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Jefferson and Hamilton

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JEFFERSON AND HAMILTON*

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MEMBERS OF THE ASSOCIATION:

When the time came for me to consider this address I found myself in the same plight as have many of my predecessors found themselves. I found difficulty in choosing a suitable subject for the enforced address. Article eight of our Constitution requires that the president of the Association shall discuss matters "arising upon legislation enacted and decisions rendered, or on other kindred topics of a professional character." This will be a "kindred topic" speech.

For a time I thought of discussing, in a historical way, John Brown, of Ossawattomie, because it was near here his offense was committed and his trial, conviction, and execution took place. But I concluded that many of you perhaps already know that story better than I could hope to tell it, and that nothing I could say on this occasion would add to the sum total of your knowledge of that misguided but interesting character.

Then it occurred to me that an interesting, if not illuminating, talk might be made on the place of the lawyer in American history. Revolving this thought, I soon de-

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cided the subject was too big to be covered in a single address of permissible length. The place of the lawyer is too big—there have been too many of him—for anyone to hope to do the subject justice at a single sitting. When we remember that there is hardly a page of American history not made by, or written of our profession; that lawyers prepared the ground and sowed the seed for the Revolution which made possible our independence; listed our grievances leading to the breach; wrote the indictment against the Crown; prepared and promulgated the immortal Declaration itself; negotiated the treaty assuring us "the separate and equal station to which the laws of nature and nature's God entitle us"; that lawyers, more than all others, drafted that instrument, our constitution, which Gladstone acclaimed "the most wonderful work ever struck off at a given time by the brain and purpose of man," and successfully waged the contest for its adoption; that from that day of dawn to this year of grace, lawyers, in the main, have manned the three co-ordinate divisions of government, securing to ourselves and our posterity that degree of liberty and measure of well-being theretofore unknown; that of the active membership of fifty-six who met in the old State House of Philadelphia, a hundred thirty-nine years ago, to make what DeTocqueville pronounced a great discovery in political science, that thirty-one of the discoverers were lawyers, including such worthies as Wilson, Madison, Rutledge, Randolph, Blair, Patterson, King, Gouverneur Morris, the Pinckneys, and Hamilton; that twenty-six of the fifty-six who signed the Declaration of Independence were lawyers; that of the twenty-nine men who have been presidents, twenty-two were lawyers; that of our twenty-eight vice presidents twenty-two were lawyers; that all those who have served us in the judicial department have been of our profession; that forty-four of our forty-six Secretaries of State and forty-one of our forty-eight Secretaries of Treasury were lawyers; and that there have been more lawyers than of any other vocation or avocation in the presidential cabinets and in our legislative departments, federal and state—I say, when we remember these facts, it is apparent that he would indeed be daring who, in an address not exceeding an hour in length, would try to tell of the place in history occupied by the lawyer.

Forced by the magnitude of the undertaking to abandon that thought, mindful of the Constitutional requirement as to the nature of my discussion, and still desiring to make it biographical, I conceived the notion of saying something to you of those two immortals of our profession who bulk largest in our Colonial history and in the history of the early days of the Republic—Jefferson and Hamilton. What better or more inspiring topic, thought I, can any man choose upon which to talk to a body of lawyers than the subject, Jefferson and Hamilton? Jefferson and Hamilton! What names to conjure with! What recollections the very names awaken!

Having reached this decision, I promised myself that a portion of my August vacation should be devoted to brushing the dust from handy, but unused volumes, the while I corrected and confirmed my memory as to some of the more notable and important services of these two, who, according to our historian Fisk, by their antagonism and consequent struggles, marked out the lines along which all American history has since then run.

About this time, and before a single page was turned, John W. Davis (our own John Davis) hies himself to Hot Springs, and there, as the guest of honor, and orator of occasion, for our brethren in the Mother State, stole half my text and nearly all my sermon, by addressing the Virginia Association from the subject—"Jefferson"; and doing it in his usual matchless and inimitable way, which is the envy and despair of all of us who are less favored. The fact the offense was committed unconsciously and without premeditation or malice aforethought, does not lessen the havoc wrought to me and my effort. When the newspapers told me of his subject, and something of the substance of his address, I was tempted again to cast about for another theme for my discourse, but finally decided that I must talk about something—must stay put somewhere—and feeling that if a good sermon may be preached from half a text, another might come from the whole (though knowing a sermon cannot be measured by the length of the text) I concluded to try to interest and entertain you, if I cannot edify or inspire you, by speaking from the subject "JEFFERSON AND HAMILTON."

I took the precaution to obtain from Mr. Davis a copy of

his address, to the end that if I cannot advance different thoughts about Jefferson, at least I can clothe my thoughts in other language than that employed by him.

Because of the limited time allowable for the purpose, it cannot be hoped the subject can be covered. Properly to recount the achievements of Jefferson and Hamilton, and accord to them the place in history their services demand, would require an address of impossible length, or entail the writing of a volume of considerable proportions. Adequately to tell the story of their lives and, to examine, in the most cursory way, even their notable achievements and accomplisments, necessarily would involve a recital in great measure of the history of this country of ours for more than a half-century.

All that I can hope to do is to say something of them as lawyers and perhaps afford you a glimpse of them as they strode the boards in the great drama, which might be titled The Making of a Nation.

Both were lawyers, and they were good lawyers. Yet, strange to say, history and biography tell us but little about it. Even a careful search of the twenty-volume edition of the "Writings of Thomas Jefferson," containing his autobiography and all available manuscripts, yields the most meagre information of him as a lawyer, and of his practice. Jefferson quit the active practice when the Revolution began and there are few published reports of cases tried in Virginia prior to the Revolution, in which he appeared as counsel.

In great measure the same thing is true of Hamilton. Almost fruitless is an examination to learn of him as a lawyer, made of the twelve volumes of "The Hamilton Papers," edited by Lodge; and on the whole the published reports are so fragmentary that they tell us but little of the nature of the professional employment of these lawyer-statesmen, and less of their arguments and abilities.

