

TRENDS TOWARD STATES' RIGHTS IN THE
FEDERALIST PARTY, 1803-1815

APPROVED:

William P. Vaughn
Major Professor

Howard C. Key
Minor Professor

Jack B. Sturges
Director of the Department of History

Robert B. Toulouze
Dean of the Graduate School

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James E. Hitt, Jr., B. A.

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TABLE OF CONTENTS

Chapter	Page
I. A PARTY IN SEARCH OF SALVATION	1
II. THE LOUISIANA PURCHASE AND STATES' RIGHTS . .	9
III. THE EMBARGO AND STATES' RIGHTS	37
IV. THE WAR OF 1812 AND STATES' RIGHTS	75
BIBLIOGRAPHY	106

CHAPTER I

A PARTY IN SEARCH OF SALVATION

For three presidential terms the Federalist party claimed status as a majority party, but its star fell as that of Jefferson and the Republicans rose. Jefferson made an early bid for power in the election of 1796 but lost to John Adams by the close electoral vote of seventy-one to sixty-eight and had to settle for the Vice-Presidency. During the four years that followed, Jefferson and his colleagues continued to build their party's strength, and their work bore fruit in the election of 1800 with a Republican victory.

The Federalists were appalled. Only trickery could have given Jefferson's party the election. John Lowell, a Federalist lawyer and judge of Massachusetts, felt that the people of the nation had been "impelled by motives and feelings, which in a free government will ever be fatal to any honest and honourable administration." The people had been "deceived, cajoled, and corrupted by an abominable system of falsehood and calumny." As a result, said Lowell, the people of the nation withdrew their confidence from the Federalist party who were "the founders of our republic, the

authors, supporters, defenders and friends of the constitution."¹ Since Jefferson himself had some early misgivings regarding the Constitution, this implied that he and his followers were against the fabric that bound the nation together. The Republicans wished to destroy the nation, which, according to Lowell, the Federalists had so carefully constructed. The people had transferred power to those who were "open and avowed opposers of that constitution, and of that system which was calculated to make us a great, powerful, and happy people."²

With defeat the Federalists became timid, inactive, and divided. They said privately, "Let the people run themselves out of breath; all will come right; there is no occasion for us to do anything." Others said, "We despair; nothing can be done with effect."³ Many of the luke-warm Federalists seemed "disposed to slide down the steep of democracy, without an effort to save themselves and country."⁴ Yet, to some the outlook was not completely black. Fisher Ames, a former member of Congress from Massachusetts who had retired from

¹John Lowell, The New England Patriot (Boston, 1810), p. 3.

²Ibid.

³Seth Ames, editor, Works of Fisher Ames, I (Boston, 1854), 313.

⁴Thomas Fessenden, Democracy Unveiled; Or Tyranny Stripped of the Garb of Patriotism (Boston, 1805), p. 121.

public political life when the Republicans came to power, believed that it was not even necessary to regain the majority as long as his party maintained a strong sectional minority. However, it must be "powerful in talents, union, energy, and zeal. It should see far and act soon." The lack of zeal among the Federalists worried Ames. If the approaching danger could be shown more clearly, perhaps the people of New England and the members of the Federalist party would act in self-defense. A closer union than ever before might be formed between these two. The realization of this end became even more important now that the "real" purpose of the Jeffersonians appeared in the open. According to these Federalists, the Jeffersonians intended to destroy all commercial activity in the nation and to subvert the other states of the union to the rule of Virginia. Factionalism among the Federalists would only help Jefferson accomplish his purpose, and to avoid this, the Federalists must unite as "security against the approaching danger." Ames warned his friends that a "party inactive, is half conquered."⁵

Viewing their position in 1802, the Federalists could find little real comfort in their situation, although many tried to make themselves believe the situation was not as hopeless as it seemed on the surface. They held power in three of four New England states. Massachusetts, the bastion

⁵Seth Ames, Fisher Ames. I. 313-14.

of Federalism, held firm along with New Hampshire. Vermont still retained a Federalist governor and almost one-half of the state legislature, allowing the Federalists to count her in their ranks. Rhode Island, which had gone Republican in 1800, was disdained by all good party members. New York, New Jersey, and Pennsylvania were utterly lost, and not far behind were Delaware and Maryland.⁶ The Federalists found themselves pushed into a small corner of the nation. Once a proud and powerful party under Washington and John Adams, they were now a minority with little real hope of ever regaining national power. They began to fight to escape political extinction.¹

As early as 1802 the answer appeared to some Federalists. Looking to the state governments as a safe refuge, Alexander Hamilton said, "It had ever appeared to me as sound principle to let the federal government rest, as much as possible, on the shoulders of the people, and as little as possible on those of the State Legislature."⁷ In October, 1803, Fisher Ames declared, "Our country is too big for Union, too sordid for patriotism, too democratic for liberty."⁸ The destruction of everything that the Federalists held dear appeared imminent,

⁶ Ibid., p. 314.

⁷ Henry Cabot Lodge, editor, The Works of Alexander Hamilton, X (New York, 1904), 431.

⁸ Seth Ames, Fisher Ames, I, 328.

and in order to prevent this, they "must entrench themselves in the State governments, and endeavor to make State justice and State power a shelter of the wise, and good, and rich, from the wild destroying rage of the Southern Jacobins."⁹ For the next twelve years the Federalists attempted to follow this advice.

While searching for an issue of political significance behind which they could unite the rank and file, the Federalists were given one. Trouble flared in the Southwest. The port of New Orleans, controlled by Spain, was closed in 1802 to American traffic coming down the Mississippi River. With the river route effectively blocked to most Westerners, they were forced to bring their trade over the Alleghenies, which was a more arduous and expensive trip. They cried for an open port at New Orleans where they could deposit their goods without interference from Spain or any other foreign power. The Federalists, thinking they had discovered a national issue, complained that something should be done. In January of 1803 Uriah Tracy, Federalist Senator from Connecticut, said that Jefferson refused to do anything because he feared involving the nation in a war. The Federalists, claimed Tracy, stood behind the people of Kentucky, Tennessee, and Mississippi. If the federal

⁹Ibid., p. 310.

government stood by and did nothing, the French, led by Napoleon, would take possession of Louisiana, and New Orleans would be lost forever to the frontier people.¹⁰

The Federalists, who actually possessed a poor national issue in New Orleans, found themselves faced with a fait accompli. In October of the same year Jefferson announced to the Senate that Louisiana, including New Orleans, had been transferred to the United States from France by a treaty negotiated the preceding April. Without going into the constitutionality of the treaty provisions, he dealt with the expediency of the purchase. By controlling both banks of the Mississippi, the United States could provide the Westerners with an unhindered outlet to the Gulf of Mexico. Also, this vast amount of territory in the hands of the United States would eliminate any foreign threat from Louisiana. The rich fertility of the soil of Louisiana would provide surplus money to the nation's treasury.¹¹ Later, Jefferson said that we did not produce the international situation between France and Britain, "but we availed ourselves of it when it happened."¹² Needless to say, Jefferson was exceedingly happy with the treaty with France.

¹⁰Bernard Steiner, Life and Correspondence of James McHenry, Secretary of War Under Washington and Adams (Cleveland, 1907), p. 516.

¹¹James D. Richardson, editor, Messages and Papers of the Presidents, I (Washington, 1904), 358.

¹²Worthington C. Ford, editor, Writings of Thomas Jefferson, XI (New York, 1913-1917), 403.

Most members of the Republican party shared the sentiments of Jefferson. David Leonard, a Republican orator of Massachusetts, made a speech at the request of his friends in which he declared the purchase "a splendid triumph." Most modern and ancient conquerors won their laurels at the expense of blood, but Jefferson delivered to the nation the vast land of Louisiana by the use of the olive branch of peace.¹³ Republicans in general believed that if New England took an obstinate stand against the purchase, the people of that region would soon throw off the shackles of Federalism and join the Republican ranks.¹⁴ In this belief they were not far wrong, as the election of 1804 was to show.

Even a great many Federalists saw the advantages of acquiring Louisiana for the United States. Some leading Federalists proved to be quite vocal in declaring their feelings on the subject, although they soon came into conflict with others of their party. John Quincy Adams spoke openly of his sentiments favoring manifest destiny, even though that particular term describing American continental imperialism was not used for over twenty years.

The whole continent of North America appears to be destined by Divine Providence to be peopled by one nation.

¹³David Leonard, An Oration Delivered at Raynham (Massachusetts) Friday, May 11th, 1804, on the Late Acquisition of Louisiana, at the Unanimous Request of the Republican Citizens of the County of Bristol (Newport, 1804), p. 3.

¹⁴Ibid., pp. 27-8.

speaking one language, professing one general system of religious and political principles, and accustomed to one general tenor of social usages and customs. For the common happiness of them all, I believe it indispensable that they should be associated in one federal Union.¹⁵

Even Roger Griswold, Federalist member of the House of Representatives from Connecticut from 1795 to 1805, admitted that he had long "felt the importance, to this country, of the free navigation of the Mississippi, and a place of deposit at some place near the mouth of that river," although he opposed the purchase on constitutional grounds.¹⁶ Despite some favorable remarks by isolated Federalists, the bulk of the party leaders opposed the purchase and were determined to make an issue over it.

¹⁵Worthington C. Ford, editor, Writings of John Quincy Adams, IV (New York, 1917), 209.

¹⁶U. S., Annals of Congress, 8th Congress, 1st Session (Washington, 1832), p. 460.

CHAPTER II

THE LOUISIANA PURCHASE AND STATES' RIGHTS

The Louisiana Purchase became a signal to the Federalists to renew party bitterness with vigor, and when news arrived in the United States of the treaty with France providing for the cession of Louisiana, the Federalists newspapers responded with definite hostility. Surprisingly, the purchase excited little attention among the rank and file of the party. Fisher Ames thought his "people care not for these things."¹ Louisiana excited less interest among the people of New England than a Thanksgiving holiday.² The leading members of the party who hoped to shake off the cloak of apathy began to complain bitterly of the purchase. Many of them even saw the purchase as another link in the chain to hold New England in bondage to the southern states, particularly Virginia.

The size of Louisiana worried many Federalists. Fisher Ames said that so much property at public disposal was "sure to corrupt."³ Roger Griswold, while he saw the need of acquiring the land for the Westerners, claimed the Republican spirit of government could not operate within the boundaries

¹Seth Ames, Fisher Ames, I, 332.

²Ibid., p. 334.

³Ibid., p. 330.

of such a large extent of territory. He said that with the increase in size of the nation the habits and customs of the people would vary to such an extent that unity would become impossible. However, he did admit that it was difficult to draw a precise line beyond which the nation should not expand.⁴ William Plumer, Federalist Senator from New Hampshire, said that the territory constituted a definite threat to the security of the government, for without Louisiana, the United States already possessed more uncultivated farm land than could be sold. The addition of this new territory would spread the settlements and the population over a wide area, and this huge, sparsely settled nation would have little or no security. The central government would be weakened by spreading itself too thin.⁵

Others attacked the purchase on similar grounds. In August of 1803 the Connecticut Courant, a leading Federalist newspaper published in Hartford, began a series of articles against the purchase. The Courant agreed with Plumer that the country already possessed too much land for its own good. The new land would bring speedy settlement, which "would tend to impoverish and weaken" the nation by "dispersing its population and dissipating its capitals."⁶ John Lowell,

⁴Annals, 8th Congress, 1st Session, p. 443.

⁵William Plumer, William Plumer's Memorandum of Proceedings in the United States Senate, 1803-1807 (New York, 1923), p. 6.

⁶Hartford, Connecticut Courant, October 12, 1803.

writing as late as 1810, still declared that the purchase weakened the government and security of the nation. To Lowell the "monstrous purchase," which by 1810 had cost an estimated twenty million dollars, was entirely too expensive for the benefits derived. It also cost too much to maintain. Attacking the method of acquisition, he said:

But though the navigation of the Mississippi might be important . . . , and though it might be our duty to procure it . . . , yet there were two modes in which it might have been obtained at less expense of money or character. . . . We wanted only the depot of New Orleans, and the free navigation of the river--those were ours by solemn treaty with Spain before this purchase--But she . . . shut us out of the depot--What then was our duty--to take it But another mode by which you might have accomplished the object, was by a purchase (if you would suffer the degradation of purchasing your own property, rather than of defending it by arms) of the right of navigation, and of the island of New Orleans only.⁷

In his use of hindsight, Lowell proved to be remarkably inept. He completely neglected to mention that by the purchase the United States had eliminated the possibility of a hostile nation on her immediate borders.

The Federalists found other ground on which to base their opposition when the Republicans claimed that the possibilities for economic endeavors in Louisiana were almost unlimited. The fertility of the soil was capable of producing sugar, cocoa, coffee, pimento, molasses, cane juice, cotton, indigo, saffron, and in general "most of the precious articles

⁷Lowell, pp. 44-5.

which the West India Islands do or can yield." The Federalists replied that the fertility of the land mattered not when the nation had "neither the money to spare for the purchase or slaves nor laborers for the cultivation of the newly acquired soil."⁸

These general arguments hid the real hostility of the Federalists to a purchase that threatened both the political and economic interests of New England. With the great amount of new land available in the West, they believed the value of Eastern land would decline sharply. Also, the westward spread of civilization would leave the Federalists even more of a minority, a political situation not destined to please any political party caught in such a trap. This situation would become increasingly evident when the states carved from the new territory asked for admission to the Union. Many of these states would undoubtedly permit slavery, thereby increasing the slave representation in Congress. New England would be even more tightly controlled by Virginia and the South. This was an intolerable situation.

In October, 1803, Fisher Ames complained that the acquisition of new territory by purchase was despicable and mean. He cared not for the territory acquired or the money needed to pay for it.⁹ Most New England farmers agreed with

⁸Hartford, Connecticut Courant, October 12, 1803.

⁹Seth Ames, Fisher Ames, I, 323.

Ames, since the value of their land decreased with the addition of free land in the West. The merchants of New England also failed to appreciate the purchase, since the Westerners now had a free access to New Orleans, and the western trade, which had once come to New England across the mountains, now would go down the Mississippi.¹⁰

The outflow of money from New England to Louisiana caused worry to many Federalists. The Connecticut Courant pointed out to its readers that in addition to the cost of purchasing the land, the United States must also spend much to build defenses and encourage settlement.¹¹ Years would pass before any benefits could be derived from the immediate outlay of money. New Englanders would pay part of the bill and receive for their share a loss of political power. The Courant also pointed out that Louisiana would be the cause of land speculation by capitalists, using monetary resources that could be successfully employed at home. In addition, many industrious families would be drawn to the West by this speculation, families that might otherwise fill the vacated areas of New England.¹²

John Lowell believed that the purchase would certainly prove harmful to future generations of New Englanders,

¹⁰ Ibid., pp. 323-24.

