal sentiments may not endanger the peace of two countries between whom I trust a permanent union is now established." He advises that this be done with prudence and delicacy.

On 15 April 1795 Grenville expresses uneasiness at hearing nothing of the treaty's arrival in Philadelphia. Under date of Feb. 23 Hammond explains that unless the treaty arrives before March 3, "on which day Congress must necessarily adjourn (on account of its being the expiration of the period for which the House of Representatives was elected), it is understood that 90 days must elapse before the President can again convene the Senate." On March 7 Hammond reports having just received a note from Mr. Randolph announcing the arrival of Captain Blaney at Baltimore with the treaty. May 9 Grenville instructs Hammond that Parliament cannot be kept sitting until the treaty, if ratified, arrives. "Advice having been received here of the cap-

ture of the 'Tankerville' packet with the November and December mails [containing all copies of the treaty sent by both Jay and Grenville] on board by a French armed vessel, I now send you enclosed duplicates of my despatches . . . which had been sent by that conveyance." On April 3 Hammond reports much public excitement and curiosity about the treaty. "No particulars, however, respecting it have hitherto transpired; and in fact Mr. Randolph has informed me that there are considerations of a peculiar nature which induce the President to confine the knowledge of its contents to himself and the Secretary of State alone, and not to communicate them to the other members of the American Administration." On April 28 Hammond reports capture of the "Tankerville," on her passage from Falmouth to Halifax, by the "Lovely Lass" privateer. "Its mails were, I understood, previously thrown overboard, and the packet herself sunk after her officers and crew had been removed on board of the 'Lovely Lass,' from which vessel they were soon afterwards released by the commander and sent in a Spanish prize to Barbadoes, where they arrived in safety." He states that the "Lovely Lass"—a British prize captured in July 1793 by the "Citoyen Genet" privateer—was laid up at Baltimore, and attracted notice, as she was being fitted up. She was surveyed by the customs, and her equipment taken out, but escaped in January with 14 cannon on board. On June 28 Hammond writes that although the capture of the "Tankerville" has been personally embarrassing, no public inconvenience has resulted, as the delay has reserved discussion of the treaty for the Senate, "which is universally regarded as the most respectable on every account which has ever existed since the establishment of the present government." This was preceded, June 25, by a despatch containing the following:

"Yesterday afternoon the Senate (of which body all the members were assembled) recommended to the President to ratify the treaty

concluded by your Lordship with Mr. Jay, one stipulation alone excepted, which is contained, I understand, in the 12th Article; but having never yet seen the treaty I cannot be certain as to the number. It is, however, that which relates to the regulating the commerce between this country and the British West Indies, and to the absolute prohibition of re-exporting from the former the products of those islands, or of such as belong to other European powers. In the debates upon this point it was observed that amongst the productions so prohibited, cotton, one of the staples of the United States, was included, and that the trade carried on by their citizens with the North of Europe in the sale of the productions of the French islands was so lucrative, and constitutes so important a part of the actual commercial speculations of this country, that it was not to be expected that the individuals engaged in them would consent totally to relinquish them. At the same time it was presumable that, as the liberty of trading to His Islands had been conceded by His Majesty as a favour, and could not have been demanded by the United States as a matter of right, the British Government could not be offended, nor esteem itself in any manner aggrieved, if the citizens of America preferred the continuance of the former system of exclusion from the British West Indies to the acquisition of the privileges granted by the Treaty under the limitations by which they were to be accompanied. For these reasons it was unanimously determined to omit the article altogether, and to request the President to institute a new negotiation upon it with H. M. Minister. On the division 20 members voted in favor, and 10 against the ratification of the remaining articles, without any alteration whatever. The question was therefore finally decided by the precise majority (two-thirds) that is required by their constitution on subjects of this nature. To be sure the proceedings of the Senate have been secret, but your Lordship may be assured of the authenticity of the circumstances I have mentioned as they were last night communicated to me in confidence by Mr. Wolcott, the present Secretary of the Treasury."

On July 18 Hammond transmits a copy of the treaty (with two motions made in course of the discussion) as published by a member of Senate "in defiance of general regulations and of a positive order on the subject." The motive of the disclosure was to render it an object of public discussion, and to excite popular resentment against the government, and those who approved of

it. This artifice, it is added, has proved successful. Great ferment prevails in various parts of the country; and Boston and other places have determined to ask the President to refuse his consent to its ratification. Hammond mentions in this despatch (23) an interview with Randolph, from which he gathers that President will ratify treaty in agreement with determination of Senate. The Secretary promises to transmit a memorial of President's motives. But Hammond remarks that this decision of the President was formed previous to manifestation of popular dislike. Treaty is a pamphlet of 27 pages, headed "authentic," printed by Benjamin Franklin Bache. On the front page is a letter from Stephen Thomson Mason (one of the Senators from Virginia), dated 29, 6, '95, addressed to B. F. Bache, editor of the *Aurora*, in which, after alluding to an incorrect extract which appears in the paper, he states that he forwards a genuine copy of the treaty "for the purpose of giving to the citizens of America full information respecting this momentous business." The names of the members who voted pro. and con. are finally given.<sup>1</sup>

On July 27, Hammond writes:

"The ferment which I mentioned in my No. 23 as existing in this country with respect to the Treaty with Great Britain has considerably increased since the date of that letter. Tumultuous meetings of the people have been held at Portsmouth (New Hampshire), Boston, New York, Philadelphia, Norfolk, and Charleston, in all of which it has been determined to present remonstrances to the President reprobating the Treaty in terms of the grossest invective, and requesting him to withhold his ratification of it. The meetings in this city (of which there have been two) have been peculiarly distinguished by their violence. Towards the conclusion of the second of them, on Saturday last, about three or four hundred persons proceeded from the place of assembly to the house of Mr. Bond, his Majesty's Consul General, before which,

<sup>1</sup> These names the British Minister, so jealous of our senatorial secrecy, must have obtained from the same faithful ally (Wolcott) who obtained for him a resumé of the debate. As for the publication of the treaty by Mason, it has already been seen that the President, on the same day, had ordered its publication, as he was desirous of hearing the voice of the people.

after much tumult and clamour, they burnt a copy of the treaty. Thence they came to my house, and after ranging themselves in front of it in the street and expressing their indignation by various noises, burnt another copy of the treaty. Although no personal injury was offered to any part of my family or of Mr. Bond's, I esteemed it nevertheless becoming my public station to take some notice of this transaction ; and in consequence of that opinion I have had, agreeably to appointment, a conversation with Mr. Randolph this morning upon the subject, in the course of which I represented that, as from the circumstance of Mr. Bond's house and mine having been selected as the objects of this outrage, no doubt could be entertained that it was the intention of the individuals concerned in it to insult the British nation through its representatives in this country ; and I thought it an act of respect due as well to this government as to my own not to pass this insult over in silence, but to relate the facts exactly as they had occurred, and to leave it to this government to decide on the steps which it might deem it expedient to take on the occasion. Mr. Randolph in reply coincided entirely in sentiment with me as to the nature and extent of the indignity offered, but doubted much whether it was cognizable by the laws of this country. He, however, desired me to state the particulars in writing, and assured me that he would take them into consideration. To this I answered that I would address a letter to him to-morrow on the subject, in which I should confine myself merely to a recital of facts, and should not insist on any reparation or redress, since the object I had in view would be effectually answered by establishing on record my statement of this transaction.

“ The three ships *armés-en-flûte* which have been so long detained in the harbour of Norfolk sailed from that Port about a fortnight ago.

“ Since the conference mentioned in my Despatch No. 23, I have had another conversation with the Secretary of State on the subject of the treaty, in the course of which he repeated pretty nearly the sentiments which he had advanced upon the former occasion, and added that he had transmitted to the President for his approbation the memorial which he (Mr. Randolph) has been for some time past preparing to deliver to me. He further informed me that that paper will contain an explicit declaration of the principles which will influence the President's determination either in agreeing to ratify the treaty, conformably to the resolution of the Senate, or in suspending or even absolutely refusing the ratification of it unless the Order of Council authorizing the seizure of neutral vessels bound to France with provisions be previously revoked.”

14 August. No. 31. From Mr. Hammond.—“Since the date of my last letter the attention of this country has continued to be engrossed by the Treaty, and although the popular ferment is not quite so violent as it was when I wrote, a considerable degree of irritability still exists upon the subject.”

He encloses a copy of his letter to Randolph concerning the popular insults, with the Secretary's reply, which, with its warm regret for the same, encloses the opinion of the Attorney General (Bradford, a British partisan) that the indignity is not cognizable by the laws of the United States.

On August 31 Lord Grenville writes that he had foreseen that “the French and democratical party” would excite a prejudice against the treaty, but it was conceived that if the United States Government has strength and firmness to resist these clamors, the results would be beneficial. He is sorry to see wavering on this point. He points out the inconvenience and hazard of further discussion and delay, and deprecates opening a new negotiation, which would unquestionably afford fresh matter for exciting opposition to the government, and animosity against Great Britain.

This despatch of Lord Grenville was passed on its voyage by one from Hammond, Aug. 14, transmitting Randolph's memorial—the Secretary's last and most painful task.

No. 33.—“On this paper [writes Hammond], it is at present merely necessary for me to remark that I have a certain knowledge that in its actual form it differs widely in expression and sentiment from the paper originally composed by the Secretary of State, and that the alterations it has undergone are clear indications of the declining influence of that gentleman in the councils of this country. Indeed, when he delivered it to me Mr. Randolph did not attempt to conceal his chagrin upon the occasion, but voluntarily confessed that his opinion had been overruled in the President's Cabinet.”

It is now necessary to go back on our dates a little.

On the 9 May 1795 Lord Grenville writes:

“ I send you enclosed for your information a précis of certain Despatches from the different ministers and agents of the French convention in America, which were found on board the *Jean Bart*, a French vessel, captured by His Majesty’s cruisers on its passage from America to France. It is probable that, by a future conveyance, I may be enabled to send you the original despatches, the communication of some of which to well-disposed persons in America may possibly be useful to the King’s Service.”

On June 4 Grenville writes ;

“ I also send you enclosed the originals of the Despatches from the ministers and agents of the French convention in America, which were found on board the French vessel *Jean Bart*, captured by His Majesty’s cruisers on the passage from America to France, of which I sent you a précis in my Despatch No. 8, with a view that you should communicate such parts of them as you may deem expedient to well-disposed persons in America.”

The capture is described by affidavits.

“ Affidavit by Jno. Colpoys, Vice-Admiral of the Blue Squadron of H. M. Fleet and Commander-in-Chief of H. M. Vessels and Ships at Portsmouth, dated 16 June 1795, declares : That a squadron of H. M. Ships of War being on a cruise, the French corvette *Le Jean Bart* was taken as prize on 28 March 1795 by H. M. Frigate *Cerberus* ; that he was informed that the papers were thrown overboard, of which two private letters and a butcher’s bill were delivered to declarant by Capt. Drew, Commander of the *Cerberus*. The letters were delivered to owner on *Jean Bart*, and the butcher’s bill destroyed. That so far as he knows, no other writings or papers were delivered up or found.”

“ The depositions were taken at the house of Ann Palmer, bearing the sign of the George, in Portsmouth, on 18 April 1795, and were interpreted by the Revd. Wm. Howell, Clerk. A copy of the Standing Interrogatories applicable to such cases is attached. They are 34 in number, and are to be in force ‘during the present hostilities,’ in virtue of H. M. commission of High Court of Admiralty 20 Feb. 1793.

“ Guillaume François Need, 36, of St. Malo, states that he esteems himself a servant of the French Republic, that the *Jean Bart* was a corvette of war of the French Republic, which was captured about 20 leagues from Pesmarque, in France, on 28 March last, by the *Cerberus*, Capt. Drew, in sight of Rear Admiral Colpoys’ squadron ; that he was appointed captain of the *Jean Bart* by the Marine Minister of the

French Republic, and that he sailed under the F. R. colours ; that there were 118 on board, all French except one American ; that none of the papers or writings were burnt or otherwise destroyed before the capture, except that an officer threw overboard, at his (Need's) directions, his orders, his private signals, and a packet which he was bringing from New York to France, which packet not sinking, was taken up by a boat of the *Cerberus* ; that he was on his way to Brest.

“ *Francois Auguste Cotelle*, 28, 1st Lieut., corroborates, but says nothing of the packet incident ; neither does *Charles Nicole*, who also corroborates the other particulars.”

On July 27 Hammond writes home concerning the French despatches :

“ I beg leave to offer to your Lordship my most respectful acknowledgment for the several very important papers which were enclosed in your Despatch No. 12, and of which I shall endeavor to make such use as will, I hope, be productive of the most beneficial effects to the general interests of His Majesty's service. The originals of the French letters are peculiarly interesting, and will, I am persuaded, if properly treated, tend to effect an essential change in the public sentiment of this country with regard to the character and principles of certain individuals, and to the real motives of their political conduct.”

Along with the French despatches which secured Randolph's downfall came Hammond's recall. The two men passed out of this great struggle together. Hammond had become as necessary a sacrifice to the French as Randolph to the English party. Not long before, reciprocity with France had necessitated the recall of Gouverneur Morris in consideration of that of Genet ; and it is not improbable that Randolph's dismissal might have been sternly demanded in return for that of Hammond, even had Fauchet's letter not been intercepted. The last official acts of the two combatants were Randolph's preparation of the modified memorial, and Hammond's triumphant transmission of it to England.

The next official despatch is from Phineas Bond, His Majesty's *chargé d'affaires* at Philadelphia, 24 August 1795.



“On 21st Inst. Mr. Randolph resigned his place as Secretary of State, and yesterday Mr. Bradford, Attorney General, died after a very short illness. Immediately after Mr. Randolph's resignation, before it was generally known, he set out on a journey to the Eastward, the cause of which was ascribed to the necessity of an immediate conference with the Governor of Rhode Island relative to some differences which had arisen there with Capt. Home, Commander of H. M. Ship 'Africa.' I very soon discovered, my Lord, that the motive which induced this journey was was not of a public but of a personal nature, and originated in a desire which Mr. Randolph possessed to obtain an explanation from M. Fauchet, the late Minister of France, upon some recent discoveries which were *supposed* materially to implicate the character of the former gentleman, and which unquestionably led to his resignation.”

By a note from John Hamilton, British Consul at Norfolk, Va., September 24, it would appear that the facts were not generally known in Randolph's State at that time. “Much,” he writes to Grenville, “is at present said on account of a correspondence reported to have been intercepted between a gentleman lately high in office in the Federal government and the late French minister plenipotentiary. The nature of it at present is kept very secret, but it is apprehended it will be the subject of public investigation.”

Washington had ordered his Secretaries to keep every thing about the affair secret until Randolph should have prepared his vindication. But it is evident that the British Embassy was regarded by Mr. Wolcott (who had a spy at Newport) as part of the President's Cabinet. On September 29, Mr. Bond, *chargé d'affaires*, writes home :

“The letter I have the honor to enclose to your Lordship, published by Mr. Randolph on his return from Rhode Island, dated at German Town, 15<sup>th</sup> curr., and addressed to the President of the United States, promises a digest of certain matters relative to that gentleman's conduct, which unquestionably influenced his resignation.

“It seems, my Lord, that upon the arrival of Mr. Randolph at Newport, which happened on the evening previous to the departure of

M. Fauchet in 'La Meduse,' these gentlemen had an interview in which much acrimonious conversation passed. When Mr. Randolph found 'La Meduse' was under weigh next morning he could not refrain from expressions of great reproach. The pilot on his return brought him a note from M. Fauchet, which the friends of Mr. Randolph declare contains a complete refutation of the charges which have now very improperly become the subject of general conversation here ; they go so far as to assert that M. Fauchet has in terms denied having written to France any thing which could tend to throw a suspicion of undue influence, either practised or attempted, and that if any despatch said to have been written by him to France contained such an imputation, it was a direct forgery.

"In a conversation I have just had with the Secretary of the Treasury, I mentioned these reports, and expressed my conviction that M. Fauchet could not have committed himself by making such fallacious declarations. I also thought it necessary to observe that if in any digest or detail of a particular transaction the least reflection should be cast upon His Majesty's Ministers, I should feel myself in a very delicate predicament, but, at all events, called upon in the most pointed manner to refute such reflections, unless this government should come forward and do all that justice and candor required.

"I found the Secretary of the Treasury very explicit and manly upon this point. He very freely entered into the reasonableness of my expectations upon a subject so interesting, and assured me without reserve that if any publication should appear which had the tendency I anticipated he should think himself bound 'to stand in the gap,' and disclose to the world every fact of which this government was in possession."

On October 11 Mr. Bond writes :

"In an evening paper of the 10th currt. appeared the extract of another letter, of the 8th currt. from Mr. Randolph to the President of the United States, which I have now the honor to enclose to your Lordship.

"The President being still at Mount Vernon, the result of this application is not known. As it plainly implies an intended appeal to the people in the event of a refusal of the paper required, it is rather presumed no notice will be taken of an application which contains a threat so derogatory to the dignity of the government."

On November 15 Mr. Bond writes to Lord Grenville :

“The offices of Secretary of State and Attorney General still remain vacant, nor has the President yet been able to select from the different States persons calculated to fill these important places, or at least any who in times like these are willing to enter upon the exercise of public duties.

“Mr. Randolph, in preparing his vindication of his resignation, contemplates a review of the important acts of the Government for a space of no less than 18 months, and though it is not easy to discover any connexion between the general system of the government, and the imputations which, in their application to him individually, go further than merely to affect his partiality as the minister of a neutral nation, there is a party here ready to avail itself of the threatened disclosure, and to justify that gross violation of public and private confidence which affords them the means of embarrassing the Government.

“Much correspondence has passed between Mr. Randolph and the members of this Government since his return from Rhode Island. His demands have been pointed to the obtaining of papers necessary to his defence, with which, for the most part, he was instantly furnished. Some little delay happened in the delivery of one paper, to which Mr. Randolph alluded in his letter of the 8th ult. to the President of the United States, the printed extract from which I had the honor to forward to your Lordship, in my Despatch No. 9. I am informed the paper requested is a copy of a letter from the President to Mr. Randolph relative to the treaty, which having been written in the fulness of confidence to a favorite Minister, was not so well calculated to meet the public eye as it might have been if written for the purpose of being promulgated.<sup>1</sup> The present members of the Cabinet, therefore, hesitated as to the delivery of this paper until the sense of the President should be known. Upon his arrival from Mount Vernon he directed a copy of the paper to be prepared, which was enclosed to Mr. Randolph, with a declaration of the President’s permission to him to publish that paper as well as the letter in which it was enclosed, enjoining him at the same time to avoid any disclosure which might implicate the interests of the people. Some enquiry has been made by Mr. Randolph as to the length of time His Majesty’s Minister Plenipotentiary was in possession of the intercepted despatches previous to his communicating them to the Secretary of the Treasury, and as to the nature of your Lordship’s instructions which accompanied them. The Secretary of

<sup>1</sup> By referring to the letter of July 22 (Chap. XXV) it will be perceived that it was an instruction to be used for the information not only of the Cabinet, but, on fit occasion, of others.

the Treasury, not being competent to satisfy these enquiries, contented himself with declaring the manner in which the material despatch was communicated to him, and the motive which impelled him to submit to the consideration of the President the very important detail which it contained.

“ The drift of these enquiries is to fix upon the President a change of sentiment in respect to the Treaty, imputable to an influence created by the delivery of the intercepted despatch. But in what manner this can operate to the exculpation of the Party, whom the intercepted despatch so unequivocally implicates, is yet to be determined. The only publication which has appeared under the signature of Mr. Randolph since the date of his letter to the President, of the 8th ult., is the apology for the delay of his vindication in a letter to his printer of the 7th curr., a printed copy of which I have the honor to enclose to your Lordship.”

The final mention of the subject discovered in the British Archives is in a despatch from Mr. Bond, 20 Dec. 1795 :

“ After a considerable lapse of time the vindication of Mr. Randolph was published on the 18th curr. I have the honor to transmit the pamphlet to your Lordship. From all that I can learn there seems to be but one opinion on the subject, that to the most dangerous enormity originating in the most sordid motives, he has added the violation of that secrecy and faith which his late station enjoined him to maintain, and treachery to his patron and protector.

“ Whatever effect this publication may have in developing the motives which have influenced the government of the United States, it has operated very perceptibly here in diminishing the inveteracy which heretofore marked the conduct of the party to which the late American Secretary of State was attached. Every man of that party (particularly such as are implicated in the remarks contained in Mr. Fauchet's intercepted letter) seems willing to let this ruin'd Bark sink of itself, and to shun the vortex which hurries it to the bottom. I have not yet had an opportunity of conversing with any of the members of this government upon the subject. The vindication has taken so extraordinary a form that in my present opinion no interposition on my part seems to be requisite further than to inculcate upon this government, in case any public discussion should be adopted, the recollection and avowal of the printed denial, so often made by His Majesty's late Minister Plenipotentiary, of any interference on the part of His Majesty's government to encourage the continuance of the Indian wars, but on the contrary

a repeated offer of mediation to promote an amicable adjustment of differences.