Most of the biographers of both are either strangely silent as to their professional work, or content to make mere passing reference to it. For these reasons, and because of the fact the real fame of each rests on his public service, the average man today knows little of them as members of our profession. I have thought it may seem profitable to occupy a little of your time in an effort to

show that Jefferson, the Democrat, and Hamilton, his Federalist political antagonist, were great lawyers in their day, and each an ornament to the profession.

Jefferson came to the bar after preparation such as few men had in those days. His mother was a Randolph, and from her he inherited unusual mental attributes. His boyhood was devoted to almost monastic study. English, Latin, Greek were mastered. Two years at William and Mary, five years under Wythe, digging for the roots of the law—the same Wythe who was twice Chancellor of Virginia, the first University law professor in America (Blackstone having twenty years earlier filled the role at Oxford), the preceptor and mentor not alone of Jefferson, but as well of Marshall, Monroe, Tucker, Roane, Wickham, Tazewell, Munford, Nicholas, and Henry Clay; and of whom the Forestborn Demosthenes, in his great "Liberty or Death" speech, said, "Shall I light up my feeble taper before the brightness of his noontide sun? It were to compare the frail dew-drop of the morning with the intrinsic beauties of the diamond."

Jefferson was a student all his life and many of his private letters are to his agents consigning tobacco to be exchanged for books—books demanded by him to appease his unquenchable thirst for knowledge.

While sitting at Wythe's feet in Williamsburg, Jefferson spent much time in company with Wythe, Dr. Small and Governor Fauquier. Often the four, at table at Fauquier's, sat until a late hour, in conversation on the rights of man, and the laws of nature. To his associations with Wythe and Small, to the profound impression made on him by Patrick Henry's fiery speeches in the House of Burgesses, while he was yet a school-boy, and to the "Liberty, Equality and Fraternity" with which the very atmosphere was saturate, while he was later in Paris, we may ascribe some of Jefferson's conceptions of democracy, some of his astounding faith in the masses. Small occupied the chair of mathematics and natural philosophy, and, like Wythe, was a liberal. What more natural than that their favorite pupil and companion absorb their theories of government and abstract rights, while mastering the law and the sciences?

But it was not all work. There were periods of relax-

ation, of diversion. In the evenings, at the dinner table, in company with their intimates, we are told that both Jefferson and Hamilton found diversion, distraction, and, upon rare occasion, something akin to temperate dissipation. When Jefferson practiced there was no Constitution, and in Hamilton's prime there were but ten amendments to the Constitution, and one could indulge in conviviality without losing caste. Both men drank wine, rather regularly, but without excess. Otis tells us that if upon occasion, with choice spirits, Hamilton partook generously of the cup that cheers (sometimes) he could be induced to sing his one and only song, reminiscent of his military days:

> "We are going to war, and when we die
> We'll want a man of God near by;
> So bring your Bible and follow the drum."

Patrick Henry, as the retort courteous to a jibe thrust at him, said of Jefferson that the long association of the latter with decadent royalty in Europe had caused him to acquire such taste for French cooking and vintage wines as proved him an aristocrat who felt himself too superior to mingle with the masses.

These worthies worked hard and fought bitterly, but were not always devoid of the joys of life.

In the letter, written Christmas Day, 1762, to John Page (afterwards Governor, and grandfather of Thomas Nelson Page) from which Mr. Davis quoted Jefferson as consigning old Coke to the Devil, Jefferson tells Page of some of the mirth and jollity; complains that rats ate up his pocket-book and "carried off my jemmy-worked silk garters" (who would guess he wore them!) and concluded by sending tender messages to a half-dozen girls, by name, including Miss Becca Burrell, afterwards to become the mother-in-law of Jefferson's cousin, the great chief justice.

Having served his apprenticeship as we have seen, Jefferson was licensed to practice in 1767, and his entire career in active practice covers but the seven years intervening until the Revolution. Thereafter his work in the legislature, the congress, as governor, as ambassador, in the cabinet, as vice president, and as president, left him no time to commune with his first-love, and but little time for pri-

vate affairs, until, when nearing seventy, he retired to Monticello.

But in those seven years Jefferson exhibited abilities which at thirty-one gave him rank at a bar made up of such men as Wythe, Henry, John Randolph, Peyton Randolph, Nicholas, Mercer, Blair, Pendleton, and others of the foremost lawyers in Virginia; and he gave fair promise of earning a place at the top of the profession. There was demand for his services, and, if we may accept as accurate the record of his cases, he was middling busy in his work. He was never an orator, but was a sound reasoner, logical, careful, methodical, orderly in his preparation and presentation of a case. His forte was not advocacy, his success not in winning jury cases, but rather in the depth, breadth, and profundity of his knowledge of the law. A safe lawyer finds the case in point; a learned lawyer analyzes the case and knows what it decides; but it takes the profound lawyer to know the principles behind the case.

There was rivalry between Jefferson and Henry—rivalry and feeling which was transmitted to their biographers. Jefferson said of Henry he was illiterate and lazy and gave little attention to the business of his clients, preferring to spend weeks at hunting in Fluvanna, and where nature and the game attracted him. There was political feeling between them also, and Henry was to support Marshall, which was unforgivable; as Jefferson could neither forgive the Federalism of Marshall, his Marbury decision, his part in the Burr trial; nor Henry for his espousal of the Marshall cause. The controversy between the biographers grew so acute that fee books were examined to determine the volume of the business of the respective champions. Tyler tells us that in three and a half years Henry charged fees in eleven hundred eighty-five cases; and Randall tells us that Jefferson in two years was retained in seven hundred seventy-seven cases. I know naught of your experience, but in my opinion if either of them *earned* these fees and properly prepared and tried the cases they must have done as Lord Eldon says one must do to master the law, "Live like a hermit, and work like a horse." When we remember there were no stenographers, and that, so far as the records disclose, neither of them had an aide or a secretary, the count is still the more remarkable.

From the number of cases, and from the aggregate of their fees, we must conclude many of the cases were small and unimportant, requiring but little work and less preparation. In truth so far as can be learned there was not at the time a great deal of really important work, either at law or in equity. Even twenty years later, when the Supreme Court of the United States was organized, there were for the first ten years of its history but sixty cases reported, and few of them were of major importance. It is only in the past half-century the profession of the law has become in our country the great business it is.