¹¹ Hartford, Connecticut Courant, September 14, 1803.

¹² Ibid., October 5, 1803.

especially since Louisiana was desired by Westerners who were hostile to commercial interests.¹³ Other Federalists feared this special hostility would increase. Senator Samuel White of Delaware feared that the great distances involved would divide the various sections of the country even more than they already were. Other sections would look elsewhere to do their business, seriously damaging the commercial interests of New England.¹⁴

The Federalists understood the magnitude of the westward movement and the shifting of political power. The seat of empire in the United States was "drawing fast toward the Western waters; there, at its center, it must ultimately fix." They looked at the growth of the Union since 1789 and saw that the three of four states (Ohio, Kentucky, and Tennessee) admitted to the Union were located in the west. Now, other new states in the West would undoubtedly be formed. The total loss of Federalist political prestige would inevitably follow.¹⁵ New England, by remaining the same size, discovered that she was shrinking.

In their opposition to the Louisiana Purchase, the Federalists definitely depended upon sectional arguments. Their political power threatened, they responded with attacks

¹³Lowell, p. 44.

¹⁴Annals, 8th Congress, 1st Session, p. 34.

¹⁵Hartford, Connecticut Courant, October 5, 1803.

upon the purchase, attempting to show the impracticality of the treaty with France. The land was too big, there were not enough people to settle the country, the drain of population on the older states was harmful--all these arguments appeared in Federalist batteries. Their true motives of opposition always remained just below the surface, cropping up occasionally in the letters of some party member or in the print of some party newspaper. The federal government under Republican control threatened the power of New England as a section and the New England states as individual states, and in defense, the Federalists turned to the advice of Fisher Ames when he told his party to take refuge in the state governments and in state power. The approaching battle over the act to carry into effect the treaty with France embodied all the arguments for states' rights that the Federalists could assemble.

The first constitutional question to arise involved the right of the United States to acquire territory legally. No specific grant existed in the Constitution, although Article Four, Section Three declared:

New States may be admitted by Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the consent of the Legislatures of the States concerned as well as of Congress.

The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United

States; and nothing in this Constitution shall be so construed as to Prejudice any claims of the United States, or of any particular State.

The Federalists and Republicans disputed the question of whether the authorization of power to acquire territory lay in these provisions.

Gouverneur Morris, Federalist Senator from New York, when he heard of the purchase, said, "I always thought that, when we should acquire Canada and Louisiana it would be proper to govern them as provinces, and allow them no voice in our councils."¹⁶ Thomas Jefferson felt differently. He did not believe that the intention of the founders of the nation permitted the addition of new states to the Union from territory acquired since the adoption of the Constitution. At this point he was still rigidly adhering to a strict interpretation of the Constitution.¹⁷ He believed that an amendment would be necessary because no provision existed for incorporating foreign territory into the nation.¹⁸ Since Jefferson believed an amendment to the Constitution necessary to make the transaction legal, the Federalists believed they possessed a forceful argument.

However, some Federalists such as John Quincy Adams agreed with Jefferson that the purchase was a positive good

¹⁶Jared Sparks, The Life of Gouverneur Morris, III (New York, 1856), 192.

¹⁷Ford, Works of Thomas Jefferson, IX, 418.

¹⁸Ibid., p. 410.

for the nation. He regarded the acquisition as "one of the happiest events which had occurred since the adoption of the Constitution." But he also believed "that the power of annexing Louisiana to this Union had not been delegated to Congress by the Constitution of the United States."¹⁹ Nevertheless, the good of the entire nation outweighed Adams' constitutional scruples, and he would have voted for the measure had he not been prevented from doing so by illness.²⁰

George Cabot, a leading Massachusetts Federalist even though he held no political office at the time, admitted to being mortified at the prospect of Adams joining the opposition on this measure. By assisting the party in power, Adams helped to destroy the political weight of the Federalists. Even if the Constitution were amended as Jefferson and Adams thought necessary, such action would only illustrate the fact that the Constitution was "too feeble a barrier to obstruct a triumphant majority in their course."²¹ The Federalists began to see the Constitution in the same light as Jefferson; their salvation lay in a strict interpretation of that document.

¹⁹Henry Adams, Documents Relating to New England Federalism, 1800-1815 (Boston, 1905), p. 53.

²⁰Ford, Writings of John Quincy Adams, III, 19.

²¹Henry Cabot Lodge, Life and Letters of George Cabot (Boston, 1878), p. 333.

Nevertheless, most Federalists disagreed with Jefferson on a most unusual point. Many actually believed that the United States had a perfect right to acquire added territory in whatever manner necessary. Timothy Pickering, Senator from Massachusetts, said that he "had never doubted the right of the United States to acquire territory, either by purchase or by conquest, and to govern the territory so acquired as a dependent province."²² Uriah Tracy, Senator from Connecticut, felt the same. "I have no doubt," he said before the Senate, "but we can obtain territory either by conquest or compact, and hold it, even all Louisiana, and a thousand times more, if you please, without violating the Constitution."²³ The Federalists took this stand without demanding a constitutional amendment, possibly because they did not know of Jefferson's true feelings. By the time they discovered them, they had committed themselves.

It was not until 1810 that a Federalist raised his voice against the right to purchase territory. John Lowell in New England Patriot maintained that "if Louisiana and the Floridas may be purchased on one side, there is reason to buy Canada and Novia Scotia [sic] on the other, and when these are bought, we see no obstacle to the purchase of Mexico." The principle would be the same in all cases. The introduction

²²Annals, 8th Congress, 1st Session, p. 45.

²³Ibid., p. 58.

of so many foreign cultures would destroy the unity of the United States, and the ultimate result would be the complete overthrow of the republican form of government. With all this at stake, Lowell assured his readers that the purchase itself must be unconstitutional.²⁴ His weak attack brought no response; he fought a battle long won by the opposition.

The acquisition of territory by itself never threatened the power of New England or the New England states, but if the Union incorporated the territory and made states from it, the power of the Federalists would dwindle until it passed into obscurity. The possible acquisition of the British provinces of Canada would counterbalance Louisiana and strengthen the commercial interests, yet the Federalists realized that the real desire of the nation for land lay to the west rather than to the north. If the Federalists agreed that foreign territory could be incorporated into the nation with the hope that the northern provinces of Canada might someday be included, they would set a dangerous precedent. Instead, they decided to fight.

Their first concentrated attack centered upon the third article of the treaty with France, which stipulated:

The inhabitants of the ceded territory shall be incorporated into the Union of the United States, and admitted, as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of the

²⁴Lowell, p. 50.

citizens of the United States, and, in the meantime, they shall be maintained in the free enjoyment of their liberty, property, and the religion they profess.²⁵

This meant that the inhabitants of Louisiana were to be incorporated into the United States, first as a territory with the same rights as other territorial governments, and later, when the population was sufficient, as states with the same rights as the original states. "Have the President and Senate a Constitutional right to do all this?" asked Uriah Tracy. He answered his own question by saying the article was unconstitutional,²⁶ and he spoke for his party when he said it.

Other Federalists soon expounded on the subject. Roger Griswold of Connecticut agreed that the President had a right to negotiate a treaty with a foreign nation and that the Senate must consent to the treaty before it became law. But he objected to the treaty with France on the matter of incorporation of Louisiana into the Union. This was unconstitutional, and any treaty contemplated by the President and Senate must conform to the Constitution in every respect. If a treaty failed to meet this conformity, it was illegal. Congress must recognize its duty and support the Constitution by refusing ratification.²⁷ The Constitution gave to Congress

²⁵Annals, 8th Congress, 1st Session, p. 54; U. S., Treaties and Other International Acts of the United States of America, II (Washington, 1931), 501.

²⁶Ibid.

²⁷Ibid., p. 460.

the power to admit new states formed from territory under United States rule at the time of adoption, but it did not give the power to admit foreign territory into the nation. Even if the power existed, it rested in the hands of the legislature, not the President. Therefore, Griswold called for resistance to the treaty, which he declared to be nothing more than usurpation of power by Jefferson.²⁸ Griswold, appealing to the states' rights feelings of all Americans, hoped to gain enough votes to kill the bill authorizing the President to take charge of Louisiana.

Even John Quincy Adams, who loved his country above New England, believed the third article of the treaty unconstitutional. He questioned neither the constitutional right of Congress to make treaties nor to grant the money to carry the treaty into effect, but he did question the right of Congress to annex the inhabitants of the ceded territory into the United States and to bestow upon them all the rights of citizens of the United States.²⁹ While Adams was a nationalist at heart, he saw a threat to the security of the state governments and their rights. He believed in the need of maintaining a balance of power between the state and federal governments if the republic were to continue. To preserve this balance all measures undertaken by the federal government

²⁸Ibid., p. 462.

²⁹Adams, New England Federalism, p. 54.

must be legal or else a precedent would be set--a precedent that could destroy the Union as he knew it. He desired to keep the acquisition and treaty legal without damaging the balance of power, and an amendment to the Constitution would solve this difficulty.

Not all Federalists were willing to admit the legality of an amendment. Uriah Tracy said, "We can hold territory; but to admit the inhabitants into the Union, to make citizens of them, and States, by treaty, we cannot constitutionally do; and no subsequent act of legislation, or even ordinary amendment to our constitution, can legalize such measures." Only the unanimous consent of all the states could make it legal. He based his argument upon the theory that the government was a partnership of the states and that unanimous consent could never be gained. "This would be absorbing the Northern States," he said, "and rendering them as insignificant in the Union as they ought to be, if, by their own consent, the measure should be adopted."³⁰ Tracy did not believe that his suggestion would be adopted, but he made his point. Northeastern political power was at stake.

In attempting to gain support from other sections of the country, many Federalists pointed to the problems arising from incorporating the inhabitants of Louisiana into the

³⁰Annals, 8th Congress, 1st Session, p. 58.

United States. Louisiana contained an unknown number of French and Spanish peoples (Creoles), and even the number of Negro slaves was unknown.³¹ These Creoles, being both foreigners and Roman Catholic, would be hostile to a republican form of government.³²

In 1803 Napoleon Bonaparte controlled the destinies of France and the French Empire, and the Federalists could not understand why he sold this land and these people to the United States unless a clandestine motive existed. William Plumer feared that Napoleon expected the admission of the people of Louisiana to "create an influence in his favor in the councils of our nation."³³ This idea excited the pro-British Federalists, who believed the Republicans to be in league with Napoleon. Since there existed a general distrust of the French, John Lowell thought Bonaparte sold Louisiana in order to retake it later. When the citizens of Louisiana rose in revolt, Napoleon would come to their rescue to redress their wrongs.³⁴ Whether real or not, the threat from Napoleon appeared real enough to the Federalists, and they did not fail to make use of the French threat in their effort to preserve states' rights.

³¹Hartford, Connecticut Courant, August 31, 1803.

³²Annals, 8th Congress, 1st Session, p. 56.

³³Plumer, p. 7.

³⁴Lowell, p. 47.

In an effort to sway the Westerners against the purchase, the New Englanders claimed that much of the best land had already been taken by the French and Spanish inhabitants through land grants bestowed upon them by their governments.³⁵ Of course, this argument was the exact antithesis of an earlier argument, which claimed that many people would migrate to Louisiana and would take needed capital from New England. If the land were unavailable, the people and capital could not migrate there in any great quantity.

Timothy Pickering, thinking of the inhabitants of Louisiana, pointed out to the Senate that all provisions of the treaty needed to be completed by the United States in a reasonable time. If this were not done, France could declare the treaty null and void and reclaim Louisiana. In that case the United States had no alternative but to wage war with France in order to maintain possession of the territory.³⁶ War was certainly one thing the Federalists did not wish, since superior French sea power would soon drive American merchant vessels from the water, thus seriously damaging New England commercial interests.

In the opinion of John Lowell, France sold Louisiana for several reasons, including the seeding of a future quarrel. He understood "Napoleon's motives." With the first sign of

³⁵Hartford, Connecticut Courant, October 12, 1803.

³⁶Annals, 8th Congress, 1st Session, p. 45.

war, the British would seize Louisiana with little or no trouble, and to prevent this, Napoleon sold Louisiana to the United States.³⁷ George Cabot believed that the purchase was like selling a ship surrounded by the British Fleet. The sale put the land into safe keeping until France could reclaim it at a later and safer date. By selling it at this time France eliminated a cumbersome protectorate, received much needed cash for her armies, and regained the friendship of the United States.³⁸ "It appears then," said John Lowell, "that we have not avoided a quarrel by the purchase of Louisiana, but have laid a most solid foundation for eternal collision"³⁹--a collision that the Federalists dreaded.

Attempting to salvage something from their crumbling political world, the Federalists turned to the one political argument that proved to be amazingly adaptable to the various sections of the country from time to time. Roger Griswold, speaking to the House of Representatives, claimed that incorporation of Louisiana into the union was "repugnant to the original compact between the States and a violation of the principles on which that compact was formed."⁴⁰ Many Federalists quickly adjusted to their new attack. They now

³⁷Lowell, p. 48.

³⁸Lodge, George Cabot, p. 131.

³⁹Lowell, p. 48.

⁴⁰Annals, 8th Congress, 1st Session, p. 461.

compared the Constitution to a trading company that had several partners. A new partner could not be admitted without the consent of all the old partners. The same question applied to the admission of new territory to the Union because "the admission might not only effect the relative interest of a particular State, but destroy the prosperity & endanger the peace and security of the Union."⁴¹ The consent of all the states must be required before the incorporation would become legal. The people originally based the formation of the Union on the Constitution, which operated on the basis of a co-partnership. It was absurd to think that a government that derived its power from the partner states could admit a new partner without the consent of all the old partners.⁴² Plumer believed that if the government could incorporate new states without the consent of the old, it might then have the power to sell a state without that state's consent.⁴³ Tracy attempted to prove by the compact theory that the whole transaction with France was illegal. Originally the Union had been formed by a number of independent states that entered into a voluntary association or partnership. They agreed to the Constitution as the means to delegate power to the federal government, and they reserved to themselves all

⁴¹Plumer, p. 8.