“I understand some ideas are entertained of instituting an impeachment, but the apprehension at present is that it could not be carried in the House of Representatives.

“The public prints have announced the appointment of Colonel Pickering as Secretary of State, in the room of Mr. Randolph, resigned.”

With regard to the “sordid motives” attributed to Randolph by Bond, it may be observed that, during the month of July, when the treaty hung in the balance controlled by Randolph, Hammond must have had in his pocket the Fauchet accusations; they were dispatched in précis from Downing Street May 9; yet he did not try to influence the Secretary of State by threat of exposure. The emergency might have justified it had the Minister so measured his man.

## CHAPTER XXIX.

### A SUSPENDED SWORD.

IF an English ship intercepted Fauchet's despatches, another intercepted Fauchet himself. Though supposed to be far away at sea, Randolph heard of his detention at Newport, and there overtook him. He had to wait for a copy of Despatch 10 promised by the President, and could not leave Philadelphia until Aug. 21. It was a tedious journey by coaches and boats, and after dreary delays he reached Newport Aug. 31. Whatever anger Fauchet had felt against Randolph nine months before, when No. 10 was written, he recoiled now from the startling result. The Despatch had returned at a moment when it must strike down the one minister battling against ratification of the British treaty. The *Meduse*, waiting to carry him to France, was watched by the British war-ship *Africa*. Fauchet promised an exculpation, and agreed to answer questions before others. While Randolph was securing attendance of Judge Marchant, and representative Malbone, he heard that the *Meduse* was weighing anchor. Rushing to Fauchet's lodgings he found no paper left, and despatched a swift boat, with a note in which he said: "My innocence of the insinuations, arising from your letter, you not only know but have twice acknowledged to me." Fauchet answered (15 Fructidor): "I have just transmitted to citizen Adet, the minister of the Republic in Philadelphia, the packet which I destined for you."

I am indebted to Mr. Moncure Robinson, of Philadelphia, for two letters to Senator Langdon.

"FAIRFIELD IN CONNECTICUT, 7 Sep. 1795,—I write this short private and confidential letter, for your own inspection only, to inform you that I am returning from Newport, where I have seen Mr. Fauchet. My object in this errand was to remove some very injurious impressions which an intercepted letter of his had cast upon myself and the republicans of our country. He has made explanations which will, if justice takes place, be satisfactory.

"When I get matters arranged I will again write to you. In the mean time I will only say to you, that a dart is aimed at me, and through me at many others. Let this rest with you till I lay before you fully the reasons of my resignation."

"PHILADLPHIA, Oct. 2, 1795.—Since I wrote you from Fairfield I have received your friendly favor; and hold myself justified in saying to you, (as the fact is), that Mr. Fauchet has by the most positive declarations repelled all the insinuations arising from his letter. I expect soon to send you a statement of facts. But it is now manifest to me that the calumnies which have been circulated, and the malicious movements which have been made, were calculated first to operate in favor of the British interest in opposition to the friends of France; secondly, to destroy the friends of republicanism; and thirdly to remove me from office. The last, thank God, is accomplished. But God forbid that the two first should be. Spain and France have certainly made peace."

Bitter as was the Secretary's humiliation, it was mitigated by the relief of retirement from office. He had notified Washington of his wish to retire, but declined an opportunity of promotion to the Supreme Bench in order to save his country from a base surrender. But now his cause had fallen. The privilege of British ships to seize and search the vessels of America, and to confiscate their freight, had been conceded. The weary Secretary thanks God he is out of it all.

But his hopes for the republicans and the friends of France were destined to disappointment. When he returned to Philadelphia from Newport he found a vast Randolph-Fauchet mythology already luxuriant. The wildest legends were afloat. Correspondence of the statesmen of that day shows that nothing was too extravagant for circulation. The friends of France were silenced

by allegations of the millions of money imported from France, of confessions that it was used to incite the Whiskey rebellion, and rumors of dark designs against the President. Amid such an atmosphere the ratification could not be opposed. The republicans sullenly acquiesced. Their cause was lost.

On reaching Germantown, Randolph wrote to the President, 15 Sept. 1797:

“ In my letter of the 19th ult. I informed you of my purpose to overtake Mr. Fauchet, if possible. I accordingly went to Newport in Rhode Island, where I had an interview with him. The abrupt and unexpected sailing of the French frigate *La Meduse*, on the morning of the day after I arrived there, had nearly deprived me of the object of my journey. But I trust that I am in possession of such materials, not only from Mr. Fauchet, but also from other sources, as will convince every unprejudiced mind that my resignation was dictated by considerations which ought not to have been resisted for a moment; and that every thing connected with it, stands upon a footing perfectly honorable to myself. Having passed through New York on my return, I am under the necessity of remaining at the distance of five miles from Philadelphia until Saturday next. This circumstance prevents me from consulting my private and other papers upon the matters in question. But I shall lose no time in digesting them into proper form and transmitting the result to you. Nor will my solicitude on this head be doubted when I state to you, that malicious whispers have been more than commonly active on this occasion.”

This was followed by a letter of Sept. 21 asking for information concerning Nos. 3 and 6. To these Washington replied from Mount Vernon, Sept. 27, saying: “ I have never seen in whole or in part Mr. Fauchet's despatches numbered three and six; nor do I possess any documents, or knowledge of papers which have affinity to the subject in question. No man would rejoice more than I should, to find that the suspicions which have resulted from the intercepted letter were unequivocally and honorably removed.” In reply to a letter of Oct. 2 Mr. Wolcott made a similar disclaimer of any knowledge concerning Nos. 3 and 6.

The President's letter of July 22, unequivocally declaring re-



peal of the provision-order a condition of ratification, was naturally a cause of anxiety to those who had secured his signature without such condition.<sup>1</sup> Col. Pickering's careful removal of the letter from the Department sufficiently indicates his sense of its character, although, to Randolph's demand for it, he refused, with insolent language, on the ground that the letter could not "be necessary for Mr. Randolph's exculpation." The President, however, compelled Col. Pickering to give Randolph the letter. In reply to a letter from Randolph of Oct. 8, asking this, and giving a list of papers he means to publish, the President says: "You are at full liberty to publish, without reserve, *any* and *every* private and confidential letter I ever wrote you ;—nay more—every word I ever uttered to, or in your presence, from whence you can derive any advantage in your vindication." "That public will judge, when it comes to see your vindication, how far and how proper it has been for you to publish private and confidential communications—which oftentimes have been written in a hurry, and sometimes without even copies being taken." (Reference to the letter of July 22 will show that it was expressly written to be used in conduct of the negotiations.) In answer to this (Oct. 21) letter Randolph refers to a phrase in it ("doubts which afterwards arose," *i. e.* about signing the treaty) and says he must contend, from proofs in his possession, that from July 13 to Aug. 11, there were no "doubts" but "determination." Recognising in the license given to publish "a qualified effort to do justice," Randolph thinks "the candor which the letter seems to wear would have been more seasonable had it commenced with this injurious business."

The President's answer, though never sent, was preserved by him.<sup>2</sup> He refers to Randolph's words, "I have been the meditated victim of party spirit," and says he cannot understand them. They cannot be aimed at himself who so continually deplored party dis-

<sup>1</sup> See Bond's despatch, Nov. 15, in chapter XXVIII.   <sup>2</sup> Sparks, ed. 1836, I., p. 87.

cords. The disclosure to him, by an officer of government, of M. Fauchet's intercepted letter was an act of evident propriety. He is at a loss to understand other words: "I shall disclose even what I am compelled to disclose, under operation of the necessity which you yourself have created." Can this allude to his putting the letter into his hands in the presence of the heads of the departments? "or to the acceptance of your resignation, voluntarily and unexpectedly given?" "If neither of these, nor an expectation that I should have passed the matter over unnoticed or in a private explanation *only* between ourselves, I know nothing to which the sentiment can have the least reference."

"Rough draft of a letter to Edmund Randolph, but, on reconsideration, it was not sent." Such is Washington's memorandum. It was better so. The fatal thing is not alluded to. Washington was not expected to talk over the Fauchet letter "*only*" with Randolph; but he left out of the talk, for eight days, the only man affected by it. He excluded his most intimate friend, and consulted with that friend's avowed enemies about his honor. This was the great wrong. Whatever reasons of state may have caused it, no personal explanation or justification was possible, and none has been attempted to this day.

The anxiety of the President concerning the forthcoming "Vindication" is disclosed in various letters. The following to Hamilton has not been published:

"PHILADELPHIA, October 29th, 1798.—(Private and confidential.)—My Dear Sir: A voluminous publication is daily expected from Mr. R. The paper alluded to in the extract of his letter to me of the 8th inst., and inserted in all the Gazettes, is a letter of my own to him, from which he intends (as far as I can collect from a combination of circumstances) to prove an inconsistency in my conduct, in ratifying the Treaty with G. Britain, without making a rescinding (by the British government) of what is commonly called the Provision order, equally with the exception of the 12th article by the Senate, a condition of that ratification, intending thereby to show, that my *final* decision thereon

was the result of party advice ; and that that party was under British influence. It being a letter of my own which he has asked for, I did not hesitate a moment to furnish him therewith, and to authorize him to publish every private letter I ever wrote, and every word I ever uttered to him, if *he* thought they w'd contribute to his vindication. But the paper he asked for is but a mite of the volume that is to appear ; for without any previous knowledge of mine, he had compiled every official paper (before this was asked) for publication, the knowledge of which can subserve the purposes he has in view ; and why they have not made their appearance before this, I know not, as it was estimated in the published extract of his letter to me, that nothing retarded it but the want of the paper then applied for, which was furnished the day after my arrival in this city, where (on the 20th inst.) I found his letter, after it had gone to Alexandria, and had returned."

Had the President been in a state of mind to reflect calmly, it might have occurred to him that some of Randolph's copies were perhaps made for that review of his administration on which his friend had long been engaged ; not for his own "vindication," but for that of a then more abused man—Washington himself.

## CHAPTER XXX.

### “PRÉCIEUSES CONFESSIONS.”

THE first passage in Fauchet's famous despatch which affects Randolph is in the first paragraph: “Besides, the precious confessions of Mr. Randolph alone throw a satisfactory light upon every thing that comes to pass. These I have not yet communicated to my colleagues.”

Had Fauchet meant his despatch to be a boomerang and return from France to strike the Secretary of State, it could not have been contrived more skilfully. The sensitiveness of the President about secrecy in his councils could not fail to be touched by this suggestion of unauthorized disclosures. These two opening sentences, all the more because without specification, might easily color the whole despatch.

Fauchet, challenged by Randolph when both were fallen to explain this, referred, as No. 10 does, to No. 3, adding that he had sometimes mistaken authorized communications for confidences; that he had come to suspect, in these, mere efforts to sound him on French intentions; that some things that might be supposed Randolph's assertions were his own inferences and conjectures; and that they no doubt sometimes misunderstood each other.

The whole charge, therefore, turned on despatch No. 3. This is a personal despatch, countersigned by Le Blanc, Secretary of Legation, and dated 4 June 1794. The first part, which M. Adet, unfortunately for Randolph, withheld from him, states that Randolph disliked communicating with him in the presence

of citizen Pétry or citizen La Forest "because they were friends, La Forest of Hamilton and Knox, and Pétry of Izard and Smith"; to which Fauchet replies that he had the same opinion of his coadjutors, and that neither had lately taken any part in his conferences.

"Then [proceeds No. 3] the Secretary of State appeared to open himself without reserve. He imparted to me the intestine divisions which were rumbling in the United States. The idea of an approaching commotion affected him deeply. He hoped to prevent it by the ascendancy which he daily acquired over the mind of the President, who consulted him in all affairs, and to whom he told the truth, which his colleagues disguised from him. The President of the United States, says he, is the mortal enemy of England, and the friend of France. I can affirm it on my honour.<sup>1</sup> But not mixing with the world, he may be circumvented by the dark manœuvres of some men, who wind themselves in a hundred ways to draw him into measures which will cause him to lose all his popularity. Under pretext of giving energy to the government they would absolutely make a monarch of him. They deceive him as to the true spirit of the people, as well as upon the affairs of France. I am sure that, at this moment, he escapes from them, and that in all these perfidious manœuvres they have not been able to persuade him from pronouncing with vigor against the ministry of England. He has—but it is impossible for me in conscience to make you this confession. I should betray the duties of my office. Every thing which I can say to you is that it is important for our two nations that you continue to visit him frequently.<sup>2</sup> He will be touched with the proofs of friendship which you shall testify to him; and I am sure this will be an infallible means of causing them to be valued. I would quit the post which he

<sup>1</sup> The conversation was in April 1794. On the 15 April Washington wrote Randolph that war must ensue if England did not "redress our complaints"; and at the same time instructed Monroe that "in case of war with any nation upon earth we shall consider France as our first and natural ally." Later he instructed Monroe that England and Spain agree in their cordial hatred of the United States. "Had the threatened war with Great Britain been realized," wrote Randolph in his "Vindication," "then this policy would have shone forth with lustre."

<sup>2</sup> The failure of Hammond in this respect, it will be remembered, wounded Washington and was resented by Randolph. It will be seen by Randolph's letter to Monroe, 29 July 1795 (Chapter XXIV.), that he resented similar conduct in the man said to have been his confidant, towards him he (Randolph) was said to have betrayed.

has confided to me if he could be brought to make any attempt on the rights of the people. A bill has passed the House of Representatives which wounds liberty. They have at least taken away the article which prevents the sale of the French prizes in our ports. My heart is troubled by it. But I have seen with pleasure that my reflections on this subject, upon the dreadful crisis which would result from an abuse of it, have made a deep impression on the mind—I will even say upon the heart—of the President, who is an honorable man. Let us unite, Mr. Fauchet, to draw our two nations closer together. Those who love liberty are for fraternising with the French Republic, the partisans of slavery prefer an alliance with England. I, he said to me (in speaking of the treaty of Jay), [affirm] that there is no question in his mission, but to demand a solemn reparation for the spoliations which our commerce has experienced on the part of England<sup>1</sup>; and to give you a proof that Mr. Jay cannot enter into a negotiation contrary to what we owe to France, I will give you the part of the instructions which concern it.

“Although the following note which I have, written in his own hand, with a promise to burn it, be little important, I annex it hereto: ‘If the English ministry shall insinuate that the whole or any part of these instructions shall appear to be influenced by a supposed predilection in favour of France, you will arrest the subject as being foreign to the present question. It is what the English nation has no right to object to; because we are free in our sentiments and independent in our government.’ ‘The following case is to be unchangeable. As there is no doubt that the English ministry will endeavour to detach us from France, you will inform them of the firm determination of the government of the United States, not to deviate from our treaties or our engagements with France.’ ”<sup>2</sup>

<sup>1</sup> This is Fauchet's own inference, fair enough, from the President's message, nominating Jay, in which nothing is said of the eventual powers of commercial negotiation. But indeed, at the time of this conversation (April 1794), such negotiation appeared improbable. Jay and Grenville kept their first talks on this point secret even from Washington and Randolph.

<sup>2</sup> The corresponding passages in Jay's Instructions (6 May 1794) will show Randolph's cautious reservations, which I italicise.

“If the British Ministry should hint at any supposed predilection in the United States for the French nation, as warranting the whole or any part of these instructions, you will stop the progress of this subject, as being irrelative to the question in hand. It is a circumstance which the British nation have no right to object to us; because we are free in our affections and independent in our government. *But it may be safely answered, upon the authority of the correspondence between the Secretary of State and Mr. Hammond, that our neutrality has been scrupulously ob-*

Despatch No. 3, though dated 4 June 1794, refers to a conversation in April. It was held at a period when Fauchet did indeed hold, unconsciously, the balance between peace and civil war. A bill had passed the House raising 25,000 men with view to an expedition against Kentucky, where officers, commissioned by Genet, were about to lead the militia against Louisiana. It was important that Fauchet should be persuaded to disown Genet's commissions; but at that very moment Jay's mission had excited his jealousy. Moreover, it must be borne in mind, war with England was imminent, as the President warned Congress in his nomination of Jay; and a French alliance must be arranged for, as he instructed Jay. Under these circumstances the President directed Randolph to read a part of Jay's instructions to Fauchet, and put him in a good humor. Randolph did this with an air of intimacy—such as asking him to burn the extract—which the Frenchman half suspected. ("The Secretary of State *appeared* to open himself without reserve.") A comparison of the passages written out for Fauchet (fortunately not burned by him as he promised) with Jay's instructions, shows cautious "reserve,"—sentences suggestive of what might "eventually" occur in London being amputated.<sup>1</sup> But the conversation in April was successful, so far as Kentucky was concerned. On March 29

*served.*" "You will therefore consider the ideas herein expressed, as amounting to recommendations only, . . . except in the *two* following cases, are immutable . . . 1. That as the British ministry will doubtless be solicitous to detach us from France, and may probably make some overture of this kind, you will inform them that the government of the United States will not derogate from our treaties and engagements with France, *and that experience has shown that we can be honest in our duties to the British nation, without laying ourselves under any particular restraints as to other nations; and (2) that no treaty of commerce be concluded or signed contrary to the foregoing prohibition.*"

It would have been impossible, with these reservations in No. 3 before him, for the President to have supposed that Randolph had been even indiscreet in the "precious confessions" boasted of in No. 10.

<sup>1</sup> The official authorization of Randolph's communication of the instructions was not denied, and was used by Pickering, in controversy with Adet, as evidence of "candor and friendship." *A Message from the President, etc.*, 1797, p. 17.

Randolph wrote the Governor of that State: "Under whatever auspices of a foreign agent these commotions were at first raised, the present Minister Plenipotentiary of the French Republic has publicly disavowed and recalled the commissions which have been granted." The crisis was passed, and the bill to raise an army in "defence of the south-western frontier" was suppressed.

After seven eventful months, during which the Excise rebellion had broken out and set the army in motion, Fauchet writes No. 10, 31 Oct. 1794. In it he ingeniously utilizes the April conversation. In paragraph 14 he says that the government, foreseeing a revolution, and defeated in its efforts to obtain [from Congress] a disposable force, may have hastened the local eruption [at Pittsburgh], in order to make an advantageous diversion; this being done by an exasperating law enforcing the excise. "Am I not authorized in forming this conjecture from the conversation which the Secretary of State had with me and Le Blanc alone, an account of which you have in my dispatch No. 3?" But the rebellion broke out, and the "exasperating" law was passed, long after the April interview of No. 3.

Thus there is in No. 3 no information beyond what was authorized. On the contrary, in it Randolph explains why he could give none. "I should betray the duties of my office."

In his "Vindication" Randolph goes step by step through Fauchet's elaborate despatch 10, points out the strictness with which its information is limited to that of the newspapers; and reminds the President of how many secrets had been worth much French gold, but of which Fauchet was evidently ignorant. His unanswerable arguments and facts need not, however, be here reproduced; for if any doubts have survived of Randolph's loyalty, or even of his prudence, in his conversations with Fauchet, they must end with a document found by Mr. Durand in the Foreign Office at Paris (1888) and forwarded by that gentleman to me.



It is a despatch from Fauchet to his government, dated Pluviôse 6, 3d Year of the Republic; that is, 26 January 1795. This was more than two months before the "compromising" despatch was intercepted, six months before it appeared in America, having thus no connection with Randolph's troubles. In this newly discovered despatch, speaking of the means he took to circumvent Jay, Fauchet writes :

"My conversations with M. Randolph were my only resource. I gave him to understand that it would be to disown a friendship so long and so often vowed [between France and the United States], to take advantage of the embarrassing circumstances in which the Republic found itself to open an easy access to its enemies by negotiations which would weaken our political *rappor*t, and place obstacles to new commercial treaties. He (Randolph), it appears, played the sincere and made me false confidences. My suspicions, however, kept me constantly on the watch; I have constantly kept yours awake in all my dispatches; and I intended at least to place the French Government in a condition to ward off in Europe a stroke arranged here in the greatest secrecy."<sup>1</sup>

Here, then, is evidence that the "précieuses confessions," even if not mythical, had proved "fausses confidences." Whatever complaint Fauchet might make,—that is considered elsewhere,—the President, with this despatch before him, must have instantly dismissed all suspicion of intrigue and disloyalty.

<sup>1</sup> The original is as follows: "Mes conversations avec M. Randolph furent ma seule ressource; je lui fis entendre que c'était bien démentir une amitié si longtemps et si fréquemment jurée que de profiter des circonstances où était la République, pour ouvrir un accès facile à ses ennemis dans des négociations qui devaient infirmer nos liaisons politiques et mettre obstacle à de nouveaux liens commerciaux. Il (Randolph) joua, à ce qu'il paraît, le sincère et me fit de fausses confidences. Mes soupçons m'ont cependant constamment tenu sur mes gardes; j'ai constamment éveillé les tiens dans tous mes dépêches, et je comptais du moins mettre le gouvernement français en état de parer en Europe un coup tramé ici dans le plus grand secret."