But, be that as it may, Jefferson was a real lawyer. Perhaps it was because of the fact opportunity was lacking to employ his genius, his talents and energies, in more important and interesting professional work that caused him to desert the law and enter on the career which won for him imperishable fame.

Yet none can doubt he was a lawyer of ability. The evidences are too numerous and unmistakable to admit of doubt. As witness (a) his "Summary Views," (which, by the way, earned for him a place in a bill of attainder in the Parliament), (b) "The Declaration of Independence" (his masterpiece), (c) his opinions while in Washington's cabinet, (d) his state papers and messages. Another noteworthy evidence of his knowledge of the law is his work, with Wythe and Pendleton, in the revision of the laws of Virginia. To Jefferson was allotted the work of re-stating the common law and English Statutes from Magna Charta to Jamestown. He did the work with the exactness and precision possible only to the trained lawyer; and did it so thoroughly and admirably as that such parts as are adapted to their needs are accepted in their entirety, even today, by revisors.

Nor are we without the opinion of others qualified to judge of him as a lawyer.

William Wirt in his eulogy on Jefferson and Adams, in the hall of the House of Representatives just one hundred years ago, said of Jefferson:

> "Permit me, here, to correct an error which seems to have prevailed. It has been thought that Mr. Jefferson made no figure at the bar; but the case was far otherwise. There are still extant in his own fair and

neat hand, in the manner of his master, (Wythe) a number of arguments which were delivered by him at the bar upon some of the most intricate questions of the law; which, if they ever see the light, will vindicate his claims to the first honors of the profession. * * * * * There is no reason to doubt that, if the service of his country had not called him away so soon from his profession, his fame as a lawyer would now have stood upon the same distinguished ground which he confessedly occupies as a statesman, an author, and a scholar."

Ex-Governor Montague, in an address at Washington, at a celebration of Jefferson's birthday, said of him:

"It is sometimes said that Mr. Jefferson was not a lawyer. The opinion of an unlettered neighbor of his was once asked upon the subject, and he replied that he could not say, as 'Mr. Jefferson was always on the right side of every case.' Certain it is his papers as Secretary of State exhibit a great knowledge of International Law and show him the equal of any of the great men who have filled that position. * * * * * He confronted in active practice and with much success, such men as Wythe, Pendleton, Randolph, Lee, and others."

Aaron Burr (himself, with Hamilton, for years at the head of the New York Bar), at Burr's historic trial at Richmond, in an argument before Marshall, said of Jefferson: "Our president is a lawyer, and a great one, too." Burr then had good reason to hate Jefferson, for the latter was exerting every effort (some of questioned propriety) to bring about Burr's conviction; and while the praise was prompted by a desire to emphasize a point being made, there can be no doubt Burr recognized Jefferson's ability and standing as a lawyer.

And who but a lawyer of commanding ability could have written that memorable and noble document preserved to us in Jefferson's own neat and precise handwriting, the preamble to which begins:

"When in the course of human events it becomes necessary for one people to dissolve the political bonds which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and nature's God entitle them," etc.?

Or what man at eighty-three, but a real lawyer, could have written in his own hand, his will, still preserved to

us, in which, "aware of the nice and difficult distinction of the law in these cases" he, by a carefully and precisely worded provision, devises his estate in trust, to safeguard the future of his beloved daughter, Martha, against the anticipated efforts of the creditors of her husband, Thomas Mann Randolph, to subject the property to the satisfaction of their debts?

Lawyer, though he was, and all his life continued to be, Jefferson came to have voluable distaste for his fellow-craftsmen.

Shortly after he graduated from a consultant, to become a legislator, he wrote Wythe a carping letter in which he alluded to lawyers as "an inundation of insects permitted to come from the country courts and consume the harvest."

In his autobiography, he soundly rates the lawyers for their much talking and said it is questionable "whether Bonaparte's dumb legislature, which said nothing and did much is not preferable to one which talks much and does nothing." And later in criticism of the non-action of a Congress, he said: "That one hundred and fifty lawyers should do business together, ought not to be expected."

When Mr. Justice Cushing died Jefferson hoped to aid Madison to find a Republican judge who would be independent of Marshall. In a letter to Gallatin, he said he thought Levi Lincoln the most promising, then proceeded to damn him with this praise: "I know he is not deemed a profound lawyer, but was there ever a profound common lawyer known in the Eastern States? There never was, nor ever can be, one from these States."

If Jefferson lived today and were a member of this Association, I can imagine some member, jealous of our professional reputation, demanding that the Grievance Committee examine into some of his animadversions.

Mr. Albert Jay Nock in a monograph, titled "Jefferson," just published this year, tells us that Jefferson earned from his profession three thousand dollars, and from his farming two thousand the year, which for the time was considered a good income.

It may be observed here, that both Jefferson and Hamilton exemplified what Webster characterized as the life

of the usual good lawyer, "worked hard, lived well and died poor."

One of Hamilton's private letters to a friend, written while he was in Washington's cabinet, asked a temporary loan of twenty dollars!

Within the present generation great grand-daughters of Jefferson, from their earnings as teachers, paid money on debts owing by Jefferson at his death.

So much for Jefferson.

Let us turn now and see something of Hamilton as a lawyer.

Hamilton was born a British subject, on the Nevis Island, one of the Leeward Islands in West Indies. One almost needs a microscope to find it on the map. It contains about fifty square miles.

At fifteen he came to New York, reaching there in 1772. Princeton refused to enroll him on his terms, because he insisted he must be allowed to complete his studies without regard to the progress of the classes. He was precocious, and a student who never rested. He entered King's College (now Columbia) and was there when the Revolution began. His "Farmer Refuted" and "Complete Vindication," two pamphlets arguing the colonists' cause, exhibit not alone his patriotism, but his remarkable maturity of thought and ability as a writer. He was then but seventeen.