⁴²Annals, 8th Congress, 1st Session, p. 461.

⁴³Plumer, p. 8.

other powers not so delegated. This power of incorporation and, for that matter, even the purchase, had not been delegated to the federal government, and therefore the treaty with France was invalid.⁴⁴

The Federalists agreed that the states in forming the Union gave certain powers to the federal government while reserving other powers for themselves, and they argued that a state would not be so stupid as to allow Congress to give that state power to some other political entity. Timothy Pickering told Congress that he believed only a Constitutional amendment would make the incorporation of Louisiana legal, and even this amendment "could not be made in the ordinary mode by the concurrence of two-thirds of both Houses of Congress, and the ratification by the Legislatures of three-fourths of the several States." The consent of each individual state was needed before it was possible to admit a foreign country as an associate in the Union.⁴⁵ Tracy, agreeing with Pickering, said, "The principles of our Government, the original ideas and rights of the partners to the compact, forbid such a measure; and without the consent of all the partners, no such thing can be done."⁴⁶

As late as 1813, a year after Louisiana had been admitted to the Union as a state, the Federalists still protested,

⁴⁴Annals, 8th Congress, 1st Session, p. 55.

⁴⁵Ibid., p. 45.

⁴⁶Ibid., p. 56.

using the same argument. The Massachusetts Legislature passed a resolution, which stated that the admission into the Union of territory not within the original limits of the United States was unauthorized by the Constitution and was a direct violation of the Constitution. It became the solemn duty of the citizens of Massachusetts to oppose the measure, even if it meant dissolution of the Union.⁴⁷ As late as 1833 William Sullivan, an oft-quoted Federalist author and vice-president of the Washington Benevolent Society of Boston, claimed that Jefferson deserved impeachment for advocating incorporation, and it chafed him to think that Jefferson's greatest accomplishment as President, according to the public, was the acquisition of Louisiana.⁴⁸

In both the Senate and House, the Federalists attempted to kill the treaty with France by defeating the bill to provide money for the purchase, but Republican strength was too much. The bill passed the House on October 29, 1803, by an overwhelming vote of eighty-five to seven.⁴⁹ The bill went to the Senate, and after a brief struggle, passed by a vote of twenty-six to five. Five diehard Federalist Senators

⁴⁷Herman Ames, State Documents on Federal Relations: The States and the United States (Philadelphia, 1909), p. 68.

⁴⁸William Sullivan, Familiar Letters on Public Characters and Public Events From the Peace of 1783, to the Peace of 1815 (Boston, 1834), p. 208.

⁴⁹Annals, 8th Congress, 1st Session, p. 549.

cast their vote in the negative--James Hillhouse and Uriah Tracy of Connecticut, Samuel White and William H. Wells of Delaware, and Timothy Pickering of Massachusetts. Two Federalist Senators, William Plumer of New Hampshire and John Quincy Adams of Massachusetts, voted in favor of the measure.⁵⁰ Jefferson signed the bill on November 10, and the purchase became a reality.

Bitter over defeat, Uriah Tracy said that the "relative strength which this admission gives to a Southern and Western interest, is contradictory to the principles of our original Union."⁵¹ His words issued a threat. In the eyes of the Federalists, the Union had divided into separate interests, and perhaps their paths now lay in separate directions. The evils of democracy seemed to be inherent in the treaty. Senator Samuel White of Delaware feared that incorporation of Louisiana into the Union would be "the greatest curse that could at present befall us." He feared it would produce many evils, "and especially of one that I fear even to look upon."⁵² He meant separation. Rather than see such a thing happen, he would rather see France or even Spain possess that territory, even if it meant the total exclusion of all Americans. Actually, he preferred this.⁵³

⁵⁰Ibid., p. 73.

⁵²Ibid., p. 33.

⁵¹Ibid., p. 56.

⁵³Ibid., p. 34.

Many Federalists began to think of separating the New England states from the rest of the Union and forming a northern confederacy. Tracy, writing to former Secretary-of-War James McHenry, declared the acquisition of Louisiana would accelerate the dissolution of the Union, and although he could not predict the exact time the separation would take place, he knew it to be inevitable. The physical differences between North and South made this so. The two sections, held together by thin threads of interests, appeared destined to pull apart in the near future, especially with the new addition of southern territory. "The Northern section," said Tracy, "will fall off, by force of its own weight."⁵⁴ A northern confederacy would become a necessity.

Tracy attempted to conceal the true argument. New England was surrounded with no place to expand; the southern states could claim almost unlimited land into which they might expand. Tracy calmed himself with the thought that the Union would split without the use of overt force, although if this failed to happen, the Federalists must take action. The federal government would be sacrificed to protect New England's political power. Tapping Reeve, a Federalist lawyer of Connecticut, believed that the minds of leading party men sincerely opposed the treaty, and he wrote, "It seems to be a very general opinion that some method must be

⁵⁴Steiner, p. 522.

fallen upon to preserve ourselves from that ruin which we are threatened." He proceeded to correspond with many of his friends upon the subject and discovered that many felt separation the only answer to their problems. The method of separation remained a problem, but they generally agreed that a firm and proper step needed to be taken. They demanded action from both Congress and the state legislatures.⁵⁵

Timothy Pickering took this position, and he continued to affirm it until the end of the War of 1812. "The principles of our Revolution point to the remedy--a separation," he said, and this could be accomplished without the spilling of blood. Putting his ear to the pulse of New England, he heard mutterings that called for resistance to oppression. Now that the Constitution was a "lump of clay" in the hands of the opposition, they ruled with a rod of iron.⁵⁶ As for himself, he refused to live under a man whom he considered a popular tyrant. "My life is not worth much," he said, "but if it must be offered up, let it rather be in the hope of obtaining a more stable government, under which my children, at least, may enjoy freedom with security."⁵⁷ He desired a northern confederacy, even if it meant forcible separation, a desire that dominated him for the next eleven years.

⁵⁵Adams, New England Federalism, p. 342.

⁵⁶Lodge, George Cabot, p. 338.

⁵⁷Ibid., p. 339.

A northern confederacy offered to the Federalists the only opportunity for a continuance of public happiness. Continued union with the South was impractical. The South should be left to manage its own affairs in its own way. The separation, accomplished in whatever manner necessary, did not mean the two sections would be perpetually hostile to one another, since "mutual wants would render a friendly and commercial intercourse inevitable." The North needed the products of the South; the South needed the naval protection of the North.⁵⁸ Before a northern confederacy could be seriously considered by the Federalists, they needed a large following in the northern states. With Massachusetts in the lead, they believed other northern states would follow. New York, of necessity, appeared to be the pivotal state, along with Pennsylvania. Both states must be induced to join any northern confederacy.⁵⁹

Legality played no part in formation of this northern union. "As for the Constitution," said Pickering, "'tis mere paper, to be folded into any shape to suit the views of the dominant party."⁶⁰ Theodore Lyman, a Federalist author and philanthropist and one of Pickering's followers, agreed with his mentor. If the Constitution held any real power,

⁵⁸ Ibid.

⁵⁹ Adams, New England Federalism, p. 344.

⁶⁰ Ibid., p. 358.

reasoned Lyman, the constant encroachments month after month, year after year, would ultimately destroy it. He quickly threw his support behind separation, although he proved to be less blunt than Pickering.⁶¹ He told Pickering, "You know full well my sentiments, and will believe me ready at all times, in any way that is in my power, to do those things which in their tendency shall promote the interests of my country."⁶² Lyman's country was New England.

Many northern Federalists in Congress felt harshly toward Virginia, which they believed controlled too much power and influence in the government. Some of these men were ready to join a northern union in order to rid themselves of Virginia's domination, yet attempts by Congressional members to unite their party for this purpose failed. Even though dissatisfaction over Republican rule filled their ranks, separation was not a universal feeling among them. Even the most ardent Federalist found disappointment when he tried to persuade the population of the danger of a continued union with the southern states.⁶³

Dissension soon arose as to the ultimate aims of the Federalist party. While trying to calm the radicals who cried for separation, George Cabot advised his party to follow a path of moderation and wait for a real issue before entertaining

⁶¹Ibid., p. 350.

⁶²Ibid.

⁶³Ibid., p. 356.

the thought of separation. A war with England, provoked by the Republicans, would be an acceptable excuse. Without such a cause, Cabot warned, the Federalists had little real hope of forming a northern confederacy.⁶⁴ Even though a moderate in party affairs, he favored separation if there seemed a likelihood of success, but he was too much the realist to believe in acting where there was no widespread public support for his party. The Federalists were only a small minority in the nation, and they were hard pressed to find majorities in some New England states. They needed an issue, Louisiana and the French treaty were not enough.

Years later, in 1829, accusations of treason concerning the above situation filled the air. John Quincy Adams, then President of the United States, accused certain members of the late Federalist party of actively collaborating in a plan to dismember the Union and form a northern confederacy. The surviving members of the defunct party submitted a rebuttal in which they said, "We solemnly disavow all knowledge of such a project and all remembrance of the mention of it, or any plan analogous to it, at that [1803-04] or any subsequent period." They pointed out that their objection to the Louisiana purchase and the treaty with France was not treasonable, as Adams claimed, since Jefferson and John Quincy Adams believed a constitutional amendment necessary

⁶⁴Lodge, George Cabot, p. 342.

before ratification.⁶⁵ This objection of the Federalists had been founded upon the conviction that the Constitution was a compact between sovereign states. Territory beyond the original jurisdiction of the United States could not be added without the consent of those states. No treason existed in this idea. On a direct inquiry from other former Federalists, James Hillhouse, Senator for Connecticut during the Louisiana crisis, replied that he never heard or knew of a secession plot among members of his party. "I always considered that kind of charge as merely party slang, to answer party purposes," he said.⁶⁷ Other Federalists when queried gave similar answers. John Quincy Adams had hit upon a tender nerve and made the Federalists jump. While an actual organized movement for disunion failed to materialize at that time, there had existed a certain disunion sentiment among many leading Federalists, a sentiment they were anxious to hide in 1829 because political reputations were at stake.

The Louisiana purchase brought home to the Federalists the idea that their entire political future was in jeopardy. If the purchase went unchallenged, political weight in the nation would swing once and for all away from New England. Already a minority, the Federalists saw destruction confronting them. They fought back with the only weapon they

⁶⁵Adams, New England Federalism, p. 77.

⁶⁶Ibid., p. 78.

⁶⁷Ibid., p. 100.

possessed---states' rights. Using the same argument that Jefferson and Madison had used in the Virginia and Kentucky Resolutions, the Federalists now favored a compact theory of government. The preservation of states' rights became the most important object of the Federalists, and when this was seriously threatened by the Louisiana purchase, they talked of secession. If the Constitution were a compact between sovereign states, the states possessed the right to secede.

Only a few of the leading Federalists actually wished for separation from the Union and the formation of a northern confederacy. Even fewer actually campaigned for such a project. The bulk of New Englanders failed to become excited over the expansion of the nation, even though the strength of their section was endangered. Alexander Hamilton explained the reason for this attitude when he said "that dismemberment of our empire will be a clear sacrifice of great positive advantages without any counterbalancing good."⁶⁸ In 1804 most New Englanders felt the same as Hamilton.

⁶⁸Henry Cabot Lodge, editor, The Works of Alexander Hamilton, X (New York, 1904), 458.

CHAPTER III

THE EMBARGO AND STATES' RIGHTS

1804 proved to be a crucial year for the Federalists. Not only did they fail to convince Congress and the nation of the inherent evil existing in the Louisiana Purchase and the treaty with France, but they faced the challenge of a Presidential election. Seats in the Senate and House were also at stake. Already a minority, they could not afford to lose any more of their political strength in Congress. The Republicans even threatened the Federalists in some New England states where they had long felt secure in their power. Jefferson had managed to keep the country out of war while doubling the size of the nation, and the Federal party could find few arguments against such success.

Leading Federalists understood their tenuous position and feared for their power. Even strong Federalists states such as Connecticut and Massachusetts appeared threatened by the Republican whirlwind. As in the Louisiana crisis, the Federalists turned to condemning Jefferson as a tyrant, bent upon usurping as much power as possible, always unsatisfied, always reaching for more. Timothy Pickering, horrified that the state governments of New England might fall to Republicanism, believed that once the Republicans gained the upper

hand in New England, leading Federalists there would be unsafe. Their only hope would lie in flight to Canada. If nothing else, the Republicans having once gained the ascendancy would surely change the state constitutions and suppress liberty.¹

In viewing their situation in 1804, the Federalists found less hope for rejoicing than in 1800. Connecticut appeared sound, although mutterings of the people of that state led Fisher Ames to fear the future. Already Federalist leaders there found it necessary to defend themselves against incessant attacks of the opposition. Vermont and Rhode Island appeared lost, their legislatures being ruled by a decidedly Republican majority. New Hampshire stood firm for Federalism along with Massachusetts, and despite repeated Republican efforts to the contrary, both states refused to be pushed hurriedly into a political revolution. But even in the strongest Federalist states, the Republicans were gaining strength. The Federalists, realizing their last refuge of power was in jeopardy, fell into a state of depression. Fisher Ames adequately summarized their feelings when he said, "We shall lose almost everything; but my hope is, that we shall save something and preserve it long."² Yet a ray of hope did exist if the Federalists could unite their forces.

¹Lodge, George Cabot, p. 339.

²Seth Ames, Fisher Ames, I, 335.

The Federalist party was rapidly being dissipated by a loss of energy and ambition. For eight years it had steadily declined, with total annihilation daily drawing closer. Some Federalists became bitter over the situation and refused to give any credit to Jefferson's administration for the prosperity the country enjoyed in 1804. George Cabot, usually a fair man in his political judgment, attributed all prosperity to the neutral position of the United States in a world at war.³ He failed to recognize Jefferson's part in keeping the nation out of war. Yet he directed his main criticism at his own party rather than the Republicans. He believed the apathy in his party offered little hope in the general elections of that year, and any effort to revive party spirits would only fail.⁴

Timothy Pickering went further in criticizing party members. He worried as he saw men becoming apostates, "not to Federalism merely, but to virtue and to religion and to good government." Northern men could gain public honors only by apostasy and depravity, which were the official qualifications of public office, while good men and true--true Federalists--were displaced from office and held up to popular contempt and scorn. The Republicans had debased the system of public morals that the Federalists had fought so

³Lodge, George Cabot, p. 343.