## CHAPTER XXXI.

### THE "OVERTURES."

IN paragraph 15 (No. 10) Fauchet states that the "military part of the suppression [of the Pittsburgh insurrection] is doubtless Mr. Hamilton's; the pacific part and the sending of commissioners are due to the influence of Mr. Randolph over the mind of the President." Then follows the 16th paragraph, with its sweeping insinuations:

"In the mean time, although there was a certainty of having an army, yet it was necessary to assure themselves of co-operators among the men whose patriotic reputation might influence their party, and whose lukewarmness or want of energy in the existing conjunctures might compromise the success of their plans. Of all the governors whose duty it was to appear at the head of the requisitions, the Governor of Pennsylvania [Mifflin] alone enjoyed the name of Republican: his opinion of the Secretary of the Treasury [Hamilton] and of his system was known to be unfavorable. The Secretary of this State [Dallas] possessed great influence in the popular society of Pennsylvania, which in its turn influenced those of other States: of course he merited attention. It appears therefore that these men, with others unknown to me, all having without doubt Randolph at their head, were balancing to decide on their party. Two or three days before the proclamation was published,—and of course before the Cabinet had resolved on its measures,—Mr. Randolph came to see me with an air of great eagerness, and made to me the overtures of which I have given you an account in my No. 6. Thus with some thousands of dollars the [French] Republic could have decided on civil war or on peace! Thus the consciences of the pretended patriots of America have already their prices (*tarif*)! It is very true that the certainty of these conclusions, painful to be drawn, will forever exist in our

archives! What will be the old age of this government if it is thus early decrepid! Such, citizen, is the evident consequence of the system of finances conceived by Mr. Hamilton. He has made of a whole nation a stock-jobbing, speculating, selfish people. Riches alone here fix consideration, and as no one likes to be despised, they are universally sought after. Nevertheless this depravity has not yet embraced the mass of the people; the effects of this pernicious system have as yet but slightly touched them. Still there are patriots, of whom I delight to entertain an idea worthy of that imposing title. Consult Monroe; he is of this number; he had apprised me of the men whom the current of events had dragged along as bodies devoid of weight. His friend Madison is also an honest man. Jefferson, on whom the patriots cast their eyes to succeed the President, had foreseen these crises. He prudently retired in order to avoid making a figure against his inclination in scenes, the secret of which will soon or late be brought to light."

To this may here be added the following from the next paragraph (17):

"As soon as it was decided that the French Republic purchased no men to do their duty, there were to be seen individuals, about whose conduct the government could at least form uneasy conjectures, giving themselves up with a scandalous ostentation to its views, and even seconding its declarations."

In paragraph 18 Fauchet says:

"The army marched; the President made known that he was going to command it; he set out for Carlisle; Hamilton, as I have understood, requested to follow him; the President dared not to refuse him. It does not require much penetration to divine the object of this journey: in the President it was wise; it might also be his duty. But in Mr. Hamilton it was a consequence of the profound policy which directs all his steps; a measure dictated by a perfect knowledge of the human heart. Was it not interesting for him, for his party, tottering under the weight of events without and accusations within, to proclaim an intimacy more perfect than ever with the President, whose very name is a sufficient shield against the most formidable attacks?"

It will be seen that all these innuendos, so far as they concerned Randolph, depended on the "overtures" said to be con-

tained in Despatch 6. That, of course, was obtained from the French embassy by Randolph. The only passage concerning him is as follows :

“Scarce was the commotion known [the Pittsburgh insurrection] when the Secretary of State came to my house. All his countenance was grief. He requested of me a private conversation. It is all over, he said to me. A civil war is about to ravage our unhappy country. Four men by their talents, their influence, and their energy may save it. But debtors of [English] merchants, they will be deprived of their liberty, if they take the smallest step. Could you lend them instantaneously funds sufficient to shelter them from English prosecution? This inquiry astonished me much. It was impossible for me to make a satisfactory answer. You know my want of power, and my defect of pecuniary means. I shall draw myself from the affair by some commonplace remarks, and by throwing myself on the pure and unalterable principles of the republic.

“I have never since heard of propositions of this nature.”<sup>1</sup>

Fauchet's explanation of this to Randolph is as follows :

“A little time after my arrival in America I had requested Mr. Randolph to recommend me the most proper persons with whom he was acquainted in the different States to be employed in the purchase of flour. This request naturally led him to believe that there were persons employed in it, as they really were. We had frequent conversations upon the insurrection, and in all of them he manifested an unequivocal indignation against the fomenters of it, and a deep affliction at the dangers of a civil war. I had learned, as my dispatch No. 10

<sup>1</sup> M. Adet gave Randolph only the above portion. The copy in Paris, written in cipher (translated) and script, is dated 5 September 1794. It opens with animadversions on Jay, and reflections on Hamilton and others. The original of the passage concerning Randolph is as follows : “A peine l'explosion connue le Secrétaire d'état (Randolph) s'est rendu chez moi ; toute sa physionomie était douleur ; il me demande un entretien particulier. C'en est fait, me dit-il ; la guerre civil va ravager notre malheureuse patrie. Quatre hommes par leur talent, leur influence, et leur energie peuvent la sauver, mais debiteurs de negocians et au moindre pas qu'ils feront ils seront privés de leur liberté. Pourriez vous leur prêter momentanément des fonds suffisants pour les mettre à l'abri de la persécution Anglaise? Cette demande m'étonna beaucoup ; il m'était impossible de faire savoir une réponse satisfaisante ; tu connais et mon impuissance et mon défaut de moyens pecuniaires ; je me tirai d'affaire par quelques lieux-communs, et en me rejetant sur les principes pur et inalterables de la république. Depuis je n'ai plus entendu parler de proposition de cette nature.”

shows, that the English were suspected of fomenting and supporting these manœuvres. I communicated my suspicions to Mr. Randolph. I had already communicated to him a Congress which at this time was holden in New York. I had communicated to him fears that this Congress would have for its object some manœuvres against the Republic of France, and to render unpopular some virtuous men who were at the head of affairs,—to destroy the confidence which existed, on one hand, between General Clinton and his fellow-citizens, and, on the other, that which united the President to Mr. Randolph. He said to me that I ought to make efforts to obtain the proofs of this fact, and he added to me that, if I did so, the President would not hesitate to declare himself against all the manœuvres which might be directed against the French republic. Things remained in this situation. About the month of July or August, in the last year, he came to see me at my country house. It was in the afternoon. He was to go that evening to Germantown. We had a private conversation of about twenty minutes. His countenance bespoke distress. He said to me that he was afraid a civil war would soon ravage America. I inquired of him what new information was procured. He said that he began to believe that in fact the English were really fomenting the insurrection, and that he did not doubt that Mr. Hammond and his Congress would push some measures with respect to the insurrection with an intention of giving embarrassment to the United States. He demanded of me, if, as my Republic was itself interested in these manœuvres, I could not by the means of some correspondents procure some information of what was passing. I answered him that I believed I could. He replied to this, that having formed many connections by means of flour contracts, three or four persons among the different contractors might, by talents, energy, and some influence, procure the necessary information, and save America from a civil war, by proving that England interfered in the troubles of the West. I do not recollect that he gave to me at that time any details upon the manner in which this discovery would produce this last effect. But I perfectly remember to have heard it said by some person or other, that the insurgents would be abandoned by the greatest number of those whom they believed to be on their side, and that the militia would march with cheerfulness, if it were proved that the English were at the bottom of these manœuvres. I think, therefore, that this was probably the manner in which he conceived that things should be settled; and that he thought that the insurrection would cease from the want of support. At the moment of

mounting his horse he observed to me, that the men whom I might be able to employ might perhaps be debtors of English merchants ; that in this case they might perhaps be exposed, on the slightest movement which they should make in this important affair, to see themselves harrassed by process, and even arrested by the pursuits of their creditors. He asked me if the payments of the sums which were due to them by virtue of the existing contracts would not be sufficiently early to render these individuals independent of British persecution. I confess that this proposition to obtain this intelligence surprised me. I was astonished that the government itself did not procure for itself information so precious. And I made the reflections, contained in my letter on this affair, because I believed, and do still believe, that all the citizens in the United States ought to endeavor to furnish intelligence so important, without being stopped by fear of English persecution ; and because I moreover thought, when I committed my reflections to paper, that it was proposed to obtain the foregoing intelligence by assisting with loans those who had contracted with me. But now calling to mind all the circumstances to which the questions of Mr. Randolph call my attention, I have an intimate conviction that I was mistaken in the propositions which I supposed to have been made to me. I declare, moreover, that no name or sum was mentioned to me ; that Mr. Randolph never received, either directly or indirectly, by himself or by another for his use, one shilling from myself, by my order, or, according to my knowledge, hearsay or belief, from any other public officer of France. I declare that he never made to me in this respect a single overture : and that no part of the above circumstance has the least relation to him personally."

M. Adet, Fauchet's successor, having examined his predecessor's despatches, publicly certified "that whensoever Citizen Fauchet has had occasion to speak of Mr. Randolph, in respect to his morality, he always describes him as an honest and upright man."

Randolph's letter to Monroe of July 29 (Chapter XXIV.) shows that he had concluded that Fauchet's story of Hammond's New York Congress was a fiction. Some of our revelations from the English archives may render the reader doubtful on that point. There is also a curious remark in that letter that he (Randolph) supposed that Fauchet "wanted an exculpatory

letter for pledging the public purchases of flour." It looks a little as if Fauchet had discovered a consultation in New York hostile to Randolph; and that he had prepared for himself a theory of exculpation, for appropriating the flour-money, by representing that he had, by the Secretary of State's advice, used it to detect and defeat a conspiracy. Randolph may, indeed, have innocently suggested use of the flour merchants. He did not deny, though he had no remembrance of it, that, when Fauchet divulged the machinations of Hammond, he might have advised him to obtain some evidence of the story, and reminded him that he might protect his correspondents by advances made to them on the score of his flour contracts. But Randolph pronounced this Despatch 6 incomprehensible. "What four men upon earth could have been contemplated? Why was *British* persecution to be apprehended? Why should so peculiar an interest be attributed to Mr. Fauchet, in saving the country from civil war?" Fauchet said that after the overtures were declined he never heard more on the subject; consequently the charge against Randolph was of an effort to get money. But Randolph pointed out that when, in Despatch 10, paragraph 17, Fauchet says "the French Republic purchased no men to do their duty," he "did not conceive me to be personally concerned in the overture, as he terms it. For what were men to be procured? To do *their duty*. What was their duty? To save their country from a civil war."

After all, what did the charge against Randolph amount to? That "to save his unhappy country from civil war" Randolph suggested that the French minister, whose country was also involved, should "lend funds" to certain men able to save it if relieved of indebtedness to Englishmen. That is the whole of it. Absurd though it be, what if it were admitted? The independence of this country was won by aid of French gold. Mr. Parnell is now fighting the cause of Ireland with American gold.

That Washington himself, in the summer of 1794, feared a general revolt against the government is proved by instructions to Jay (August 18). Whatever means Randolph might have employed to "save his country" would have been condoned by history, if not by his adversaries. But this patriotic object of Randolph's alleged "overtures" was not named in the intercepted despatch; it was contained in Despatch 6, referred to in the other, but not sent for by Washington, Wolcott, and Pickering, while determining Randolph's fate.<sup>1</sup> Indeed, in the absence of No. 6, the crucial sentence of No. 10 conveys the impression, never intended by Fauchet, that Randolph was among those who were balancing on their party. He means that Randolph was their leader (*à leur tête*), and thought they might be influenced by money to "do their duty," and save the "country from civil war."

Randolph did not base his "Vindication" on the flour-merchant incident. The allegations were preposterous. No man in his senses could have applied for money to a minister of notorious poverty, in discredit with his government, and whose accounts, always subjected to the inspection of two agents, were traceable. Fauchet was received by Washington in February 1794, and throughout March was imploring the Cabinet through Randolph to relieve his pecuniary distress by an advance on the debt due France, which government is represented as embarrassed. The Cabinet must have known how ludicrous was the suggestion that Randolph could, at that very time, have been hoping to handle any French gold. All of Fauchet's money had to go through the United States Bank, and every dollar was

<sup>1</sup> "Not the smallest exertion was made to procure these documents; which would be naturally sought for by those whose judgement was not preoccupied. Nor was this all. You undertook to decide for me that *my* inquiries from Mr. Hammond for No. 3 and 6 must be unavailing; because you withheld from me Mr. Fauchet's letter until Mr. Hammond had sailed for Europe. This is no speculative complaint. For I have been assured that a duplicate of No. 6 accompanied the letter No. 10 from Philadelphia."—*Vindication*.



traceable. Randolph challenged an investigation. Moreover, Despatch 10 pointed the "overtures" of Despatch 6 to the Governor and Secretary of Pennsylvania: the idea of bribing those men, to say nothing of doing it with "some thousands of dollars," could not have been entertained out of Bedlam. The flour merchants, British debtors, are transformed to dignity, but their "*tarif*" remains. Finally, the despatches attest throughout Randolph's constant efforts to allay Fauchet's fears and inspire him with confidence in the President,—the very reverse of what a venal aim would have required. The Fauchet despatches show that this impecunious and ambitious diplomatist of thirty was transmitting newspaper gossip to his ignorant superiors, pretending to receive it from high quarters, hoping to be kept in office, and also that he might have the handling of some of the cash with which France was buying up foreign support.

Although the subsequent career of this inflexible patriot, who threw himself "on the pure and unalterable principles of the republic"—his transformation from a "citizen" to a "baron" under the patronage of Napoleon—suggests a corrupt intent in his hints about the desirability of cash, it is not, as has been said, necessary to suppose that his motives were altogether personal. His voluminous correspondence with the Secretary of State concerning the seizure of French cruisers and prizes shows that he had the interests of his country at heart, and undoubtedly France was at a great disadvantage by reason of the inadequate resources at his command.

It is not impossible that No. 10 was purposely put in a form which might react on Randolph. "Consult Monroe," is his advice to his employers. Monroe and Randolph had exchanged unpleasant letters. Monroe also had complained of being deceived. We have seen that, in a moment of humiliation, and fear of Genet's fate, of which Randolph was compelled to remind him, Fauchet had written No. 10, and said "Consult Monroe!"—the

equally reprov'd and probably angry Monroe. It must also be admitted that Randolph, himself deceived as to predetermined purposes of the negotiations in London, unaware of the extent to which his colleagues were influencing them, unwittingly misled Monroe and Fauchet. But so far as Fauchet discovers *animus* against Randolph it is to injure him with French sympathizers. He intimates that Randolph defended unconstitutional pretensions of the Executive; that he wished to throw on him (Fauchet) the burden and expense of defeating Hammond's schemes. He praises Monroe, Madison, Jefferson, Washington; he has n't a good word for Randolph; yet Randolph alone is accused of intrigue with him. Had his cabinet colleagues understood the despatch, and not wanted Randolph's place, they had here surprised testimony that he was less French than they supposed. Yet with this same testimony he was slain. His vicarious sacrifice for those really impugned, by Fauchet's praise, was unctuously accepted.

One thing is certain from all Fauchet's despatches: no faintest notion ever entered his mind that Randolph had hinted about money for his own benefit.

## CHAPTER XXXII.

### MR. WOLCOTT.

ON the 15 August 1789 Oliver Wolcott, Jr., of Connecticut, aged twenty-nine, sought a place in the Treasury, and was appointed Auditor. He became a favorite of Hamilton, and succeeded him as Secretary of the Treasury, 31 January 1795. Washington knew him but little, and, in his diary, the name is written "Walcot." Although Mr. Wolcott had disliked Hammond, as it now appears,<sup>1</sup> the British minister selected him as his ally in what Madison described as "the plan of running down Randolph," and what my reader now knows to have been a scheme devised in Downing Street.

Mr. Wolcott's correspondence reveals antipathy to Virginia and its statesmen. Even Washington was hardly exempt.<sup>2</sup> As for Jefferson, Mr. Wolcott's pen foams when writing his name. "I will say," he writes to his father, "that if French agency places Mr. Jefferson in the seat of the Chief Magistrate (and if he is placed there it will be by their intrigues), that the government of the United States ought at that moment to discontinue its operations, and let those who have placed him there take him to themselves; for although I am sensible, by our last revolution, of the evils which attend one, I sincerely declare that I wish the Northern States would separate from the Southern the moment that event shall take effect, and never reunite with them except

<sup>1</sup> "The British minister," he says to his father, "is a weak, vain, and imprudent character." Gibbs, "Administrations of Washington and Adams," I., 133.

<sup>2</sup> See letter to Hamilton, 30 July 1795. Gibbs, I., p. 219.

it shall be necessary for military operations." <sup>1</sup> To Mr. Wolcott's antipathy to himself Randolph alludes in several letters.

When Hammond confided the intercepted despatch to Mr. Wolcott, it was at once revealed confidentially to the two colleagues hostile to Randolph. It was withheld from Washington for sixteen days, then revealed at an instant when final action on the treaty was urgent. Hammond must be answered at once, having to sail from New York August 17. If ratification is refused he (Hammond) has only to publish the Fauchet letter as representing the administration's intrigues and policy. (This would not be displeasing to Hammond, who disliked Washington.) Randolph is held by his affection for the President, to execute sentence on his policy, in ignorance that himself is involved. Fauchet had started for France. Hammond sails in a few days. When these two witnesses, alone cognizant of all the facts, are beyond summons, namely on August 19, Randolph is shown the letter. The tongues of the Secretary's wounds speak in these dates.

A contrast may be noted in the course of Edmund Randolph when, two years before, an accusation against Hamilton, involving Wolcott, was privately communicated to him (Randolph). Instead of revealing it to Jefferson, who, with himself, was in combat with Hamilton, Randolph wrote confidentially to the President (2 August 1793): "The inclosed letter from A. G. Francis contains insinuations which are undoubtedly without grounds, as I verily believe. Still they are of such a nature as to render it too delicate to pass without notice. On the other hand the gentleman who is spoken of has a title to know a charge like that expressed in the letter. Permit me therefore to suggest that the papers be put informally into his hands with an instruction to inform you how the truth is, and what kind of an answer would be proper, if any, to be returned, and from whom. I shall

<sup>1</sup> Gibbs, I., p. 409.

wait on your commands, if any difficulty remains with you after his explanation."

Mr. Wolcott did not venture to disclose the Fauchet discovery to Hamilton, who might have remembered this. "I shall take immediate measures with two of my colleagues this very day," he writes that gentleman (30 July 1795). "They are firm and honest men. We will if possible, to use a French phrase, 'save our country.'" "Feel no concern, however, for I see a clue which will conduct us through every labyrinth except that of war."<sup>1</sup>

So jubilant was Mr. Wolcott that war with France seemed trivial. Why is the phrase, "*save our country*" particularly French? The words sound like a mocking echo of a sentence ascribed to Randolph in Fauchet's No. 6,—that four men could "save our unhappy country." Could Wolcott have seen that despatch also? The small coincidence would, of course, be of no importance in the face of Mr. Wolcott's disclaimers to Randolph of having seen that despatch, were it not necessary to check these by his own posthumous admissions. Concerning the two despatches referred in No. 10, and seriously modifying its sense in Randolph's favor, Mr. Wolcott wrote to Randolph (2 Oct., 1795): "I have never seen or been possessed of Mr. Fauchet's letters, numbered 3 or 6, or either of them, in or out of cypher, and I have no knowledge whether they or either of them, have been seen by Lord Grenville or Mr. Hammond." He assures Randolph "nothing has been at any time concealed by me to your prejudice." Some days later—"I mean not to incur the imputation of wanting candor by forbearing a reply to your inquiry. When the existence of the intercepted letter was first mentioned to me by Mr. Hammond, etc." Randolph had ascertained (from Adet, no doubt) that No. 6 had accompanied No. 10, but might charitably conclude that Hammond withheld it from Mr. Wolcott. But

<sup>1</sup> Gibbs, I., p. 220.

Mr. Wolcott's candor must now be discounted by his posthumous "Notes,"<sup>1</sup> mentioning that Hammond said he had "*certain letters* from M. Fauchet to the French government." "The history of these letters as related by Mr. Hammond was, etc." These private entries qualify the words to Randolph, in which Hammond is said to have mentioned "the intercepted letter." The existence of other despatches at the British Embassy was "concealed," notwithstanding professions of candor. That he should make no inquiry of Hammond concerning the other despatches were so little worthy of Mr. Wolcott's diplomacy in the whole affair, that his statement to that effect may be also a *ruse de guerre*. On the other hand, if Mr. Wolcott inquired nothing concerning the other despatches mentioned to him, that fact would equally show to what extent the interests of truth were considered in his interview with the British Minister.

