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A POLITICAL HISTORY  
OF THE  
STATE OF NEW YORK

BY  
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## CONTENTS

### VOL. I

| CHAPTER   | PAGE |
|---|------|
| I. A COLONY BECOMES A STATE. 1774-1776 . . .                        | 1    |
| II. MAKING A STATE CONSTITUTION. 1777 . . .                         | 8    |
| III. GEORGE CLINTON ELECTED GOVERNOR. 1777 . . .                    | 17   |
| IV. CLINTON AND HAMILTON. 1783-1789 . . .                           | 23   |
| V. GEORGE CLINTON'S FOURTH TERM. 1789-1792 . . .                    | 37   |
| VI. GEORGE CLINTON DEFEATS JOHN JAY. 1792-1795 . . .                | 50   |
| VII. RECOGNITION OF EARNEST MEN. 1795-1800 . . .                    | 64   |
| VIII. OVERTHROW OF THE FEDERALISTS. 1798-1800 . . .                 | 78   |
| IX. MISTAKES OF HAMILTON AND BURR. 1800 . . .                       | 94   |
| X. JOHN JAY AND DEWITT CLINTON. 1800 . . .                          | 107  |
| XI. SPOILS AND BROILS OF VICTORY. 1801-1803 . . .                   | 115  |
| XII. DEFEAT OF BURR AND DEATH OF HAMILTON. 1804 . . .               | 129  |
| XIII. THE CLINTONS AGAINST THE LIVINGSTONS. 1804-1807 . . .         | 147  |
| XIV. DANIEL D. TOMPKINS AND DEWITT CLINTON. 1807-<br>1810 . . . . . | 158  |
| XV. TOMPKINS DEFEATS JONAS PLATT. 1810 . . .                        | 173  |
| XVI. DEWITT CLINTON AND TAMMANY. 1789-1811 . . .                    | 180  |
| XVII. BANKS AND BRIBERY. 1791-1812 . . .                            | 186  |
| XVIII. CLINTON AND THE PRESIDENCY. 1812 . . .                       | 199  |
| XIX. QUARRELS AND RIVALRIES. 1813 . . .                             | 211  |
| XX. A GREAT WAR GOVERNOR. 1812-1815 . . .                           | 219  |
| XXI. CLINTON OVERTHROWN. 1815 . . .                                 | 231  |
| XXII. CLINTON'S RISE TO POWER. 1815-1817 . . .                      | 241  |
| XXIII. BUCKTAIL AND CLINTONIAN. 1817-1819 . . .                     | 253  |
| XXIV. RE-ELECTION OF RUFUS KING. 1819-1820 . . .                    | 263  |
| XXV. TOMPKINS' LAST CONTEST. 1820 . . .                             | 273  |

# A POLITICAL HISTORY OF THE STATE OF NEW YORK

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## CHAPTER I

### A COLONY BECOMES A STATE

ON THE 16th of May, 1776, the second Continental Congress, preparing the way for the Declaration of Independence, recommended that those Colonies which were without a suitable form of government, should, to meet the demands of war, adopt some sufficient organisation. The patriot government of New York had not been wholly satisfactory. It never lacked in the spirit of resistance to England's misrule, but it had failed to justify the confident prophecies of those who had been instrumental in its formation.

For nearly a year New York City saw with wonder the spectacle of a few fearless radicals, organised into a vigilance committee of fifty, closing the doors of a custom-house, guarding the gates of an arsenal, embargoing vessels laden with supplies for British troops, and removing cannon from the Battery, while an English fleet, well officered and manned, rode idly at anchor in New York harbour. Inspiring as the spectacle was, however, it did not appreciably help matters. On the contrary, it created so much friction among the people that the conservative business men—resenting involuntary taxation, yet wanting, if possible with

honour, reconciliation and peace with the mother country—organised, in May, 1774, a body of their own known as the Committee of Fifty-one, which thought the time had come to interrupt the assumed leadership of the Committee of Fifty. This usurpation by one committee of powers that had been exercised by another, caused the liveliest indignation.

The trouble between England and America had grown out of the need for a continental revenue and the lack of a continental government with taxing power—a weakness experienced throughout the Revolution and under the Confederation. In the absence of such a government, Parliament undertook to supply the place of such a power; but the Americans blocked the way by an appeal to the principle that had been asserted by Simon de Montford's Parliament in 1265 and admitted by Edward I. in 1301—"No taxation without representation." So the Stamp Act of 1765 was repealed. The necessity for a continental revenue, nevertheless, remained, and in the effort to adopt some expedient, like the duty on tea, Crown and Colonies became involved in bitter disputes. The idea of independence, however, had, in May, 1774, scarcely entered the mind of the wildest New York radical. In their instructions to delegates to the first Continental Congress, convened in September, 1774, the Colonies made no mention of it. Even in May, 1775, the Sons of Liberty in Philadelphia cautioned John Adams not to use the word, since "it is as unpopular in all the Middle States as the Stamp Act itself."<sup>1</sup> Washington wrote from the Congress that independence was then not "desired by any thinking man in America."<sup>2</sup>

The differences, therefore, between the Committees of Fifty and Fifty-one were merely political. One favoured agitation for the purpose of arousing resistance to the King's summary methods—the other preferred a more orderly but not less forceful way of making known their oppo-

<sup>1</sup> E. B. Andrews, *History of the United States*, Vol. 1, p. 172.

<sup>2</sup> *Ibid.*, p. 172.

sition. Members of both highest and best sense, yet only patriotic, public spir-

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sition. Members of both committees were patriots in the highest and best sense, yet each faction fancied itself the only patriotic, public spirited and independent party.

It was during these months of discord that Alexander Hamilton, then a lad of seventeen, astonished his listeners at the historic meeting "in the Fields,"<sup>3</sup> with the cogency of his arguments and the wonderful flights of an unpremeditated eloquence while denouncing the act of Parliament which closed the port of Boston. Hamilton had already been a year in America attending the Elizabethtown grammar school, conducted under the patronage of William Livingston, soon to become the famous war governor of New Jersey. This experience quickened the young man's insight into the vexed relations between the Colonies and the Crown, and shattered his English predilections in favour of the little minds that Burke thought so ill-suited to a great empire. A visit to Boston shortly after the "tea party" seems also to have had the effect of crowding his mind with thoughts, deeply and significantly freighted with the sentiment of liberty, which were soon to make memorable the occasion of their first utterance.

The remarkable parallel between Hamilton and the younger Pitt begins in this year, while both are in the schoolroom. Hamilton "in the Fields" recalls Pitt at the bar of the House of Lords, amazing his companions with the ripe intelligence and rare sagacity with which he followed the debate, and the readiness with which he skilfully formulated answers to the stately arguments of the wigged and powdered nobles. Pitt, under the tuition of his distinguished father, was fitted for the House of Commons as boys are fitted for college at Exeter and Andover, and he entered Parliament before becoming of age. Hamilton's preparation had been different. At twelve years of age he was a clerk in a counting house on the island of Nevis in the West Indies; at sixteen he entered a grammar school in New Jersey; at seventeen he

<sup>3</sup> City Hall Park.



became a sophomore at King's College. It is then that he spoke "in the Fields"—not as a sophomore, not as a precocious youth with unripe thoughts, not as a boy orator—but as a man speaking with the wisdom of genius.

After the meeting "in the Fields" patriotism proved stronger than prejudice, and in November, 1774, the Committee of Fifty-one gave place to a Committee of Sixty, charged with carrying out recommendations of the Continental Congress. Soon after a Committee of One Hundred, composed of members of the Committees of Fifty and Fifty-one, assumed the functions of a municipal government. Finally, in May, 1775, representatives were chosen from the several counties to organise a Provincial Congress to take the place of the long established legislature of the Colony, which had become so steeped in toryism that it refused to recognise the action of any body of men who resented the tyranny of Parliament. Thus, in the brief space of eighteen months, the government of the Crown had been turned into a government of the people.

For several months, however, the patriots of New York had desired a more complete state government. All admitted that the revolutionary committees were essentially local and temporary. Even the hottest Son of Liberty came to fear the licentiousness of the people on the one hand, and the danger from the army on the other. Nevertheless, the Provincial Congress, whose members had been trained by harsh experience to be stubborn in defence and sturdy in defiance, declined to assume the responsibility of forming such a government as the Continental Congress recommended. That body had itself come into existence as a revolutionary legislature after the Provincial Assembly had refused either to approve the proceedings of the first Continental Congress, or to appoint delegates to the second; and, although it did not hesitate to usurp temporarily the functions of the Tory Assembly, to its great credit it believed the right of creating and framing a new civil government belonged to the people; and, accordingly, on May 24, 1776, it recommended the elec-

tion of new representatives who were authorised to form a government for the Colony.

The members of this new legislature were the first to appear in New York's history for the purpose of forming a government. Among them were John Jay, Philip Livingston, Philip Schuyler, and John M. De Witt. The same men appeared at the birth of the state government. The helplessness of the Confederates and the biters of the Federal Constitution were James Clinton, Willett, John Morin Scott, Sloss Hobart, the Yateses, the Van Cortlandts, James, Richard, Lewis and Gouverneur Morris. Only two illustrious names were omitted from the patriotic lists, but already Alexander Hamilton had taken the heart of the people by his eloquence and Aaron Burr, a comely youth, was as graceful as a girl, with the refinement of his education and the refinement of his manners. These men passed into history behind his own trail of light and shadow. The duties demanded prudence and the answer to the roll-call of the patriots appeared in conformity with the vote set the pace which achieved the independence of the new nation.