⁴Ibid.

long to preserve. As he looked toward the approaching election, Pickering asked his colleagues, "And shall we sit still, until this system shall universally triumph? until even in the Eastern States the principles of genuine Federalism shall be overwhelmed?"⁵ He appealed to his friends to strengthen themselves for the approaching election of 1804, but the gloom and foreboding that he felt were apparent. Federalist power was at stake and the specter of defeat faced the Federalist party once again.

A few leading Federalists lost some of their gloom in rosy optimism. Feeling that Federalism had reached its lowest ebb, they saw a gradual rise in their fortunes until once again they could make a realistic bid for national power, and the election of 1804 appeared to them as the starting point of this political revival. They looked forward to the day when all the state governments of New England, and ultimately the national government, would once again be in the hands of honest and responsible people. When that time finally arrived, the wounds inflicted upon the national government would be quickly healed by the victorious party, and the blessings of liberty would again be restored to the people.⁶ But their outlook ignored the facts. The party had lost too much ground ever to contend seriously for national

⁵Ibid., pp. 337-38..

⁶Fessenden, p. 122.

power unless, by some miracle, the Republicans made a disastrous blunder that turned the nation against them.

George Cabot, although bitterly resentful against the Republicans, took a more realistic view of the party's future. He realized that New England was the last refuge of Federalism. The election of 1804 offered no hope of national gains, but it might be made to strengthen the sectional power of the party. Immediate exertion by party members might save Federalism from complete collapse and bring desired gains. Any such movement for organizing their forces for the election must begin in Massachusetts. The Federalists could expect support in Connecticut and New Hampshire, but if they expected any real hope of making the northern states secure in their politics, New York must be made the center of the movement. This was certainly true if the Federalist leaders ever seriously intended to form a northern union, which might, at some time in the future, be the only alternative to complete political control by the Republicans. If New York could be captured politically, Vermont and New Jersey would follow of necessity, and the North would again be united. Cabot looked forward to May and June of 1804, when the legislatures of Massachusetts, Connecticut, and New Hampshire were to meet, and he believed these state legislatures would consider action to be taken against the Republicans. He hoped they

might consider disunion.⁷ Cabot understood that the mere threat of disunion might draw back some of the Federalists who had deserted their party by showing them the desperateness of the situation.

During 1804 the Federalists in both houses of Congress and the state legislatures endeavored to rouse their section to a determined bid to avoid defeat. Most New Englanders, when questioned by staunch Federalists, claimed they recognized the danger to the political strength of their section and realized the only alternative was united action. But they also felt that the time for this united effort had not arrived. The Republicans had shown no dangerous tendencies yet, and until they did, the people would not be led into hasty and precipitate action which might bring ruin to the section. Sentiments of disunion simply did not exist among the people of New England, and regardless of efforts toward this end, Federalists encountered only apathy. George Cabot feared this apathy as much as democracy. "Whilst we are waiting for the time to arrive in New England," he said, "it is certain the Democracy is making daily inroads upon us, and our means of resistance are lessening every day."⁸

It was under these conditions that Cabot, Pickering, and Roger Griswold contacted Aaron Burr. Burr's troubles with

⁷Lodge, George Cabot, p. 340.

⁸Adams, New England Federalism, p. 355.

Jefferson had received wide publicity, and even though the Federalists distrusted Burr, they felt they might make some sort of political arrangement with him. In the approaching elections, Burr had chosen to run for governor of New York on an independent ticket. The Federalists, thinking he possessed a chance for victory, approached him with the idea of a northern union. Cabot disliked Burr, as did the others, but he believed this the only way to rally the northern state to its own defense.⁹ The idea behind the move was to destroy Republican strength in New York, which rallied behind the banners of the Clintonians, and to prepare the state for its eventual break from the nation. Burr's dissatisfaction with the Virginia faction gave hope to the Federalists, although they had little personal contact with Burr and were unable to fathom his true motives and feelings.¹⁰ The hopes of the Federalists collapsed when Republican Judge Morgan Lewis defeated Burr by a vote of 30,829 to 22,139. Hamilton, a bitter enemy of Burr, advised his party to vote for Lewis, but four-fifths of the Federalists of New York voted for Burr. Nevertheless, the Clinton-Livingston combination was too much for Vice-President Burr.¹¹

⁹Ibid.

¹⁰Ibid., p. 354.

¹¹John C. Miller, Alexander Hamilton: Portrait in Paradox (New York, 1959), p. 568.

As the election of 1804 approached, leading Federalists tried to impart their desires to the people. John Quincy Adams, although having sided with the Republicans on the Louisiana issue, remained loyal to his party and cautioned his friends to be wary in their choice of Presidential and Vice-Presidential electors. New Englanders must be careful to select electors who would protect New England's rights. "The people of Virginia," said Adams, "will not choose Representatives who will abandon their interests for the sake of advancing yours."¹²

Other Federalists agreed with Adams concerning the choosing of electors. Daniel Webster, writing in the Dartmouth Gazette, pleaded with his readers to choose carefully the men who would in turn select the President and Vice-President. Webster was pleased with the newspapers in New Hampshire, where the Federalists had decided to take a strong stand against the administration, but he realized that much more work and effort by members of the party must be made before success could be achieved. Federalist representatives had already been chosen by the people, but now they must prepare for the battle over electors. Webster refused to believe that the cause of Federalism could be defeated by

¹²Ford, Writings of John Quincy Adams, III, 47.

either the maneuvers of the Republicans or the sluggishness of the Federalists themselves.¹³

The election came and Federalists realized many of their fears. The nation overwhelmingly re-elected Jefferson. Charles Cotesworth Pinckney of South Carolina and Rufus King of New York, the Federalist candidates for President and Vice-President, managed to win only fourteen electoral votes each, while Jefferson and his running mate, George Clinton of New York, each amassed 162. Every state except Connecticut and Delaware voted for Jefferson, including Massachusetts, the home of Pickering, and Adamses, and George Cabot.¹⁴ The Federalists needed an issue before they could hope to challenge successfully the authority of the Republicans.

The Federalists were forced to wait for an issue. Jefferson gave them little cause for attack during the next two years. But while there was little trouble at home, trouble did flare up in Europe and on the high seas between Britain and France. Napoleon still ruled a good portion of Europe, and Britain challenged his authority. Soon the belligerents began to attack American shipping, and American seamen were impressed into foreign service against their will.

¹³Claude Van Tyne, editor, The Letters of Daniel Webster, I (New York, 1902), 16.

¹⁴James Schouler, Jefferson Republicans, Vol. II of History of the United States of America Under the Constitution, 7 vols. (New York, 1910), 519. The Federalist candidates also received two votes from Maryland.

On April 18, 1806, Congress passed an act prohibiting the importation of certain goods into the United States from ports controlled by the belligerent nations.¹⁵ When this act failed to stop harassment of American commercial shipping, Congress passed a more stringent act, the Embargo Act, on December 22, 1807, which prohibited the sailing of any merchant vessel except coasters from any American port.¹⁶ The Republicans hoped these measures would bring France and England to terms.

By the time the Tenth Congress opened in October, 1807, the Federalists had fallen even lower than in 1804. Massachusetts had elected a Republican governor, James Sullivan, and the Republicans controlled the state legislature. Only one Federalist governor, Jonathan Trumbull of Connecticut, remained in the nation.¹⁷ Only five Federalists held Senate seats--Samuel White and James A. Bayard of Delaware, James Hillhouse and Uriah Tracy¹⁸ of Connecticut, and Timothy Pickering of Massachusetts. In the House, only Connecticut

¹⁵U. S., United States Statutes at Large, II (Boston, 1856), 379-381.

¹⁶Ibid., pp. 451-453.

¹⁷W. H. Carpenter, The History of Massachusetts From Its Earliest Settlement to the Present Time (Philadelphia, 1853), p. 311.

¹⁸Uriah Tracy died before taking his seat, and Chauncey Goodrich, also a Federalist, was appointed to fill the vacancy.

contained a full roster of Federalist members, with all seven representatives belonging to the party. Massachusetts had suffered the invasion of the Republicans, and only five out of sixteen House seats were won by Federalists, of which the most important was Josiah Quincy, a lawyer and former member of the Massachusetts General Court. Neither New Hampshire nor New Jersey sent a Federalist to Congress, and Vermont sent only Representative James Elliot. Rhode Island sent only Richard Jackson, Jr., and Isaac Wilbour to the House.¹⁹

After President Jefferson delivered his message recommending the embargo in December, 1807, the Senate appointed a committee of four to consider such a measure. John Quincy Adams, who by this time no longer considered himself a member of the Federalist party, served as one of the members. He reluctantly consented to an embargo because he felt it the only honorable alternative to war. He also understood that the measure was designed to help Jefferson in his dealings with Rose, the British envoy. Addressing a member of the committee after giving his approval to the measure, Adams said, "This measure will cost you and me our seats, but private interest must not be put in opposition to

¹⁹The above material can be found by a careful study of U. S., Biographical Dictionary of the American Congress, 1774-1961 (Washington, 1961). James Truslow Adams, New England in the Republic, 1776-1850 (Boston, 1926), p. 248 makes an error in fact in discussing the Federalist position in 1807. He states the only Federalist members of the Senate were Pickering, Goodrich, and Hillhouse.

public good."²⁰ The Federalist party was so enraged that the new, Federalist-controlled Massachusetts Legislature, which met at the end of May, 1808, recalled Adams by electing James Lloyd, Jr., to replace him in the Senate.²¹

The Federalists in Congress needed a rallying point for their party and their section, and yet, when the embargo on shipping passed, they raised only a small cry. The measure, while pending in Congress, had been discussed in secret because the Republican members felt that if the provisions of the bill became known in the commercial states, the people would rush to the sea with "every plank that would float" in order to escape the restrictions.²² The resistance encountered from the few Federalist members of Congress had little effect upon the heavy Republican majority. The Federalists made an effort to delay passage of the bill and thereby defeat its purpose, but it passed the Senate by a vote of twenty-two to six²³ and the House by a vote of eighty-two to forty-four.²⁴ When Jefferson signed the bill on December 22, 1807,

²⁰Ford, Writings of John Quincy Adams, III, 168-89; also, Samuel Flagg Bemis, John Quincy Adams and the Foundations of American Foreign Policy (New York, 1949), p. 143.

²¹Bemis, p. 149.

²²Ford, Writings of John Quincy Adams, III, 225.

²³Annals, 10th Congress, 1st Session, p. 51.

²⁴Ibid., pp. 1221-1222.

congressional opposition of the Federalists died because most New Englanders approved the measure.

Immediately following the passage of the Embargo Act, the Republicans in the Massachusetts Legislature pushed through a resolution favoring the act because it was intended to bring peace to the country.²⁵ Even a staunch Federalist newspaper, the Connecticut Courant of Hartford, approved the bill, saying:

Under such circumstances, the best to be done is what had been done; a dignified retirement within ourselves; a watchful preservation of our resources; and a demonstration to the world that we possess a virtue and a patriotism which can take any shape that will best suit the occasion.²⁶

Charles C. Pinckney, the Federalist candidate for President in both 1804 and 1808, favored the embargo, although leading Federalists who saw the measure as a source of future conflict with the Republicans tried to conceal the fact.²⁷ Even George Cabot admired Jefferson's sternness in dealing with the situation.²⁸

Despite some early favorable impressions the embargo created among various Federalists, discontent arose among

²⁵Dice Robins Anderson, William Branch Giles (Menasha, 1915), p. 128; also, Herman Ames, State Documents on Federal Relations, p. 26.

²⁶Hartford, Connecticut Courant, January 13, 1808.

²⁷William Story, editor, Life and Letters of Joseph Story, II (Boston, 1851), 175.

²⁸Lodge, p. 399.

the people. Leading Federalists such as George Cabot saw the inevitable suffering the commercial cities must undergo because of the act. "The embargo brings greater immediate distress on us than war," said Cabot, "though the latter would finally bring ruin." While many merchants at first expressed favorable opinions of the measure, they soon changed their minds as they saw their pocketbooks becoming thinner. Ships lay at anchor, goods remained on the docks, and money became scarce. Commercial interests soon began to hate the measure they once supported. By June, 1808, public opinion in New England had completely shifted, and Cabot wrote, "The truth is no man likes the embargo, and nineteen in twenty detest it."²⁹

John Quincy Adams, despite the treatment handed him, attempted to soothe the harsh feelings of the Federalists toward the act. He calmly reminded Cabot, Harrison Gray Otis, and others that the embargo was a measure that could be rescinded at any time and was always under the control of Congress. At the time of its passage, the act was intended as a measure of defense and experiment. If it proved to be ineffectual, Congress could revoke it in a day. The Federalists should at least give the people time to judge the effectiveness of the act before condemning it.³⁰

²⁹Ibid., p. 376.

³⁰Ford, Writings of John Quincy Adams, III, 200.

Adams failed to convince the measure's critics, and they continued their attacks. It was not long until he received a reply to his defense of the act. Josiah Quincy, Federalist member of the House from Massachusetts, claimed the object of the embargo was not temporary but permanent, intended by the Republicans as a measure of retaliation upon the European powers. To Quincy, "permanent" meant only a year or two, but he believed that this span of time without commercial intercourse would destroy commerce. It appeared to him that the Republicans went beyond reason in the matter and cared little for the sufferings of New Englanders.³¹

As commercial activity worsened because of the embargo, alarm spread throughout the New England states. With commerce dying, the people suddenly saw the mistake they had made in favoring the bill. The measure now appeared to the people "without sufficient motive, without a legitimate object," and the only alternative was repeal.³² John Lowell, rising to the call of his friends, claimed that Congress had not possessed the constitutional right to pass the embargo, so repeal was not necessary since the measure was unlawful. The Constitution stated, "Congress shall have the power to regulate commerce," but Lowell said this did not mean Congress had a right to annihilate commerce, which is exactly what the

³¹Story, II, 165.

³²Hartford, Connecticut Courant, March 23, 1808.

Republicans intended by instituting a perpetual embargo. The states need not obey such an unconstitutional law.³³ At the time, Lowell's nullification theory found little enthusiasm among the Federalists, although it was not long until he was joined in this position by others of his party.