The same kind of "candor" appears to have been observed towards Washington, who was anxious about those other despatches. According to Mr. Wolcott's "confessions" the President at once propounded to him the question: "Would an application to Mr. A [det] to see the paragraphs in Nos. 3 and 6, alluded to in Fauchet's letter, be proper? These might condemn or acquit unequivocally. And if innocent, whether R. will not apply for them if I do not?" "After mature consideration," writes Mr. Wolcott, "it was considered to be improper to make any application to Mr. Adet; that it was improbable that Mr. Adet would permit his records to be inspected, etc." Here, then, a gentleman deficient in Mr. Wolcott's curious "candor" might have answered: "But, Mr. President, Mr.

<sup>1</sup> Gibbs, I., p. 232. The English Foreign Office records, given elsewhere, also show that several despatches were intercepted, but they cannot be discovered there. A vain search was made at Mr. Buchanan's request, while he was Minister to England, in the State Archives, and also among Hammond's papers (see Chap. XXVI). A similar search recently made for this work has proved unavailing. Whether they have been sought in the Wolcott MSS. I know not.

Hammond informed me that *he* had other intercepted letters of Fauchet: perhaps Nos. 3 and 6 are among them. Should he object to show them it would prove the despatches favorable to Randolph." No such suggestion appears in the minute reports left by the two Secretaries. So Washington wrote to Randolph disclaiming any "knowledge of papers which have an affinity to the subject in question."

In 1806, replying to a question from Judge Marshall as to how far Washington's ratification of the treaty was affected by the Fauchet despatch, Mr. Wolcott says: "A letter from the President to Randolph, dated July 22, may be understood to convey an idea that the treaty would not be ratified while the provision order was supposed to be in existence; but this is not the necessary, nor perhaps the most natural interpretation of that letter. The President knew that this would be Mr. Randolph's advice, and he might not think it proper to countroul that opinion at that time."<sup>1</sup> But what Mr. Wolcott thought at the time appears in a letter to Hamilton 30 July, 1795, in which he says: "The ratification of the President has moreover been connected with the repeal of some unknown order . . . what must the British government think of the United States when they find the treaty clogged with one condition by the Senate, *with another by the President,*" etc.

Apart from the witness borne by these private words against Mr. Wolcott's later language to Washington's biographer, one may remark a willingness on his part to concede to England even that article which the Senate refused and Lord Grenville himself surrendered. From the day when Messrs. Wolcott and Hammond arranged the doom of Randolph they became friends. Indignation at alleged disclosures to Fauchet did not prevent Mr. Wolcott, though not of the State Department, from keeping the British Minister informed as to Cabinet and senatorial pro-

<sup>1</sup> Gibbs, I., p. 246.

ceedings. This fully appears in the English records now for the first time printed. It will be seen that Mr. Wolcott was prepared, in case any reflections were cast on His Majesty's ministers in this transaction, to "disclose to the world every fact of which the government was in possession."

Mr. Wolcott privately kept several correspondents informed of whatever came to pass. Also of some things which did not come to pass. In a letter to Hamilton, 16 Nov. 1795, enclosing the Fauchet letter, he says that Randolph denied "having made any proposition relative to money, except on one occasion, which was this. He said that in the summer of 1794 Fauchet told him there was a meeting of persons in New York, consisting among others of Mr. Hammond and Mr. Jaudenes, conspiring to destroy him (R.) and Gov. Clinton. . . . Randolph said that he then inquired whether proof could be got of this conspiracy, and that after some conversation he suggested that as he (F.) had the resources of the French government at command, he could obtain the proof."<sup>1</sup>

This enclosure and communication was made over a month before the publication by Randolph, concerning which Washington had promised, Aug. 20: "While you are in pursuit of means to remove the strong suspicions arising from his letter, no disclosure of its contents will be made by me; and I will enjoin the same on the public officers who are acquainted with the purport of it." Apart however, from the consistency of this and other communications of the enjoined information in one arraiging a supposed betrayer of secrets, one may remark an effective travesty of what Randolph really said. He had no recollection of mentioning money at all, while admitting that he might have suggested to Fauchet obtaining proof through his flour-merchants, even if he had to advance payments to them on the score of flour-contracts. But "resources of the French government"

<sup>1</sup> Gibbs, I., 265.



has a more imposing expressiveness. A story which, starting in Philadelphia as an advance to a flour merchant, becomes in New York drawing on the resources of the French government, has a chance of being, as John Quincy Adams described this one, "loaded with great exaggerations."

Again, writing to his father, 19 Nov. 1795, Mr. Wolcott says: "It is said [in the intercepted despatch] that in 1793 and 1794 the attacks upon the general government had become so serious that its friends became alarmed, and that the Government, foreseeing a general storm, hastened the local insurrection to create a division [? diversion], and that this was ascertained by the confession of Mr. Randolph to M. Fauchet."<sup>1</sup> But Fauchet says this is his own "conjecture"; asks if it is not warranted by a remark of Randolph's; then immediately admits its doubtfulness. Gov. Wolcott, Sr., was a man of wider influence than his son, and this perversion of the despatch could hardly fail to tell seriously against Randolph in New England.

Mr. George Gibbs, who announces himself as "the avenger of a bygone party and a buried race," indignantly repels Jefferson's "hearsay slander" that Mr. Wolcott was "cunning." Certainly that is the last quality that can be ascribed to Mr. Gibbs himself. Nothing can exceed the candor of his revelations. Of this one more example must suffice. In "Dec. 1795" Mr. Wolcott in a note marked "private," to William Ellery, of Newport, says: "It has been stated to me in a manner which admits of but little doubt, that Mr. Randolph was in fact closeted with M. Fauchet for the greatest part, or whole of one night. If this be true, you will much oblige me by obtaining an affidavit of the fact from some creditable person." On 11 Jan. 1796, Mr. Ellery returns an answer confirming Randolph's own account of his visit to Newport, adding a scarcely welcome but pregnant story:

"The same gentleman told me that he was credibly informed, that

<sup>1</sup> Gibbs, I., 266.

at a house where M. Fauchet was invited to dine, prior to Randolph's coming here, that he said in the course of conversation, that Mr. Randolph was a d——d rascal. Desirous to find out on what subject the conversation was employed, in which such a violent, contemptuous expression was introduced, I requested a friend of mine and acquaintance of the person with whom Fauchet dined, to make the inquiry. M. Fauchet regretted very much, that on his return to France he must advise his constituents that he had been deceived—that he has found none but men of no information, of small fortunes and influence, were on the side of France; that the men of influence, and those near the President were honest, and especially Mr. Hamilton, that he was candid and undisguised, and for strictly supporting our neutrality; but that Randolph was a deceiver, and had already deceived him."

This unsophisticated report of his spy remained buried in Mr. Wolcott's desk. It suggests that if Fauchet had been in collusion with any one it was not Randolph, but others "near the President." Fauchet, in that part of No. 3 never shown Randolph, admits the intimacy of his coadjutor, Consul-General La Forest, with the Secretaries of the Treasury (Hamilton) and of War (Knox); and the intimacy of Consul Pétry with Izard and Smith. By Randolph's last despatch to Monroe (Chap. XXIV.) it will be seen that he was no stranger to the efforts of Fauchet to get information from members of the Executive. "I was not one," says Randolph. Ellery confirms this, and would rather show that it was Hamilton whom Fauchet found "candid and undisguised." Consequently Ellery's evidence slept in Mr. Wolcott's pocket, to be read in our own time by light of Fauchet's exhumed despatches.

It need not be wondered that Mr. Wolcott, near the close of his Cabinet career, withdrew his dismissed friend Pickering's papers from the State Department; or that his anxiety about his own papers, when a fire occurred in the Treasury, led to a suspicion of complicity in this fire, and of willingness to have documents destroyed. The colorless report of an investigation left Mr. Wolcott under a cloud, from which he was lifted by President

Adams,—against whom he had conspired, while in his Cabinet, and whose secrets he had betrayed. From the Bench to which by the unsuspecting Adams he was raised, but which Jefferson soon swept from beneath him, Mr. Wolcott saw Randolph branded as a betrayer of Cabinet secrets. The Newport disproof was in his desk, and he was silent. When his party was submerged, Mr. Wolcott floated on a democratic wave into the gubernatorial chair of Connecticut. This self-constant man was silent about his own secrets, however he may have dealt with those of others. But they have been brought to light by his son-in-law, who describes himself as “in some sort an avenger.” Whose?

## CHAPTER XXXIII.

### COL. PICKERING.

TIMOTHY PICKERING, in his twenty-fourth year (1769), wrote a composition describing the French as "those eternal disturbers of our peace." On the other hand, he was so favorable to Great Britain that his failure to march his Salem soldiers in time to intercept the British retreat from Lexington was attributed to friendship for the foe. His revolutionary record is mainly that of a shrewd quartermaster. The fortunes of war having brought him to the capital of Virginia, he formed a theory of Virginians from their old motto: *En dat Virginia quartam*, "that is," he translates, "Virginia gives a fourth quarter to the whole world." Col. Pickering appears to have adhered through life to his early views of the French and English and Virginians. But if his translation of Fauchet's despatch was as much influenced by those views as his Latin<sup>1</sup> by his theory of Virginians, that must have been a dangerous document, for Randolph, laid before the President. "Wolcott brought it [Fauchet's No. 10] to me," writes Col. Pickering. "He did not understand French, nor did I. He said it was a very important letter, and of a nature not to be put into the hands of the common translator" [Mr. Taylor, who was in Randolph's department]. "Upon this I told him that when young I had learned a little French; and I would endeavor to understand the letter. By the aid of a dictionary and

<sup>1</sup> After the union of Scotland and England (1706-7) the motto of the old Virginia Company's seal had *quartam* substituted for *quintum*, that colony becoming the fourth country under the crown,—England, Ireland, and Wales, the others.

a grammar I went through with it, long as it was, before I went to bed." In a letter to Hamilton 14 Dec. 1795, Col. Pickering says :

"The printer of Mr. Randolph's *Vindication* advertises that it will be published next Friday. The translation of Fauchet's letter will be in it. This translation was made by Mr. Taylor at Randolph's request, but Mr. Taylor, who desired the use of mine, told me that he had made but few variations. Now if I have mistaken the sense in any material passages, it is highly probable that they will be transferred to Mr. Taylor's translation, or Mr. Taylor may mistake the meaning of some passages, to which he will always be liable from the want of a comprehensive view of his subject. I have met with such instances in his other translations, altho' he is more familiar with the French than I am. Now it seems to me important that the first translation of Fauchet's letter that shall be published, should convey its true meaning, and therefore I wish earnestly that yours, or the one you are correcting, may be returned by to-morrow's post (if not already on its way), that it may be printed in Fenno's paper before the *Vindication* appears."

The Pickering-Upham "*Life of Pickering*" quotes from the translation in Randolph's "*Vindication*," apparently under the impression that it is Pickering's. Mr. Gibbs uses the same in a more suspicious way. On the 19 Nov. 1795, before any translation had appeared, Mr. Wolcott wrote to his father an analysis (see Chapter XXII.), in which the sense of the despatch is cruelly perverted. At one part of the letter he gave extracts from the despatch, which Mr. Gibbs has supplanted with the words: "(Here follow the Extracts from No. 10 already cited.)"<sup>2</sup>

<sup>1</sup> The translation among the Pickering MSS., to which the Massachusetts Historical Society has given me access consists of 29 quarto pages. The paragraphs of the French original and those of the translation in Pickering's handwriting correspond, but in neither case are they numbered. On every page of the translation are to be found alterations, more or less numerous, written between the lines, leaving the lines un erased, but underlined. The words between the lines were first written in pencil and afterwards traced over in ink of a darker hue than that used for the rest of the MS.; so that the handwriting cannot be certainly identified. A fair copy, in vol. 3 of the Pickering MSS., follows the Pickering translation without regard to the alterations. This copy consists of 20 folio pages and contains foot-notes of French words and phrases.

<sup>2</sup> Gibbs, I., p. 266.

On referring to the cited extracts we find paragraphs 16 and 17 thus credited: "The foregoing extracts are taken from Mr. Pickering's translation."<sup>1</sup> But a comparison shows that they are not from Pickering at all, but *verbatim* from Randolph's "Vindication." If the extracts sent by Mr. Wolcott to his father were no truer to the original than the same letter's representation of other parts, it is not surprising that they were suppressed. As Mr. Wolcott's misrepresentations, unless invented, must have followed the translation laid before the President, Col. Pickering's anxiety that a corrected edition of his version should precede Randolph's publication was natural.

It cannot now be ascertained whether the translation in Pickering's writing is that which was laid before Washington, or a subsequent improvement. Some of the inaccuracies are such as would make an unpleasant impression. Thus where Fauchet says Jefferson "prudently retired to avoid making a figure against his inclination in scenes, the secret of which will soon or late be brought to light," Pickering translates "he prudently retired, being forced to figure," etc. Fauchet may contemplate coming scenes; Pickering's mistranslation suggests that Cabinet scenes had driven Jefferson from the Cabinet. There was truth enough in this to make the President wince, and to suggest that the scenes must have been among Randolph's "confessions." Although Pickering's inaccuracies seem not generally harmful, in one vital paragraph the sense of the original has been rendered in a way damaging to Randolph. Fauchet (No. 10, par. 19) writes:

"Three weeks had they encamped in the west without a single armed man appearing. However, the President, or those who wished to make the most of this manoeuvre, made it public that he was going to command in person. The session of Congress being very near, it was wished to try whether there could not be obtained from the presses, which were supposed to have changed, a silence, whence to conclude the possibility of infringing the constitution in its most essen-

<sup>1</sup> Gibbs, I., 237, 238.

tial part ; in that which fixes the relation of the President with the legislature. But the patriotic papers laid hold of this artful attempt : I am certain that the office of Secretary of State, which alone remained at Philadelphia (for while the minister of finance was with the army, the minister of war was on a tour to the Province of Maine, 400 miles from Philadelphia), maintained the controversy in favor of the opinion which it was desired to establish. A comparison between the President and the English monarch was introduced, who far from Westminster, yet strictly fulfils his duty of sanctioning ; it was much insisted on that the constitution declares that the President commands the armed force : this similitude was treated with contempt ; the consequence of the power of commanding in person, drawn from the right to command in chief (or direct) the force of the state, was ridiculed and reduced to an absurdity, by supposing a fleet at sea and an army on land. The result of this controversy was, that some days after it was announced that the President would come to open the approaching session."

There is at first glance an ambiguity here. Which side in the controversy did the "office of Secretary of State" maintain? Apparently, according to Fauchet, (here discrediting Randolph to his own party), that of the government ; for that was the only one which "it was desired to establish." The other side were not establishing any theory, but "laying hold" of one. "The patriotic papers laid hold of this artful attempt." The Pickering translation turns the ambiguity against Randolph. "But," translates Pickering, "the patriotic papers took up this artful attempt. I have the certainty that the office of Secretary of State, which remained alone at Philadelphia, . . . maintained the controversy in favor of the opinion they wished to establish. They talked of the comparison between the President and the English monarch," etc. In both instances the word "they" refers us to the "patriotic papers." Instead of the right translation of the last sentence, "A comparison was introduced between the President and the English monarch," the alleged argument, of the State Department, Pickering has : "They [apparently the opposition papers] talked of the comparison, etc."

Randolph, however, declared that with his "privity or belief not a single publication was made from the Department of State respecting the President's absence from Congress." We may feel tolerably certain that he would have maintained silence, through dread of the expedition being under other control, on the one hand, and of a bad precedent on the other.

It seems astounding that three men, of whom neither knew French, should have set themselves to determine the testimony of a French document concerning a colleague familiar with French, excluding the one most needed in the council, if only to check ignorant inferences. These errors he could only have met as they arose. They were placed forever beyond his reach. They are revealed only to a later generation. How grievous were those errors has been already shown by Mr. Wolcott's monstrous analysis, sent his father, of a despatch notable for intricacy and indirection.<sup>1</sup>

From Mr. Wolcott's posthumous narrative we learn that when he and Colonel Pickering and Mr. Bradford first met the President in consultation on his return from Virginia, he (the President) "was greatly dissatisfied that the instructions and memorial [to England] had not been prepared and submitted to the consideration of the Secretaries and Attorney General that their reports might be formed, and he peremptorily resolved that whether Mr. Randolph was innocent or culpable, he would require of him the performance of this service, which was his official duty, and which ought to have been long before completed." But from Colonel Pickering's posthumous revelations we learn that Randolph *had* prepared the memorial.

<sup>1</sup> Other mistranslations in Col. Pickering's MS. are passed over because they do not appear material, *e. g.* : "In the meantime, even when they [the government] were certain of having an army, it was yet necessary to assure themselves of coöperators among the men whose reputation was unable to influence their party." This reverses the meaning of *pouvait influencer leur parti*. It can never be known, however, what colorings were given, in the consultation with Washington, to some of these seemingly harmless mistakes.



“ Randolph brought it to me, and desired, when examined, that I would hand it to Mr Wolcott, Secretary of the Treasury. I read the paper, and reprobated it. While it remained with me, Randolph called upon me at my office, and asked my opinion of it. I rose from my seat (I think with the paper in my hand), and, raising my right hand in the air, said with some animation: ‘Why, this is throwing all up in the wind,’ expressing my strong disapprobation of Randolph’s views and reasons for further postponing the ratification of the treaty. Shortly after this interview (I suppose in two or three days; for I heard no more of the memoir) Mr. Wolcott called on me one evening, and gave me information of Fauchet, the French Minister’s letter to his government, implicating some Americans, but, above all, Edmund Randolph, Secretary of State, as corrupt men, and ready to sell themselves to the French government.”<sup>1</sup>

It thus appears that when, in Randolph’s absence, the President was “greatly dissatisfied” that he had not done a certain “official duty,” these gentlemen, knowing that it had been done, that the delay was theirs, did not undeceive the President. This suppression of the fact that they had the memorial was perhaps Randolph’s ruin; for it was in order to secure that further official service, neglected as he was left to suppose, that the irritated President withheld from the Secretary knowledge of the letter which he feared might arrest completion of the ratification so instantly resolved on. Washington and Randolph died in ignorance of these facts.

On the 10 September 1795 Colonel Pickering addressed the following “private” letter to John Q. Adams, Minister at the Hague, temporarily transferred to London:

“My temporary agency in the department of State has given me the sight of a letter of Mr. Randolph, late Secretary of State, dated the 21st of July which I observe was circular to all our foreign ministers, and cannot fail to have excited very unpleasant sensations in the mind

<sup>1</sup> Here, by the way, is an error of interpretation into which Pickering (consequently Washington, Wolcott and Bradford fell, through not having before them No. 6.) Fauchet, as we have seen, means that Randolph suggested the use of money to determine the course of undecided men in his (Randolph’s) own perfectly decided direction.

of every lover of order, and of every lover of his country. He there mentions the non-ratification of the treaty of Great Britain, and his opinion that the President would not ratify it; at least, not till after it should make a voyage to Britain and return; nor even then if it should prove true, that his Britanic Majesty had issued and did not repeal an order in council for capturing the vessels of all the neutral powers laden with provisions for France. He mentions the town meeting at Boston, in which the treaty was condemned; that the like measure had taken place at New York, was the next day to be repeated at Philadelphia, and would probably proceed southward. . . . The complexion of his whole letter shows that these popular meetings were not displeasing to him; and combined with various facts, which I cannot now detail, indicating studied delays, to give time for extending the opposition, satisfies me that his true object was to defeat the treaty altogether. But however reprehensible his conduct about the treaty might be deemed,—and it brought the character of the President and the solid interests of the United States to the brink of a precipice,—it was not the cause of his resignation; this had other relations, which some time or other may possibly be developed. Suffice it now to say that he had lost, or to speak more accurately, that he had forfeited, the President's confidence."

Randolph's letter of July 21, thus secretly censured, was written with care not to commit the President. Washington's own summary of it is given in my Chapter XXIV. It is followed in Chapter XXV. by correspondence between the President and the Secretary of State which enables the reader to judge whether Randolph did not state the case justly. Randolph, at any rate, showed the despatch to the President on his return from Mount Vernon, no observation being made that he "had exceeded his intention." So Randolph stated to the President, and it was not denied. Is it credible that Secretary Pickering's above animadversion on his predecessor's filed despatch was known to Washington? It is not in the State Department. It first saw the light in Pickering's biography, there described as a "private" letter. It also says Randolph's resignation was because he had "lost," or "forfeited," the President's confidence. But seven days

later, Sept. 27, the President wrote Randolph that none could rejoice more than himself if the suspicions were removed, and on Oct. 25 says the resignation was "voluntarily and unexpectedly given." Nor did the President ever say that he shared "the suspicions" (his usual phrase) raised by Fauchet's despatch.