The new Provincial Congress met at White Plains on July 9, 1776, and from the old institutions of the "Convention of the New York." As further evidence it declared that New York was a free and independent State April 20, 1775. It also declared that such parts of the common law were in force in the Colony

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tion of new representatives who should be specially author-  
 ised to form a government for New York.

The members of this new body were conspicuous charac-  
 ters in New York's history for the next third of a century.  
 Among them were John Jay, George Clinton, James Duane,  
 Philip Livingston, Philip Schuyler, and Robert R. Living-  
 ston. The same men appeared in the Committee of Safety,  
 at the birth of the state government, as witnesses of the  
 helplessness of the Confederation, and as backers or back-  
 biters of the Federal Constitution. Among those associated  
 with them were James Clinton, Ezra L'Hommedieu, Marinus  
 Willett, John Morin Scott, Alexander McDougall, John  
 Sloss Hobart, the Yateses, Abraham, Richard and Robert;  
 the Van Cortlandts, James, John and Philip; the Morris-  
 es, Richard, Lewis and Gouverneur, and all the Livingstons.  
 Only two illustrious names are absent from these early pa-  
 triotic lists, but already Alexander Hamilton had won the  
 heart of the people by his wonderful eloquence and logic,  
 and Aaron Burr, a comely lad of nineteen, slender and  
 graceful as a girl, with the features of his beautiful mother  
 and the refinement of his distinguished grandfather, had  
 thrown away his books to join Arnold on his way to Quebec.  
 These men passed into history in companies, but each left  
 behind his own trail of light. Where danger called, or civic  
 duties demanded prudence and profound sagacity, this band  
 of patriots appeared in council and in the camp, ready to  
 answer to the roll-call of their country, and by voice and  
 vote set the pace which achieved independence.

The new Provincial Congress met at the courthouse in  
 White Plains on July 9, 1776, and, as evidence of the change  
 from the old institutions to the new, it adopted the name  
 of the "Convention of the Representatives of the State of  
 New York." As further evidence of the new order of things  
 it declared that New York began its existence as a State on  
 April 20, 1775. It also adopted as the law of the State  
 such parts of the common and statute law of England as  
 were in force in the Colony of New York on April 19, 1775.



By this time the British forces had become so active in the vicinity of New York that the convention thought it advisable to postpone the novel and romantic work of state-making until the threatened danger had passed; but, before its hasty adjournment, by requesting officers of justice to issue all processes and pleadings under the authority and in the name of the State of New York, it served notice that King and Parliament were no longer recognised as the source of political authority. This appears to have been the first official mention of the new title of the future government.<sup>4</sup> When the convention reassembled on the first day of the following August it appointed John Jay chairman of a committee to report the draft of a state constitution.

Jay was then thirty-one years old, a cautious, clever lawyer whose abilities were to make a great impression upon the history of his country. He belonged to a family of Huguenot merchants. The Jays lived at La Rochelle until the revocation of the Edict of Nantes drove the great-grandfather to England, where the family continued until 1686, when Augustus, the grandfather, settled in New York. It was not a family of aristocrats; but for more than a century the Jays had ranked among the gentry of New York City, intermarrying with the Bayards, the Stuyvesants, the Van Cortlandts and the Philippses. To these historic families John Jay added another, taking for his wife Sarah Livingston, the sister of Brockholst, who later adorned the Supreme Court of the United States, and the daughter of William, New Jersey's coming war governor, already famous as a writer of poems and essays.

Jay's public career had begun two years before in connection with the revolutionary Committee of Fifty-one. He did not accept office because he loved it. He went into politics as he might have travelled on a stage-coach at the invitation of a few congenial friends, for their sake, not for his own. When he took up the work of organisation, therefore, it was with no wish to become a leader; he simply desired

<sup>4</sup> *Memorial History of the City of New York*, Vol. 2, p. 608.

to guide the spirit of resolutions. But soon he held brake. In drafting a town meeting, he suggested to which should be referred importation. This letter gestion of a general Congress ally at the head of the Revolution which meant broader organizational measures, an enlistment and one official head for separated colonies—gradually sending the young writer to the national Congress.

It was in this Congress constitution-maker. Of liant age, no one advanced knowledge and favour. V ple of Canada, his great after he composed the the famous circular letter address to the people of frequently drawn upon ever; but he may be said when he drafted the address. While still ignorant of "a production of the first

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*of New York, Vol. 2, p. 608.*

to guide the spirit of resistance along orderly and forceful lines. But soon he held the reins and had his foot on the brake. In drafting a reply to resolutions from a Boston town meeting, he suggested a Congress of all the Colonies, to which should be referred the disturbing question of non-importation. This letter was not only the first serious suggestion of a general Congress, placing its author intellectually at the head of the Revolutionary leaders; but the plan—which meant broader organisation, more carefully concerted measures, an enlistment of all the conservative elements, and one official head for thirteen distinct and widely separated colonies—gradually found favour, and resulted in sending the young writer as a delegate to the first Continental Congress.

It was in this Congress that Jay won the right to become a constitution-maker. Of all the men of that busy and brilliant age, no one advanced more steadily in the general knowledge and favour. When he wrote the address to the people of Canada, his great ability was recognised at once; and after he composed the appeal to Ireland and to Jamaica, the famous circular letter to the Colonies, and the patriotic address to the people of his own State, his wisdom was more frequently drawn upon and more widely appreciated than ever; but he may be said to have leaped into national fame when he drafted the address to the people of Great Britain. While still ignorant of its authorship, Jefferson declared it "a production of the finest pen in America."

CHAPTER II  
MAKING A STATE CONSTITUTION

1777

IT WAS early spring in 1777 before John Jay, withdrawing to the country, began the work of drafting a constitution. His retirement recalls Cowper's sigh for

“. . . . a lodge in some vast wilderness,  
Some boundless contiguity of shade,  
Where rumours of oppression and deceit,  
Of unsuccessful and successful war,  
Might never reach me more.”

Too much and too little credit has been given Jay for his part in the work. One writer says he “entered an almost unexplored field.” On the other hand, John Adams wrote Jefferson that Jay’s “model and foundation” was his own letter to George Wythe of Virginia. Neither is true. The field was not unexplored, nor did John Adams’ letter contain a suggestion of anything not already in existence, except the election of a Council of Appointment, with whose consent the governor should appoint all officers. His plan of letting the people elect a governor came later. “We have a government to form, you know,” wrote Jay, “and God knows what it will resemble. Our politicians, like some guests at a feast, are perplexed and undetermined which dish to prefer;”<sup>1</sup> but Jay evidently preferred the old home dishes, and it is interesting to note how easily he adapted the laws and customs of the provincial government to the needs of an independent State.

<sup>1</sup> John Jay, *Correspondence and Public Papers*, Vol. 1, p. 68.

1777]

A RESTRICTED

The legislative branch consisted of two separate and distinct bodies, the Senate and the Assembly. The first Congress was elected each year; the second was elected every fourth year. The members of the Assembly were proportioned to the number of qualified voters, the State was divided into districts, the eastern being allowed three members, the middle six and the western nine. The powers and privileges of the Senate and the Assembly were the same as those of the British House of Commons in the Province of New York. In 1777 the Assembly introduced no new feature. It consisted of a lower house, and the former of the Province, which exercised the same powers for the Senate.<sup>2</sup> In their respective bodies were indistinguishable.

The qualifications of the members of the Legislature greatly increased. Every patriot believed in the principle of the first article of the Constitution, shall, on any pretence whatsoever, be taken from the State, but such as shall be chosen by them.” This high-sounding principle of popular sovereignty; but the Constitution, fearing the possibility of the tyranny of kings, placed the power in the hands of a few. A man must have a freehold of the value of two hundred pounds of the yearly value of forty pounds, and one possessed of a freehold of the value of two hundred pounds, free from taxes, was eligible for a senator.

But even these drastic provisions were not enough. The draftsman of the Constitution

<sup>2</sup> *Memorial History of the State of New York*, Vol. 1, p. 610.

<sup>3</sup> *Ibid.*, Vol. 2, p. 610.

The legislative branch of the government was vested in two separate and distinct bodies, called the Assembly and the Senate. The first consisted of seventy members to be elected each year; the second of twenty-four members, one-fourth to be elected every four years. Members of the Assembly were proportioned to the fourteen counties according to the number of qualified voters. For the election of senators, the State was divided into "four great districts," the eastern being allowed three members, the southern nine, the middle six and the western six. To each house was given the powers and privileges of the Provincial Assembly of the Colony of New York. In creating this Legislature, Jay introduced no new feature. The old Assembly suggested the lower house, and the former Council or upper house of the Province, which exercised legislative powers, made a model for the Senate.<sup>2</sup> In their functions and operations the two bodies were indistinguishable.<sup>3</sup>

The qualifications of those who might vote for members of the Legislature greatly restricted suffrage. Theoretically every patriot believed in the liberties of the people, and the first article of the Constitution declared that "no authority shall, on any pretence whatever, be exercised over the people of the State, but such as shall be derived from and granted by them." This high-sounding exordium promised the rights of popular sovereignty; but in practice the makers of the Constitution, fearing the passions of the multitude as much as the tyranny of kings, deemed it wise to keep power in the hands of a few. A male citizen of full age, possessing a freehold of the value of twenty pounds, or renting a tenement of the yearly value of forty shillings, could vote for an assemblyman, and one possessing a freehold of the value of one hundred pounds, free from all debts, could vote for a senator.

But even these drastic conditions did not satisfy the draftsman of the Constitution. The legislators themselves,

<sup>2</sup> *Memorial History of the City of New York*, Vol. 2, p. 610.