All his life he yearned for a military career, and apparently possessed no little talent. He enrolled in a military company, was made a captain of artillery and soon attracted Washington's attention and became his aide and military secretary, serving him for four years. An attachment was formed which continued so long as Washington lived, and always Hamilton was a great favorite of his chief, and had much influence with him.

Hamilton was a remarkable man. There is a mystery about his birth. It was charged, and believed, the union between his father, a Scotch merchant, and his mother, a French Huguenot, was without the benefit of clergy. Despite his origin he was always the aristocrat-companion to Washington, intimate of La Fayette, married to a daughter of General Schuyler, the leader of New York's social aristocracy, handsome, brilliant, courtly, and attractive to men

and women alike. Endowed with a marvellous intellect, and possessed of an unaccountably good education and charming manners, he was egocentric, impatient of criticism, and imperious. After four years of the closest association with Washington he one day left him in a fit of temper. Washington a little later gave him an independent command and he finished his military career in what has been termed a blaze of glory.

We are told but little of his preparation for the bar. Nor are we told precisely when he was admitted. His son, J. C. Hamilton, who in 1834 published two volumes of a never completed biography, says as of the date 1783:

> "Notwithstanding urgent solicitations, Hamilton adhered to his purpose of retiring wholly from public life, and was soon immersed in the labors of his profession; in which without the advantage of much previous study, by the energies of a mind peculiarly adapted to the analysis of first principles, he rose to an unequalled, unapproached distinction."

Schmucker, after commenting on Hamilton's superior talents and the fact the chief burden consisted in the acquisition of the principles of the common law of England, says:

> "We will not be surprised therefore to learn that Hamilton prepared himself for admission to the bar in the incredibly short period of four months, and that he was licensed as an attorney at the end of that time."

None of them tell us what he studied or how and by whom he was admitted.

Mrs. Atherton in "The Conqueror," which professes to be the dramatization of Hamilton's life, tells us that even before he left the West Indies he had learned Latin, Greek, and Hebrew, and pored over Pope, Plutarch, Shakespeare, Milton, Plato, and a few other English poets and Greek philosophers. She also says that while at King's, doing five years of college work in two years, he found time to read Cudworth's "Intellectual System," Bacon's "Essays," Plutarch's "Morals," Cicero's "De Officiis," Montaigne's "Essays," Rousseau's "Emile," Demosthenes' "Orations," Aristotle's "Politics," and the "Lex Mercatoria."

Neither she, nor any other, tells us of other books,

peculiarly of the law, he studied. Nor are we told of his examination or admission.

Burr was admitted about the same time and Parton and Davis, each in his seperate "Life of Burr," tells us that admission to the practice was obtained from the Supreme Court; that a rule of court required that a candidate must have spent three years in the study of law before he could be admitted. This court then was composed of Richard Morris, Robert Yates, and John Sloss Hobart. Burr had read law for only one year, but in his own behalf moved the court to waive its rule and, because of his service to his country in the army, permit him to take the examination. The Bar at Albany vigorously opposed his motion. But the motion was granted, a difficult examination successfully passed, and Burr, who for twenty years was to be Hamilton's rival at the bar and opponent in politics, was licensed as an attorney January 19, and admitted as a counsellor April 17, 1782.

Doubtless Hamilton's experience was quite similar. Certainly he could not have been considered to have pursued a course of legal studies for three years. What did they study and what had they read? Coke, of course, and they had Blackstone's Commentaries. Burke in a speech in the British Parliament, at the beginning of the Revolution, said there were then as many copies of Blackstone in the colonies as there were sold in England, and said that in no country in the world was the study of the law so general.

Later Chancellor Kent tells of Hamilton, in his cases, relying on Grotius, in the original, and says of him:

> "He was not content with the modern reports, abrigements, or translations. He ransacked cases and precedents to their very foundation and we learned from him to carry our inquiries into the Commercial codes of the nations of the European continent."

Undoubtedly Hamilton had read and studied deeply, and widely; but his papers left to us are remarkably free from quotations, or citations of authorities. He seems to have bottomed his arguments on bedrock principles and from that builded in the fewest, strongest words possible.

James Brown Scott, in his sketch on Hamilton in Dean Lewis' "Great American Lawyers," says that Story's words concerning Marshall are applicable to Hamilton. Story

said, "When I examine a question I go from headland to headland; from case to case. Marshall has a compass, puts to sea, and goes directly to his result." Marshall wrote his great opinions, expounding our constitution, declaring the law and making the precedent, without calling to his support the opinion, decision or writing of others. He simply declared the law, and there it is. Not as Burr said, "Law is whatever is boldly asserted, and plausibly maintained"; but because it is law—right, reason, and logic. So, with Hamilton. One who reads his arguments in the Camillus papers, his reports to Congress, his debate on the constitutionality of the Federal Bank, his immortal essays in the "Federalist," knows Hamilton exhibits the highest achievement in political thinking and constructive statesmanship and observes that he rarely ever quotes or cites any other writer or authority. Kent tells us, however, that in presenting his cases in court he exhausted the subject and covered the entire field.

Apparently he was admitted to the practice in the autumn of 1782 for Schmucker tells us that the New York Legislature elected Hamilton to Congress on July 22, 1782, and adds: "After the adjournment of the state legislature Mr. Hamilton returned to Albany, and, after examination was admitted to the bar."

In July, 1782, in a letter to Morris, Hamilton mentioned his hope to be examined for the Bar in October; and in November in a letter to La Fayette he said "I have been employed for the past ten months in rocking the cradle and studying the art of fleecing my neighbors. I am now a grave counsellor at law, and shall soon be a grave member of Congress."

All of them tell of his first case—some calling it his first others one of his earliest cases. The case was *Rutgers* v. *Waddington,* and was tried in the mayor's court of New York. It was brought under the Trespass Act, allowing suit to be brought by those who had deserted their residences because of British occupancy of the city, against the quondam tenants. The plaintiff was a widow; the defendant a wealthy Tory. Hamilton appeared for the defense and invoked the law of nations, contending the recent treaty with Britain extinguished the right of action. He, of course, was on the unpopular side, and the case was one of many pend-

ing or to be brought. His presentation was forceful and successful. A town meeting followed, complimented Hamilton on his ability displayed, but stigmatized the court and memoralized the legislature. That obliging body decreed that the court's decision was subversive of all law and order, and provided that in future only men should be appointed judges who would administer the laws fearlessly and justly! It would seem that even then the courts were not immune from criticism.