As the battle lines formed, Massachusetts once again took the lead, even though the legislature of the state (General Court) was ruled by a Republican majority. Of all the New England states, she had led the commercial world before the embargo, and as a result, she suffered most from the act. Since she supplied one-third of the nation's tonnage, she believed that her voice in the matter should carry a proportionate weight. The reasons for imposing the embargo--to protect shipping from British and French depredations--was a mockery because American shipping suffered more from the embargo than that of the belligerents.³⁴

The people of the state began to assemble in town meetings to complain of the embargo. In March, 1808, the people of Northhampton gathered to condemn the measure, and they also recommended similar meetings throughout the rest of New England for the same purpose. In New Hampshire the Republicans began to lose ground over the measure, and the Federalists

³³Lowell, p. 95.

³⁴Ibid., p. 96.

quickly took advantage of the situation.³⁵ Since all of New England suffered the rigors of the embargo, people of all social classes participated in these meetings, and in some towns the voting was almost unanimously in favor of condemning the act. Usually these towns drew up a petition and then asked other towns within their county to join them, and together they forwarded it to Congress.³⁶

These town meetings and petitions finally inspired the Massachusetts Legislature in June, 1808, to question the constitutionality of the embargo. It did so in a report on these petitions. The report began by saying that if the government had been truly informed of the serious effect of the measure, the act would have been repealed long ago. The legislature recognized that the government intended the measure to operate against a common enemy, but it never expected the complete annihilation of commerce to be the only effective measure employed. While New England always intended to live under the compact of states, she refused to surrender her rights in order to maintain the Union. The right to carry on commerce was one of those rights. The commerce of New England furnished the country with its total

³⁵Steiner, p. 546.

³⁶Samuel E. Morison, Life and Letters of Harrison Gray Otis, I (Boston, 1913), 333.

revenue and gave "vigor and energy to the government."³⁷ Commerce benefited every section of the country and all classes of people. Since it had been so productive, a portion of revenue should have been set aside for the protection of shipping, and there would have been no need for the embargo. When commerce had been attacked by the belligerents, the country should have risen to its defense rather than passing restrictive and destructive measures. A timid government allowed United States commerce to be pushed from the seas and trade to be paralyzed.

In reviewing the constitutionality of the act, the report stated that the people had judged the situation and discovered that the primary motive for the compact between the states had been neglected by the "Southerners." New England's most important interests were sacrificed and their rights violated. All this had been done in the name of preservation of national rights, yet a more fearsome prospect loomed over the horizon. If the act were not repealed, war with Great Britain might soon be upon the nation. Of course, the people of Massachusetts stood ready to defend their country with their lives, but they looked with dismay upon an unwanted and thoughtlessly provoked war. The report suggested

³⁷William Sullivan, Familiar Letters on Public Characters, and Public Events From the Peace of 1783, to the Peace of 1815 (Boston, 1834), p. 435.

that more sincere conciliatory talks with Great Britain might alleviate the situation.³⁸

When the people of Massachusetts helped to establish the Constitution, said the report, they saw fit to set forth certain fundamental principles that constituted a free government. These principles had been violated or disregarded.³⁹ "Thus the laws which regulate the use and enjoyment of our property, instead of being standing and permanent, may be as mutable and uncertain as the whim of an executive officer can render them."⁴⁰ Laws could be bent from day to day to fit the needs of the government rather than the needs of the people. What was allowable for one citizen was a crime for another.

The Massachusetts report then accused the federal government of violating a state law. The eleventh article of the Massachusetts Declaration of Rights declared that every citizen had recourse to laws for all injuries and wrongs inflicted upon his property or person. But an official enforcing the embargo need only show the instructions from the President for justification or defense. Therefore, the remedy of the situation lay not in public courts but in the will of the executive. The Constitution also prohibited unreasonable searches and seizures of citizens or their

³⁸Ibid., pp. 435-36.

³⁹Ibid., p. 436.

⁴⁰Ibid., pp. 436-37.

property, but the Embargo Act authorized officials to seize any property on its way to foreign territory. The official could detain any property or merchandise until he received a bond, and he used his discretion as to the amount to be paid.⁴¹

The report closed with several resolves, the first of which called the embargo unjust, oppressive, and unconstitutional and not legally binding on the citizens. Notwithstanding this, the legislature recommended restraint from forcible resistance. The remedy must be a peaceful one. The General Court also decided to send a suitable remonstrance to Congress complaining of the act and stating that Massachusetts stood ready to cooperate actively with any other state legislatures in all legal and constitutional means to correct the situation. The best solution seemed to be a constitutional amendment for the protection of commerce and to give the commercial states their "fair and just consideration in the government of the Union."⁴²

This report attacked the right of the federal government to interfere with the state governments. With the commerce of the New England states at the mercy of the federal government, they needed a point of attack to regroup their forces, and they found one in states' rights. While they

⁴¹Statutes at Large, II, 453.

⁴²Ibid., p. 439.

agreed that the government possessed the right to regulate commerce, they refused to accept the right of the government to destroy it. They found within the act sections that they claimed violated the Constitution, which made the entire act illegal. Therefore, the people were not bound to follow the Embargo Act. The General Court attempted in this report to nullify a federal law, although it refused to resort to violence to uphold their ideas. It first needed support from other states before it could consider the threat of force.

John Quincy Adams, now a Republican, recognized the danger in this approach to the problem. He felt that a state legislature had the right to express its wishes to Congress and the chief executive, but when it did so, it should first take a long and impartial view of the whole subject. "The interposition of one or more State legislatures," said Adams, "to control the exercise of the powers vested by the general Constitution in the Congress of the United States, is at least of questionable policy." The views of the state legislature would of necessity be limited to a considerable degree in the "particular interests of the State." If the commercial states could impose their will on one hand, the southern states could impose their will on the other. Under these conditions, the sections would turn against each other and anarchy would follow.⁴³

⁴³Ford, Writings of John Quincy Adams, III, 192.

Angry Federalists refused to accept Adams' advice. Timothy Pickering told his friends to look to the Constitution, where lay the answer to New England's problems. The Tenth Amendment to the Constitution clearly gave to the states all powers not reserved to the federal government. Pickering asked, "How are the powers reserved to the States respectively, or to the people, to be maintained, but by the respective States judging for themselves and putting their negative on the usurpations of the general government?"⁴⁴ He had joined Lowell in advocating nullification of federal laws by the states.

The federal government found it difficult to enforce the Embargo Act in New England, and smuggling was common practice among many people of that area. On January 9, 1809, Congress passed the Enforcement Act, which supposedly put teeth into the embargo measure by allowing the state militias to help government officials.⁴⁵ The Federalists considered this act to be a step toward tyranny. William Sullivan, the oft-quoted Federalist author, said, "If Congress enacted that Thomas Jefferson may lawfully do any thing he may choose to do, to annihilate commerce, and to strip every citizen of his last shilling, who does not submit to his will, it would not have

⁴⁴ Adams, New England Federalism, p. 378.

⁴⁵ Statutes at Large, II, 506.

been a more real despotism."⁴⁶ In the Massachusetts legislature one member rose to make a resolution asking the people of the state to rally round a resistance movement aimed at the overthrow of the hated acts. He did add that the overthrow should be accomplished by peaceful and constitutional means.⁴⁷

By 1809 the Massachusetts legislature once again contained a Federalist majority, but because of the recent death of the governor, James Sullivan, Levi Lincoln had taken office, and Lincoln was a Republican. When the General Court re-assembled in January, Lincoln opened the session with a speech condemning the agitation against the Embargo and Enforcement Acts, claiming that the town meetings had seditiously attacked the measures. He suggested certain restrictions be put upon the press to silence their remarks concerning the measure.⁴⁸ He used little tact in facing the hostile audience, and his ears soon burned from the replies of both branches of the state legislature.

The state senate replied first. The members understood the difference between the Constitution and the administration, which Lincoln claimed they did not, and they were firmly attached to the former. They had no intention of abandoning the union, as many Republicans charged. Since the government

⁴⁶Sullivan, p. 263.

⁴⁷Ibid.

⁴⁸Ames, State Documents on Federal Relations, p. 26.

of the Union was a confederation of "equal and independent states with limited powers," they believed the states had a right to question with moderation the methods and motives of those responsible for conducting the affairs of the nation.⁴⁹ The people elected the members of the state legislature to defend their rights and not to surrender them. The legislature had no intention of dispensing with these duties. It must therefore question the government in this matter, since the acts threatened the liberty and livelihood of the people of the state. Both the people and the legislature wished to make clear to the federal government that they would not "cling to an administration that had brought them to the brink of destruction," and they refused to take part in a fruitless experiment.⁵⁰

The reply of the house arrived the same day as the senate's. Calling for unity, the lower chamber refused to believe that any division existed among the New England states on this matter, since basic liberties guaranteed by the Constitution were at stake. No one could seriously damage the Union, as Governor Lincoln implied, by opposing acts that were unconstitutional. Lincoln, in his speech, referred to certain leading Federalists in New England who planned secession, but the house denied any knowledge of the fact. The only place such a fact existed was in the minds of

⁴⁹Ibid., p. 28.

⁵⁰Ibid., p. 29.

the Republicans, who conceived it to hide the results of their despotism, which had driven the people of Massachusetts to desperation. Despite their present condition, the people of the state remained loyal to the Union. But the states had a right to question the constitutionality of the act, even though it had been passed by Congress, and at no point, as Lincoln claimed, must debate end. The government had been formed by the people to protect them. "Whenever his [the citizen's] liberty is infringed," said the house, "his rights violated or unprotected, if not absolved from his allegiance, he may demand redress, and take all lawful measures to obtain it."⁵¹ The Federalists made it clear that they intended to fight the Embargo and Enforcement Acts with everything they had. Attacked by Governor Lincoln in strong terms, they replied in equally strong terms, making sure their opponent understood that the rights of the states were involved in the argument.

Soon after the Enforcement Act had passed Congress, the Administration asked for help from the states to enforce it. Without the aid of the states, the measure would undoubtedly fail, since the federal government did not possess the strength to do the job. On January 18, 1809, Henry Dearborn, the Secretary of War, wrote to Governor Trumbull of Connecticut asking for help. He pointed out to the Governor that all the

⁵¹Ibid., pp. 30-31.

citizens felt the pressure of the embargo, yet most people believed this temporary measure necessary to avoid the rigors of war. However, the measure would have been more cheerfully received by honest men who observed the law had not unprincipled men along the coast fraudulently evaded the act. In some areas these thieves openly broke the law by armed force, opposing the collector. To end this, Congress had passed the Enforcement Act, which "empowered persons to employ militia for preventing or suppressing armed or riotous assemblages of persons resisting the custom-house officers in the exercise of their duties, or of opposing or violating the embargo laws." The President had directed Dearborn to appoint well-known militia officers who favored or respected the law to assist the collectors in each port of entry.⁵² With Governor Trumbull's help, he planned to do this first in Connecticut.

On February 4, Henry Dearborn received his answer from Governor Trumbull and the state legislature of Connecticut.

I have reflected that neither the constitution, nor statutes of this state [said Trumbull], have given the commander-in-chief of its militia, any authority to make such appointment of officers as has been requested; nor does my information suggest to me, any authority given to the president of the United States, derived either from the constitution or laws of the United States, to call upon the executive of an individual state to take an agency in appointments, such as are contemplated by the request mentioned.

⁵²American Register, 1809 (Philadelphia, 1809), p. 177.

He and a great many people of his state believed the Enforcement Act was unconstitutional in many of its provisions. It interfered with the sovereignty of the states and the guaranteed immunities, privileges, and rights of the citizens of the nation. For these reasons, he felt it "highly improper for a state executive to contribute his volunteer aid in support of laws bearing such an aspect."⁵³ He stated that he had been given a responsibility by the people, which he would not risk by placing a dangerous power in the hands of men in whom he lacked the fullest confidence. In closing, Trumbull submitted his remarks to the house for approval.⁵⁴

The house agreed with the Governor, saying that upon investigating the Embargo and Enforcement Acts, it discovered them to have exceeded the powers delegated to the federal government. Encroachments had been made upon the powers of the state governments, and it therefore became the duty of the officers of the states to withhold their aid in carrying the laws into effect. Under these circumstances the legislature passed several resolves aimed at curtailing the power of the federal government. The first resolution pledged the Connecticut Legislature to watch faithfully for any encroachments by the federal government into the powers reserved to the states. Acts that violated this principle would find no assistance from the legislature. The second

⁵³ Ibid., p. 178.

⁵⁴ Ibid., pp. 178-79.

resolve approved wholeheartedly the conduct of Governor Trumbull in his reply to Henry Dearborn, while the third forbade the Governor to allow the militia of the state to participate in enforcing the Embargo Act. Since these resolves accorded with the feelings of the legislature of Massachusetts, the house advised that Massachusetts and other New England states be approached on the subject of joint action against the measures.⁵⁵ The replies from the Governor and Connecticut House soon produced a flood of remonstrances and replies.

On February 15, 1809, came the answer from the Massachusetts General Court. It concurred with Connecticut that the oppressive acts were unconstitutional and infringed upon the rights of the states and the liberties of the people. "While this state maintains its sovereignty and independence," said the legislature, "all citizens can find protection against outrage and injustice in the strong arm of the state government." This being the case, forcible resistance to the acts by individuals was unnecessary and inexpedient, and it would endanger public peace. The legislature recommended peaceful means as a solution until all non-violent alternatives had been exhausted. It then passed several customary resolves, the first of which called the acts intolerable, oppressive, and unconstitutional, and therefore not binding on the citizens of Massachusetts. Using this report as a

⁵⁵Ibid., pp. 179-80.

basis, the legislature decided to forward a remonstrance to Congress and the President.⁵⁶

After a brief struggle in the state legislature, the Massachusetts Federalists managed to pass the remonstrance aimed at the Embargo and Enforcement Acts.⁵⁷ Rumors circulated through the nation that violence pended in Massachusetts and other New England states because of the unrest over the acts. The General Court denied the validity of the rumors. However, the citizens of the state stood firm on their rights, although they believed a peaceful solution could be found to the problem. Various petitions had been submitted from different parts of the state to Congress, but little response to them had been noted, and it pained the legislators to see the failure of repeated attempts to communicate the sufferings of the people to the leaders of the nation. Rather than relaxing the measures, these national leaders had seen fit on January 9 to pass the Enforcement Act, which if continued would prove harmful to public liberties. The remonstrance concluded by apologizing for the method employed in criticizing the government, but the situation demanded drastic steps.⁵⁸

⁵⁶Herman Ames, State Documents on Federal Relations, pp. 34-35.

⁵⁷American Register, 1809, p. 202. The vote on this measure was not given.