<sup>3</sup> *Ibid.*, Vol. 2, p. 610.

## ER II

### CONSTITUTION

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although thus carefully selected, might prove inefficient, and so, lest "laws inconsistent with the spirit of this Constitution, or with the public good, may be hastily or unadvisedly passed," a Council of Revision was created, composed of the governor, chancellor, and the three judges of the Supreme Court, or any two of them acting with the governor, who "shall revise all bills about to be passed into laws by the Legislature." If the Council failed to act within ten days after having possession of the bill, or if two-thirds of each house approved it after the Council disapproved it, the bill became law. This Council seems to have been suggested by the veto power possessed by the King's Privy Council.

The supreme executive power and authority of the State were vested in a governor, who must be a freeholder and chosen by the ballots of freeholders possessed of one hundred pounds above all debts. His term of office was three years, and his powers similar to those of preceding Crown governors. He was commander-in-chief of the army, and admiral of the navy. He had power to convene the Legislature in extraordinary session; to prorogue it not to exceed sixty days in any one year; and to grant pardons and reprieves to persons convicted of crimes other than treason and murder, in which cases he might suspend sentence until the Legislature acted. In accordance with the custom of his predecessors, he was also expected to deliver a message to the Legislature whenever it convened. To aid him in his duties, the Constitution provided for the election of a lieutenant-governor, who was made the presiding officer of the Senate.

The proposition that no authority should be exercised over the people except such as came from the people necessarily opened the door to an election of the governor by the people; but how to restrict his power seems to have taxed Jay's ingenuity. He had reduced the number of voters to its lowest terms, and put a curb on the Legislature, as well as the governor, by the creation of the Council of Revision; but how to curtail the chief executive's power in making appoint-

ments, presented a problem to the governor, good reason to regret.

The only governors with whom we are acquainted were British governors, and the story of astonishing mistakes goes no farther back than Lord Bute, who, in the latter part of the century, exhibited gifts fitting a spirited and intelligent person for good either for the disposition was to be despotic in such arbitrary conduct, Jay's power in making appointments.

The new Constitution provided for the election of sheriffs, mayors of cities, district treasurers, and all other officers, the lieutenant-governor, and some members of the convention to make these appointments; or by the Legislature's right to elect them. The first would transfer power; the latter would transfer it. To reconcile these different views, "Article XXIII. That all officers of this Constitution, are direct elections shall be appointed in the next Assembly shall, once in every year, appoint one of the senators to be the presiding officer of the said officers, of which the governor shall have a casting vote, but no other officers shall be appointed without the consent of the said Council officers."<sup>4</sup>

<sup>4</sup>"The clause directing the election of the lieutenant-governor was generally disapproved. Many other members, and mentioned to the convention several myself, and



ments, presented a problem which gave Jay himself, when governor, good reason to regret the manner of its solution.

The only governors with whom Jay had had any experience were British governors, and the story of their rule was a story of astonishing mistakes and vexing stupidities. To go no farther back than Lord Cornbury, the dissolute cousin of Queen Anne, not one in the long list, covering nearly a century, exhibited gifts fitting him for the government of a spirited and intelligent people, or made the slightest impression for good either for the Crown or the Colony. Their disposition was to be despotic, and to prevent a repetition of such arbitrary conduct, Jay sought to restrict the governor's power in making appointments to civil office.

The new Constitution provided for the appointment of sheriffs, mayors of cities, district attorneys, coroners, county treasurers, and all other officers in the State save governor, lieutenant-governor, state treasurer and town officers. Some members of the convention wished the governor to make these appointments; others wanted his power limited by the Legislature's right to confirm. Jay saw objections to both methods. The first would give the governor too much power; the latter would transfer too much to the Legislature. To reconcile these differences, therefore, he proposed "Article XXIII. That all officers, other than those who, by this Constitution, are directed to be otherwise appointed, shall be appointed in the manner following, to wit: The Assembly shall, once in every year, openly nominate and appoint one of the senators from each great district, which senators shall form a Council for the appointment of the said officers, of which the governor shall be president and have a casting vote, but no other vote; and with the advice and consent of the said Council shall appoint all of the said officers."<sup>4</sup>

<sup>4</sup>"The clause directing the governor to *nominate* officers to the Legislature for their approbation being read and debated, was generally disapproved. Many other methods were devised by different members, and mentioned to the house merely for consideration. I mentioned several myself, and told the convention at the time,

might prove inefficient, and in the spirit of this Constitution may be hastily or unadvisedly passed into laws by the three judges of the Supreme Court, or by the governor, who may be passed into laws by the Council, or by the governor, who failed to act within ten days of the bill, or if two-thirds of each Council disapproved it, the bill may be passed into laws by the King's Privy Council.

power and authority of the State shall be exercised by the governor, who must be a freeholder and whose property shall be valued at one hundred dollars, and whose term of office was three years, and whose salary shall be the same as of preceding Crown governments. The governor shall be chief of the army, and shall have the power to convene the Legislature in person, or by a committee, and to prorogue it not to exceed sixty days, and to grant pardons and reprieves, except in cases of treason and murder, and to suspend sentence until the pleasure of the Legislature, in accordance with the custom of his predecessors. To aid him in his duties, the Governor shall have the power to elect a lieutenant-governor, and a Council of the presiding officer of the

authority should be exercised over the people, and the power of pardon should be exercised by the people; and the Governor shall have the power to tax Jay's income, and to reduce the number of voters to its lowest point, and to alter the Legislature, as well as the power of the Council of Revision; but the Governor shall have the power to restrict the Governor's power in making appoint-

This provision was simply, as the sequel showed, a bungling compromise. Jay intended that the governor should nominate and the Council confirm, and in the event of a tie the governor should have the casting vote. But in practice it subordinated the governor to the Council whenever a majority of the Assembly was politically opposed to him, and the annual election of the Council greatly increased the chances of such opposition. When, finally, the Council of Appointment set up the claim that the right to nominate was vested concurrently in the governor and in each of the four senators, it practically stripped the chief executive of power.

The anomaly of the Constitution was the absence of provision for the judicature, the third co-ordinate branch of the government. One court was created for the trial of impeachments and the correction of errors, but the great courts of original jurisdiction, the Supreme Court and the Court of Chancery, as well as the probate court, the county court, and the court of admiralty, were not mentioned except incidentally in sections limiting the ages of the judges, the offices each might hold, and the appointment of clerks. Instead of recreating these courts, the Constitution simply recognised them as existing. The new court established, known as the Court of Errors and Impeachment, consisted of the president of the Senate, the senators, the chancellor, and the three judges of the Supreme Court, or a major part of them. The conception of vesting supreme appellate jurisdiction in the upper legislative house was derived from the former practice of appeals to the Council of the Province,<sup>5</sup> which possessed

that, however I might then incline to adopt them, I was not certain, but that after considering them, I should vote for their rejection. While the minds of the members were thus fluctuating between various opinions, I spent the evening of that day with Mr. Morris at your lodgings, in the course of which I proposed the plan for the institution of the Council as it now stands, and after conversing on the subject we agreed to bring it into the house the next day. It was moved and debated and carried."—John Jay, *Correspondence and Public Papers*, Vol. 1, p. 128. Letter of Jay to Robert R. Livingston and Gouverneur Morris, April 29, 1777.

<sup>5</sup> *Memorial History of the City of New York*, Vol. 2, p. 612.

judicial as well as legislative followed the practice that judges could not vote on matters, although they might be the same—a custom which existed from the earliest times.<sup>6</sup>

In like manner provincial laws, legal customs, and precedents had been in existence for a century. The constitution simply provided, in the absence of such parts of the statute law of England and of the constitution of the legislature of the Colony, that there should be no obedience to the government to establish any particular duties for priests or ministers, who held civil or military office, and no punishment for crimes committed by them. The practice was abrogated, with the declaration that no work of a corruption of the

The draft of the Constitution was reported to the convention on the following day the first section began. Sixty-six members, a majority of whom, led by the reign of the people. The British to embargo vessels and British guns never wanted now prepared to resist a simply to change the name of this feeling. "It is probably democratic," says William Jay's father, "for I have heard the winch would have cr-

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<sup>6</sup> *Duke's Laws*, Vol. 1,

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*of New York*, Vol. 2, p. 612.

judicial as well as legislative power. The Constitution further followed the practice of the old Council by providing that judges could not vote on appeals from their own judgments, although they might deliver arguments in support of the same—a custom which had obtained in New York from the earliest times.<sup>6</sup>

In like manner provincial laws, grants of lands and charters, legal customs, and popular rights, most of which had been in existence for a century, were carried over. The Constitution simply provided, in a general way, for the continuance of such parts of the common law of England, the statute law of England and Great Britain, and the acts of the legislature of the Colony of New York, as did not yield obedience to the government exercised by Great Britain, or establish any particular denomination of Christians, or their priests or ministers, who were debarred from holding any civil or military office under the new State; but acts of attainder for crimes committed after the close of the war were abrogated, with the declaration that such acts should not work a corruption of the blood.

The draft of the Constitution in Jay's handwriting was reported to the convention on March 12, 1777, and on the following day the first section was accepted. Then the debate began. Sixty-six members constituted the convention, a majority of whom, led by John Morin Scott, believed in the reign of the people. The spirit that nerved a handful of men to embargo vessels and seize munitions of war covered by British guns never wanted courage, and this historic band now prepared to resist a conservatism that seemed disposed simply to change the name of their masters. Jay understood this feeling. "It is probable that the convention was ultra-democratic," says William Jay, in the biography of his father, "for I have heard him observe that another turn of the winch would have cracked the cord."<sup>7</sup>

Jay was not without supporters. Conservatives like the

<sup>6</sup> *Duke's Laws*, Vol. 1, Chap. 14.