We have but little of his professional work in his early year at the bar, but apparently he was busy. In a letter to Gouverneur Morris written on Sunday, March 21, 1784, after apologizing for not having sooner written, he says:

> "But legislative folly has afforded so plentiful a harvest to us lawyers that we have scarcely a moment to spare from the substantial business of reaping."

His son says:

> "Of his professional efforts at this time, the traces among his papers are few and of little value. The practice of reporting adjudicated cases had not obtained. Stenography was unknown in America, and the vestiges of the eloquence of the men whose genius embellished the infancy of our republic are rare and imperfect."

Hamilton was chosen by the Annapolis convention to draft the call which was issued for the constitutional convention, which met at Philadelphia in May, 1787. It is impossible here to comment on this most memorable convention, its work, or its illustrious members. Hamilton was a member. Jefferson was in France. Neither was wholly pleased with the draft of the Constitution submitted. Here, however, each by his action rose to the pinnacle of patriotic statesmanship, for both Jefferson and Hamilton worked valiantly for its adoption; Jefferson by letters, mainly to Washington and Madison; Hamilton by the "Federalist" papers.

No study, however imperfect, of the life of Hamilton can be made without noticing this, his greatest work. The "Federalist" comprises eighty-five essays on the science of government, which are universally regarded as the most important contribution of our country to the literature of political science. With the exception of five papers written

by Jay, the series was written by Hamilton and Madison, Hamilton preparing the greater number of them.

They appeared as newspaper articles in two New York papers. It is said of them they were dashed off almost as hurriedly as are newspaper leaders; but their character and excellence make classics of them; and they stand as glorious monuments to the wisdom, statesmanship, and knowledge of government of their authors.

Here Hamilton was at his best, and although he was yet hardly thirty years old, he argued the cause with amazing ability. These papers are among the best examples of his skill as a logician, as witness certain sections of No. XXXI, of the papers, concerning the general powers of taxation:

> "A government ought to contain in itself every power requisite to the full accomplishment of the objects committed to its care, and to the complete execution of the trusts for which it is responsible, free from every other control but a regard to the public good and to the sense of the people.
>
> "As the duties of superintending the national defense and of securing the public peace against foreign or domestic violence involve a provision for casualties and dangers to which no possible limits can be assigned, the power of making that provision ought to know no other bounds than the exigencies of the nation and the resources of the community.
>
> "As revenue is the essential engine by which the means of answering the national exigencies must be procured, the power of procuring that article in its full extent must necessarily be comprehended in that of providing for those exigencies.
>
> "As theory and practice conspire to prove that the power of procuring revenue is unavailing when exercised over the States in their collective capacities, the federal government must of necessity be invested with an unqualified power of taxation in the ordinary modes."

Nor did he stop with his writing. When the New York legislature met to act upon the Constitution he was there, a member, and a veritable torrent of eloquence, persuasion, and reason. His courage and pertinacity are attested by this incident: He sent a message from Poughkeepsie, where the convention was in session, to friends in New York. He told them, apparently the count at that time, was about

two to one against adoption. "But," he added, "tell them this convention will never rise till it votes to adopt."

History records the prophecy foretold the event.

It was at this juncture in the lives of these two giants that Washington called them to his cabinet. Jefferson, who had not practiced for fifteen years, had for five years been in Paris. Hamilton had practiced for about seven years. Jefferson was recalled to become Secretary of State, succeeding Jay, who for six months had been both Chief Justice of the newly formed United States Supreme Court and Secretary of State. Hamilton was made Secretary of the Treasury. Washington knew them—knew what they had done and could do, and what manner of men they were. He felt need of them in his official family, and chose them for his first Cabinet. Here the trouble started. Jefferson himself says that he and Hamilton "Fought like cocks in a pit."

But that is another tale, and there is no time for it here.

Mr. Claude G. Bowers tells it, in a most interesting and delightful way, in his recent volume, "Jefferson and Hamilton."

The cabinet, the tavern, the coffee-house, the street and the drawing room were battle-fields, and the struggle was intense. This struggle surpassed all others in importance, because not only did it mark the formation of two great political parties, but it affected profoundly the lives of millions yet unborn. There were marching mobs, burning in effigy, fist fights, duels, debates and billings-gate; and the encounters were not pink-tea affairs. This battle between the able, quiet philosopher-statesman, later to be fondly called the "Sage of Monticello," of the one part; and the equally brilliant and patrotic genius, sometimes called "Alexander the Great," and sometimes "The Little Lion," of the other, was indeed Plutarchian.

The two never met in the courtroom. Battles they had, and many of them, but they were political, not legal. Perhaps the best comparison we have of their logic and ability in debate is afforded by the opposing opinions furnished Washington, upon his request, about the right of the government to charter a bank—that bank which forty years later

was to cause Jackson to lie awake nights, devising means for its destruction.

It will be remembered that in February, 1791, the Congress had passed a bill chartering a national bank. The bill went to the president for his approval or veto. Its constitutionality was questioned, and Washington obtained on this question the written opinion of Jefferson, of Hamilton, and of Randolph, Attorney General. Jefferson and Randolph argued the bill was unconstitutional. Hamilton contended it was constitutional. No one reading the arguments made on this occasion would ever doubt but that both Jefferson and Hamilton were able and learned lawyers.

Here started the two schools of thought as to the powers of Congress to legislate—the one maintaining that the only field open is where the power is expressly given; the other equally firm there are implied powers. Jefferson belonged to the former of these schools and argued his case in a most lawyer-like way. Hamilton was of the latter named school, and was equally forceful in the debate. Washington accepted and acted upon Hamilton's opinion. The bill was signed and the bank chartered. Twenty-eight years later, in *McCullough* v. *Maryland*, the same question came before the Supreme Court, and, in the unanimous opinion of that court, the great chief justice followed the reasoning and logic of Hamilton in his opinion to Washington.