When Col. Pickering was a member of the Board of War, during the Revolution, and reprimanded by Congress for a breach of its privileges, the offence was heightened by his having signed himself "President." It would appear to have been written in his day-dream; and, in remembrance of his low estimate of the President's intellect,—candidly published by his biographers,—one can hardly wonder that he should thus begin his secretaryship by taking the executive office on himself.

John Quincy Adams, in his answer, 15 Nov. 1795, says :

"That the Secretary of State should be accessory to such a manœuvre is what I could not have believed from any opinion less respectable than yours, and of which I would still fain hope he was innocent," and, "But notwithstanding the force of your expression that he had forfeited the confidence of the President, the story, which is not much of a secret here, must be loaded with great exaggerations, if not with absolute falsehood."

Randolph's "Vindication of Mr. Randolph's Resignation," appeared 18 December 1795. No note or comment on it occurs in Washington's correspondence. But Col. Pickering has made up for this silence by his account of a picturesque interview, which is told by his biographer.

"It reached his hand soon after its issue. He read it through, and immediately sent for Colonel Pickering. Receiving him with his usual composure of manner, and requesting him to be seated, he spoke as follows, in a slow and suppressed voice, uttering each word with deliberation, and pausing between the sentences :

"Colonel Pickering, I feel that a necessity is upon me to unburden my mind to some one, and you will pardon me for the liberty I have taken in sending for you on this occasion. Peyton Randolph was my

dearest friend. He died suddenly, in October 1775. In an hour of affectionate and solemn communion, in which he had expressed an expectation that before long he would thus be removed, he begged me to be a friend to his nephew and adopted son Edmund. I promised that I would be to him as a father : that promise has been sacredly kept. If, in any instance, I have been swayed by personal and private feelings, in the exercise of political influence or of official patronage and power, it has been in this.'

"Thus far there had been no change in his countenance or manner, except a slight indication of increasing sensibility when uttering the last two or three sentences. He proceeded, with somewhat longer pauses and a more compressed and restrained expression :

"Upon taking command of the army of the United Colonies, in June 1775, I made him, then not twenty-two years of age, one of my aids ; as such he was a member of my military family. My entire interest was actively given to place and advance him in the path of political and professional promotion, for which his talents and education remarkably qualified him. By the aid of my influence he rose from one distinguished post to another in rapid succession and, at an early age, in the civil service of Virginia ; a member of the convention that framed the first constitution of that State, in 1776 ; in the same year Attorney-General of Virginia,—an office his Uncle Peyton, as well as his father and grandfather, had held ; a delegate to Congress in 1779 ; Governor of Virginia in 1786 ; and a member of the Convention that framed the Constitution of the United States. I made him Attorney-General of the United States, at the organization of the Federal government ; a member of my Cabinet from the first. In 1794 I made him Secretary of State, placing him at the head of my official council : in my Cabinet, from the beginning he has been admitted to my utmost confidence. I have held with him a daily intimacy. He occupied the chief seat among the guests at my table.'

"At this point Washington rose to his feet, the pamphlet in his hand,—his whole aspect and manner showing the storm that was gathering, and his voice rising as he spoke :

"While at the head of my Cabinet he has been secretly, but actively, plotting with the opponents of my administration, consulting and contriving with them for the defeat of its measures ; he, the Secretary of State, to whose trust the foreign relations of the country are confided, has been conducting an intrigue with the ambassador of a foreign government to promote the designs of that government, which were

to overthrow the administration of which he Randolph was a trusted member, receiving from the ambassador money to aid in accomplishing that object; soliciting from him more for the same purpose,—all this time I have had entire faith in him, and been led by that faith to pay deference to his representations, to delay the ratification of the British treaty, thereby exposing myself to imputation of having been intimidated by party clamor from the discharge of a public duty, an imputation contrary to the truth, a thought abhorrent to my feelings and my nature, and now he has written and published this.’

“As he uttered these last words, he threw the pamphlet down, and gave way to a terrific burst of denunciation in unrestrained expressions. He then calmly resumed his seat. The storm was over. With perfect serenity other business was entered upon, and the name or thought of Edmund Randolph was never again suffered to disturb his temper.”

Col. Pickering’s memory was never exact. Referring to the assertion that he never asked Washington for an office, his tender biographer says: “As in other instances his memory was here at fault.” He twice asked Washington for office.<sup>1</sup> It is therefore necessary to scrutinize this, the only report of Washington’s conclusions on the facts as set forth by Randolph. In this instance the interviewer had no contemporary document to refresh his memory, and the only other witness to the incident was in his grave when the picturesque reminiscence was written.

1. The assertion ascribed to Washington that Randolph’s rise to the enumerated posts of distinction was by the aid of his influence, is as absurd as it is arrogant. The earlier promotions and elections in Virginia were without Washington’s knowledge. In no instance does Washington’s influence appear in Randolph’s political successes up to the appointment as Attorney General.

2. “I promised [Peyton Randolph] that I would be to him [Edmund] as a father; that promise has been sacredly kept.” If Washington had been a father, and his son secretly accused before him by avowed antagonists, would he have concealed the accusation from him for eight days? Would he have failed to

<sup>1</sup> “Life of Pickering,” I., 261; II., 452.

demand all the documents on which, according to his own assertion, the accusation pointedly rested? Would he have lavished exceptional affection on his son while daily consulting in secret with his accusers? Washington may have felt compelled by reasons of State to do all this in Randolph's case; but that he could at the same time have talked about fulfilling promises of paternal care for the victim would imply a character which no enemy ever attributed to him.

3. If Washington denounced Randolph as plotting with the opponents of his administration to defeat its measures, it was contrary to the evidence he had in the very document of accusation. It could only have been by a survival in his mind of Col. Pickering's damaging mistranslations already pointed out.

4. "Conducting an intrigue with the ambassador of a foreign government to promote the designs of that government, which were to overthrow the administration, of which he was a trusted member." That is, Randolph wanted to scuttle the ship in which he was sailing. Disliked equally by Jeffersonians and Hamiltonians, here is a Secretary who seeks to overthrow the one administration in which he could have any place!

5. The explanation of a phenomenon otherwise incredible follows: "Receiving from the ambassador money to aid in accomplishing that object." If Washington said this, the senility into which Jefferson ("Ana") says he had sunk two years before, must have sadly increased. He held, according to Pickering, the three Fauchet despatches in his hand; if they were good for any thing they were good to prove that he (Fauchet) did *not* respond to Randolph's overtures, these being for money to enable certain men (not himself) to "save the country from civil war"; and that *France purchased no men to do their duty.*

## CHAPTER XXXIV.

### WASHINGTON IN JUDGMENT.

AMONG the manuscripts of Washington in the State Department, one, hitherto unnoticed, possesses significance. It is a minute and extended summary of Randolph's "Vindication," in which every important point of the hundred pages is reproduced. Why Washington performed this long labor, with the pamphlet in his hand, seems incomprehensible. At any rate, this was what Washington did with the work so melodramatically thrown down in Col. Pickering's description. To a casual perusal, this MS. seems a colorless resumé of Randolph's pamphlet; but explored word by word, just two small paragraphs of Washington's own are discovered:

"P. 49. 'In the controversy between us the partisans of Great Britain have said I must be sacrificed.' What has been the controversy between us?"

The seven words of the question are Washington's. In another part of the digest Washington writes without pointed reference to any passage in the pamphlet: "His declarations at all times on these subjects have accorded with my opinions, namely, that we ought to be totally independent of every power on earth, france (*sic*) as well as others. See his letter to Col. Monroe on this subject."

The letter alluded to is probably that of 1 June 1795, Washington's admiring comment on which appears elsewhere (Chap. XXIV.).

Those who have studied Washington's writings know his sensitiveness to criticism, and how ready he is to remark any misrepresentation or error. He covered the margins of Monroe's "View," etc., with sharp criticisms. However keenly he must have felt Randolph's pamphlet, not one statement in it did he ever deny. The reader has in the two small paragraphs the only discoverable sign Washington ever gave, after Randolph left his side.

"His declarations at all times on these subjects have accorded with my opinions."

"What has been the controversy between us?"

The question is pathetic. "Had Mr. Fauchet's letter been shown to me in private," said Randolph to his lost chieftain; "—had you been yourself—such as you were when party dare not approach you:—I should have thanked you, and immediately gone in quest of proofs which I now possess." Was it possible that Washington could not see the wrong done his friend of many years in this secret consultation with his enemies; and, in their presence, springing on him, without preparation, a trial and cross-examination for which the others had been preparing for more than three weeks?

Whatever it was, the controversy between them passed out into the world to receive its verdict. I can find in the criticisms of that period only one attempt to answer the "Vindication." Of this Madison writes to Jefferson, 10 Jan. 1796: "Randolph's 'Vindication' has just undergone the lash of the author of the 'Bone to Gnaw.' It is handled with much satirical scurrility, not without strictures of sufficient plausibility to aid in the plan of running him down."<sup>1</sup>

In a letter to Jefferson 26 Jan. 1796, Madison again refers to the pamphlet: "His greatest enemies will not easily persuade themselves that he was under a corrupt influence of France, and

<sup>1</sup> But this outburst of Cobbett's vulgar malice is only plausible in its exposures of the improbabilities in Fauchet's "certificate," on which Randolph's defence did not rest.



his best friends cannot save him from the self-condemnation of his political career, as explained by himself.”<sup>1</sup>

Thomas Callender, though alienated from Randolph by Jefferson's influence, ridiculed the case against him. Quoting No. 6, Callender wrote :

“ This is a clear intimation that he (Fauchet) could do something important if he had the command of proper funds. His real object undoubtedly was to get the handling of some cash. He knew that work of this kind was going on in Europe and he naturally inferred that America would be thought worthy of purchase. When a republic such as Genoa received ten million dollars in bribes undoubtedly the United States would be worth more or less. To ensure getting money he set us down very cheap. Some thousands of dollars were to have overturned the present government.”<sup>2</sup>

The same writer called attention to the fact that Hamilton was involved with Randolph in the Fauchet Despatch 10, and not through Randolph, being charged with corruption as financier, and with having begged Washington to take him along on the military expedition in Pennsylvania, in order to impress the country and army with a belief that the President was on his side. “ The friends of Alexander Hamilton,” says Callender, “ want to recommend the veracity of Fauchet when he impeaches Randolph, and to disown it when he impeaches Hamilton.”

The Library of Congress contains a copy of Randolph's “ Vindication ” with notes in the handwriting of Jefferson. He has underscored two descriptive phrases aimed at Washington :— “ A temper which under the exterior of cool and slow deliberation rapidly catches a prejudice, and with difficulty abandons it ” (p. 50); and “ your invincible repugnance to retract.” On page 97 Randolph, speaking of Washington's dilemma over the British Treaty and the obnoxious provision-seizing order, says: “ You will remember a remarkable phrase of your own upon this

<sup>1</sup> I cannot discover what part of Randolph's political career is here referred to, Madison's letters suggesting no dissatisfaction.

<sup>2</sup> *Am. Annual Reg.*, 1796, p. 172.

occasion." To this Jefferson adds the phrase alluded to: "That if he should not ratify the Treaty he should lose the support of one party and not gain the other, who would still continue to abuse him as much as ever, and so between the two stools the breech will come to the ground." Writing to Senator W. B. Giles, 31 Dec. 1795, Jefferson, whose dislike of Randolph we know, is constrained to say: "His narrative is so straight and plain that even those who did not know him will acquit him of the charge of bribery. Those who know him had done it from the first." Gen. Horatio Gates writes to James Wormeley 11 Jan. 1796: "I have read with attention Mr. Randolph's pamphlet, and from so able a defence, I am convinced he had most degrading and undeserved treatment; and this, I trust, will be the sentiment of every impartial judge and every friend of his country."

These early commentators knew but few of the facts. Since their time graves have opened, and secret things been brought to light. The attack on Randolph by Mr. Wolcott's son-in-law, Mr. Gibbs, in his "Administrations of Washington and Adams," was followed in 1856 by a republication of the "Vindication" by a grandson of Edmund Randolph, Mr. Peter Vivian Daniel, son of the late Justice Daniel of the U. S. Supreme Court. From the many letters then received, which Mr. Daniel has placed in my hands, I select a few from those which appear to represent impartial and competent opinion. I copy from the originals, and in no case suppress any thing against Randolph.

GEORGE BANCROFT.—"It is plain to my mind that neither Fauchet's money nor Fauchet's advice had any influence on Mr. Randolph's conduct relating to Jay's treaty. His advice in the Cabinet corresponded to his convictions."

Gov. A. G. BROWN.—"Gen. Washington's appreciation of men was so very accurate that we are apt to adopt any views he may have expressed, or *seemed to entertain*, of the statesmen of his day. I never thought that Randolph had acted corruptly. But there had been a

strong impression on my mind that he had been so *indiscreet* in his intercourse with Fauchet as to give his enemies a loop on which to hang a doubt. His whole life bore prompt and willing testimony that he was not corrupt, and therefore appearances, though against him, did not unsettle my conviction that he was above being bribed. After reading the pamphlet I can see how a very cautious man might have borne himself differently, and yet I do not think it just to say that Randolph was ever indiscreet."

HON. BENJAMIN HOWARD.—"It is impossible, I think, for any fair mind to come to any other conclusion than this,—that General Washington allowed himself to be excited to anger by some of those about him who made absurd representations respecting Mr. Randolph, and that whilst thus heated he treated a high-minded Virginia gentleman with shocking rudeness and injustice. In fact, I had scarcely patience to go through the elaborate examination which Mr. Randolph deemed it expedient to make of the charges brought against his integrity, deeming them utterly frivolous and vexatious. If the history shows that Washington gave way to passion, it will only prove him not to have been

" 'That faultless monster whom the world ne'er saw.' "

That he should have asked Mr. R. to walk into the next room whilst other persons were deciding upon his case, and then have subjected him to their personal examination, is wonderful. Mr. R. would have been justified in walking out of the house instead of into the next room; but I suppose his faculties were bewildered at finding himself treated so unworthily by such a man as General Washington. It would have been enough to confound any man."

WILLIAM HENRY TRESKOT.<sup>1</sup>—"I think the defence of Mr. Randolph can be made unanswerable. Wolcott himself, and others who agreed with him, shrunk from the full consequence of their own accusations, and I think the only mistake Randolph committed was to ask any explanation of Fauchet at all. Fauchet's explanation is to me a very clumsy one, and I have put it aside altogether in my conclusion. I prefer to hold him to the explicit language of his despatch. I think he meant, and I prefer that he should have meant, to charge Mr. Randolph with a corrupt combination with Mifflin and Dallas to obtain money. This accusation, altho' distinct, is not separate. It is part of the system of policy which he is endeavoring to explain to his govern-

<sup>1</sup> Author of "Diplomatic History of the United States," etc.

ment, and his account is so systematic that the despatch must be taken or rejected as a whole. I am sure, if properly analyzed, it can be reduced to a perfect *reductio ad absurdum*. But with all my strong conviction, I cannot help thinking that Mr. Randolph was 'indiscreet'—that is, that he dealt with Fauchet too frankly, and gave him credit for an intelligent and unselfish interest in the welfare of the country which the man never possessed. The policy of France to this country during the administrations of Washington and Adams was intolerable, and the ignorance of her ministers was equalled by the insolence of her government. The ambassadors from France here wrote despatches as they made speeches in the convention—full of bombastic rhetoric and false sentiment; they misunderstood every honest man they met, and were the most pertinacious mischief-makers that ever tormented a government. Add to their special characteristics the smart and busy vanity of their private characters, and you have men who could not safely be trusted even with the truth.

“That Mr. Randolph had a difficult, very difficult, part to play I admit, and I surely believe that he failed because he was too high and noble a nature to entertain the mean suspicions of others which they were unjust enough to feel towards him. Had he watched Fauchet with one tithe of the jealous distrust that Hammond and Wolcott and Pickering watched him, he never would have been subjected to a moment's misunderstanding.”

Chief-Justice TANEY.—“I was a boy at college when the difficulty took place between him and General Washington, and remember well the excitement produced at the time throughout the country. But in those days the students at college did not read newspapers nor political pamphlets; and before I entered into the society of men, this incident of Washington's administration had ceased to attract public attention, and was no longer a subject of public discussion. And I had never read any thing upon the subject, until I saw the Wolcott correspondence. Although this was the account of Mr. Wolcott himself, who was one of the principal actors in this proceeding, it impressed me very unfavorably as regarded the members of the Cabinet who were active in getting up this charge. There was a want of that manly frankness on their part which is due from one member of the President's Cabinet towards the others, from the confidential relation in which they all stand towards the President and towards each other. He ought to have been the first person informed of the imputation on his integrity, and as soon as it was made by the British Minister. But

Mr. Wolcott and his associates concealed it from him, while they were secretly pouring suspicions in the President's ear and poisoning his mind against Mr. Randolph. His conduct and conversations during all that time were manifestly watched and interpreted by prejudice under the impression of these suspicions, while he was left perfectly unconscious that any one entertained the slightest suspicion of his honor and integrity. And finally an attempt was made to embarrass him and take him by surprise, by inducing the President, whose mind they had thus poisoned, to put the letter suddenly in his hands and demand an immediate explanation and answer—when the letter was written in French filling fifteen pages<sup>1</sup>—containing a variety of matter—some assertions and some conjectures and speculations—very desultory—and in which the passages in relation to Mr. Randolph are to be found in different places—mixed up with other matters, so as to make it difficult to understand what Mr. Fauchet meant.

“These were the impressions made upon me by the Wolcott correspondence. Mr. Randolph's Vindication has confirmed them. And I am sorry to see that Gen. Washington (in whom we are most unwilling to admit any fault) was so influenced by those who were active in these accusations, and by his strong indignation at what he believed the treachery of his Secretary of State, as to depart from his habitual frankness, and dissemble his suspicion for days, and wear the appearance of his usual friendly and confidential manner when it would seem that he suspected him of being guilty, and had made up his mind to deal with him as a culprit to be surprised into a confession of his guilt, and not as a gentleman whose character and previous life he well knew, and which ought to have placed him above all suspicion without very clear and strong proof against him. I cannot now imagine how Fauchet's letter, standing by itself, could be regarded as such proof. The letter shows what manner of man he was,—writing home a letter mainly intended, it would seem, to give himself importance,—and containing nothing, if true, that could be of any value to his own government from the confused way in which every thing is stated, and representing what were obviously authorized although informal communications, as if they were the confidential confessions of the Secretary, and not as they obviously were, official. What he meant about the flour upon which the charge against Mr. Randolph is founded I do not know, for he tells the story in such a manner that I cannot comprehend what he means, or what Mr. Randolph meant, if Fauchet

<sup>1</sup> Twenty folio pages.

states truly what he knew, or how he inferred from it that Mr. Randolph was ready to take a bribe. His subsequent letter, however, to Mr. Randolph places the matter beyond doubt. His argument (I mean Mr. Randolph's) is conclusive."

Here the commanding name in American history is implicated. Here also lies the gravamen in Randolph's case. There was really no case against Randolph, though a plausible one for the momentary purpose; and it is certain that his shining name would long ago have emerged from its eclipse but for his unpardonable sin of speaking against Washington, and the assumption that his disgrace represented the President's judgment. But Washington never dismissed Randolph from his service; in his voluminous letters he never intimated belief of the charges against him; and by the assumption that he passed such judgment on the Secretary a real stigma is cast upon Washington, whereas Randolph's words were but the outburst of a wounded friend fancying he had been betrayed with a kiss. On the surface there was reason for Randolph's wrath. Let us suppose the matter brought before Washington one simply affecting his friend's honor. It is a charge brought from an interested foreign Legation through a fiery partisan who had been in his Cabinet six months, against an old friend and comrade who had served at his side from youth,—on his staff in the field, his private secretary, his fellow-worker in the affairs of Virginia, for nearly six years an unwearied worker in his administration. Washington has seen this man as a youth parting, as then supposed, with a large patrimony for his country's cause, taking the undowered hand of Liberty, serving her chief for twenty years: he had known him for many years, as his personal lawyer, building up his fortune and declining payment. He now finds him accused of venality and disloyalty by comparative strangers, avowed adversaries both of the man and of his own policy. The accusation is based on an equivocal paragraph in an otherwise admittedly untruthful let-

ter of a foreigner ; which letter refers to previous ones—on file near by at a Legation interested to respond to Washington's every request—for particulars which might put a different face on the matter. What would a loyal friend, a just man, a gentleman, do under such circumstances? Would he make no effort to see documents obviously essential to the case? Would he conceal the charge from his friend, while conspiring with his friend's adversaries, until their purpose was accomplished? Would he meanwhile lavish exceptional affection on his unsuspecting friend, exchanging hospitalities with him? Would he give the place of honor at his table to a man he meant to degrade as a traitor?