The little state of Delaware, the only Federalist-controlled state outside of New England, fell in line with her companions. She too passed a series of resolves aimed at the two acts. The Delaware legislature disapproved of the administration's policy, which brought ruin to so many of her citizens and showed partiality toward France in the present world crisis. The people of the United States had a right to navigate the seas and to participate in foreign trade, and the embargo denied these rights. Added to this, the Enforcement Act was a clear violation of the liberty of the people and a constitutional violation of the sovereignty of the state governments. If the President were allowed to gain control of the 50,000 militiamen to enforce the embargo, the government would be overreaching its authority. Despite the seriousness of the situation, the Delaware Legislature also pleaded for a peaceful remedy to the situation and a resort to constitutional means to redress all wrongs.⁵⁹

On February 23 the state that began the current landslide of replies and remonstrances spoke up once again. A special session of the Connecticut Legislature assembled, and Governor Trumbull made an opening speech in which he publicly attacked for a second time the Embargo and Enforcement Acts, claiming they would endanger the peace of the nation. He suggested that, in the future, state governments should often

⁵⁹Herman Ames, State Documents on Federal Relations, p. 37.

consider the powers delegated to the federal government in an effort to keep those powers delegated to the states safe and free. This would eliminate such errors as the present acts under consideration.⁶⁰ Whenever the national government dangerously imposed its authority, it became the duty of the states to interpose "their protecting shield between the right and liberty of the people, and the assumed power of the General Government."⁶¹

Working with deliberate speed, the Connecticut Legislature managed to pass a set of resolutions the same day on which the special session opened and Trumbull delivered his speech. It also felt that in certain crises such as the present one the states should vigorously maintain the powers delegated to the states and the people. The regard for this duty would not permit the legislature to assist the unconstitutional act passed to enforce the embargo. It also approved the Governor's refusal to designate militia officers to aid in carrying out the provisions of the act. In direct opposition to the federal government, the legislators forbade any Connecticut officeholder to aid the enforcement of the acts. They agreed with the resolves of Massachusetts and pledged themselves to help their neighbor and any other

⁶⁰American Register, 1809, p. 176.

⁶¹Ibid., p. 177.

New England state in opposing the measure by constitutional means.⁶²

The last state to reply officially was Rhode Island, on March 4, 1809. The legislature of that state had received many petitions and memorials from various towns and cities within its borders, and in reply to these, it passed resolutions directed to the Congress and the President. What it feared most was the dissolution of the Union, which daily seemed more imminent due to the two hated acts. With brevity Rhode Island reached the climax of the argument in declaring the acts to be oppressive and unconstitutional, and in order to preserve the Union and support the Constitution, the legislature found it necessary to caution the federal government against usurpation and violation of "those powers and rights which the good people of this State have expressly reserved to themselves, and have ever refused to delegate."⁶³

The states that sent resolutions to Congress protesting the two acts wished to protect the rights and powers delegated to them by the Constitution. They felt the Embargo and Enforcement Acts to be a violation of these rights and unconstitutional, and they had a perfect right to complain

⁶²Herman Ames, State Documents on Federal Relations, pp. 41-42.

⁶³Ibid., pp. 43-44.

to the federal government. While opposing these measures by every legal means, the states continually advised against any hostile individual action until all peaceful means had been exploited, even though unconstitutional laws were not binding on the people. Yet, the resolves made one point clear. If peaceful means failed and there appeared no other way to end the dreaded acts, violence would be used. This was the last resort of the Federalists, but they would perform their duty as they saw necessary.

For a year the Federalists had presented the Republicans with constant opposition to the embargo, but not all the opposition appeared on the surface. While the states publicly made their positions known, certain prominent members of the party worked in secret. All the remonstrances and petitions assured the administration and the country of New England's undivided loyalty to the Union, even though New England opposed the Embargo and Enforcement Acts. But behind this facade, a small group of men actively worked for separation of the northern states from the Union and a formation of a northern confederacy. This was the same group of men who had worked so hard for the same end during the Louisiana crisis.

The first real knowledge of this secession plot came to the Republicans through John Quincy Adams, who called upon President Jefferson in March, 1808, to discuss measures

for the repeal of the embargo. He informed Jefferson of the restlessness of certain unnamed Federalist leaders who would do anything in order to rid themselves of the embargo. The first step in the plans of these men was to persuade the northern states to withdraw their aid and obedience from the federal government without actually withdrawing from the Union. Apparently these men had already been in contact with the British, who had given their consent to the maneuver. Once this had been accomplished, the northern states would be considered neutrals by the British and would once again enjoy the freedom of the seas. Once the war ended, the northern states would be free to rejoin the Union if they wished. Adams assured Jefferson that this threat was real and that something needed to be done immediately about the embargo, but Jefferson failed to heed Adams' advice.⁶⁴

While Republican members of Congress considered reinforcing the embargo with supplementary acts, they wrote to Adams to solicit his opinion on the subject. He replied that due to the unpopularity of the embargo in New England the embargo should be dropped in favor of a non-intercourse substitute. In giving his reasons for the suggestion, he referred to the undercurrent of separatism that was floating through the Federalist party. A continuation of the embargo would only give strength to the radicals of the party and might even

⁶⁴ Adams, New England Federalism, p. 12.

produce a civil war.⁶⁵ The plan had even matured so far in Federalist circles that a proposal had been made to a certain unnamed individual to be placed at the head of a military movement designed to accomplish separation.⁶⁶ The majority of the Federalist party knew nothing of the existence of these designs, but Adams feared that effective propaganda might sway the bulk of the party behind the radicals.⁶⁷ But before the leaders of the conspiracy could hope to succeed in their plans, two requirements had to be met: first, an act or acts of Congress that could be considered unconstitutional and successfully resisted under such a charge; and second, "a state of excitement among the people of one or more states of the Union, sufficiently inflamed to produce acts of the State legislatures conflicting with the acts of Congress." Resolutions passed by the state legislatures condemning congressional acts would be the first step toward disunion.⁶⁸ Both of these requirements had been met during the first three months of 1809, when the Enforcement Act passed Congress and various New England state legislatures replied in hostile terms. Adams' dissention with the Federalist leaders finally caused him to lose his Senate seat in March, 1808, the same month in which he informed Jefferson of the disunion plot.⁶⁹

⁶⁵Ibid., p. 25.

⁶⁶Ibid., p. 52.

⁶⁷Ibid., p. 47.

⁶⁸Ibid., p. 58.

⁶⁹Ibid., p. 25.

Adams was too much a Unionist to allow sectional prejudices to disrupt the Union, and so he chose to fight the separation movement within his state.

The disunion movement, while not highly organized, found sympathetic and interested people throughout the party. Many people of New England were prepared to co-operate with the "Headquarters of Good Principles" in order to lead them from the distress they felt from the hated acts.⁷⁰ Timothy Pickering, who figured prominently in disunion movements from 1803 to 1815, wished to unite New England regardless of the desired object, although he hoped for separation. He wished the New England states to call a special convention to consider the stand the states should take upon the acts passed by the federal government.⁷¹ If the convention had a semblance of legal authority, perhaps the people would more readily follow the lead that the convention offered. With the proper handling, the convention might advocate secession.

Pickering was a member of the Essex Junto, a political group so named because the original members came from Essex County, Massachusetts. Republicans broadened the meaning to include those wealthy, mercantile Federalists who violently opposed the administration's policy. Other members included

⁷⁰Samuel E. Morison, Life and Letters of Harrison Gray Otis, I (Boston, 1913), 334.

⁷¹Adams, New England Federalism, p. 377.

Fisher Ames, George Cabot, Francis Dana, Nathan Dane, Benjamin Goodhue, Stephen Higginson, Johnathan Jackson, John Lowell, Theophilus Parsons, Israel Thorndike, and Nathaniel Tracy. While the group contained several leaders of the Federal party, it was very unorganized.⁷² In 1808-09 the disunion sentiment found its center in these men, especially Cabot and Pickering. If the embargo continued, they planned to campaign for support from the farmers in an attempt to swing enough support for separation. They felt they already had the support of the merchants. The only danger to their plan rested with Jefferson and Congress who might substitute a non-intercourse bill for the embargo, and the mitigation of the restraints would cause less discontent among the people.⁷³ As things stood, the majority of the people of New England might back a move for separation if Congress did nothing.⁷⁴ Relying upon this mood of the people, Pickering and others of the Essex Junto approached the British with an attractive offer. If a war occurred between the United States and Great Britain, the Federalists would attempt to break New England away from the Union and enter into a defensive and offensive alliance with the mother country.⁷⁵

⁷²David H. Fischer, "The Myth of the Essex Junto," William and Mary Quarterly, XXI (April, 1964), 193.

⁷³Story, p. 174.

⁷⁴Ibid., p. 182.

⁷⁵Adams, New England Federalism, p. 20.

Pickering had to wait for his war. On March 1, 1809, Congress substituted the Non-Intercourse Act for the embargo and thus destroyed his immediate hope of secession, but his desire did not die and was easily rekindled when the War of 1812 began. The Non-Intercourse Act was met by many Federalists with the same scorn shown the embargo. John Lowell believed the new measure to be in the same hostile spirit toward Great Britain. It was intended only as a blind to hide the failure of its predecessor.⁷⁶ Despite the cynical attitude of certain Federalists such as Lowell, the new act loosened tensions throughout New England, where many seriously believed that Jefferson intended to destroy commerce. The radicals momentarily lost their chance for separation from the Union, and it was not until three years later that another opportunity came their way.

⁷⁶Lowell, p. 22.

CHAPTER IV

THE WAR OF 1812 AND STATES' RIGHTS

As relations between Great Britain and the United States steadily worsened, the Federalists became worried that war might occur. Feeling that the Republicans, who favored the French over the British in the struggle between the two countries, were deliberately preparing for war, the Federalists began to attack the administration--ruled by the Virginia dynasty--in vigorous terms. The South again became a tyrant bent upon usurping all political power in the country for the benefit of that section. Stephen Higginson said, "Having the command of men money and Ships, the northern and middle states will not long submit to the domination of the Southern."¹ When war clouds began to gather in 1811, the Federalists, who had always favored the British, claimed the administration's policy was pushing the country into war. New Englanders realized the danger to their commerce if war broke out, so it was only natural that they felt the need to protest. Their pocketbooks demanded it.

¹"Letters of Stephen Higginson" (author not given), Annual Report of the American Historical Society for the Year 1896, I (Washington, 1894), 838.

The fear that the Republicans might gain political propaganda by the close association of the Federalist party with the British led the Federalists to adopt a mild course toward the administration's policy concerning defensive measures for the country. The Federalist members of Congress even voted in January, 1812, for measures to strengthen the army and navy in order to show that they harbored no partialities toward the British.² Despite this conciliatory mood on the part of the Federalists, Madison found himself either unwilling or unable to make use of it. In March, 1812, he accused the New England Federalists of treason, and to prove his point, he laid before Congress the Henry letters, which supposedly proved collaboration between the British and the Federalists in certain separation schemes.³ John Henry, an Irish adventurer who had been a British agent but deserted that side when the Perceval ministry refused him remuneration for his services, sold President Madison certain documents for 50,000 dollars. These documents revealed that in 1809 Henry had been sent by

²Elizabeth Donnan, editor, Papers of James A. Bayard, 1796-1815, Vol. II of Annual Report of the American Historical Association for 1913 (Washington, 1915), 188; Norman K. Risjord, The Old Republicans (New York, 1965), p. 133 says that "the primary purpose of the Federalists was apparently to embarrass the administration, and a few even felt a short war worthwhile if it served to turn the Republicans out of office." However, Risjord gives no primary evidence to support this statement.

³Richardson, I, 498.

Sir James Craig, the British Governor of Canada, to contact leading Federalists concerning possible separatist movements in New England. Henry gave the impression in his letters that the Massachusetts Legislature in case of war would lead the northern states in withdrawing from the Union, but he failed to give specific names. Also, Henry's conduct in certain disreputable establishments while in Boston under British orders led many to doubt the truth of his assertions. As an exposé of Federalist plans to separate from the Union, the Henry letters failed, and by using them, Madison failed to endear himself to the people of New England.⁴

On June 1, 1812, the President sent to the House his war message, but the war did not become official until the 18th of June, when the Senate formally adopted the measure. On June 26 the Federalist minority of the House protested to their constituents that "the right of debate" had been denied the representatives and that "the doors of Congress were shut to the people." The administration had kept the public in "ignorance of the progress of the measures, until the purposes of the administration were consummated, and the fate of the country sealed."⁵ Before the declaration of war became final, the legislature of Massachusetts passed a resolution

⁴Schouler, II, 82-83.

⁵Theodore Dwight, History of the Hartford Convention (New York, 1833), pp. 236-37.

in which it complained that an offensive war against the British would "be impolitic, unnecessary, and ruinous," and that the people of Massachusetts opposed any war at present. The resolution specifically pointed to the damage to commerce that the war would bring.⁶

Timothy Pickering explained the war from a purely sectional point of view. He saw both French influence and corruption of officials of the administration as leading factors in the drift toward war.⁷ However, he believed that the declaration of war would bring the people of New England to their senses and show them that the present administration must be changed.⁸ He preferred to keep the Union together, but he "would not be deluded by a word." To his ears, the sound of Union held no magic when the "objects of union are utterly abandoned." If the southern and western states sacrificed the interests of New England, the Union should be severed.⁹

More moderate Federalists such as John Jay cautioned against precipitate action. He agreed that the declaration of war was unnecessary and wrong and that protests should be made on both an individual and collective basis. He suggested

⁶U. S., American State Papers, XXXVIII, Miscellaneous, II (Washington, 1834), 186.

⁷Adams, New England Federalism (Boston, 1905), p. 388.

⁸Ibid., pp. 388-89.

⁹Ibid., p. 389.

"temperate and decent" town meetings because, he said, "We cannot catch flies with vinegar."¹⁰ Whether radical or moderate, the Federalists viewed the war as a definite affront by the administration to their prosperity.

The Massachusetts Legislature took the lead in protesting officially against the war. On June 28 it submitted to the United States Senate a remonstrance protesting the war and also the formation of new states not within the limits of the United States at the time of independence. The remonstrance stated that when the privileges guaranteed in the Constitution were threatened, the states must protect themselves. The petitions of the people of Massachusetts had not been well received, hitherto, by the federal government, but the people hoped that conditions of this sort would improve. The national legislature needed "to allay the apprehensions, and restore the confidence of the Eastern and commercial States." These people had been driven from "a happy and prosperous condition" by measures of an administration which showed open hostility to the rights of commerce.¹¹ Massachusetts complained about the admission of new states that would be created from the Louisiana Purchase, which the legislature frankly admitted

¹⁰Henry P. Johnson, editor, The Correspondence and Public Papers of John Jay, II (New York, 1893), 360-61.