Jefferson left the cabinet early in 1794; and Hamilton soon thereafter. This ended the public life of both men, each having devoted about twenty years to public service, if we count as such Hamilton's army service.

Thereafter Jefferson did not re-enter the practice. Hamilton, however, was active as a lawyer and really made his reputation as a leader of the profession after he left the cabinet.

Mr. Warren, in his "The Supreme Court in United States History," tells us of Hamilton's first case in that court. Strange to relate, this case was decided the day following the Court's decision of the only case in which Marshall appeared before that Court, of which he was to act as Chief Justice for thirty-four years. Hamilton's case was *Hylton* v. *United States* (3 Dallas 171), and to decide it the Court for the first time (February, 1796) was called upon to pass

upon the constitutionality of an act of Congress. The question involved was whether a Federal tax on carriages was a direct tax, within the meaning of the Constitution.

Jay, who continued as chief justice while acting as our special minister to negotiate a new treaty with England, had been elected Governor of New York and resigned. Hamilton had been offered the appointment by Washington, and declined it. Rutledge was named, served for a short time, but was not confirmed by the Senate. Cushing was appointed, but refused to accept. Ellsworth was named, and took the oath the day of Hamilton's argument. With Hamilton was Charles Lee, recently made Attorney General, and opposed to them were Alexander Campbell, of Virginia, and Jared Ingersoll, of Pennsylvania. Mr. Justice Iredell said of this case:

> "Mr. Hamilton spoke in our court, attended by the most crowded audience I ever saw there, both Houses of Congress being almost deserted on that occasion. Though he was in ill health, he spoke with astonishing ability, and in a most pleasing manner, and was listened to with the profoundest attention."

In speaking forty years later of the same case, Mr. Justice Story said:

> "I have heard Samuel Dexter, John Marshall, and Chancellor Livingstone say that Hamilton's reach of thought was so far beyond theirs (Campbell's and Ingersoll's) that by his side they were school boys—rush tapers before the sun at noon-day."

Two other observations may be of interest:

Marshall lost his case, *Ware, Administrator* v. *Hylton* (3 Dallas, 199) while Hamilton won. Campbell and Ingersoll each received as a fee $233.33; and Hamilton was paid $500.00.

A little later Hamilton made it clear he did not care to practice in United States Supreme Court. Hunter, the plaintiff, had lost his case against Fairfax's Devisee, in the Virginia District Court; and appealed direct to the Supreme Court. He asked Hamilton to appear for him. The immediate case involved only 788 acres and Hunter offered to Hamilton a fee of $400.00, and agreed if the case were won the fee would be increased to $1,000.00 or "the fee of the land." Hamilton refused employment, saying, "It not

being my general plan to practice in the United States Supreme Court."

At that time most of the members of the Court doubtless owed their selection to his influence, and it is highly probable this decision may be credited to his sense of the proprieties.

Two other instances of the influence of his logic upon the Supreme Court are given:

In 1810 the Court decided *Fletcher* v. *Peck* (6 Cranch, 87) involving what was known as the "Yazoo Land Fraud." This was the first case in which the Court held a state law unconstitutional; and Hamilton, in a formal opinion given clients fifteen years before, foretold the decision of the Court. By fraud and bribery, the Legislature of Georgia had, by statute, granted thirty-five million acres to four land companies, at less than two cents the acre. Many legislators were bribed with stock or money. A succeeding Legislature sought to repeal the Act and regain the land; the legislative contention being that titles based on the original fraudulent statute were invalid, the claimants contending that having acquired title without knowledge of the fraud, the provision of the Federal Constitution forbidding the impairment of a contract protected them.

Finally the matter reached the Supreme Court, on what appears to have been a made case. It was argued twice; each time by Luther Martin against the validity of the titles; and each time for their validity by Robert Goodloe Harper. In the first argument John Quincy Adams was associated with Harper. Adams tells of it in his diary, and of the inauguration of Madison interrupting the argument. In the second argument, Joseph Story appeared with Harper, this being Story's first appearance in the Court. Chief Justice Marshall delivered the opinion of the Court March 16, 1810, holding precisely as Hamilton had foretold the Court would hold, that the titles were valid and the Repeal Act unconstitutional.

Mr. Beveridge in his "Life of John Marshall" in adverting to this earlier opinion of Hamilton, says of him:

> "He was still regarded by most Federalists and nearly all moneyed men, as the soundest lawyer, as well as the ablest statesman in America."

The other case referred to is that of *McCullough* v. *Maryland,* (4 Wheaton 316; 3 Law Ed. 579) decided in 1819, twenty-eight years after Hamilton had given to Washington his opinion in the Bank Case. It will be remembered the case was one in which the government, through McCullough, the cashier of the bank, questioned the right of the state of Maryland to tax a national bank. The case arose in the county court of Baltimore County, was affirmed by the Maryland Court of Appeals and reached the Supreme Court on writ of error. Both the lower courts had decided in favor of Maryland. It was argued for the government by Webster, William Pinckney, and by William Wirt, the Attorney General—all giants; and for Maryland by Luther Martin, Attorney General of Maryland, and Joseph Hopkinson, two other giants; and Walter Jones of Washington. The arguments consumed nine days. In those days of few cases there was time to prepare and present them.

Three days after Pinckney completed his memorable argument, which consumed three full days, Marshall, on March 6, rendered the unanimous opinion of the Court; and followed with remarkable similarity the reasoning of Hamilton in his opinion to Washington.

It was in this opinion the Chief Justice employed this sonorous language:

> "The government of the Union is a government of the people; it emanates from them; its powers are granted by them; and are to be exercised directly on them, and for their benefit.
>
> "The government of the Union, though limited in its powers, is supreme within its sphere of action; and its laws, when made in pursuance of the constitution, form the supreme law of the land.
>
> "There is nothing in the constitution of the United States, similar to the articles of confederation, which exclude incidental or implied powers.
>
> "If the end be legitimate, and within the scope of the constitution, all the means which are appropriate, which are plainly adapted to that end, and which are not prohibited, may constitutionally be employed to carry it into effect."