This was the apparent conduct which Randolph resented. "Why," he asked, bitterly, "was all this stratagem observed towards him of whose fidelity you had never entertained a doubt?" Washington made no reply. Who has ever justified his conduct? It has never been defended; it could not be denied; and historians have simply suppressed this notable chapter in the career of Washington.

I submit that it is susceptible of but one explanation at all consistent with the honor of Washington: he did not believe one word of the charges against Randolph. Jefferson, Randolph's enemy, said no man who knew Randolph would believe them; and none knew him so well as Washington. But from the moment in which the intercepted despatch was laid before him every step of the President was compulsory. It was brought from the British office to be held as a pistol at the head of the administration to compel an unconditional signature to the Treaty. The despatch involved Washington equally with Randolph, unless the latter was delivered up as the scapegoat. Washington's enemies were even more relentless than those of Randolph. That might be of little importance to him personally, but the peril of his administration was the peril of the country. In that critical week, when peace or war hung in the balance,—not only foreign but

civil war,—a British bomb was suddenly revealed which no subsequent disclosure could deprive of its adequacy for immediate service. The intercepted despatch, if published and not repudiated, could raise enough clamor about executive intrigue and French gold to ruin an administration already divided against itself. The bomb had a time-fuse, set to explode at a moment too late for discussion, to be averted from the administration only by rolling it under Randolph and the Republicans. Washington could not save Randolph; he could easily have shared his fate. The British party had conquered; the President could now only send a remonstrance against the odious Provision Order where he meant to send a demand. But he resolved that no British sympathizer should write this remonstrance; on Randolph alone he could depend to do it vigorously; and for that purpose, and to complete the transaction, he was compelled to keep the Secretary for a week in ignorance of his fate.

It is plain then why Washington did not send for the other Fauchet despatches. Washington would not even investigate Fauchet's miserable insinuations against the best friend he had in the world. It was cruel enough that among them they had rendered necessary the sacrifice of that friend; he would show them that his faith in their victim was unabated. He visited no minister but Randolph. At his table Randolph had the place of honor, and was treated with a friendship which afterwards appeared to him as a mask. But was this true? Was Washington merely working on his friend's affection to get out of him a bit of odious work? This was indeed the effect. To one less dear Randolph would have indignantly refused all share in the surrender of American commerce to English seizure and confiscation. He ought to have refused Washington, but his heart was appealed to by the intimate visits, the dandling of his children. Was Washington seething the kid in its mother's milk? It was natural that it should so seem to the stricken statesman, but



to share his view now were to fix on Washington a brand of treachery worse than any ascribed to Randolph.

In fact, Washington's character is especially shown in this omitted passage of his history. Unable to rescue his friend, already marked by Lord Grenville for destruction,<sup>1</sup> but prepared to utilize even that injustice to save his country from war, Washington afterwards refused to shelter his own personal reputation at Randolph's cost. He could not, indeed, then, or at any period, have confessed his disbelief in the charges, after having based a change of policy on the disgrace of the "French party" effected by those charges; but, the blow having fallen, Washington was prepared for any personal penance; nor would he allow Randolph's adversaries more than their pound of flesh. These desired to withhold from the forthcoming "Vindication" parts of Fauchet's despatch involving Hamilton; still more they desired to suppress Washington's letter saying he would not sign the Treaty, written just before he did sign it. Pickering, now in Randolph's place, removed this damaging letter from the State Department and insolently refused the ex-Secretary's demand for it. But Washington compelled its surrender. "You are at full liberty," he wrote to Randolph, "to publish without reserve *any* and *every* private and confidential letter I ever wrote you; nay, more,—every word I ever uttered to, or in your presence, from which you can derive any advantage for your vindication."

Pickering's "interview" proved mythical,—containing inaccuracies no Virginian could have uttered, and in any case more discreditable to Washington than to Randolph,—we have as Washington's only inscription on his friend's "Vindication," an assertion that Randolph's opinions on foreign questions were always his own, and the bewildered question—"What was the controversy between us?"

Some have sought to show that Washington did not change

<sup>1</sup> See his despatch to Hammond, 20 Nov. 1794.

front under menace of the intercepted letter ; but the original documents which I have obtained from England prove that such was the case. Hammond, writing home, gloats over the chagrin of Randolph, and ascribes his own victory to " the declining influence of that gentleman in the Councils of this country."

At no period up to his death could Washington have done justice to Randolph without seriously affecting the foreign relations of the country. To admit disbelief in the Fauchet falsehoods concerning Randolph,—consequently concerning the party which opposed the treaty,—would confess that the Provision Order was swallowed, and the combination to starve France joined, under English menace and dictation. That would have given away the American contention in the hostile controversy with France which followed, and went so far as to summon Washington again to the head of the army. On this personal matter, therefore, because it still involved the nation, Washington was necessarily dumb. If his treatment of Randolph was not hypocritical, he no doubt hoped that eventually his old comrade would see that during their last week together the kindness was real, the unkindness the mask. Those last actions would say to a calmer year : " I sacrificed you, but never doubted you."

Even so it proved. After fifteen years he, for the first time, referred to his trouble with Washington. On 2 July 1810 he wrote to Hon. Bushrod Washington : " If I could now present myself before your venerated uncle it would be my pride to confess my contrition that I suffered my irritation, be the cause what it might, to use some of those expressions respecting him which, at this moment of my indifference to the ideas of the world, I wish to recall, as being inconsistent with my subsequent convictions." He added that it was his hope that he might yet recover strength enough to leave the world his sincere homage to Washington,—a hope fulfilled.

## CHAPTER XXXV.

### GERMANICUS IN EXILE.

It was to be a long time before Randolph could calmly survey the situation which had brought about his sacrifice, or take a lenient view of Washington's course. His own characteristic loyalty could not comprehend the disloyalty to friendship or personal injustice.<sup>1</sup> What friendship meant to Randolph appears in a letter to Madison 1 Nov. 1795 :

"I have forborne to write to you since my resignation, that you might be able to affirm that, in the ground which I shall take in my appeal to the people, you have borne no part. For among the objects, which the President and his party have in view, one is to destroy the republican force in the U. S. A conspiracy, more deeply laid and systematically pursued, has not yet occurred ; and in every newspaper from New York and Boston I read hints, bottomed upon that letter. I have no doubt, that the whole scheme will recoil upon their heads. But it has required time to prepare the means. This is now done, and the press is at work. I cannot in the compass of a letter give you details. But every nerve has been strained to combine your name in a business to which you were the most absolute stranger. I mean the insurrection, and a general revolution of government. I feel happy at my emancipation from an attachment to a man who has practised upon

<sup>1</sup> Had Randolph known the tenor of Grenville's secret despatches,—that the Indian wars must end only through English interposition ; that the negotiation must be with Hamilton, and kept from Randolph ; that Randolph must be made pliant or replaced, a conference for this end to be held ; he (Randolph) might have appreciated more fully the secret and tremendous pressure brought to bear, in consultations from which he was excluded, on the now rapidly failing President. Personally Washington knew not fear ; for his country, and when political and not military action was required, the father of his country was maternally apprehensive.

me the profound hypocrisy of a Tiberius, and the injustice of an assassin. If he does not repent it, it must be because he is invulnerable by even the most pointed facts. In the course of this week, I expect to commence my journey. Wearied as I am in contemplating the vexatious subject, I will not dilate upon it, as my pamphlet will shortly reach you."

Here we find him, instead of seizing the strong hand of Madison in his hour of need, carefully defending that powerful friend from possible participation in any odium that might surround himself. What a commentary on human judgment to now read this letter beside the report of the English *Chargé d'Affaires*: "Every man of that party (particularly such as are implicated in the remarks contained in Mr. Fauchet's intercepted letter) seems willing to let this ruined Bark sink of itself and to shun the vortex which hurries it to the bottom!"

The Englishman's remark was true enough. Randolph's care to detach his friends from all implication with himself does not appear to have excited chivalry towards himself. It is a notable fact that when leading republican statesmen who had ridiculed in private the accusations against Randolph came into power, they gave him no opportunity for rehabilitation. The causes are not remote. 1. Jefferson had politically undermined Randolph by writing to leading politicians the misrepresentations of his course in the Cabinet already recounted. 2. Randolph knew not the wisdom of the unjust steward who used his master's means to make friends with his creditors, so that, when dismissed, he might be received in their habitations. He had stood by the rights and principles of his country alike against French and English interests; he had thereby equally incurred enmity of the French and English ambassadors; also that of their respective parties in America. When John Adams exclaimed "Happy is the country to be rid of Randolph!" the response came from Monticello. 3. There was a party war; partisans only were wanted. Randolph could not be a partisan. In political life he

in no instance fought for victory. 4. So far from conciliating the party with which he most sympathized, he had assailed its organizations—the “democratic societies”—as tending to develop a tyrannous Jacobinism. The truth of this charge was now proved in his own case. Even statesmen who deplored those societies, in private, were afraid to consort publicly with the man who had offended them.

In this connection an expression concerning Washington, in the above letter to Madison, has significance,—the allusion to Tiberius. In a letter before me to Samuel Bayard, London, enclosing him £52, he says the President’s perfidy is “unexampled but in Tiberius.” This is not a mere strong expression, but a far-reaching one, from the heart and hand which had defended the President under the signature “Germanicus.”

The pseudonyms of our early political writers were carefully chosen. That under which Randolph defended Washington bore a connotation somewhat pathetic,—to be proved in the end prophetic. Young Germanicus, son of a house whose imperial figures had departed, was so loyal to his adoptive father that he would have no other name on the memorial of his own victories but that of “Tiberius.” In his youth Germanicus had entered military service with Tiberius, but was recalled to be magistrate and “Attorney General” at Rome. The young Roman’s resemblance to Randolph went further, through the latter’s imitation of his successful effort to put down the mutiny of four legions by negotiation instead of bloodshed. The four mutinous western counties of Pennsylvania were thus appeased before the arrival of soldiery. Then as Germanicus, at the order of Tiberius, fought battles over which he shed tears, Randolph engaged in Cabinet combats, in altercations with ambassadors, for which he had no taste. It can hardly be supposed that the pseudonym meant to him more than an expression of an adopted son’s loyalty, but its use, in the light of subsequent events, is startling. Tiberius, outwardly hon-

oring Germanicus, secretly thwarted him, placed next him in command an official who hated him, and by whose machinations he perished. That Washington, while honoring him outwardly, should have been delivering him secretly to his enemies in the Cabinet, could hardly fail to remind the "Germanicus" who defended the President in his darkest days, of the perfidy of Tiberius. For he could not then know the forces at work around the President or himself.

Notwithstanding the popularity of Washington the circumstances of Randolph's resignation, and the unconditional ratification of the Treaty, excited much indignation in Virginia, and throughout the South. Jefferson, in a letter to Gouverneur Morris, describes the triumph of the British party as a "dear-bought victory." "Nothing can support them but the Colossus of the President's merits with the people."

Before setting out for Virginia Randolph summoned his servants and presented them with free papers.<sup>1</sup> On his arrival in Richmond, Nov. 20, he was received with a public demonstration. He at once resumed the practice of law, and was welcomed to his old place at the head of the Bar.

He was a sore loss to the republicans at Philadelphia. On Randolph they had depended for legal light on all questions of constitutional action; and when, after the President had signed the Treaty, the House of Representatives hesitated to pass an appropriation for its execution, Randolph was besieged with letters on the subject. "Randolph," writes Jefferson to W. B. Giles (31 Dec. 1795), "seems to have hit upon the true theory of our Constitution; that when a treaty is made involv-

<sup>1</sup> "All took them but the cook," writes one of his granddaughters, "who walked to the Library fire and put them in the coals, and said: 'I aint agoin to do noffin of the kind. Ise goin to live and die with master. Ise goin back to old Virginy.' Which she did, and died in his service. There were several of his old negroes in Richmond taken care of by my mother and aunts,—one who was blind from childhood." (MS.)

ing matters confided by the Constitution to the three branches of the Legislature conjointly, the Representatives are as free as the President and Senate were to consider whether the national interest requires their giving the form and force to the articles over which they have a power." I cannot find that Randolph participated in the excited meetings which were held, as a speaker, but the following letter reveals his interest in them. It is to his "dear friend" Madison, and dated at Richmond, 25 April 1796.

"The meeting, which I mentioned to you in my last letter, was this day held at the Capitol. Between 3 & 400 persons were present; a large proportion of whom were British merchants, some of whom pay for the British purchases of horses,—their clerks—officers, who have held posts under the President at his will,—stockholders—expectants of office—and many without the shadow of a freehold. Notwithstanding this, the numbers on the republican side, tho' inferior, were inferior in a small degree only; and it is believed on good grounds that the majority of free-holders were on the side of the house of representatives. Campbell and Marshall the principal combatants [word illegible], as you know without being told. Marshall's argument was inconsistent, and shifting; concluding every third sentence with the horrors of war. Campbell spoke elegantly and forcibly; and threw ridicule and absurdity upon his antagonist with success. Mr. Clofton will receive two papers; one signed by the treaty men, many of whom he will know to have neither interest nor feeling in common with the citizens of Virginia, and to have been transplanted hither from England or Caledonia since the war, interspersed pretty considerably with fugitive tories who have returned under the amnesty of peace. The notice, which I sent you the other day, spoke of instructions and a petition; but Marshall, suspecting that he would be outnumbered by freeholders, and conscious that none should instruct except those who elect, quitted the idea of instruction, and betook himself to a petition, in which he said all the inhabitants of Richmond, though not freeholders, might join. Upon which Campbell gave notice, that it would be published that he (Marshall) declined hazarding the question on the true sense of the country. Very few of the people of the county were present; but three-fourths of those who were present voted with Campbell. Dr. Foushee was extremely active and influential."

The most important work of Randolph in the year 1796 was the production entitled "Political Truth; or Animadversions on the Past and Present state of Public Affairs; with an inquiry into the truth of the charges preferred against Mr. Randolph." Philadelphia: printed by Samuel Harrison Smith, No. 118 Chestnut St., MDCC.XCVI." In this pamphlet Randolph appears, intellectually at least, at his best. He is now a free man. The subjoined extracts possess a centenary suggestiveness.

"America, when she surveyed the old world, saw nothing but a wide scene of corruption. The happiness of a million dependent on the caprice of one man; wealth, distinction, and honour the rewards of servility and prostitution of talents; idleness united to affluence, industry to poverty; religion but another name for superstition and intolerance; all these hideous effects sprang from the political institutions denominated governments. Even these nations themselves, possessing in most respects one common property, had presented one unshifting scene of rapacity and bloodshed in their connections with each other. To suppose then that the United States, in her intercourse with them, would avoid every source of discord, was to suppose vice a friend of virtue, and corruption the protectress of innocence. . . . It required not the gift of prophecy to foresee that our happiness must depend on as insulated a state of existence as the imperiousness of our wants would permit. Our contest for freedom cost us some sacrifices of this independent principle. The obligations we entered into with France were the price of those benefits which she coöperated in securing. They impaired in a limited degree our national principle, but yet they were entitled to an honorable compliance from the high advantages which they reciprocated, as well as from the great sacrifices they made of the principles of the government which sanctioned them. France too, though then a despotism, had unwarily planted the germ of liberty; and at that very moment the national enthusiasm in the cause of American freedom, which ran through the kingdom, was the presage of its impending birth in France. Treaties were formed with other powers during the war. They all arose from necessity, and had probably expired with the cause which produced them, had the principle of independence retained its inflexible determination. Good faith required a strict observance of all of them. But as it did not require, so neither did good sense justify or recommend, their extension, either as to time or as to their contents.



"The deposit which a kind Providence placed in our hands was dear beyond everything heretofore entrusted to man. It promised in its effects to produce universal regeneration, to restore man to his original state of innocence, and to add to his happiness by making it secure. Liberty, tried in the school of adversity, had made successive displays of uncontrollable energy, had risen above the storm, and now assumed her station in the midst of tranquillity and peace.

"After the desolation of war, the nation felt that languor ever inseparable from great exertion. . . . Our national sleep, of course, so far from being an evil, was a positive good. It restored us to our healthful state, and we awoke to the enjoyment of a new existence.

"It were futile to deny that a large portion of our present happiness sprang from the national government ; but equally futile would it be to deny that this government received its legitimate energy from the enlightened virtue of the people. From the texture of the system many powers were vaguely granted without regard to accuracy in their nature, and uncircumscribed in their extent. Whether this indefinite feature was the effect of accident or design has been and still is a subject of controversy."

Randolph then proceeds to argue that this vagueness of the Constitution was designed by some who, unable to incorporate their unrepugnant principles in it, hoped to import them gradually by construction. He shows that this had been already done, to some extent. "The funding system, the irredeemable quality of the debt, the national bank, are features borrowed from the British system." A special solicitude to preserve the defects of the Constitution is observable,—its least republican features.

So far as his own case is concerned Randolph does not, in "Political Truth," add any material facts to the "Vindication,"—whose main points have been used in the preceding pages. He here still challenges accusers to name the secret which had been confided to the French Minister. "Under the garb of a communicative frankness secrecy is most successfully practised," he says ; but "even Mr. Fauchet, who borrowed from the stores of fancy what his judgment or information could not supply, does not specifically state a solitary communication made by the Secretary of State which his official duty forbade."

In the spirit which once caused George Mason to drink the health of King George's ministers in his best claret, Jefferson, as we have seen, rejoiced in "the dear-bought" victory of the "British Party." From the hour that Randolph left his side, Washington was delivered into the hands of Messrs. Wolcott and Pickering. The latter could now freely indulge his hatred of France, and answer with insult her claims to gratitude for benefits resulting "from her exertions to advance *her own interest* and secure *her own safety*." The increasingly strained relations between France and the United States caused the military, or despotic, side of the government to come more and more to the front, and the sentiments or interests of the States to be treated with comparative indifference. "Virginia," writes Randolph to Madison, 8 Jan. 1797, "Virginia is very little more in this quarter, than a colony of Philadelphia. No conversation, no object political, commercial, and in many instances legal, can occur, without looking up to that city as the standard. We are even unable to procure the current publications until they are stale there. Whatever is said in favor of the government is circulated under franks from the treasury, etc. But not a Virginian eye has seen Gallatin's pamphlet, Dwight's address to the President, President the 2d., etc., etc."

Washington being presently out of it, the reactionists had all the rope they wanted. For one brief space they had the opportunity to lay bare their soul. It was not enough that the Constitution had left an unfenced croft where authority might play its fantastic tricks,—like the "Guid-man's croft" once left in wildness near tilled acres, that mischievous imps might have no need to invade the crops. The new Federalism gleefully trampled the gardens of liberty: the legislative power "to raise and support armies," "to make rules for the government and regulation of the land and naval forces," and several other trusts, were

<sup>1</sup>Despatch to Pinckney at Paris, 16 January 1797.

transferred to President II. for five years in advance ; also the authority, so carefully reserved to Congress, "to borrow money on the credit of the United States." The purse and sword thus delivered up to an absolute sovereign, he was empowered to banish all foreigners whose principles he did not like, without trial. The press was fettered by a law making it criminal to print any thing with intent to bring either Congress or the President into the "contempt or disrepute" they so richly deserved. The light and airy spirit with which these things were done was displayed in the titles given by officials to these acts,—“the Sedition Act cutter,” and “the Alien Law smack.” But “cutter” and “smack” have other meanings than those drawn from the naval service,—also, by the way, given over to President II. It was, however, something more than cut or smack which those apes of autocracy drew on themselves,

Had Randolph been a demagogue his opportunity was in the insurrection of Southern sentiment against the Alien and Sedition Acts. Destiny had made him martyr of the anti-treaty sentiment ; the ministers who, over his prostrate form, compelled the nation to kiss the British rod, remained to strike down the rights of individuals and States. Virginia needed an eloquent leader. Jefferson and Madison were without eloquence ; all that was left of Patrick Henry had been drawn by all that was left of Washington to the other side. But Randolph was a man of principles ; he saw unconstitutional federal acts answered by unconstitutional State theories, which might culminate in civil war. They culminated in the Kentucky Resolutions of 1798. While Jefferson's hidden hand was writing these, Randolph was engaged in work dealing with constitutional problems. Circumstances prevented its completion ; the fragment probably perished with other manuscripts in a disastrous fire ; but his correspondence at the time shows Randolph anxiously reminding revolutionary politicians that State governments

are not States. Even Madison had forgotten that ; there was a nullification clause struck from the Resolutions prepared by him for Virginia. Where this elimination came from is shown by a manuscript found among Madison's papers, but never published. Although Madison, then in the Virginia legislature, may have been somewhat shy of association with Randolph,—efforts being made to implicate him also with Fauchet, who had patronized him in the intercepted despatch,—their personal friendship was never disturbed. Privately Madison consulted Randolph on every important step ; and in a letter to Jefferson he calls his attention to the principle laid down by Randolph in the subjoined paper. A partial draft of the Report justifying the Resolutions of 1798 had been sent to Randolph for criticism. In supporting the position “ that the States are parties to the Constitution or compact,” this Report refers to the various senses of the word “ State,”—as the territory, the particular government,—and “ lastly,” it adds, “ it means the people composing those political societies, in their highest sovereign capacity.” In this last, says the Report, all will concur, whatever different construction of “ States ” in the resolution may have been entertained, “ because in that sense the Constitution was submitted to the States ; in that sense the States ratified it ; and in that sense of the term ‘ States ’ they are consequently parties to the compact from which the powers of the federal government result.”