<sup>7</sup> William Jay, *Life of John Jay; Jay MSS.*, Vol. 1, p. 72.

Livingstons, the Morrises, and the Yateses never acted with the recklessness of despair. They had well-formed notions of a popular government, and their replies to proposed changes broke the force of the opposition. But Jay, relying more upon his own policy, prudently omitted several provisions that seemed to him important, and when discussion developed their need, he shrewdly introduced them as amendments. Upon one question, however, a prolonged and spirited debate occurred. This centred upon the freedom of conscience. The Dutch of New Netherland, almost alone among the Colonies, had never indulged in fanaticism, and the Constitution, breathing the spirit of their toleration, declared that "the free exercise and enjoyment of religious profession and worship without diminution or preference shall forever hereafter be allowed within the State to all mankind." Jay did not dissent from this sentiment; but, as a descendant of the persecuted Huguenots, he wished to except Roman Catholics until they should deny the Pope's authority to absolve citizens from their allegiance and to grant spiritual absolution, and he forcefully insisted upon and secured the restriction that "the liberty of conscience hereby granted shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the safety of the State." The question of the naturalisation of foreigners renewed the contention. Jay's Huguenot blood was still hot, and again he exacted the limitation that all persons, before naturalisation, shall "abjure and renounce all allegiance to all and every foreign king, prince, potentate, and state, in all matters ecclesiastical as well as civil."

Jay intended reporting other amendments—one requiring a similar renunciation on the part of all persons holding office, and one abolishing domestic slavery. But before the convention adjourned he was, unfortunately, summoned to the bedside of his dying mother. Otherwise, New York would probably have had the distinction of being first to set the example of freedom. "I should have been for a clause

against the continuance of it in a letter objecting to my retirement.<sup>8</sup>

Although the Constitution was not adopted more than a month, haste in the convention's deliberations. Jay seemed eager to get away, and the Constitution was adopted. Jay left it, and a committee appointed for establishing a government under the Constitution of Massachusetts, it was not until the ratification. The fact that the Constitution elected by the people seemed to have secured its passage, the secretary of the convention placed a barrel in front of the copy of the Constitution to the world by reading it to be present. As it became known, it was cordially approved as the first American constitution. "The Constitution of this land," wrote Jay, "where credit."<sup>9</sup>

The absence of violent opposition to the Constitution's remarkable success in the Revolution, framed to the spirit of that great event, its general character conservative. The right of suffrage was late as 1790 only 1303 of the population of New York City possessed sufficient property to vote for governor. Even in the most undisturbed, notwithstanding the opposition to the wish despite popular dissatisfaction and earnest prayers and ugly p

<sup>8</sup> John Jay, *Correspondence and Public Papers*, p. 140. A recommendation was introduced but subsequently omitted.

<sup>9</sup> *Ibid.*, p. 140.

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against the continuance of domestic slavery," he said, in a letter objecting to what occurred after his forced retirement.<sup>8</sup>

Although the Constitution was under consideration for more than a month, haste characterised the close of the convention's deliberations. As soon as Jay left, every one seemed eager to get away, and on Sunday, April 20, 1777, the Constitution was adopted as a whole practically as he left it, and a committee appointed to report a plan for establishing a government under it. Unlike the Constitution of Massachusetts, it was not submitted to the voters for ratification. The fact that the delegates themselves had been elected by the people seemed sufficient, and two days after its passage, the secretary of the convention, standing upon a barrel in front of the courthouse at Kingston, published it to the world by reading it aloud to those who happened to be present. As it became known to the country, it was cordially approved as the most excellent and liberal of the American constitutions. "It is approved even in New England," wrote Jay, "where few New York productions have credit."<sup>9</sup>

The absence of violent democratic innovations was the Constitution's remarkable feature. Although a product of the Revolution, framed to meet the necessities growing out of that great event, its general provisions were decidedly conservative. The right of suffrage was so restricted that as late as 1790 only 1303 of the 13,330 male residents of New York City possessed sufficient property to entitle them to vote for governor. Even the Court of Chancery remained undisturbed, notwithstanding royal governors had created it in opposition to the wishes of the popular assembly. But despite popular dissatisfaction, which evidenced itself in earnest prayers and ugly protests, the instrument, so rudely

<sup>8</sup> John Jay, *Correspondence and Public Papers*, Vol. 1, p. 126. "Such a recommendation was introduced by Gouverneur Morris and passed, but subsequently omitted."—*Ibid.*, p. 136, note.

<sup>9</sup> *Ibid.*, p. 140.



and hastily published on April 22, 1777, remained the supreme law of the State for forty-four years.

Before adjournment the convention, adopting the report of its committee for the organisation of a state government, appointed Robert R. Livingston, chancellor; John Jay, chief justice of the Supreme Court; Robert Yates, Jr., and John Sloss Hobart, justices of the Supreme Court, and Egbert Benson, attorney-general. To a Council of Safety, composed of fifteen delegates, with John Morin Scott, chairman, were confided all the powers of the State until superseded by a regularly elected governor.

CH

GEORGE CLINTON

AFTER the constitution of 1777, the Council of Safety elected a governor, lieutenant-governor, and legislature. The selection was made by the people. Although free only a small part of the class rejoiced in the success across the sea. And all suggested as fittest as well as John Morin Scott, John Schuyler, and others. Just then Schuyler, watching Burdett's invasion of the Mohawk valley, and the command on the Hudson, the movements of Sir Henry Clinton, meant the destruction of the lower entrance to the river. As members of the Council of Safety, members of the Government of the new State.

Schuyler's public career in the Assembly of New York in 1768 was distinguished by his boldness. He proposed to thank the delegates of the Provincial Congress and to appoint others to a section of the Provincial Assembly's functions and people. Chancellor Kent t

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CHAPTER III

GEORGE CLINTON ELECTED GOVERNOR

1777

AFTER the constitutional convention adjourned in May, 1777, the Council of Safety immediately ordered the election of a governor, lieutenant-governor, and members of the Legislature. The selection of a governor by ballot interested the people. Although freeholders who could vote represented only a small part of the male population, patriots of every class rejoiced in the substitution of a neighbour for a lord across the sea. And all had a decided choice. Of those suggested as fittest as well as most experienced Philip Schuyler, John Morin Scott, John Jay and George Clinton were the favourites. Just then Schuyler was in the northern part of the province, watching Burgoyne and making provision to meet the invasion of the Mohawk Valley; George Clinton, in command on the Hudson, was equally watchful of the movements of Sir Henry Clinton, whose junction with Burgoyne meant the destruction of Forts Clinton and Montgomery at the lower entrance to the Highlands; while Scott and Jay, as members of the Council of Safety, were directing the government of the new State.

Schuyler's public career began in the Provincial Assembly of New York in 1768. He represented the people's interests with great boldness, and when the Assembly refused to thank the delegates of the first Continental Congress, or to appoint others to a second Congress, he aided in the organisation of the Provincial Congress which usurped the Assembly's functions and put all power into the hands of the people. Chancellor Kent thought that "in acuteness of intellect,

profound thought, indefatigable activity, exhaustless energy, pure patriotism, and persevering and intrepid public efforts, Schuyler had no superior;" and Daniel Webster declared him "second only to Washington in the services he rendered the country."<sup>1</sup> But there was in Schuyler's make-up a touch of arrogance that displayed itself in letters as well as in manners. The soldierly qualities that made him a commander did not qualify him for public place dependent upon the suffrage of men. People respected but did not love him. If they were indignant that Gates succeeded him, they did not want him to govern them, however much it may have been in his heart to serve them faithfully.

John Morin Scott represented the radical element among the patriots. By profession he was an able and wealthy lawyer; by occupation a patriotic agitator. John Adams, who breakfasted with him, speaks of his country residence three miles out of town as "an elegant seat, with the Hudson just behind the house, and a rural prospect all around him." But the table seems to have made a deeper impression upon the Yankee patriot than the picturesque scenery of the river. "A more elegant breakfast I never saw—rich plate, a very large silver coffee-pot, a very large silver teapot, napkins of the very finest materials, toast and bread and butter in great perfection. Afterwards a plate of beautiful peaches, another of pears, another of plums, and a musk melon." As a parting salute, this lover of good things spoke of his host as "a sensible man, one of the readiest speakers upon the continent, but not very polite."<sup>2</sup> This is what the Tories thought. According to Jones, the Tory historian, Scott had the misfortune to graduate at Yale—"a college remarkable for its

<sup>1</sup> While in command of the northern department, embracing the province of New York, Schuyler was known as "Great Eye," so watchful did he become of the enemy's movements; and although subsequently, through slander and intrigue, superseded by Horatio Gates, history has credited Burgoyne's surrender largely to his wisdom and patriotism, and has branded Gates with incompetency, in spite of the latter's gold medal and the thanks of Congress.

<sup>2</sup> John Adams, *Life and Works*, Vol. 2, p. 349 (Diary).

republican principles and to belong to a triumph down church and state, upon the ruins."<sup>3</sup>

Scott, no doubt, was in course to pursue, but he viewed, and his point of view was a misrule. Whatever the energy of a man still in his ancestry. His great-great-grandfather, of Ancrum, Scotland, came to New York in 1700, a stronghold on the Mohawk. Tory blood was foreign to him, and the air of independence depend upon the pleasure of his neighbours, or of the ministry, or to be excluded of his neighbours, or of the In 1775 he went to the Provincial Congress he participated in the brigadier-general. After the substitution he became secretary in 1783 served in the Congress enough to see his count ended at fifty-four.