¹¹Annals, 13th Congress, 1st Session, p. 333.

would destroy New England's political power.¹² Massachusetts, still the stronghold of Federalist power, reasserted with this remonstrance its leadership of the New England states against the rest of the nation in the battle for states' rights.

This protest stirred bitter debate in Congress, where Robert Wright, Republican from Maryland, called it "treasonable in its language."¹³ William Baylies, Federalist representative of Massachusetts, answered by saying that treason was nowhere evident in the memorial. The Massachusetts General Court had only availed itself of the right of petitioning the government as granted in the Constitution. Baylies also said that the people of his state, suffering under the present war, agreed in general with the memorial.¹⁴ The motion to print the memorial passed the House by a unanimous vote.¹⁵ Apparently the Republicans wished to get the statements of the Federalists in print and before the nation where they could be easily assailed. The Federalists, in a bad move on their part, simply failed to realize the effect this might have on the attitude of the rest of the country, wishing only to register a strong and threatening protest. John Quincy Adams,

¹²Ibid., p. 338. In 1812 the only state that had been carved from the Louisiana Purchase and admitted to the Union was Louisiana.

¹³Ibid., p. 348.

¹⁴Ibid., p. 349.

¹⁵Ibid.

former Federalist turned Republican, became convinced that Federalists in general plotted disunion and that civil war loomed near.¹⁶ Adams was close to the mark. In September, 1812, Rufus King reported that New England leaders talked openly of dissolving the Union, making a separate peace with Great Britain, and opening New England ports to all nations.¹⁷

April 10, 1812, saw the passage of the militia act, which allowed the President to call up the militia from the states and incorporate it into the jurisdiction of the regular army by placing regular army officers in command. Controversy raged over this act for the next two years, with the Federalists taking a strong stand on states' rights. When General Henry Dearborn, senior officer of the United States, requested militia from the New England states, the Federalists met him with stiff opposition. The Connecticut Legislature replied first with an attack on the constitutionality of the measure, saying that the Constitution allowed Congress to call "forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions." Since none of these exigencies "recognized by the constitution and laws of the United States" existed at the time, the militia could not

¹⁶Donnan, II, 448.

¹⁷Charles R. King, editor, The Life and Correspondence of Rufus King, V (New York, 1898), 345.

be withdrawn from the Governor who was commander-in-chief.¹⁸ Also, the Constitution provided that the officers of the militia would be appointed by the states, not the federal government. If the government appointed the officers of the militia, the military power of the individual states would eventually be destroyed, since the states would lose all control over the militia. With these arguments in mind, the legislature advised Governor John Cotton Smith to refuse the request of General Dearborn.¹⁹ Connecticut, seeing the possibility of losing power to the federal government, sacrificed the interests of the nation for her own interests.

Massachusetts also replied in strong terms to the government's request for militia. Governor Caleb Strong, upon receiving a request from Secretary of War William Eustis, claimed that the danger of invasion was not considerable and that the real reason for the request involved an offensive war against Canada. Since the Governor lacked authority "to call the militia into actual service" unless one of the emergencies existed, he asked the advice of his legislature on the question of General Dearborn's request for militia. The people, he claimed, appeared to be under no threat of invasion and did not wish for the militia to be called for their defense. With this in mind, the legislature agreed with

¹⁸Dwight, p. 246.

¹⁹Ibid., pp. 246-47.

the Governor that no emergency existed; therefore Massachusetts denied the government's request for militia. Since there appeared to be a question of law involved, the Governor and legislature requested the Supreme Court of the state to reply to two questions: (1) whether the commander-in-chief of the militia in each state (the governor) had a right to decide if an emergency existed that required the calling of the militia, and (2) if one of those emergencies did exist, could the militia be lawfully placed under the command of officers other than those appointed by the states?²⁰ The court answered that the constitution of Massachusetts vested the authority of commanding the militia in the Governor, who was to decide if the emergencies existed. Also, the court found that officers could only be appointed by the state and not by the federal government.²¹ Governor Strong added that he would give all the aid possible to measures of the national government that were allowed by the Constitution. He presumed that the government would not ask him to carry out unconstitutional measures.²²

In October, 1812, Governor Strong further attacked the federal government's request for militia. He declared that

²⁰American State Papers: Military Affairs, I (Washington, 1832), 323, 610-11.

²¹Ibid., pp. 324, 611.

²²Ibid., pp. 323, 611.

if the loose construction of the United States Constitution were upheld, the President and Congress could call the militia into service at any time by the simple act of declaring war. They could also maintain the militia in the service for an indefinite period and march them anywhere the administration desired.²³ Obviously Strong and the other Federalists saw that if the militia were marched out of a state, that state would be defenseless. However, since the United States had no large standing army, it by necessity had to rely on the militia as the main bulk of its fighting force. While the various southern and western states allowed the federal government to command their militia, the New England states remained antagonistic to any encroachment on their respective powers in that situation.

The question of the militia definitely became a matter of state sovereignty. Although control of the militia had been given to the states by the Constitution, it remained in Federalists' eyes one of the most essential powers delegated to the states. They feared that with a consolidation of military power by the federal government the security of the state governments would be seriously impaired.²⁴ The Constitution, which under Washington and Adams had been interpreted so loosely, became the rallying point for the

²³Dwight, p. 242.

²⁴Ibid., pp. 242-43.

Federalists, who by now had reverted to strict construction. Governor Strong aptly demonstrated this by his refusal to allow the militia to be called out by the federal government, a decision that he based on constitutional grounds.

In an effort to explain its action to the people of Massachusetts, the state legislature addressed a memorial to them on August 29, 1812. The language contained within it could not fail to convince Washington of the Federalists' true feelings. Capitalism motivated the petition. Massachusetts made her living by shipping, which was capital, and by destroying shipping, the government had prostrated her financially. The Federalists believed that the southern planter felt that any damage to American commerce was a remotely unimportant factor because he could ship his crops in foreign bottoms.²⁵ To show the government that New England, and especially Massachusetts, hated this attitude and the war, the memorial suggested that the people meet in town and county meetings to protest. It declared that when the government threatened to subvert the constitutional privileges of the people, the people must show their strength against such aggression.²⁶ Harrison Gray Otis, staunch Massachusetts Federalist, summed up their position when he

²⁵Ibid.

²⁶Ibid., pp. 418-19.

said, "On none but God and herself could Massachusetts rely for succour."²⁷

The question of the militia never seemed to solve itself or to be solved by anyone. The matter lay dormant for a little over two years until September, 1814, when General Dearborn again requested the militia troops of New England to be placed under his command.²⁸ The circumstances by this time had changed drastically. No longer did the United States face a possible invasion by the British, since the British invasion had already taken place. The city of Washington had been put to the torch earlier in the same year. But New England stubbornness persisted. Any talk of the militia question brought immediate response from the Federalists. The people of Connecticut even felt that the state legislature worked too slowly taking direct action against the encroachments of the federal government.²⁹

The Connecticut Legislature acted with due promptness, however, by passing in November of 1814 a resolution that adequately informed the federal government of the position of Connecticut Federalists. The resolution charged that the

²⁷Harrison Gray Otis, Otis' Letters in Defence of the Hartford Convention and the People of Massachusetts (Boston, 1824), p. 27.

²⁸Niles Register, VII, 113.

²⁹William E. Buckley, editor, "Letters of a Connecticut Federalist, 1814-1815." New England Quarterly, III (April, 1930), 321.

United States Government planned to enlarge the regular army by using the militia. The main objection to this plan centered upon the argument that it would leave the home states defenseless against any attack by the enemy.³⁰

In Congress a bill concerning the militia waited to be passed by the administration. This bill would deliver to the United States Government the control of all the militia of the states at a time when the defenses of the states needed that militia. The Connecticut resolution protested that "our sons, brothers, and friends, are made liable to be delivered against their will, and by force, to the marshals and recruiting officers of the United States, to be employed, not for our own defense, but for the conquest of Canada." It asserted that the militia bill offered proof that the federal government wished to subvert the "rights and liberties of the people" and "the freedom, sovereignty, and independence" of the New England states. Therefore, the Connecticut Federalists considered the measure inconsistent with the federal Constitution.³¹

The best and most precise attack on the government's militia bill came from Daniel Webster, who at that time was a Federalist representative from Portsmouth, New Hampshire. In December, 1814, Webster rose in the House to deliver the

³⁰Dwight, p. 336.

³¹Ibid.

speech that he had so carefully written beforehand. "I am confident," he said, "that the people would support almost any attack that should be made on the administration,"³² and with this in mind, he began his own assault. He asserted that the Constitution did not provide for the principles that were to be found in the militia bill. The government conceived the plan to force free men of the country into the ranks of the army to carry out that nefarious scheme of an offensive war. Yet, the Constitution plainly stated that the militia could be called into service for only three reasons--"to execute the laws of the union, suppress insurrections, and repel invasions"--and when one of these emergencies arose such as in the present circumstance, the federal government could only enact laws for organization and discipline. At this point, the legal authority of the government ceased.³³

. . . if the President should not march them into the provinces of England at the North [Canada], or of Spain on the South [Florida], it will not be because he is prohibited by any provision in this act. . . . The question is nothing less, than whether the most essential rights of personal liberty shall be surrendered, and despotism embraced in its worst form. . . . On the issue .³⁴ . I believe the fate of this Government may rest.³⁴

Webster had just begun to warm up to his task. In every quarter, he said, the protection that the federal government

³²Claude Van Tyne, editor, The Letters of Daniel Webster (New York, 1902), p. 54. This is a previously unpublished speech and does not appear in the Annals of Congress.

³³Ibid., p. 56.

³⁴Ibid.

claimed as the reason for the militia bill had been in most cases abandoned by the government and left to the individual states.³⁵ If the government wanted to invade Canada, the men of New England would not enlist. This militia bill would result in persons being taken by force to be put into the army and compelled to serve there for the duration of the war. For that matter, the government could require those chosen to serve for life, and they might be stationed at home or abroad and used for defense or invasion. This amounted to an attempt on the part of the government to establish a form of slavery.³⁶

In Webster's final comments he stated that the administration often alluded to the state of affairs in New England, but he denied that his section intended dissolving the Union. New England was "too wise to entertain such purposes." She still maintained recollections of the great benefits of union under a just and wise administration. Those who cried that the Union was in danger had themselves been the authors of that danger. New England alone favored the Union of states and endeavored "to maintain the principles of civil liberty in the country, and to preserve the spirit in which the Union was framed."³⁷ Let the administration beware! If the administration discovered it could not form

³⁵Ibid.

³⁶Ibid., p. 61.

³⁷Ibid., p. 68.

an army without the militia bill, it would also discover that it could not enforce the militia bill without an army.³⁸

Webster had responded to the call of New England sectionalism in his attack on the administration's militia bill, and in doing so, had concisely and adequately summed up the arguments of the Federalists on the issue.

On this particular bill, the House and Senate could not agree and so resolved into a Committee of the Whole, which was still unable to agree, laying the bill on the table on March 3, 1815.³⁹ As late as 1833, Theodore Dwight, the secretary of the Hartford Convention, stated that if New England had surrendered its militia when the requisition came from the administration, a precedent would have been established that one day might have destroyed the liberties of the country.⁴⁰

On December 9, 1813, President Madison introduced another problem for the Federalists. In a special message to Congress, he complained of commercial and navigational practices that favored the enemy. Essential supplies found their way to the British both in Canada and in the states.⁴¹ To remedy the situation, he suggested an embargo on exports to be

³⁸Ibid., pp. 67-68.

³⁹Annals, 13th Congress, 3rd Session, p. 1274.

⁴⁰Dwight, p. 250.

⁴¹Richardson, I, 540.

immediately enacted, the effect of which would shorten the duration of the war by depriving the enemy of indispensable goods. Madison felt certain that this measure would be met with "greater cheerfulness by all good citizens" who put the interests of their country first.⁴² Obviously the President intended the last statement as a slap at the Federalists who would be the first to complain against the measure that would put a halt to all shipping from the country.

The Embargo bill passed the House with very little debate two days after the message.⁴³ Just before it passed the Senate on December 16,⁴⁴ Stephen Mason of New Hampshire rose to attack the measure in behalf of the Federalist party. He believed it "to be pregnant with consequences the most pernicious to our country," especially since the government planned "to change the daily occupations, and destroy the means of subsistence, of a vast portion" of the population.⁴⁵ The government intended to destroy all commerce,⁴⁶ and when the people of New England realized this, they would then "disclaim all attachment to the Union."⁴⁷ Mason left no doubt that the interests of the people of New England came first. The following day Rufus King in the Senate also warned

⁴² Ibid., p. 541.

⁴³ Annals, 13th Congress, 2nd Session, p. 2053.

⁴⁴ Ibid., p. 561.

⁴⁵ Ibid., pp. 554-55.

⁴⁶ Ibid., p. 558.

⁴⁷ Ibid., p. 561.

that if the "Union ever be dissolved, it will not be for want of their [New England's] attachment to it, but because this government . . . discards them, and sacrifices their interest and their happiness, and turns protection into oppression."⁴⁸ Under the administration's interpretation of the Constitution, King charged that commerce would be destroyed and New England seamen would be driven into foreign service.⁴⁹

The most violent attack on the embargo came after the bill passed both houses. The Columbian Centinel in Boston began a regular column devoted to the measure. The Centinel feared for "the fate of our country and its liberty." The measure intended not to regulate but to destroy commerce, and it would prove to be "worse than useless for the objects of war" because it would destroy those resources that were necessary for war.⁵⁰

The Federalists saw Congress only as an agent of destruction. The "Slave representatives" gave the southern and western states a majority in the lower house, and the admission of senators from the new states had given them a majority in the Senate. The sections that now controlled Congress displayed open hostility to commerce, and they considered merchants "an inferior order of men who should not be allowed the full protection of the law." If the South

⁴⁸Ibid., p. 2056.

⁴⁹Ibid., p. 2057.