The Virginia Resolutions of 1798 say nothing of the people. They are careful to use “ States ” in the plural, and imply that they must unite to check the federal government ; but there is no hint that the legislature regarded any sovereignty above itself. New Hampshire replied “ That the State Legislatures are not the proper tribunals to determine the constitutionality of the laws of the General Government ” ; and no committee with Madison at its head could deny this. So it was necessary at once to stand by the “ flag of '98 ” and to explain it away. This was the dilemma submitted to Randolph, whose review follows :

" I admit that the word *States* is used in the Constitution in all the senses which have been ascribed to it by the paper which I have seen ; that the State-governments neither created nor can abrogate the federal compact ; and that the people of the States did create, and may abrogate it. But none of these considerations settle the question. The true enquiry is, in what sense the resolution of the last Assembly intended to use that term ? It seems to me that nothing could have been more unimportant, at least to the subject matter, than to announce that the people of the States were parties to the Constitution. Everybody acknowledged it. To introduce this position, therefore, appears to be so wanton,<sup>1</sup> as that an attempt to shelter the Assembly under that signification will be deemed a downright subterfuge. The close reasoning of every other part of the resolutions will countenance this imputation.

" But if the word is to be thus understood, what is to prevent the conclusion, that the people alone ought to interfere in correcting violations of the Constitution ? I know that in some subsequent pages, which I have not seen, it is intended to insist upon the right of the State governments to animadvert upon its violations. How then can it affect the main purpose of the work, if an unity be given to it by vesting the State government uniformly with the power of thus animadverting ? It deserves to be noticed, too, that in sundry passages of the resolutions, the word *States* certainly includes the State governments, and the expression of the States being parties to the compact was defended by the friends of the resolution during the last session, upon that idea.<sup>2</sup>

" There is so much depending upon what is done now, that to afford an opportunity for a clamor throughout the United States, and an increased alienation of the Eastern from the Southern people, will be a dreadful catastrophe. I submit, then, to your consideration, whether, in the paragraph speaking upon the subject, it may not be as well at least to make a salvo of this kind : that, even if the word *States* were to be confined to the State governments, it will appear in the sequel that the State governments themselves have a right to pass such resolutions as those of the last Assembly."

<sup>1</sup> Madison's marginal note : " The arguments used in support of the alien and sedition laws made it proper to state the fact and go to the foundation of the Constitution. It rested on certain truisms. What are the principles on which the Declaration of Independence and Declaration of Rights of Virginia and [declarations on which] other states are founded, but plain truths or [word illegible] "

<sup>2</sup> Here follows, in Madison's writing : " Quere : but, if so, among the inaccuracies observable in the reasonings of particular members."

A careful perusal of Madison's Report, as it passed the Virginia Legislature, will show that it was influenced by this criticism. The right of interference by the State Legislatures was reduced to one of mere protest—a right requiring no challenge. The State legislature may censure federal legislation; it may summon its people in convention, and if they obey, and conventions in three-fourths of the other States coöperate with them, the federal government would be overpowered. This would be the only possible resumption of State sovereignty according to the principle affirmed by Randolph in the above paper. And from the time it came into Madison's hand he retreated from the "nullification" position taken up in his original Resolutions.

Such was the silent work of exiled "Germanicus." This was the patriot whom Northern men struck down,—this man so resolute in his nationality, so anxious lest sectional alienation should increase! Without a word of elation Randolph saw their blow recoil on his adversaries. For there never was a more suicidal victory. In that favorite of Virginia they drove from public life the Southerner without sectionalism, the antislavery Virginian, the one republican able to curb revolutionary democracy. Randolph and pure republicanism fallen, in their place rose Jefferson, and a democratic imperialism under which those sham federalists saw their party buried in the grave of their outstripped leader, with Aaron Burr's bullet in his breast.

## CHAPTER XXXVI.

### THE FICTITIOUS DEFAULT.

IN a list of debtors to the United States, laid before Congress (1887) by the Register of the Treasury, a balance of \$61,355.07 stands against Edmund Randolph.

At this moment there is in the Treasury an authentic statement of Randolph's accounts, showing that the United States has not only been paid the debt, principal and interest, and given quittance therefor, but beyond that is in pocket \$7,716.21.

This recent representation of Randolph as a defaulter is the result of a financial myth, which would be amusing did it not involve the reputation of a man who stripped himself of all he possessed to bequeathe this full quittance to his family.

In his resignation, 19 Aug. 1795, Randolph said to the President: "Immediately upon leaving your house this morning, I went to the office for the department of State, where, I directed the room in which I usually sat to be locked up, and the key to remain with the messenger. My object in this was to let all the papers rest as they stood." This was not the course of a man conscious of any default in his accounts. Nor could one aware of such peril have offered his slaves freedom. When, however, Col. Pickering, his accuser, stepped into his official shoes, a heavy account was run up against Randolph,—of \$49,154.89 for "moneys placed in his hands to defray the expenses of foreign intercourse." Under the system of that time, abandoned at the beginning of the present century, the Secretary of State personally disbursed

the funds provided for diplomatic and consular service. If the money were captured by a cruiser, or lost by a broken bank, he was responsible. Several losses of that kind occurred in Randolph's case; in one instance \$9,000 were lost by the failure of an Amsterdam bank. But the amount made out by Col. Pickering was incredible. Randolph and his friends had no doubt that it was part of the plan to ruin him. Wilson Cary Nicholas, writing to Col. Breckenridge, says:

"I was his [Randolph's] agent in this country and knew more of his affairs than any other person did. I cannot conceive any possible way in which he could have disposed of it [the money], as, to my certain knowledge he must have received from other sources at least \$50,000 during his being in the service of the U. S.; which is a sum fully equal to cover all his expenses, and payments that came within my knowledge during his absence from the State."

He adds that he loaned Randolph £2,000 (Virginia currency) to enable the family to return to Virginia, after his resignation.

Thomas Jefferson Randolph states that his grandfather (Jefferson) "was perfectly satisfied that he [Randolph] had been robbed by his clerks." "From his [Jefferson's] intimacy with him he was satisfied that he could not have himself used the money without his knowledge, for he was the whole time straitened in his pecuniary matters."

It came upon Randolph like a thunderbolt. He met the charge with an affidavit pointing out that \$800,000 had been charged against him to be expended for the captives in Algiers, "of which he never touched a shilling, the whole thing being conducted, managed, and applied under the direction of Oliver Wolcott, Secretary of the Treasury." He complains that impediments were thrown in the way of his settling his accounts in Washington, through malice; that his letters were unanswered; and he "defies the malice of certain persons he can name, being ready to meet them and their efforts."



Why President Jefferson, convinced that the account was fraudulent, and Madison, his Secretary of State, did not secure an investigation for Randolph, seems inexplicable. Here are letters showing Randolph then attending to Jefferson's private business, but no suggestion of help in the matter weighing that wronged man to the earth. The accounts had been made up by Randolph's avowed enemies, presiding over the Treasury and State Departments; both of these had been accused of malversation in office, and Pickering charged with a larger defalcation than he had summed up against Randolph. Yet with all of these facts nobody came to the rescue except his brother-in-law, Wilson Cary Nicholas.

No man ever rendered greater service to another than this noble Nicholas did to Randolph. He set himself to investigate Randolph's resources, in case the suit should go against him. The business letters which passed between them are touched with pathos. "After a strict review of my life," writes Randolph (9 Nov. 1801), "I find my heart unpolluted by anything which is flagitious. Those who know my fortune and income, and exemption from expensive vices at least, will ask, what can he have done with the money now demanded of him? What I have in money claims I can account for, and trace to the best of all resources, the independent labours of my own hands." (Here follow the details, showing £14,200 Virginia currency.) "My lands and negroes did not come from speculation. I have stated these things to you that you may see my situation, and what funds can be brought to bear upon any necessary occasion."

The suit had been brought in the U. S. Circuit Court at Richmond, 5 June 1797. Randolph's plea was *non assumpsit*. There were two trials, in which the jurors could not agree; the case lingered on until 1802. Then from Secretary Gallatin came a report mentioning Randolph's case as an instance of the difficulty the United States had in obtaining its dues. (This under the

eye of a President who was "persuaded that Randolph was robbed!") Randolph was so stung that he wrote to Gallatin, stating the general belief that no jury could be obtained in Richmond without a formed opinion. "Delay is so far from being an object or wish with me, that I am resolved, by some means or other, to close the business, and free myself from my painful predicament. For this purpose I submit to you the following propositions: For the security of the United States I will immediately pledge property of abundant value; and I will either submit to the award of two intelligent and impartial arbitrators, *chosen by yourself*, or their umpire; or I will even go to Washington and abide by the decision of the auditor. [by an arbitrator.]"

This letter is among the papers of Wilson Cary Nicholas, and the three bracketed words are in his handwriting. Nothing could more certainly prove Randolph's confidence in his case than this proposition. His confidence was not justified. The government's idea of an "impartial" arbitrator was its own Comptroller of the Treasury, Gabriel Duvall. He was selected in face of Randolph's complaint, in the very letter proposing arbitration, that this Comptroller had declined to answer his letters. The Comptroller's award was against Randolph for \$53,162.89 (interest having swelled Pickering's bill to this), to bear interest from date of judgment, 24 Nov. 1804.

Randolph realized his folly too late. He had rashly left his papers in the State Department to the manipulation of an enemy; he had now rashly submitted his controversy with the United States to the arbitration of his antagonist. But no complaint escaped him. He had played against loaded dice, and lost. Nicholas explored his brother-in-law's possessions, and reported that, time being given, the debt could be paid. He was presently able to report that the United States had agreed to accept himself (Nicholas) in the place of Randolph, under contract to discharge the judgment in four annual instalments of

\$13,290.72 each. Randolph having made over all his estates, money, and negroes to Nicholas, the debt was covered by bonds to the value of \$56,534.13, which were punctually paid. The correspondence between Randolph and Nicholas on the matter is in my possession. Randolph's heart overflows with gratitude for the balm brought to him and his family by the best of brothers.

The engagement was punctually fulfilled; the instalments were paid; and so far as Randolph and Nicholas were concerned, the whole debt was settled 1 Jan. 1810.

The interest for which the judgment called amounted to \$11,491.32, But the government had received bonds exceeding the original debt by \$9,371.24; and the bonds bore interest sufficient to secure the \$2,120.08 of remaining interest. Randolph died in 1813 and Nicholas in 1820, undisturbed by any suggestion of further claim from the United States.

By 29 Nov. 1821 the bonds had brought the Treasury \$42,031.12; by 17 Aug. 1824, \$44,217.76. The Auditors continued keeping account of sums which the government was realizing on its bargain with Nicholas, "in discharge of the judgment"; and doubly closed with Randolph, for whom the government had accepted Nicholas. Unfortunately, however, the name of Randolph continued in the account on the Treasury books. The early history of the case was lost; the clerks seem not to have known that Randolph was dead; and out of this mere survival of his name in the account grew an onomatopoeic myth represented in the fictitious debt ascribed to Randolph by the Register in 1887.

In 1824 it was discovered that two of the Nicholas bonds had not realized their valuation, and the government claimed a lien on lands once owned by that gentleman for \$6,273.99. [Unfairly: the government had accepted bonds largely in excess of the original debt, for better or worse; now that in the end they have

proved better, the government would hardly recognize a claim from the heirs of Nicholas.] The owners of the estates, to avoid litigation, paid the \$6,273.99, on condition of a full discharge of the alleged lien of the United States. The money was paid, 25 March 1825, and the "full discharge" of the whole debt signed by Richard Rush, Secretary of the Treasury.

But it is hard to lay a phantom once summoned. The U. S. District Attorney in Virginia, Stanard, by calling Nicholas from his grave, and holding him responsible for the shortage of certain bonds, created an impression in the Treasury that the man was still in running account with the United States. So, despite his death and double release, Somebody in the Treasury, ignoring the bond-payments of 1807-10, figured up the actual cash receipts, and found them short of the original debt and interest by \$8,955.13; and this mysterious Somebody pencilled on the Secretary's "full discharge" the words—"Balance due from him,—\$8,955.13." By subtracting from this the sum paid for the "full discharge,—expenses deducted, \$6,075.12,—there was left \$2,880.01. The "Randolph debt" had become a pet in the Treasury, and here was a snug balance for its new departure.

But the darling debt was again threatened. Some Nicholas lands brought the government (1834) \$6,664.12 in excess of their bonds. And now Somebody else in the Treasury considered that if Nicholas was debited when his bonds fell short, he ought to be credited when they exceeded. So this unsophisticated Register, deducting the \$2,880.01, from the \$6,664.12, estimated a "balance due him \$3,784.11."

But this would never do. Within twenty-five days of this Register's certificate, of a "balance due him" a Comptroller's certificate made Randolph debtor to the United States in the amount now standing against him, \$61,355.07!

This financial feat was ingeniously achieved. The Nicholas lands, which exceeded the value of their bonds, had been bid in

(1830) by the government for \$3,950; and sold (1833) for \$10,596.92. Our new accountant in the Treasury, finding "Randolph" credited, on this gain, with \$6,654.12, debited him with the same amount. Then he credited "Randolph" with the \$3,950, for which the lands were bid in. Even this set-off against the \$2,880.01 left the "balance due him" \$1,069.99. But this intolerable result was escaped, and the debt made eternal, by the facile stroke of charging "Randolph" with interest on the whole judgment debt, from 24 Nov. 1804 to 22 Oct. 1834! This, after deducting the "balance due him," created the default recently laid before Congress, of \$61,355.07. Why the Treasury did not add cumulative interest down to 1887 is not explained.

In 1856 Solicitor Streeter, of the Treasury, called Secretary Guthrie's attention to these enormities. The Secretary directed the First Auditor (T. L. Smith) to revise the account in accordance with the facts shown by the Solicitor. *Of that order of the Secretary of the Treasury, dated 28 April 1856, no notice whatever has been taken, officially, to this day.* In consequence of this neglect, an executive document has just been distributed, adding another to the libels on a statesman whose life was one of sacrifices for his country.

Since the publication of the libel the documents connected with this fictitious debt, though at first reported non-existent, have successively rewarded my siege at the Treasury. An eminent financier and accountant has done just what Secretary Guthrie ordered the First Auditor to do in 1856. His work—which, with all documents herein mentioned, I am prepared to produce—shows that, on 25 March 1825, when Secretary Rush wrote the full discharge, the account was balanced without a difference of one cent. It is also shown that for a debt of \$53,162.89, the United States has received in cash \$60,879.10. The government is in pocket \$7,716.21. But whether the government lost or gained, has nothing to do with either Randolph, for whom it

accepted Nicholas, or Nicholas, whose bonds, good for more than the debt, it agreed to accept in discharge of the judgment. The default, if any, is that of the government in forcing from the owners of Nicholas lands in Virginia, by threats of prosecution, \$6,273.99. All the accounts since 1810, when the government accepted the bonds, have been foreign to the Nicholas settlement. The continuance of Randolph's name on the Treasury books misled blundering accountants into the notion that the government, in realizing its bonds, was pursuing an individual. The scores of mortgages were personified as "Randolph." Aided by incredible mistakes, the myth, despite Guthrie's effort to arrest it, grew to its present proportions. Randolph who, at cost of all his possessions, overpaid a government claim in itself scandalous, is, by a trick of words, impaled on the pen of a blundering Register as a defaulter. These facts are known and admitted in the Treasury, but the wrong remains unredressed.

## CHAPTER XXXVII.

### A LAST TRIBUTE TO WASHINGTON.

RANDOLPH'S son, in a letter to his wife, 30 Aug. 1808, says: "My father looks better than I have seen him for a year." The stricken statesman had found a congenial task,—one which laid many cares to sleep. He was writing the history of Virginia. A forecast of the work in the *Richmond Enquirer*, 27 Dec. 1809, states that it was to be in six parts. The 5th was to be on the Constitution, the 6th on its effects. These, alas, have been lost. A letter of Randolph's dated at Battletown, Va. 12 June 1812, describes his work as containing "parallels between the characters of certain men, such for instance as those between General Washington and Mr. Jefferson, President Madison and General Hamilton, George Mason and John Dickinson, Benjamin Franklin and John Jay, Patrick Henry and Richard Henry Lee."<sup>1</sup> In the fragment discovered in Staunton about 1860, and preserved in the Virginia Historical Society, there is something concerning these men, but nothing answering to the above description.<sup>2</sup>

In a letter of 2 July 1810 to Judge Bushrod Washington, Randolph says: "My life will, I hope, be sufficiently extended for the recording of my sincere opinion of his [Gen. Washington's] virtues and merit, in a style which is not the result of a

<sup>1</sup> Gratz Collection.

<sup>2</sup> The fragment has been ignorantly transcribed, and in its use I have not felt bound to follow the punctuation and clerical errors.

mind merely debilitated by misfortune, but of that Christian philosophy on which alone I depend for inward tranquillity." In the preface to this MS. history he says: "I rejoice that I have lived to do justice to the character of Washington." An estimate of Washington by one so long intimate with him would be invaluable. Although this MS. contains nothing relating to Washington's political career, Randolph's desire to bequeath a true portrait of the man has not been entirely foiled by time and fate.

"At the beginning of the year 1774 [he writes] some others were more prominent [than Washington]. It could not have been then truly foretold that those germs of solid worth which afterwards overspread our land with illustrious fruit, would elevate him very far above many of the friends of the revolution. His youth had developed no flattering symptom of what the world calls genius; but he had been conspicuous for firmness, for a judgment which discriminated the materials gathered by others of quicker and more fertile invention, and for a prudence which no frivolousness had ever chequered. He possessed a fund of qualities which had no specific direction to any particular calling, but were instruments for any crisis. By nature, by his attention to agriculture, an exposure of himself in the chase, and his occupation of a surveyor of land, he was remarkably robust and athletic. It had been the lot of Washington, at the age of nineteen, as the sequel to his history when resumed will show him to have been at the most vigorous era of his life, the only man whose total fitness pointed him out for a mission that first introduced him to public notice. When France had made some progress in the completion of a scheme to surround the British colonies by a line of posts from the lakes to the river Ohio, the governor of Virginia had resolved to remonstrate against the encroachments, and to demand their removal. The very journey through a wilderness without a track opened by civilized man, and infested by Indians not friendly to the English, was truly formidable from its danger and fatigues. But the grandeur of the enterprize animated Washington to commence it on the very day of receiving his commission and instructions. Among the lovers of ease, and those who in the lap of luxury regarded the territory as doomed to perpetual savage rudeness, Washington was mentioned as an adventurer, meritorious indeed, but below competition or envy.



In the hands of Washington the expedition did not droop; in the hands of any other it would probably have perished. With what applause he performed his errand of defiance is recorded by his country: and in the journal which, on short notice, he composed,—the publication of which his modesty induced him to desire withheld,—he evidenced a perspicuity and skill in composition which diffused a reverence for his powers of varied utility. It was impossible to peruse it without emotion. The quickness of his movements; the patience with which he encountered the inclemencies of the weather; the military acuteness with which he surveyed the lands in the fork of the Monongahela and Ohio, where Pittsburg has been since erected, and compared that site with “Hog’s-loan”; his accuracy in the computation of distances: his success in the acquirement of the intelligence to be procured; his management in obtaining secret interviews with the halfling; his discernment in ascertaining when to yield, and when to resist importunity; his escape from French snares; his treasuring up the imprudent discoveries made by the French officers; his conciliation of respect from those who were hostile to his business; his observance of all attention towards even savage princes, whose favor might be beneficial to his country; and the anxiety which pervaded his whole journey, to do his duty in everything; all these traits, when brought together, gave reason for the anticipation that no trial could exhaust such a fund of qualities, but that they would supply every call.

“Being a member of the house of burgesses, after his return from the Ohio, the speaker was charged to express to him the thanks of that body. That officer, by the august solemnity of his manners, would probably have embarrassed most men in their attempt to reply to the compliments with which he covered Mr. Washington. While they soothed, they awed him. When the address from the chair was concluded he could not articulate without difficulty. This being perceived by Mr. Robinson, he did honor to himself, and relieved Mr. Washington, by crying out at the instant, ‘Sit down Mr. Washington. Your modesty is equal to your merit, in the description of which words must fall short.’