George Clinton possessed either Schuyler or Scott in New York to in attachment than George C was more bitter in his uncompromising in his typical Irishman—intolerant, petulant, and occasional was magnetic and gener

<sup>3</sup> Thomas Jones, *E*

activity, exhaustless energy, and intrepid public efforts, Daniel Webster declared in the services he rendered Schuyler's make-up a touch of letters as well as in that made him a commander-in-chief dependent upon the success but did not love him. If they succeeded him, they did not care much it may have been a failure.

the radical element among them was an able and wealthy political agitator. John Adams, as of his country residence a magnificent seat, with the Hudson a prospect all around him." It made a deeper impression upon the picturesque scenery of the river. He never saw—rich plate, a very fine silver teapot, napkins of gold bread and butter in great quantities of beautiful peaches, another a musk melon." As a party-giver he spoke of his host as "a great speaker upon the continent, is what the Tories thought. In the morning, Scott had the misfortune to be college remarkable for its military department, embracing the services known as "Great Eye," so of the y's movements; and although a military trigue, superseded by Horatio Gates's surrender largely to his defeat of Gates with incompetency, and the thanks of Congress.

2, p. 349 (Diary).

republican principles and religious intolerance," he says, and to belong to a triumvirate whose purpose was "to pull down church and state, and to raise their own government upon the ruins."<sup>3</sup>

Scott, no doubt, was sometimes mistaken in the proper course to pursue, but he was always right from his point of view, and his point of view was bitter hostility to English misrule. Whatever he did he did with all the resistless energy of a man still in his forties. He was of distinguished ancestry. His great-great-grandfather, Sir John Scott, baronet, of Ancrum, Scotland, had been a stalwart Whig before the revolution of 1688, and his grandfather, John Scott, coming to New York in 1702, had commanded Fort Hunter, a stronghold on the Mohawk. Both were remarkable men. Tory blood was foreign to their veins. Young John, breathing the air of independence, scorned to let his life and property depend upon the pleasure of British lords and a British ministry, or to be excluded from the right of trial by a jury of his neighbours, or of taxation by his own representatives. In 1775 he went to the Continental Congress; in 1776, to the Provincial Congress of New York; and later he participated in the battle of Long Island as a brigadier-general. After the adoption of the State Constitution he became secretary of state, and from 1780 to 1783 served in the Continental Congress. He lived long enough to see his country free, although his strenuous life ended at fifty-four.

George Clinton possessed more popular manners than either Schuyler or Scott. Indeed, it has been given to few men in New York to inspire more passionate personal attachment than George Clinton. A patriot never lived who was more bitter in his hostility to English misrule, or more uncompromising in his opposition to toryism. He was a typical Irishman—intolerant, often domineering, sometimes petulant, and occasionally too quick to take offence, but he was magnetic and generous, easily putting himself in touch

<sup>3</sup> Thomas Jones, *History of New York*, Vol. 1, p. 3.

with those about him, and ready, without hesitation, to help the poorest and carry the weakest. This was the kind of man the people wanted for governor.

Clinton came of a good family. His great-grandfather, a too devoted adherent of Charles I., found it healthful to wander about Europe, and finally to settle in the north of Ireland, out of reach of Cromwell's soldiers, and out of sight of his ancestral patrimony. By the time Charles II. came to the throne, the estate was lost, and this friend of the Stuarts lived on in the quiet of his secluded home, and after him, his son; but the grandson, stirred by the blood of a Puritan mother, exchanged the North Sea shore for the banks of the Hudson, where his son breathed the air that made him a leading spirit in the war for American independence. Clinton's youth is one record of precocity. Before the war began he passed through a long, a varied; even a brilliant career, climbing to the highest position in the State before he had reached the age when most men begin to fill responsible places. At fifteen he manned an American privateer; at sixteen, as a lieutenant, he accompanied his father in a successful assault upon Fort Frontenac; at twenty-six, in the colonial legislature, he became the rival of Philip Schuyler in the leadership and influence that enabled a patriotic minority to resist the aggressions of Great Britain; at thirty-six, holding a seat in the Second Continental Congress, he voted for the Declaration of Independence, and commanded a brigade of Ulster County militia.

The election which occurred in June was not preceded by a campaign of speaking. People were too busy fighting to supplement a campaign of bullets with one of words. But Jay sent out an electioneering letter recommending Philip Schuyler for governor and George Clinton for lieutenant-governor. This was sufficient to secure for these candidates the conservative vote. It showed, too, Jay's unconcern for high place. He was modest even to diffidence, an infirmity that seems to have depressed him at times as much as it did Nathaniel Hawthorne in a later day.

The returns were made to the carefully scanned them as they wrote Schuyler: "The elections taken such a turn as that, if a should prevail in the upper co doubt of having, ere long, the hon your excellency. Clinton, being have neither; he has many votes for the second. Scott, however, him, and you are by no means rely on receiving by express the alluded to."<sup>4</sup> When the voters fr ern counties came in, however, sult did not follow the line eit suggestions. On the contrary, offices by a considerable pluralit

The result of the election p something of a humiliation to Clinton, I am informed, has : Chair," Schuyler wrote to Jay played his cards better than v later, after confirmation of the erable feeling. "Clinton's fan entitle him to so distinguished showing that Revolutionary l into more democratic and less aristocratic and less aristocra was still in the mind rather th

<sup>4</sup> John Jay, *Correspondence and*

<sup>5</sup> A fragment of the canvass c Albany, Cumberland, Dutchess, lows: Clinton, 865; Scott, 386; Sc ingston, 5; Robert R. Livingston, other southern counties gave the *State of New York* (1886), p. 164. S met at Kingston on September 1, of the Senate performed the duti

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The returns were made to the Council of Safety, and Jay carefully scanned them as they came in. On June 20 he wrote Schuyler: "The elections in the middle district have taken such a turn as that, if a tolerable degree of unanimity should prevail in the upper counties, there will be little doubt of having, ere long, the honour of addressing a letter to your excellency. Clinton, being pushed for both offices, may have neither; he has many votes for the first and not a few for the second. Scott, however, has carried a number from him, and you are by no means without a share. You may rely on receiving by express the earliest notice of the event alluded to."<sup>4</sup> When the voters from Orange and other southern counties came in, however, Jay discovered that the result did not follow the line either of his wishes or of his suggestions. On the contrary, Clinton was elected to both offices by a considerable plurality.<sup>5</sup>

The result of the election proved a great surprise and something of a humiliation to the ruling classes. "Gen. Clinton, I am informed, has a majority of votes for the Chair," Schuyler wrote to Jay, on June 30. "If so he has played his cards better than was expected."<sup>6</sup> A few days later, after confirmation of the rumour, he betrayed considerable feeling. "Clinton's family and connections do not entitle him to so distinguished a pre-eminence," he wrote, showing that Revolutionary heroes were already divided into more democratic and less democratic whigs, and more aristocratic and less aristocratic patriots; but the division was still in the mind rather than in any settled policy. "He

<sup>4</sup> John Jay, *Correspondence and Public Papers*, Vol. 1, p. 142.

<sup>5</sup> A fragment of the canvass of 1777 shows the returns from Albany, Cumberland, Dutchess, Tryon, and Westchester, as follows: Clinton, 865; Scott, 386; Schuyler 1012; Jay, 367; Philip Livingston, 5; Robert R. Livingston, 7. The votes from Orange and other southern counties gave the election to Clinton.—*Civil List, State of New York* (1886), p. 164. Subsequently, when the Legislature met at Kingston on September 1, Pierre Van Cortlandt as president of the Senate performed the duties of lieutenant-governor.

<sup>6</sup> John Jay, *Correspondence and Public Papers*, Vol. 1, p. 144.

is virtuous and loves his country," added Schuyler, in the next line; "he has ability and is brave, and I hope he will experience from every patriot support, countenance and comfort." Washington understood his merits. "His character will make him peculiarly useful at the head of your State," he wrote the Committee of Safety.

Clinton's inauguration occurred on July 30, 1777. He stood in front of the courthouse at Kingston on top of the barrel from which the Constitution had been published in the preceding April, and in the uniform of his country, with sword in hand, he took the oath of office. Within sixty days thereafter Sir Henry Clinton had carried the Highland forts, scattered the Governor's troops, dispersed the first Legislature of the State, burned Kingston to the ground, and very nearly captured the Governor himself, the latter, under cover of night, having made his escape by crossing the river in a small rowboat. Among the captured patriots was Colonel McClaughry, the Governor's brother-in-law. "Where is my friend George?" asked Sir Henry. "Thank God," replied the Colonel, "he is safe and beyond the reach of your friendship."

<sup>1</sup> John Jay, *Correspondence and Public Papers*, Vol. 1, p. 146.

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*Public Papers*, Vol. 1, p. 146.

CHAPTER IV

CLINTON AND HAMILTON

1777-1789

DURING the war Governor Clinton's duties were largely military. Every important measure of the Legislature dealt with the public defence, and the time of the Executive was fully employed in carrying out its enactments and performing the work of commander-in-chief of the militia. A large proportion of the population of the State was either avowedly loyal to the Crown or secretly indisposed to the cause of independence. "Of all the Colonies," wrote William Jay, "New York was probably the least unanimous in the assertion and defence of the principles of the Revolution. The spirit of disaffection was most extensive on Long Island, and had probably tainted a large majority of its inhabitants. In Queens County, in particular, the people had, by a formal vote, refused to send representatives to the colonial congress or convention, and had declared themselves neutral in the present crisis."<sup>1</sup>

The Governor sought to crush this spirit by methods much in vogue in the eighteenth century. At the outset of his career he declared that he had "rather roast in hell to all eternity than be dependent upon Great Britain or show mercy to a damned Tory." To add to his fame, he enforced this judgment with heavy fines, long imprisonments, summary banishments, and frequent coats of tar and feathers.