Strange to relate, every one of the six lawyers had quoted from, cited, or referred to Hamilton's opinion, or to

the Federalist Papers. In noticing this, Marshall in his opinion said:

> "In the course of the argument, the Federalist has been quoted; and the opinions expressed by the authors of that work have been justly supposed to be entitled to great respect in expounding the constitution. No tribute can be paid to them which exceeds their merit."

Coleman's one volume Report, and Johnson's Reports tell us something of Hamilton's practice in New York. Many of the cases are marine insurance cases; a few are ejectment cases and some are in assumpsit or debt.

One of the first reported by Coleman is *Wardell* v. *Eden.* Eden had given his bond in fifty thousand dollars to Wardell to cover money due to, and be advanced by Wardell. In July, 1796, Wardell assigned the bond to Olcott; in August, Olcott assigned to Rowe; and on October 7, Rowe assigned to the Bank of New York. On October 7, Olcott became a bankrupt and on October 8 Rowe died insolvent.

The bank notified Eden of the assignments and forbade payment to Wardell. A few days later Eden paid Wardell fifteen hundred dollars, and Wardell entered of record a satisfaction of judgment.

Hamilton and Harrison appeared for the bank and Brockholdt Livingstone for Eden.

Hamilton moved for a vacation of the entry of satisfaction, assigning fraud. A majority of the Court held with him, Benson delivering the opinion; but Chief Justice Lansing and Justice Lewis dissented.

Burr was appointed in 1792 as a member of the New York Supreme Court, but declined to accept. He and Hamilton frequently met in the courtroom, sometimes as associates, and at other times as opponents.

In *Le Guen* v. *Gouverneur & Kemble* they were associates. Against them were Livingstone, Troupe and Gouverneur Morris. Le Guen, a Frenchman, sued his factors, a Jewish house in New York, for goods consigned by Le Guen and sold by the factors. There were a number of trials. In the first the factors won. In the second Hamilton and Burr won for Le Guen. In 1800 the Supreme Court affirmed the judgment, which was for a hundred and twenty thousand dollars.

Afterwards Livingstone, Troupe and Morris filed a bill in chancery before the Chancellor of New York alleging fraud in the contract. The Chancellor overruled the demurrer of Hamilton and Burr, who in substance contended the matter had been fully adjudicated at law. The cause went by appeal to the Court of Errors, at Albany. This Court sustained the demurrer and dismissed the bill, with costs to appellants.

In *Silva* v. *Lowe*, Hamilton and Burr were on opposite sides. The case was one of marine insurance, involving fifty-five hundred dollars. It was first tried in 1798, before Kent, before he became Chancellor. The jury found for the plaintiff. Kent overruled the motion for a new trial, and it went, on writ of error, to the Supreme Court. There it was first argued for plaintiff in error by Riggs and Lust, and for defendant in error by Burr and B. Livingstone. At the April, 1799, term the Court ordered a re-argument. This time Hamilton, Harrison and Troupe opposed Burr and Livingstone. A new trial was granted, and again the jury found for Silva. Again it went on writ to the Supreme Court. Burr argued that, since the jury had a second time found for his client on a question of fact, this ought to be conclusive. Hamilton argued, the jury could only reach the verdict it did by disregarding the law of the case, as laid down by this Court, and therefore another trial should be had. Another new trial was granted. I am unable to learn from the reports if there was another trial.

All the biographers and many historians tell us of *Croswell* v. *The People*, argued before the Supreme Court February, 1804, only a few months before his death. Croswell was indicted for libelling Jefferson, then president, and tried and convicted. The libel consisted in charging that Jefferson paid Callender, a printer, for grossly slandering Washington and Adams.

Hamilton appeared in the Supreme Court, without fee, and offered to prove the truth of the charges. From all accounts, his efforts here must have been of his greatest. We can only notice two of his important contentions: (1) That the fact may be given in evidence by the defendant in justification of the alleged libel, if published for good motives and justifiable ends; and (2) That the jury in a criminal case should decide the law and the facts, as the

two are so blended as to make this necessary to reach a general verdict.

Hamilton lost by the decision of an equally divided court; but he won his purpose, for after his tragic death, and at its next session, the legislature, by statute, made law of both his contentions.

Hamilton exhibited a commendable sense of the ethics of our profession. In 1795 he wrote his friend Troupe, informing him he had made him executor of his will. He told him of his property, the lists, and of his obligations. Then he said:

> "I have received some large fees for which the parties could not have had equivalents: From Williamson, one hundred pounds; from Macombe, one hundred pounds; from Constable, one hundred pounds. It would be just if there were means, that they should be repaid."

A year later he writes to one Greenleaf, who described himself to Hamilton as a banker worth five millions, owing twelve hundred thousand. Greenleaf had proposed to Hamilton that Hamilton help him and allow Greenleaf to use his name, the two becoming partners, and Greenleaf to convey to Hamilton one-third his property. Hamilton declined the offer, saying:

> "In my peculiar situation, viewed in all its public, as well as personal relations, I think myself bound to decline the overture."

Parton, in his life of Burr, says the earnings from the practice of Hamilton and of Burr were about ten thousand each. He tells this story, which I find nowhere else, nor am I able to find the letter to which he refers.

> "Among the letters of Alexander Hamilton is one from a New York merchant, retaining Hamilton's services in any suits the merchant might have for five years. Enclosed in the letter was a note for a thousand dollars, payable at the end of five years, with interest. Upon the letter is an endorsement in Hamilton's hand, reading 'Returned, as being too much.' "

If this story be true, it would seem Lincoln was not the first lawyer whose modesty minimized the value of his services.

Among Hamilton's private papers, found after his death, was one in his handwriting in which he told of his

investments, estate, income, and expenses. From this we learn: "I think myself warranted to estimate the annual product of those emoluments at twelve thousand dollars, at the least." It is doubted if any American lawyer at that time had a greater income from the profession.

Let us now consider briefly the opinion of others as to Hamilton's ability as a lawyer. It is sometimes difficult to determine what is history and what is eulogy; and men in estimating Hamilton's ability have exhausted the superlatives.