“Of a regiment, raised for the defence of the frontiers, the command had been given to a Mr. Fry, and Mr. Washington had been appointed lieutenant colonel. Upon the death of Mr. Fry, Mr. Washington succeeded to the command, and was unfortunate at the Great Meadows; but it is remarkable, that in no adversity had his honor as

a soldier or a man been ever stained. He was himself a pattern of subordination ; for when orders of the most preposterous and destructive nature were given to him, he remonstrated, indeed, but began to execute them as far as was in his power. A new arrangement of rank, which humiliated the provincial officers of the highest grade to the command of the lowest commissioned officer of the crown, rendered his continuance in the regiment too harsh to be endured. He retired to Mount Vernon, which his brother by the paternal side, passing by his own full blood, had bequeathed to him. His economy, without which virtue itself is always in hazard, afforded nutriment to his character. But he did not long indulge himself in the occupation of his farm. General Braddock, who had been sent by the Duke of Cumberland, the commander in chief, to head the forces employed against the Indians and French, invited him into his family as a volunteer aide-de-camp. The fate of that brave but rash general, who had been taught a system unpliant to all reasoning which could accommodate itself to local circumstances and exceptions, might have been averted if Washington's advice had been received. As it was, he, in his debilitated state, could accomplish nothing more than by his own valor to lead from the field of slaughter into security the remains of the British army. Washington was now no longer forbidden by any rule of honor to accept the command of a new regiment, raised by Virginia. In his intercourse with Braddock, and his first and second military offices, he continued to add to the inferences from the whole of his former conduct instances of vigilance, courage, comprehensiveness of purpose, and delicacy of feeling ; and, in the enthusiastic language of a Presbyterian minister, he was announced a hero born to be the future saviour of his country.

“ It was the custom of the king to enrol in the council of state in Virginia men with fortunes, which classed them in the aristocracy of the colony. The proprietor of the Northern Neck, Lord Fairfax, had been importunate for the promotion of Col. Washington to a seat at that board, and he would have been gratified long before, if four of his tenants and one of his own name had not been already in the same corps. That this honor awaited him, Col. Washington well knew, but the probability that the event was not far distant could not abate his sympathy with his country's wrongs ; and he promptly associated his name with every patriotic step and idea.”

In other parts of this MS. Washington is seen casually, and surrounded by his famous contemporaries. Next to the stupidity

of George III., Randolph credits the pen of Thomas Paine with having kindled the spirit of independence. Henry, he says, was compared to St. Paul at Athens, while he spoke March 23d in the church where the Convention of 1775 sat, on the resolution that Virginia should arm. So great was the impression that it appeared adventurous for any one even to second him.

“After a few seconds Richard Henry Lee fanned and refreshed with a gale of pleasure ; but the vessel of the revolution was still under the impulse of the tempest which Henry had created. Artificial oratory fell in copious streams from the mouth of Lee, and rules of persuasion accomplished everything which rules could effect. If elegance had been personified, the person of Lee would have been chosen. But Henry trampled upon rules, and yet triumphed, at this time perhaps beyond his own expectation. Jefferson was not silent. He argued closely, profoundly, and warmly on the same side. The post in the revolutionary debate belonging to him, was that at which the theories of republicanism were deposited. Washington was prominent, though silent. His looks bespoke a mind absorbed in meditation on his country's fate ; but a positive concert between him and Henry could not more effectually have exhibited him to view, than when Henry ridiculed the idea of peace ‘when there was no peace’ and enlarged on the duty of preparing for war. The generous and noble minded Thomas Nelson, who now for the first time took a more than common part in a great discussion, convulsed the moderate by an ardent exclamation,—in which he called God to witness, that if any British troops should be landed within the county of which he was the lieutenant, he would wait for no orders, and would obey none which should forbid him to summon his militia and repel the invaders at the water edge.”

Randolph speaks of Lafayette as having learned “from Washington how to conciliate friends among the militia, and to place in the registers of public safety, necessity, and justice, every act which savoured of severity.” He also says : “Washington's anxiety seems to have been constantly on the watch, and daily employed in admonishing Lafayette lest Cornwallis should escape from Virginia. In York therefore he was invested, and the elements defeated his only attempt to escape.”

This patriotic jealousy for Washington's credit, considering what the writer had suffered from his chieftain, may be read beside the contemptuous pages of his accuser (Pickering) concerning the military career of Washington. In none of the passages concerning Washington does any memory of personal wrong cause the historian's hand to tremble. "We live too near the time of certain occurrences," he writes to a friend, in reference to this history; "while caution is not to be abandoned, and improper irritation ought to be avoided, truth must prevail." In himself it prevailed over all sense of injustice. This tribute was not written with any conceivable aim but that of truth. Washington had long been in his grave, and Randolph was forever out of the political arena. Even with the loss of his main study of Washington's character, we may see in the passages which remain a calm and true judgment. His pen leaves us as lineaments of Washington the "mind absorbed in his country's fate"; the patriot who "placed in the registers of public safety, necessity, and justice, every act which savoured of severity." To such absorption, too deep for nice regard of friendship or justice when in apparent conflict with public safety, Randolph forgave his own great injury. He forgave it even though the wrong to himself proved one to the nation also. For when his tribute to Washington was finished the surrender to British impressment, search and seizure, in 1795, had reached its sequel in the war of 1812.

## CHAPTER XXXVIII.

### THE BRAVE HEART BROKEN.

WHEN Edmund Randolph resigned office and returned to Virginia it was passing from poverty to wealth. He had indeed to borrow money from his brother-in-law, W. C. Nicholas, to move to Richmond ; but he owned some seven thousand acres of land, several houses, and near two hundred negroes. The slaves had long been an incumbrance on account of his refusal to sell their increase, and his inability, while at Philadelphia, to hire them properly. But there was every prospect of increased happiness for the family when the statesman returned to his people, and fixed himself at Spring Farm, near Richmond.<sup>1</sup> Mrs. Randolph's health improved after her husband's release from political responsibilities. There is a cheerful note about the following, written to his son (aged seventeen), then a student of William and Mary College :

“ RICHMOND, 27 Sept. 1796.

“ MY DEAR SON :—The books which I intended for you will not, I fear, reach you before it is time for you to revisit this place. If this should be the case I entreat you to perfect yourself *with accuracy* in those things which you have passed over. Arithmetic is my idol ; because it is the best instrument of prudence, without which human life

<sup>1</sup> Randolph had one son, Peyton, author of six volumes of Reports of the Court of Appeals of Virginia, of which he was clerk. He was in his sixteenth year when his father's troubles occurred. He married (1806) the celebrated beauty, Maria Ward, at one time betrothed to John Randolph, of Roanoke. Edmund Randolph had three daughters—Susan Beverley, who married Bennett Taylor, an eminent jurist ; Edmonia Madison, who married Major Thomas Lewis Preston, distinguished in the Virginia Assembly and in the War of 1812 ; and Lucy Nelson, who married Peter Vivian Daniel, of Stafford County, Va., Justice of the U. S. Supreme Court.

is the sport of the winds. I know that on the score of vanity you are unassailable ; otherwise I would not so frankly say to you, as I now do, that I see no boy with better prospects before him. Those prospects consist in a good heart, and a good head—which is not led astray by trifles. This is a proof that you have escaped the first rock which lies in wait for youth. The next is pleasure : I mean that which is called pleasure by the sensual and debased. It is supposed to be found in gaming, drinking, etc.; and every man has been deceived to his destruction who expected to find it in any of them. While I am speaking thus I upbraid myself for suffering my business to prevent me from fulfilling my promise to write to you by the last post,—lest you should think that anything can dispense with what a man says that he will do. Should you want any more literary food before you come down bend yourself to Morse's geography."

Even Pickering's astounding bill could not prostrate Randolph. He had no doubt of his ability to prove it unjust, and indeed it could never have succeeded had he not, in his over-confidence, submitted the whole thing to the decision of the Treasury. His profession was more lucrative than ever before, and more congenial—being chiefly in the Court of Appeals. Thoroughly informed in law, able to lead and direct judges, he finds time for study and for literary work. He writes to Madison, 8 June 1801 :

"This is the last day of the chancery-term with which and the terms of other courts I have been occupied, ever since the first day of March ; sometimes with two at a time, and always with an indisposition,—from which I am just recovering by the observance of a regimen. This must be my apology for not again writing to you earlier ; but I shall certainly do so in the course of the week. The general court sits to-morrow ; but will discharge me in two or three days. Can you send me to Fredericksburg, to the care of the postmaster there, Darwin's Phytology, and Jefferson's Manual, both of which are advertised for sale in Washington ? I insist that the price be marked in each, as from Fredericksburg I shall remit it."

Among the interesting cases reported by Call was one involving the estates of Robert Carter Nicholas (Mrs. Randolph's father, who died in 1780), and all the connection. This was gained by Randolph against an array of counsel. The decision, 23 Oct.

1803, was the last given by Judge Edmund Pendleton. He died Oct. 31, and, by request of the bench and bar, Randolph delivered an oration concerning him. In it he stated that the Virginia Declaration of Independence, 15 May 1776, "was drawn by Pendleton, was offered in convention by Nelson, and was advocated on the floor by Henry."

In this year the pressure of business induced Randolph to fix his residence in Richmond. The house was known as The Octagon; it faced the Capitol Square, and was pulled down (1887) to make way for the new City Hall. When, in 1804, the self-constituted "arbitration" of the Treasury went against him, absorbing his lands, and the negroes hitherto so tenderly guarded from sale and separation, the household encountered the storm with heroism. The debt was paid, and presently forgotten. Law students were eager to avail themselves of his instruction. Among these was Peter Vivian Daniel, afterwards Justice of the U. S. Supreme Court, who married Randolph's daughter, and with her long resided at Spring Farm, which he purchased from Randolph. I have before me Randolph's settlement on her, as a marriage portion, of the old furniture and fine silver plate still preserved in the family.

On the 15 March 1806 Randolph wrote the following note to Maria Ward, on the occasion of her marriage with his son :

"MY DEAR MARIA :—I fear that I ought not to hazard my health by a journey to the Hermitage to-morrow, even for the opportunity of showing by my presence how sincerely I expect the happiness of my beloved son from the event of Monday. I had, indeed, arranged my business in the court which is now sitting so as to justify my absence to my clients. But a cold, which I caught about a week ago, has been very troublesome. Let me therefore entreat your respected mother to accept my most cordial wishes that the intended union may be a source of comfort to the parents, and of uninterrupted bliss to their children. —Anticipating the adoption of you, I subscribe myself, my dear daughter, as your affectionate father."

Paralysis was the recognized family liability. After his severe trials Randolph had to be careful. A certain physical distress was observed during his arguments at the trial of Aaron Burr in Richmond; but the master mind was still there to detect the weakness of the net which Jefferson imagined so strong. Randolph disliked Burr, and had he been on trial for the murder of Hamilton might not have defended him. He was convinced that Burr was merely a balked filibuster, who had no idea of dividing the Union.

In this historic trial, Randolph (11 June 1808) administered an artistic castigation to the President for proclaiming that there could be no doubt of Burr's guilt. With a general approval of the administration he reminded it that the executive was not the judicial department of the government. Marshall, who presided, no doubt relished this. That which really overthrew the prosecution, as I think, was Randolph's argument proving that, as Burr was admittedly not in Blennerhasset's Island, he could only be an "accessory" to the alleged "treasonable" assemblage there; and that the Constitution did not recognize "accessories" to treason, which consists *only* in levying war against the United States, etc. Even in England no one had ever been punished as an accessory, save for an attempt on the king's life. There being no such personal idolatry in the United States, no corresponding provision existed. Whether this was a "casus omissus" he declined to argue. No doubt an "accessory" was criminal at common law, but the United States had no common law. This argument (August 21) exhibited Randolph's inexhaustible knowledge of English and American law, and well repays perusal.

It was probably soon after Burr's trial that Randolph set to work on his history of Virginia. For nearly two years his life was happy. But then, 6 March 1810, came a blow from which he could not recover. His wife died. Again and again there



had been a struggle between love and death for her life ; but now, after one lasting six months, death prevailed.

The relation between Randolph and his wife had always been true and tender. So free from friction had been the course of their united lives that his daughters could not forget the single instance of misunderstanding. Mrs. Randolph having related some incident, her husband hastily exclaimed : " That is mere gossip." The lady repaired to her room, where she did not answer her husband's gentle knock. " Betsey," says Randolph, " I have urgent business in town, but I shall not leave this house until permitted to apologize to you." The door opens, and the unprecedented scene ends. It was said that the lady's courage and nobility, under her husband's trials, enhanced her personal appearance.

After Mrs. Randolph's burial the heart-broken husband wrote some account of her, and of their married life, which was addressed to his children as " the best witnesses of the truth of the brief history."

Some parts of this touching paper even now call for respectful reserve.

" The 29th day of August 1776 joined us in wedlock ; and if without danger of pollution she can now cast one look into the history of my heart, and most secret conduct for more than thirty-three years of our married life, I make the solemn appeal to her, whether, in thought or deed, I ever intentionally did her wrong. I am fully aware that I must have caused her some pains, but in all those instances her sufferings recoiled upon myself with tenfold vengeance because I knew that she had felt them. . . . It was a matter of astonishment to me to meet with such an unchangeable and undiminished fund of delicacy. . . . Her attention to personal neatness was never surprised and never stood in need of an apology. My God ! I cannot without an emotion of gratitude and enthusiasm remember that while her words of affection warmed and subdued me, their heat and force arose from the contemplation of her chaste soul unfolded in her divine countenance—divine in conveying its just picture. To speak of her as dis-

charging every duty would be but a cold tribute to her work. Her understanding, although often aided by brilliancy of imagination was rather of the serious, reflecting, and solid cast. It was too penetrating to be deceived, although her love of harmony with the world often produced in her an acquiescence which resembled a contrary conviction. But she explored and studied my temper, and anticipated the means of gratifying even my caprices. Innumerable were the instances in which I have returned home dissatisfied with some of the scenes of the day abroad, and found an asylum in her readiness to partake of my difficulties and make them her own, or to divert them by despising them. On these occasions her features, to which she would never permit the smallest beauty to be ascribed, assumed a species of glory. . . . This peculiar something in her looks places her far beyond the line of symmetry of face. . . . From the strength of parental example her attendance on public worship was unremitted . . . the questioning of sacred truths she never permitted to herself, nor heard without abhorrence from others. When we were united I was a deist, —made so by my confidence in some whom I revered, and by the labours of two of my preceptors who, though of the ministry, poisoned me with books of infidelity. I cannot answer for myself that I should have been brought to examine the genuineness of holy writ if I had not observed the consolatory influence which it brought upon the life of my dearest Betsey. . . . During her last illness she and I frequently joined in prayer. She always thanked me after it was finished ; and it grieved me to think that she should suppose that this enlivening inducement was necessary to excite me to this duty. . . . I must have been a brute not to have been bound in soul to her and to her alone. . . . She was sincerely inclined to hospitality but free from ostentation, and foretold to me before it was realized that my facility in spending money for the accommodation of others would make scarcely one friend, and make enemies in some whom I should most oblige. . . . Let the tears of the poor who now lament her speak the rest. From various causes she visited few but the sick and needy for many years, but she had a levee of affection. . . . My eyes are every moment beholding so many objects with which she was associated ; I sometimes catch a sound which deludes me so much with the similitude of her voice ; I carry about my heart and hold for a daily visit so many of her precious relics ; and, above all, my present situation is so greatly contrasted by its vacancy, regrets, and anguish, with the purest and unchequered bliss, so far as it depended on her,

for many years of varying fortune, that I have vowed at her grave daily to maintain with her a mental intercourse."

"A PRAYER FOR MY FAMILY."

"O God, whose mercies have hitherto covered us from the most grievous afflictions to which the condition of human life is exposed, hear us, we beseech thee, in this hour of distress. We bow with pious resignation to thy late decree which tears from us her whom we all loved, and, so far as the gospel suffers, even adored. Pour into our hearts the balm of thy holy spirit; that, if this dispensation of thy providence was drawn upon us by our sins, we may sincerely repent, and thus secure forgiveness. Keep her example ever before our eyes, that in nothing we may offend against thy law; and by daily recalling to our view those virtues by which we believe her to have ascended into a seat of eternal bliss, we may become worthy of being known to her at our awful change. May we estimate the world as she did, merely as affording an opportunity of performing our respective duties, of manifesting a Christian-like temper and conduct to all mankind, and of preparing ourselves for obtaining that reward which our beloved Saviour has promised to those who feed the hungry, clothe the naked, and visit the sick. Thou, O Lord, to whom her heart was open, who knowest it to be spotless, except with inseparable human frailty, protect our family affection; that neither misconduct nor dissension may make this agonising event a source of disunion, or the cause of our falling off from each other; but teach us to consider every breach of family harmony as it would have been considered by her while living, an interruption to that heavenly peace of soul which she enjoyed."

This family paper is dated 25 March 1810. It must have been near that date that Randolph, after visiting his wife's grave, called on his old friend, Dr. Adams, on Church Hill, at whose house he was struck with paralysis.

The grief and the stroke must be fatal which could keep Randolph from thinking of others. Of that a notable instance occurs in the following letter of 15 June 1810 to President Madison:

"This is the first letter which I have written since my convalescence, after the dreadful attack from a hemiplegia, with which, by a kind of

sympathy with my poor wife, I was afflicted in a few weeks from her death. It happily affected no faculty of my mind, and has not taken away the sanguine hope that, altho' I require in rough ground the aid of a crutch, I may be restored to the free use of my legs.

"I write now in reference to my friend the Governor. Judge Griffin is so much reduced by a long-standing disease, and seems so little able to resist a great flux of blood, which seized him about a week ago, that I cannot forbear indulging my friendship for Mr. Tyler by saying to you that he was long conversant in the admiralty practice, and I have, from a review of his situation, after the expiration of his [word illegible], presumed that it would be grateful to him even now to return to the bench.

"I have been urged by my children to restrict my future practice at the bar to a smaller compass than heretofore, from a belief that I ought to rest from promiscuous professional labour. To their advice I shall submit and pursue the gratification of my literary appetite at the loss of a flattering income. Under all circumstances, I shall pray for your happiness."

Every day Randolph went on his crutch to his wife's grave. He read a great deal, writing comments on what impressed him. His notes show that he found comfort in John Wesley's sermons. But that was not enough for a man to whom idleness was a stranger. His depression induced his son and daughters to persuade him to give up the house at Richmond, and reside in their homes. This, indeed, was almost necessary, as his only unmarried daughter, Lucy, was about to wed Peter Daniel. To her the household furniture was given, the library went to Peyton, and the father went off to visit the Prestons, at Lexington, Va. There his daughter and her excellent husband did the utmost to beguile the sufferer; and Randolph did his best to recover. "I have received a letter from my father," writes Peyton to his wife, "who is yet in Lexington, occupied in forming a thousand different projects, the last of which is to cut off the top of his old chariot and convert it into a single-horse vehicle. When this is done it will puzzle the collective wisdom of all the coach-makers to say to what denomination it belongs. I rejoice however that he is so

employed. Whatever abstracts his thoughts from the painful subjects which surround him is so much gained to his happiness."

But Randolph, though he had recovered from many blows, could not sustain his bereavement. His remnant of life was soothed by the happiness of his children; he was welcomed in their happy homes, and in those of his wife's relatives—among these Carter Hall, where Col. Nathaniel Burwell resided. He was able to mitigate the pain of invalidism by working on his history of Virginia. But neither skill nor affection, by which he was surrounded, could keep him from gradually sinking out of life. The last paper of his which I find is a personal and pathetic prayer,—the communion of a great heart passing from a "tempestuous review" of painful experiences to eternal calm,—within the closet, whose door had best not be opened.

In an old churchyard at Millwood, Clarke Co., Va., a tomb, set there in 1859, by Dr. Robert C. Randolph, bears the inscription:

"Edmund Randolph. Aide de Camp to Gen. Washington. Secretary of State U. S. Governor of Virginia. Died at Carter Hall, Sept. 12th, 1813. Aged 60 yrs. and 1 mo." On the reverse: "M. W. Grand Master of Grand Lodge of Ancient Free and Accepted Masons of Virginia Oct. Anno Lucis 5786. Anno Domini 1786."

On the adjoining tomb of his daughter, Susan, who died 1846, it is said that near the spot is the grave of Edmund Randolph, "the exact position of which cannot be ascertained."

The "exact position" of the living Randolph, and of his living political grave, is now known to the reader of this history. They who ponder it may read on the lonely stone in Virginia an inscription hitherto invisible:

"FARI QUAE SENTIAT."

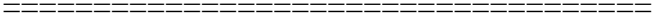
This motto of his race was embodied in the life of him who here found rest from wrongs, in a nation for which he sacrificed

all, save truth and honor. Had he been less faithful to his motto, had he not spoken and acted the truth in his heart, he had easily ascended into the democratic Holy Hill—the Presidency. The tragical close of this brilliant career will remain an exemplary warning against self-truthfulness, an instruction in servility to party or populace, until that resurrection-day when America shall rate personal, as high as national, independence.

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