Very soon after the adoption of the Constitution, the Legislature passed a law requiring an oath of allegiance to the

<sup>1</sup> William Jay, *Life of John Jay*, Vol. 1, p. 41.



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for the law of 1781 the act of March, 1783, granting the  
duties to Congress, but directing their collection by officers  
of the State. Although this act was subsequently amended,  
making collectors amenable to Congress, another law was  
enacted in 1786 granting Congress the revenue, and reserv-  
ing to the State, as in the law of 1783, "the sole power of  
levying and collecting the duties." When Congress asked  
the Governor to call a special session of the Legislature, that  
the right to levy and collect might be yielded as before, he  
refused to do so.

Governor Clinton understood the commercial advantages  
of New York's geographical location, which were greatly  
enhanced by the navigation acts of other States. The peace  
treaty had made New York the port of entry for the whole  
region east of the Delaware, and into its coffers poured a  
revenue so marvellous as to excite hopes of a prospective  
wealth which a century, remarkable as was its productive-  
ness, did little more than realise. If any State, therefore,  
could survive without a union with other Colonies, it was  
New York, and it is not surprising that many, perhaps a  
majority of its people, under the leadership of George Clin-  
ton, settled into a policy unfriendly to a national revenue,  
and later to a national government.

The Governor had gradually become mindful of an oppo-  
sition as stubborn as it was persistent. He had encountered  
it in his treatment of the Tories, but not until Alexander  
Hamilton became an advocate of amnesty and oblivion, did  
Clinton recognise the centre and future leader of the oppos-  
ing forces. Hamilton did not appear among those inter-  
ested in the election of governor in 1777. His youth shut  
him out of Assembly and Congress, out of committees and  
conventions, but it did not shut him out of the army; and  
while Governor Clinton was wrestling with new problems  
of government in the formation of a new State, Hamilton  
was acting as secretary, aide, companion, and confidant of  
Washington, accepting suggestions as commands, and ac-  
quiescing in his chief's judgment with a fidelity born of love



and admiration. In the history of war nothing is more beautiful than the friendship existing between the acknowledged leader of his country and this brave young officer, spirited and impulsive, brilliant and able, yet frank and candid, without ostentation and without egotism. It recalls a later-day relationship between Ulysses S. Grant and John A. Rawlins, his chief of staff.

In July, 1781, Hamilton, in command of a corps, accompanied Washington in the forced march of the American army from New York to Yorktown. This afforded him the opportunity, so long and eagerly sought, of handling an independent command at a supreme moment of danger, and before the sun went down on the 14th of October, he had led his troops with fixed bayonets, under a heavy and constant fire, over abatis, ditch, and palisades; then, mounting the parapet, he leaped into the redoubt. Washington saw the impetuosity of the attack in the face of the murderous fire, the daring leap to the parapet with three of his soldiers, and the almost fatal spring into the redoubt. "Few cases," he says, "have exhibited greater proofs of intrepidity, coolness, and firmness." Three days later Cornwallis surrendered.

In the summer of 1782 Hamilton was admitted to the bar in Albany, but soon afterward settled in New York City, where he seems to have come into practice and into fame by defending the rights of Tories. For four years after the war ended, the treatment of British sympathisers was the dominant political issue in New York. Governor Clinton advocated disfranchisement and banishment, and the Legislature enacted into law what he advised; so that when the British troops, under the peace treaty, evacuated New York, in November, 1783, loyalists who had thus far escaped the wrath of this patriot Governor, flocked to Nova Scotia and New Brunswick like birds seeking a more congenial clime, recalling the flight of the Huguenots after the revocation of the Edict of Nantes one hundred years earlier. It is not easy to estimate the number who fled before this savage and violent action of the Legislature. Sir Guy Carleton, in com-

mand at New York, fixes the number at ten thousand souls. For many years the "Loyalists' Day" was annually commemorated in the cemeteries of England and Scotland. The gravestones of these unfortunate descendants are still to be seen.

It is likely Clinton was too intolerant that follows revolution. In the hands of Hamilton, however, became an early advocate of the rights of man, and, although public sentiment was against him, he finally succeeded in changing the other. "Nothing is more dangerous than for a free people in times of momentary passions by legislative enactments which afterwards prove oppressive. The Legislature can disfranchise the people, give all the votes to a small number of aristocracy or an oligarchy; without hearing or trial, no liberty applied to such a gross violation of common sense."<sup>2</sup>

The differences between Clinton and Hamilton respecting the collection of duties led to a conflict. A Hamiltonian considered the question whether the State should collect its own taxes by its own authority. In 1783, Congress in 1783, he urged the adoption of an adequate federal system of revenue by the Legislature. Here he is extended exposition of the important.<sup>3</sup> Under the leadership of Hamilton was willing to surrender the collection to Congress.

<sup>2</sup> *Hamilton's Works*

<sup>3</sup> *Republic*, Vol. 1,

<sup>4</sup> *Madison Papers*,

<sup>5</sup> *Works*, Vol. 2, p.

ry of war nothing is more beautiful between the acknowledged brave young officer, spirited, yet frank and candid, without egotism. It recalls a later-day S. Grant and John A. Rawlins,

in command of a corps, accompanied the march of the American army to the town. This afforded him the opportunity sought, of handling an important moment of danger, and on the 14th of October, he had led his troops, under a heavy and constant fire of palisades; then, mounting the redoubt. Washington saw the smoke of the face of the murderous fire, and with three of his soldiers, and the redoubt. "Few cases," he said, "are proofs of intrepidity, coolness, and courage, later Cornwallis surrendered."

Hamilton was admitted to the bar and settled in New York City, and into practice and into fame by his services. For four years after the war the British sympathisers was the New York. Governor Clinton and banishment, and the Legislature he advised; so that when the peace treaty, evacuated New York, who had thus far escaped the war, flocked to Nova Scotia and seeking a more congenial climate, many after the revocation of the red years earlier. It is not easy to be fled before this savage and violence. Sir Guy Carleton, in com-

mand at New York, fixes the emigration at one hundred thousand souls. For many years the "Landing of the Loyalists" was annually commemorated at St. John, and in the cemeteries of England and Scotland are found the tombstones of these unfortunate devotees of the mother country.

It is likely Clinton was too intolerant, but it was the intolerance that follows revolution. Hamilton, on the other hand, became an early advocate of amnesty and oblivion, and, although public sentiment and the Legislature were against him, he finally succeeded in modifying the one and changing the other. "Nothing is more common," he observed, "than for a free people in times of heat and violence to gratify momentary passions by letting in principles and precedents which afterwards prove fatal to themselves. If the Legislature can disfranchise at pleasure, it may soon confine all the votes to a small number of partisans, and establish an aristocracy or an oligarchy; if it may banish at discretion, without hearing or trial, no man can be safe. The name of liberty applied to such a government would be a mockery of common sense."<sup>2</sup>

The differences between Congress and the Legislature respecting the collection of duties also brought Clinton and Hamilton into conflict. As early as 1776 Hamilton had considered the question whether Congress ought not to collect its own taxes by its own agents,<sup>3</sup> and, when a member of Congress in 1783, he urged it<sup>4</sup> as one of the cardinal features of an adequate federal system. In 1787 he was a member of the Legislature. Here he insisted upon having the federal revenue system adopted by the State. His argument was an extended exposition of the facts which made such action important.<sup>5</sup> Under the lead of Clinton, however, New York was willing to surrender the money, but not the power of collection to Congress.

<sup>2</sup> *Hamilton's Works* (Lodge), Vol. 3, p. 450.

<sup>3</sup> *Republic*, Vol. 1, p. 122.

<sup>4</sup> *Madison Papers*, Vol. 1, pp. 288, 291, 380.

<sup>5</sup> *Works*, Vol. 2, p. 16.

Meantime, the pitiable condition to which the Confederation had come, accented the need of a stronger central government. To this end Clinton and Hamilton seemed for several years to be working in harmony. In 1780 Clinton had presented to the Legislature the "defect of power" in the Confederation, and, in 1781, John Sloss Hobart and Egbert Benson, representing New York at a convention in Hartford, urged the recommendation empowering Congress to apportion taxes among the States in the ratio of their total population. The next year, Hamilton, although not a member of the Legislature, persuaded it to adopt resolutions written by him, declaring that the powers of the central government should be extended, and that it should be authorized to provide revenue for itself. To this end "it would be advisable," continued the resolutions, "to propose to Congress to recommend, and to each State to adopt, the measure of assembling a general convention of the States, specially authorized to revise and amend the Constitution." To Washington's farewell letter, appealing for a stronger central government, Governor Clinton sent a cordial response, and in transmitting the address to the Legislature in 1784, he recommended attention "to every measure which has a tendency to cement the Union, and to give to the national councils that energy which may be necessary for the general welfare."<sup>6</sup>

Nevertheless, Clinton was not always candid. His official communications read like the utterances of a friend; but his influence, as disclosed in the acts of 1783 and 1786, reserving to the State the sole power of levying and collecting duties, clearly indicate that while he loved his country in a matter-of-fact sort of way, it meant a country divided, a country of thirteen States each berating the other, a country of trade barriers and commercial resentments, a country of more importance to New York and to Clinton than to other Commonwealths which had made equal sacrifices.