Chancellor Kent said of him:

> "He rose at once to the loftiest heights of professional eminence, by his profound penetration, his power of analysis, the comprehensive grasp and strength of his understanding, and the firmness, frankness, and integrity of his character. We may say of him, as was said of Papinian, *'Omnes longo post se intervallo reliquerit.'* "

Judge Ambrose Spencer, of the New York Supreme Court, said:

> "Alexander Hamilton was the greatest man this country ever produced. I knew him well. I was in a situation often to observe and study him. I saw him at the bar and at home. He argued cases before me while I sat as judge on the bench. Webster has done the same. In power of reasoning Hamilton was the equal of Webster; and more than that can be said of no man. In creative power Hamilton was infinitely Webster's superior. * * * * Hamilton, more than any man, did the thinking of the time."

Talleyrand said:

> "I consider Napoleon, Fox, and Hamilton as the greatest three men of our epoch, and if I might judge these three, I should assign without hesitation the first place to Hamilton. He divined Europe."

Bryce draws a comparison between Washington and Hamilton; and after referring to Washington as standing like a snow-peak, unapproachable, says:

> "But Hamilton, of a virtue not so flawless, touches us more nearly, not only by the romance of his early life and his tragic death, but by a certain ardour and impulsiveness, and even tenderness of soul, joined to a courage equal to that of Washington himself. * * * * He stands in the front rank of a generation never surpassed in history;

> a generation which includes Burke and Fox and Pitt and Grattan, Stein, and Hardenberg, and William Von Humboldt, Wellington and Napoleon."

Bryce also says Jefferson owes his election to Hamilton, which finally caused Hamilton to fall in the duel at Weehawken. Of course he here refers to Hamilton's influence with Federalists to cause them to choose Jefferson rather than Burr when the electoral college was for weeks tied, with each having the same number of votes.

Jefferson himself in The Anas said of Hamilton:

> "Hamilton was, indeed, a singular character. Of acute understanding, disinterested, honest and honorable in all private transactions, amiable in society and duly valuing virtue in private life"; (But the sage must savor his tribute with some political cayenne, and he concludes the sentence) "Yet so bewitched and perverted by the British example, as to be under thorough conviction that corruption was essential to the government of a nation."

I am unable to find where Hamilton ever expressed a measured opinion of Jefferson, of his ability and character. But we are not without evidence of his action. The two were political enemies, leaders of opposing forces, which forces fought bitterly. Yet when the time came that Hamilton must, by his action and influence, choose if he would favor Jefferson, his enemy, or Burr, who theretofore had been his friend, he openly and vigorously declared for Jefferson. Burr had talent, ability and standing, but lacked character; and Hamilton knew it. Therefore, Hamilton opposed all plans of a vast majority of the Federalists leaders (including even Marshall) to choose Burr. This is proved not only by Hamilton's letters to Wolcott, Ames, Marshall and others, but Jefferson himself, in a letter to Martha, written January 26, 1801, said "Hamilton is using his uttermost influence to procure my election, rather than Colonel Burr's."

I have wondered what our history now would be if Jefferson and Hamilton had not lived. It is said that in every crisis, God finds the man to meet the crisis. Yet it is difficult now to see who but Jefferson could have penned so well the Declaration; taught so well his political philosophy, of equal and exact justice to all men, with special privileges to none; or so well expressed his sturdy faith in mankind; or

his abiding belief in freedom of religious thought and action.

Nor can we say who, but Hamilton, could have successfully waged the battle necessary to the adoption of the Constitution, that fire by night and cloud by day which has led, and still leads us on to our destined end; or who, but he, could have successfully devised and executed the financial plan which rescued the young republic from a state of bankruptcy and chaos, to start it on its way to become the greatest power in all history.

There were giants in those days, and it seems proper that we, who today enjoy the blessings made possible by their foresight, patriotism and wisdom, pause reverently and pay some slight tribute to their memory.

But, after all, they were men, not demi-gods; very human—even as you and I. Each had his faults, and, upon occasion, each stooped to conquer. Jefferson was practical in his politics, and some of his leters are to friends informing them he had "put-down" the friend addressed for a certain sum, to help the cause. He favored the flank attack, and his enemies said he was evasive and not always frank. Each inspired, if he did not actually write, newspaper articles attacking the other, which today would put to shame the most hardened ward politician.

Hamilton was intollerant, imperious and domineering. Though a charming companion, he alienated and offended many of his closest friends by his temper and his egoism. He was a hard taskmaster and drove his lieutenants by command, rather than winning them by persuasion.

We have seen that both drank wine, somewhat freely; as was the well-nigh universal custom of the time; and, if contemporary gossip is accepted, as truth, neither could have qualified as an understudy to Joseph in the episode in which Mrs. Potiphar was the leading—or misleading—lady!

In the fear that I have tired you by over-much talk, the temptation to aggravate the offense by saying more on this, to me, interesting subject must be resisted.

The subjects are left with you with the appraisal of others:

Mr. Beck talked about Jefferson in his most excellent address to the American Bar Association, at Denver, in July.

(Everybody is talking about Jefferson this year.) Of him he said:

> "An ardent soul, his was also a great intellect. * * * * Here was a man who could supervise a farm, draw the plans for a mansion or a public building with the detail of a capable architect, study nature like a scientist, make useful inventions, play a Mozart minuet on the violin, ride after the hounds, write a brief or manage an intricate law case, draft state papers of exceptional importance, and conduct correspondence with distinguished men in many languages upon questions of history, law, ethics, politics, science, literature, and the fine arts."

Mr. Bowers concludes a graphically drawn portrait of Hamilton by saying:

> "Such a man was Hamilton, a Colossus, brilliant, fascinating, daring, and audacious; a constructive statesman of highest order, a genius of the first rank, with all the strength and weakness of a genius."

> "He that walketh righteously, and speaketh uprightly; he that despiseth the gain of oppression, that shaketh his hands from holding of bribes, that stoppeth his ears from hearing of blood, and shutteth his eyes from seeing evil; he shall dwell on high."
>
> —Isaiah 23:15.