⁵⁰Boston, Columbian Centinel, January 26, 1814.

and West destroyed commerce (threatened the Centinel), then the population would separate. On this point, all those who loved Massachusetts and New England would unite since the question did not involve the war. The question revolved around the fact that the commerce of the section was controlled by a "body of men five hundred miles distant, and a majority of whom have an interest in destroying it."⁵¹ The Federalists felt unsure whether corruption, personal ambition, or French influence had inspired the embargo, but for whatever reason, the Centinel complained that the burdens that were imposed "are too grievous to be borne."⁵²

Against the embargo the Massachusetts Legislature received petitions almost daily that usually found their way into print in the columns of the Centinel. The petitioners also saw the same evils as their legislators. The southern and western states had violated the Constitution in their efforts to destroy commerce and reduce the power of New England in national affairs. These actions sprang from "at first an ill-concealed, but at last an open and undisguised jealousy of the wealth and power of the commercial states."⁵³

⁵¹Ibid., February 2, 1814.

⁵²Ibid., February 9, 1814.

⁵³Ibid., February 23, 1814. The petitions mentioned in the above paragraph can be found in various issues of the Centinel during January and February of 1814. The paper simply mentioned some while printing others in full.

The Federalist-dominated Massachusetts Legislature assigned a committee to report on the many petitions that had been received. The resulting report stated that the embargo was unconstitutional, a charge that had become standard Federalist procedure by this time. The Constitution had left to the states certain rights, and now the federal government proposed to interfere with state sovereignty. Whenever the federal government violated the compact of states by "cruel and unauthorized laws," as it had in this case, the Massachusetts General Court found itself forced to "interpose its power, and wrest from the oppressor his victim." However, for the present, the committee suggested that any hostile move on the part of the state would be inexpedient.⁵⁴ The Federalists managed to complain so loudly that the administration repealed the embargo in April, 1814, much to the relief of the New England states and especially Massachusetts, which relied heavily on commercial intercourse. The threat of nullification remained untested.

The petitions flooding the Massachusetts Legislature during the early part of 1814 constantly asked for a meeting of the New England states to be called by the legislature. When the militia question precipitated the most intense arguments between Federalists and the administration in the latter part of 1814, the General Court passed several

⁵⁴Ibid.

resolutions suggesting that Governor Strong communicate with the other New England legislatures. The resolutions called for a conference of delegates from these states to meet in order to discuss the dangers existing to the eastern section of the country. The delegates would devise practical plans of defense on a local scale and suggest amendments to the Constitution that would secure for New England equal advantage in the workings of the federal government. The resolution specifically stated that the delegates were to consider measures "not repugnant to their obligations as members of the Union."⁵⁵ The General Court, as soon as it delivered the measure to the Governor, passed another resolution appointing twelve of its own delegates to the convention, which was to be held at Hartford, Connecticut, December 15, 1814.⁵⁶ Hartford was obviously a good choice for a meeting place, since the administration and the nation at large considered Massachusetts the hotbed of separatism. Any meeting in a state so solidly controlled by the Federalists might automatically bring the cry of treason upon the convention before it even met.

Some of the more radical Federalists demanded direct action. Timothy Pickering wrote:

"Union" is the talisman of the dominant party; and many Federalists, enchanted by the magic sound, are alarmed at every appearance of opposition to the measures of the

⁵⁵Dwight, p. 343.

⁵⁶Ibid., p. 342.

faction, lest it should endanger the "Union." I have never entertained such fears. On the contrary . . . I have said, "Let the ship run aground. The shock will throw the present pilots overboard, and then competent navigators will get her once again afloat, and conduct her safely into port."⁵⁷

Pickering hoped the delegates would be ready to take the long-awaited drastic steps because faint-heartedness would be the ruin of New England.⁵⁸ When he heard that his friend, George Cabot of Massachusetts, had been elected president of the convention, he observed that Cabot was a man who felt the evil in the national government to be inherent in democracy and therefore incurable. But Cabot had been forced to take the job, and Pickering feared that his friend might be less radical than the situation demanded.⁵⁹ John Lowell also believed that Cabot had been reluctantly forced into accepting the responsibility of a delegate. Both Pickering and Lowell believed that Harrison Gray Otis, a legislator of Massachusetts and an important delegate to the convention, frequently wavered--"today bold, and tomorrow like a hare trembling at every breeze." Otis wished to initiate thorough measures, but a thousand fears restrained him.⁶⁰

When the Hartford Convention finally convened on December 15, the moderates controlled the votes. The next

⁵⁷ Adams, New England Federalism, pp. 400-401.

⁵⁸ Ibid., p. 405.

⁵⁹ Ibid., p. 406.

⁶⁰ Ibid., p. 411.

day Pickering wrote to James Hillhouse, a member of the convention from Connecticut, pleading for action because on every hand he could see "vice and presumptuous ignorance triumphing over wisdom and virtue" of Federalist principles. Federalists throughout New England looked to the convention for salvation, but to accomplish this, the delegates could not fear strong action against "the most imbecile of all governments."⁶¹

Only Massachusetts, Rhode Island, and Connecticut legislatures sent official delegates, while New Hampshire provided unofficial delegates from only two counties. One unofficial delegate appeared from Vermont.⁶² Years later, John Quincy Adams charged that since the convention lacked popular support of the people, it had no real legal basis.⁶³ The Massachusetts Federalists replied that if the citizens possessed the right to consult together for the common good and to redress grievances as stipulated in the Constitution, then there existed no prohibition against legislative assembly that represented the whole people. The sufferings of the people "could no longer be silently endured."⁶⁴

⁶¹ Ibid., p. 415.

⁶² Dwight, p. 351. The best secondary account of the Hartford Convention can be found in Samuel Eliot Morison, Life and Letters of Harrison Gray Otis, II (Boston, 1913), pp. 79-199.

⁶³ Adams, New England Federalism, p. 252.

⁶⁴ Ibid., p. 32.

Despite the harsh language, the delegates were "a collection of sedate, temperate, serious and . . . generally wise men" who pledged to do nothing that would not be approved by their Federalist friends in Washington.⁶⁵

The report that the Hartford Convention issued when it adjourned on January 5, 1815, included all the frustrations the Federalist party had sustained since the "revolution of 1800." The administration had practiced too many abuses under the loose construction of the Constitution, said the report, and necessity required the New England states to speak.⁶⁶ The Constitution, which had worked so well under the administrations of Washington and Adams, now seemed on the verge of failure because "of the lust and caprice of power, the corruption of patronage, the oppression of the weaker interests of the community by the stronger, heavy taxes, and wasteful expenditures and unjust and ruinous wars."⁶⁷

The report made a special effort to persuade the public that the Federalists intended no dissolution of the Union. If the Union needed to be dissolved because of the abuses of bad administrations, it should be done in quiet deliberation and peaceable times. A severance of the Union by one or more

⁶⁵Buckley, pp. 323-24.

⁶⁶Dwight, p. 353.

⁶⁷Ibid., p. 354.

of the states without the consent of the rest could be justified "only by absolute necessity."⁶⁸

The convention had been called to protest these abuses by the government, the most pressing of which was the authority that the government exercised over the militia.⁶⁹ The Constitution limited the control of the Executive and Congress over the militia, a control reserved to the states. The report did not deny that the President could call the militia into service (a fact denied by the more radical Federalists) when one of the constitutional emergencies existed. However, he did lack the power to appoint officers of the regular army to command the militia just as Congress lacked the right to enforce conscription. Otherwise, the national government could convert the whole militia into a standing army disposable at the President's will.⁷⁰ In this whole system for raising men, the convention perceived a total disregard for the Constitution and the individual states.⁷¹ In such cases of deliberate and dangerous violations of the Constitution which affected the sovereignty of the state and the liberties of the people, it became not only the right but the duty for the state "to interpose its authority for the protection, in the manner best calculated to secure that end."⁷²

⁶⁸Ibid., p. 355.

⁶⁹Ibid., p. 356.

⁷⁰Ibid., pp. 358-59.

⁷¹Ibid., p. 360.

⁷²Ibid., p. 361.

In other words, the states had a right to nullify federal laws that they felt were unconstitutional.

The convention, although not a radical body, passed several resolutions of which the first was definitely a radical measure. The delegates suggested that the legislatures of the states involved in the convention pass laws that would void or nullify any federal militia laws that the states felt unconstitutional. This applied to any forcible drafts of the militia.⁷³ In a more moderate tone it suggested that the legislators put forward several proposed amendments to the Constitution, which would give the New England states equal (at least to New England minds) representation in the voice of the national government. The Federalists wished to regain their lost political power, and they believed that if these amendments could be passed, they would be able to do so. The first amendment stipulated that no new state would be admitted to the Union without a concurring vote of at least two-thirds of both houses.⁷⁴ As states carved from the Louisiana Purchase would be admitted to the Union, Federalist power, concentrated in New England, would become less and less important in national affairs. To stop the degeneration of what little power still remained, they introduced this amendment. Another amendment prohibited Congress from laying an embargo for more than sixty days, an obvious attempt to

⁷³Ibid., p. 376.

⁷⁴Ibid., p. 377.

ensure a certain amount of stability in the commercial situation of the New England states during a time of war. Another amendment provided that no person could be elected to the office of President for more than one term and could not be from the same state as his predecessor.⁷⁵ The Federalists wished to ensure that never again would they be ruled by the "Virginia dynasty."

With these amendments and others, the Hartford Convention and Federalists in general hoped to regain some of their lost power by increasing the power of New England at the expense of the national government. The final resolution passed by the convention stated that if the demands of the convention failed to be met by the government, another (and more radical) meeting would be held at a later date, the delegates to be invested "with such powers and instructions as the exigency of a crisis so momentous may require."⁷⁶ The only topic that could result from another meeting would be dissolution of the Union, the battle cry of the radicals of the party.

The Hartford Convention acted too late. The three envoys--Harrison Gray Otis, Thomas H. Perkins, and William Sullivan--who were sent to Washington to deliver the ultimatum arrived after Jackson's victory at New Orleans and the signing of the Treaty of Ghent. As long as the war progressed

⁷⁵Ibid., p. 378.

⁷⁶Ibid.

badly for the United States, New England's threats carried power, but now, as far as the Federalists were concerned, the propitious time had passed. The Madison Administration pointed at the convention and shouted treason, and soon the people began to believe the charge. Perhaps the charge was not so groundless as the Federalists claimed. As early as November, 1814, Massachusetts sent an agent to Nova Scotia to negotiate a separate peace with the British. Governor Strong commissioned an unnamed agent to go to Halifax and see Sir John Sherbrooke, lieutenant governor of Nova Scotia. The proposals of the legislature were shown to Sherbrooke, and he found them very pro-British. The proposals stated that Massachusetts had not wished for the war with Britain and now wished only to see it brought to a speedy conclusion--a conclusion that would be mutually advantageous to both New England and Britain. Massachusetts looked forward to the convention meeting in Hartford, where it was believed the delegates would decide that all revenues of the United States within New England would be taken over by the states there and used strictly for their own defense. To accomplish the desired task of separation, the proposal stated:

For the purpose of being prepared to operate in such manner as future exigencies may require, the Legislature of Massachusetts has authorized his Excellency the Governor to levy an Army of 10,000 regular troops, and probably a similar measure will be adopted by the other States acceding to the Convention⁷⁷

⁷⁷J. S. Martell, editor, "Documents: A Side Light on Federalist Strategy During the War of 1812," American Historical Review, XLIII (April, 1938), 561-62.

Yet the very fact that the convention published both the report and the proceedings of the convention⁷⁸ indicated that if treason had been present, the delegates not only managed to hide it but wished to hide it. The closest thing to treason passed by the convention involved the nullification by states of the federal militia laws.

The Hartford Convention culminated years of frustration for the Federalists, who had seen their party shrink from a majority party into a sectional minority. From their first concentrated attack on Republican policy, which involved the Louisiana Purchase and the treaty with France, until the convention at Hartford, the Federalists first fought bitterly to regain power, and later, simply to save themselves from political extinction. They fought with the major weapon they possessed--states' rights. The New England states often threatened nullification during the twelve year period of their decline, but they never put action into their words. Something always prevented them from taking this step. With the Louisiana crisis they were unable to generate enough popular support for their cause. The Embargo and Enforcement Acts were repealed before they could act. The War of 1812 ended a few days too soon for their measures to be effective. The period from 1803 to 1815 proved to be one of frustration and

⁷⁸Dwight, p. 378.

failure for the Federalist party, since it was unable to successfully challenge the Republicans on either political or legal grounds.

While the Federalists in some cases threatened separation, the movement for an independent northern confederation never gained widespread support. Certain leading members of the party, such as Timothy Pickering and John Lowell, wished and even fought for independence for New England. Their impotence in this matter is well illustrated by the fact that when the Hartford Convention met to formulate Federalist policy in the time of greatest civil unrest, the moderates of the party remained in control.

The Republicans were able to convince the people of the nation that the Hartford Convention intended treason by dissolving the Union, and delegates to the convention found that they had committed political suicide by attending.⁷⁹ But these men, along with the other radicals of the section who advocated separation from the Union, conceived of themselves not as traitors to the nation but rather as zealous patriots of their section. New England was their country, their world. John Quincy Adams, a harsh critic of Federalist policy during these twelve years, gave perhaps the fairest estimate of the party members when he said:

⁷⁹Schouler, II, 476.

But to those who think that each State is a sovereign judge, not only of its own rights, but of the extent of powers conferred upon the general government by the people of the whole Union; and that each State, giving its own construction to the constitutional powers of Congress, may array its separate sovereignty against every act of that body transcending this estimate of their powers--to say of men holding these principles, that, for the ten years from 1804 to 1814, they were intending a dissolution of the Union, and the formation of a new confederacy, is charging them with nothing more than acting up to their principles.⁸⁰

For twelve years the Federalist party slowly died; the Hartford Convention inadvertently applied the coup de gr[^]ace. Certain pockets of the nation remained in Federalist hands, and the party enjoyed slight, local revivals in the election of 1820, but nationally it was dead.⁸¹ The survivors simply bided their time, awaiting the formation of a new political party they could join. For the time being national interests had triumphed over state and sectional interests, and when the contest reappeared, New England found itself opposing John C. Calhoun and the nullifiers of South Carolina.

⁸⁰ Adams, New England Federalism, p. 58.

⁸¹ See Lynn Turner, "The Electoral Vote Against Monroe in 1820--An American Legend," Mississippi Valley Historical Review, XLII (September, 1955), 250-273, for an interesting discussion of this topic.

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