Thus matters drifted until New York and other middle

<sup>6</sup> *Hamilton's Works* (Lodge), Vol. 1, p. 277.

Atlantic States discovered that the impotent Articles of Confederation, which gave the waters bordered by two or three States, New York and New Jersey could not be separated on one side of New Jersey, was like the situation of a similar character in Virginia, North Carolina and Pennsylvania. This compelled the States to call a convention, to which commissioners from Pennsylvania, Delaware, and New Jersey were appointed in 1786, to consider the situation of the United States, and to suggest a new form of Congress. Hamilton and Madison were members of this body, the former of whom drafted the plan adopted, which declared that the States should adopt and proposed a convention to be called for the purpose of ratification,<sup>7</sup> in order to render the Union more perfect. This was the result of the plan proposed by the New York Legislature. Hamilton and the friends of the plan in the Legislature now disapproved of the plan. In opposition, it meant disincorporation of debts, demoralization of officials, and the influence of

In 1787, however, the Legislature passed a resolution instructing members to call a convention to be held in Philadelphia, and, when Congress met, John Lansing, Jr., and Alexander Hamilton were delegates "for the sole purpose of proposing a new Confederation, and reporting the same to the Legislatures such alterations as they might think proper to suggest and confirmed by the

<sup>7</sup> *Journal of Congress*, Vol. 1, p. 100.

<sup>8</sup> *Hamilton's Works* (Lodge), Vol. 1, p. 277.

<sup>9</sup> In *Madison Papers*, Vol. 2, p. 100, history of previous steps toward

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Atlantic States discovered that it was impossible under the impotent Articles of Confederation to regulate commerce in waters bordered by two or more States. Even when New York and New Jersey could agree, Pennsylvania, on the other side of New Jersey, was likely to withhold its consent. Friction of a similar character existed between Maryland and Virginia, North Carolina and Virginia, and Maryland and Pennsylvania. This compelled Congress to call the convention, to which commissioners from New York, New Jersey, Pennsylvania, Delaware, and Virginia, assembled at Annapolis in 1786, to consider the trade and commerce of the United States, and to suggest measures for the action of Congress. Hamilton and Egbert Benson were members of this body, the former of whom wrote the address, afterward adopted, which declared the federal government inefficient, and proposed a convention to revise the Articles of Confederation,<sup>7</sup> in order to render them adequate to the exigencies of the Union. This was the resolution unanimously adopted by the New York Legislature in 1782, but to the surprise of Hamilton and the friends of a stronger government, the Legislature now disapproved such a convention. The idea did not please George Clinton. As Hamilton summed up the opposition, it meant disinclination to taxation, fear of the enforcement of debts, democratic jealousy of important officials, and the influence of foreign powers.<sup>8</sup>

In 1787, however, the Legislature adopted a joint resolution instructing members of Congress from the State to urge that a convention be held to amend the Articles of Confederation, and, when Congress issued the call,<sup>9</sup> Robert Yates, John Lansing, Jr., and Alexander Hamilton were elected delegates "for the sole purpose of revising the Articles of Confederation, and reporting to Congress and the several Legislatures such alterations as shall, when agreed to by Congress and confirmed by the several States, render the Federal

<sup>7</sup> *Journal of Congress*, Vol. 12, p. 12.

<sup>8</sup> *Hamilton's Works* (Lodge), Vol. 1, p. 401.

<sup>9</sup> In *Madison Papers*, Vol. 2, Introductory to Debates of 1787, is a history of previous steps toward union.





agencies of government and Hamilton's election to this of Clinton's disposition to state supremacy, since it was at Philadelphia would add to that of a strong, central gov-

Clinton's power to defeat but his liberality carried a vote and John Lansing were a vote.

Yates was Yates, whose criticism manifests hostility to a conception of what would be a government, preferring the plan in the early days of revolution, perhaps, less extreme in its more than an amendment known as the New Jersey plan that a majority favoured the plan for a national government

to, so as to declare that 'the government to consist of a supreme legislature moved a declaration 'that in the United States Congress.' was not adopted, it would produce no obviated. That the principles of representation, and dependence of the States. That as long as state government would operate, whether the plan would be adopted. If there was no interest to the plan. What would be the result in the United States? Let us meet public opinion, will make future arrangements. My colleague (Hamilton) if it could be without example."—Hamilton's motion was negatived by six to four.

with an executive, legislature, and judiciary of its own, Lansing and Yates, regarding it a violation of their instructions, and with the approval of Governor Clinton, withdrew<sup>11</sup> from the convention and refused to sign the Constitution after its adoption.<sup>12</sup>

Hamilton doubted if Madison's plan was strong enough to secure the object in view. He suggested a scheme continuing a President and Senate during good behaviour, and giving the federal government power to appoint governors of States and to veto state legislation. In the notes of a speech presenting this plan, he disclaimed the belief that it was "attainable," but thought it "a model which we ought to approach as near as possible."<sup>13</sup> After the Madison plan had been preferred, however, Hamilton gave it earnest support, and although he could not cast New York's vote, since a majority of the State's representatives had withdrawn, he was privileged to sign the Constitution. If he had never done anything else, it was glory enough to have subscribed his name to that immortal record. When Hamilton returned

<sup>11</sup> Yates and Lansing retired finally from the convention on July 10.

<sup>12</sup> "That they acted in accordance with Clinton was proved by his deportment at this time. Unreserved declarations were made by him, that no good was to be expected from the appointment or deliberations of this body; that the country would be thrown into confusion by the measure. Hamilton said 'Clinton was not a man governed in ordinary cases by sudden impulses; though of an irritable temper, when not under the immediate influence of irritation, he was circumspect and guarded, and seldom acted or spoke without premeditation or design.' When the Governor made such declarations, therefore, Hamilton feared that Clinton's conduct would induce the confusion he so confidently and openly predicted, and to exhibit it before the public in all its deformity, Hamilton published a pointed animadversion, charging these declarations upon him, and avowing a readiness to substantiate them."—John C. Hamilton, *Life of Alexander Hamilton*, Vol. 2, p. 528.

<sup>13</sup> *Works*, Vol. 1, p. 357. G. T. Curtis, *Commentaries on the Constitution*, pp. 371, 381, presents a very careful analysis of Hamilton's plan. For fac-simile copy of Hamilton's plan, see *Documentary History of the Constitution* (a recent Government publication), Vol. 3, p. 771.

home, however, he found himself discredited by a majority of the people. "You were not authorised by the State," said Governor Clinton.<sup>14</sup> Richard Morris, the chief justice, remarked to him: "You will find yourself, I fear, in a hornet's nest."<sup>15</sup>

On September 28, 1787, Congress transmitted a draft of the Constitution, which required the assent of nine of the thirteen States, to the several legislatures. At once it became the sole topic of discussion. In New York it was the occasion of riots, of mobs, and of violent contests. It was called the "triple-headed monster," and declared to be "as deep and wicked a conspiracy as ever was invented in the darkest ages against the liberties of a free people." Its opponents, numbering four-sevenths of the community—although their strength was mainly in the country<sup>16</sup>—and calling themselves Federal Republicans, organised a society and opened correspondence with leading men in other States. "All the old alarm about liberty was now revived," says W. G. Sumner, "and all the elements of anarchy and repudiation which had been growing so strong for twenty years were arrayed in hostility."<sup>17</sup> But its bitterest opponent in the thirteen Colonies was George Clinton.<sup>18</sup> "He preferred to remain the most powerful citizen of New York, rather than occupy a subordinate place under a national government in which his own State was not foremost."<sup>19</sup> On the other hand, the *Federalist*, written largely by Hamilton, carried conviction to the minds of thousands who had previously doubted the wisdom of the plan. In the last number of the series, he said: "The system, though it may not be perfect in every part, is upon the whole a good one, is the best that the present views and circumstances will permit,

<sup>14</sup> M. E. Lamb, *History of the City of New York*, Vol. 2, p. 318.

<sup>15</sup> *Ibid.*, Vol. 2, p. 318.

<sup>16</sup> W. G. Sumner, *Life of Hamilton*, p. 137.

<sup>17</sup> *Ibid.*, p. 135.

<sup>18</sup> John Fiske, *Critical Period of American History*, p. 340.

<sup>19</sup> John Fiske, *Essays Historical and Literary*, Vol. 1, p. 118.

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<sup>20</sup> *Works of Hamilton*, V

<sup>21</sup> W. G. Sumner, *Life o*

<sup>22</sup> M. E. Lamb, *History o*

self discredited by a majority authorised by the State," said Morris, the chief justice, remind yourself, I fear, in a hor-

gress transmitted a draft of the assent of nine of the legislatures. At once it began. In New York it was the field of violent contests. It was fiercer," and declared to be "as fierce as ever was invented in the annals of a free people." Its opponents of the community—abolitionists in the country<sup>16</sup>—and calligraphers, organised a society and leading men in other States. Liberty was now revived," says W. E. Gladstone, "so strong for twenty years. But its bitterest opponent was George Clinton.<sup>18</sup> "He pre-eminently powerful citizen of New York, who had no place under a national government was not foremost."<sup>19</sup> On the subject, written largely by Hamilton, the words of thousands who had preferred the plan. In the last number of the system, though it may not be the whole a good one, is the said circumstances will permit,

*City of New York*, Vol. 2, p. 318.

Clinton, p. 137.

*American History*, p. 340.

*and Literary*, Vol. 1, p. 118.

and is such an one as promises every species of security which a reasonable people can desire."<sup>20</sup>

When the Legislature opened, Governor Clinton delivered the usual speech or message, but he said nothing of what everybody else was talking about. Consideration of the Constitution was the only important business before that body; four States had already ratified it, and three others had it under consideration; yet the Governor said not a word. His idea was for New York to hold off and let the others try it. Then, if the Union succeeded, although revenue difficulties were expected to break it up immediately,<sup>21</sup> the State could come in. Meantime, like Patrick Henry of Virginia, he proposed another general convention, to be held as soon as possible, to consider amendments. Thus matters drifted until January, 1788, when Egbert Benson, now a member of the Legislature, offered a resolution for holding a state convention to consider the federal document. Dilatory motions blocked its way, and its friends began to despair of better things; but Benson persisted, until, at last, after great bitterness, the resolution was adopted.

Of the sixty-one delegates to this convention, which assembled at the courthouse in Poughkeepsie on June 17, two-thirds were opposed to the Constitution.<sup>22</sup> The convention organised with Governor Clinton for president. Among the champions of the Constitution appeared Hamilton, Jay, Robert R. Livingston, Robert Morris, James Duane, then mayor of New York, John Sloss Hobart, Richard Harrison, and others of like character. Robert Yates, Samuel Jones, Melancthon Smith, and John Lansing, Jr., led the fight against it. Beginning on June 19, the discussion continued until July 28. Hamilton, his eloquence at its best, so that at times there was not a dry eye in the assembly,<sup>23</sup> especially emphasised the public debt. "It is a fact that should strike us with shame, that we are obliged to borrow money in order

<sup>20</sup> *Works of Hamilton*, Vol. 9, p. 548.

<sup>21</sup> W. G. Sumner, *Life of Hamilton*, p. 137.

<sup>22</sup> *Ibid.*, 137.

<sup>23</sup> M. E. Lamb, *History of the City of New York*, Vol. 2, p. 320.

to pay the interest of our debt. It is a fact that these debts are accumulating every day by compound interest."<sup>24</sup> In the old Confederation, he declared, the idea of liberty alone was considered, but that another thing was equally important—"I mean a principle of strength and stability in the organisation of our government, and of vigour in its operations."<sup>25</sup> Professor Sumner, in his admirable biography, expresses surprise that nothing is said about debts in the *Federalist*, and comparatively little about the Supreme Court. "This is very remarkable," he says, "in view of the subsequent history; for if there is any 'sleeping giant' in the Constitution, it has proved to be the power of the Supreme Court to pass upon the constitutionality of laws. It does not appear that Hamilton or anybody else foresaw that this function of the Court would build upon the written constitution a body of living constitutional law."<sup>26</sup>

Melancthon Smith was the ablest opponent of the Constitution. Familiar with political history, and one of the ablest debaters in the country, he proved himself no mean antagonist even for Hamilton. "He must have been a man of rare candour, too," says John Fiske, "for after weeks of debate he owned himself convinced."<sup>27</sup> Whatever could be said against the Constitution, Smith voiced it; and there was apparent merit in some of his objections. To a majority of the people, New York appeared to be surrendering natural advantages in much larger measure than other Commonwealths, while its concession of political power struck them as not unlikely to endanger the personal liberty of the citizen and the independence of the State. They disliked the idea of a far-off government, with many officers drawing large salaries, administering the army, the navy, and the diplomatic relations with nations of the Old World. It was so different from anything experienced since their separation from England, that they dreaded this centralised power;

<sup>24</sup> *Hamilton's Works*, Vol. 1, p. 491.

<sup>25</sup> *Ibid.*, p. 449.

<sup>26</sup> W. G. Sumner, *Life of Hamilton*, p. 139.

<sup>27</sup> John Fiske, *Essays Historical and Literary*, Vol. 1, p. 125.

and, to minimise it, they among them one that no office of President for a thin the wisdom of some of the as they now appear after they were of trifling importance for a closer, stronger union

Federalists were much New York to ratify. Although ratification, commercially it was the standpoint of military premises important in the and it was felt that a Federal Mohawk and Hudson valley my own part," said Hamilton the views of the anti-federalists dread the consequences of ratification by any of the other disunion and civil war."<sup>28</sup> willingness to agree to a conditional settlement the question that conditional ratification should be absurd. On July 11 it should be ratified, and that what expedient should be recorded to satisfy the opposition, and

Hamilton, however, did not arranged for news of the ratifications, and while Clinton conditional ratification, still Hampshire, by a system of ratification. This reduced the question to a majority. The support of strength to Governor Clinton's fear that New

<sup>28</sup> *Hamilton's Works*, Vol.

It is a fact that these debts compound interest."<sup>24</sup> Indeed, the idea of liberty alone or anything was equally important—strength and stability in the government, and of vigour in its operation. His admirable biography, expressed about debts in the *Federalist* about the Supreme Court. He says, "in view of the substance 'sleeping giant' in the Constitution—the power of the Supreme Court and the national unity of laws. It does not seem anybody else foresaw that this would build upon the written constitutional law."<sup>26</sup>

His ablest opponent of the Constitution in history, and one of the ablest men of the time, he proved himself no mean man. "He must have been a man of great ability," says Fiske, "for after weeks of discussion he was needed."<sup>27</sup> Whatever could be said in opposition to it with a good faith; and there was no objection. To a majority of the people it appeared to be a surrendering rather than a strengthening measure than other Commissions of political power struck at the personal liberty of the people of the State. They disliked the centralisation with many officers drawing from the army, the navy, and the revenues of the Old World. It was feared since their separation had reduced this centralised power;

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Hamilton, p. 139.  
*Hamilton and Literary*, Vol. 1, p. 125.

and, to minimise it, they proposed several amendments, among them one that no person should be eligible to the office of President for a third term. Time has demonstrated the wisdom of some of these suggestions; but commendable as they now appear after the lapse of more than a century, they were of trifling importance compared to the necessity for a closer, stronger union of the States in 1787.

Federalists were much alarmed over the failure of New York to ratify. Although the State ranked only fifth in population, commercially it was the centre of the Union. From the standpoint of military movements, too, it had been supremely important in the days of Montcalm and Burgoyne, and it was felt that a Federal Union cut in twain by the Mohawk and Hudson valleys must have a short life. "For my own part," said Hamilton, "the more I can penetrate the views of the anti-federal party in this State, the more I dread the consequences of the non-adoption of the Constitution by any of the other States—the more I fear eventual disunion and civil war."<sup>28</sup> His fear bred an apparent willingness to agree to a conditional ratification,<sup>29</sup> until Madison settled the question that there could be no such thing as conditional ratification since constitutional secession would be absurd. On July 11 Jay moved that "the Constitution be ratified, and that whatever amendments might be deemed expedient should be recommended." This, however, did not satisfy the opposition, and the discussion continued.

Hamilton, however, did not rely upon argument alone. He arranged for news of the Virginia and New Hampshire conventions, and while Clinton, clinging to his demand for conditional ratification, still hesitated, word came from New Hampshire, by a system of horse expresses, telling the glad story that the requisite number of States had been secured. This reduced the question to ratification or secession. A few days later it was learned that Virginia had also joined the majority. The support of Patrick Henry had been a tower of strength to Governor Clinton, and his defeat exaggerated Clinton's fear that New York City and the southern counties

<sup>28</sup> *Hamilton's Works*, Vol. 8, p. 187.

<sup>29</sup> *Ibid.*, p. 191.



which favoured the Constitution might now execute their threat to split off unless New York ratified. Then came Melancthon Smith's change to the federalist side. This was like crushing the centre of a hostile army. Finally, on July 28, a resolution "that the Constitution be ratified *in full confidence* that the amendments proposed by this convention will be adopted," received a vote of thirty to twenty-seven. Governor Clinton did not vote, but it was known that he advised several of his friends to favour the resolution. On September 13, he officially proclaimed the Federal Constitution as the fundamental law of the Republic.

Posterity has never severely criticised George Clinton's opposition to national development. His sincerity and patriotism have been accepted. To Washington and Hamilton, however, his conduct seemed like a cold and selfish desertion of his country at the moment of its utmost peril. "The men who oppose a strong and energetic government," wrote Washington to Hamilton on July 10, 1787, the day of Yates' and Lansing's retirement from the Philadelphia convention, "are, in my opinion, narrow-minded politicians, or are under the influence of local views." This reference to "local views" meant George Clinton, upon whose advice Yates and Lansing acted, and who declared unreservedly that only confusion could come to the country from a convention and a measure wholly unnecessary, since the Confederation, if given sufficient trial, would probably answer all the purposes of the Union.

The march of events has so clearly proved the wisdom of Hamilton and the unwisdom of Clinton, that the name of one, joined inseparably with that of Washington, has grown with the century, until it is as much a part of the history of the Union as the Constitution itself. The name of George Clinton, on the contrary, is little known beyond the limits of his native State. It remained for DeWitt Clinton, the Governor's distinguished nephew, to link the family with an historic enterprise which should bring it down through the ages with increasing respect and admiration.

CHAP

CLINTON'S I

178

At each triennial election adoption of the State Const had been chosen governor. been seriously talked of, saw Clinton derived some advantages, which multiplied in ence as term succeeded term spiration from sources other rugged character, and a ger their roots deeply into the who supported their favour friendship.

The time had, however, c to continue as governor w encounter with the New Yo stitution had been vigorous to stand with one's State in opposition had behind it tl the persuasive Clinton arg the substitution of experir change of a superior for an a splendid stubbornness to the desperate odds arrayed man who wanted to curry : strike at Hamilton, and t Very likely his attitude wa of angry opponents. He d