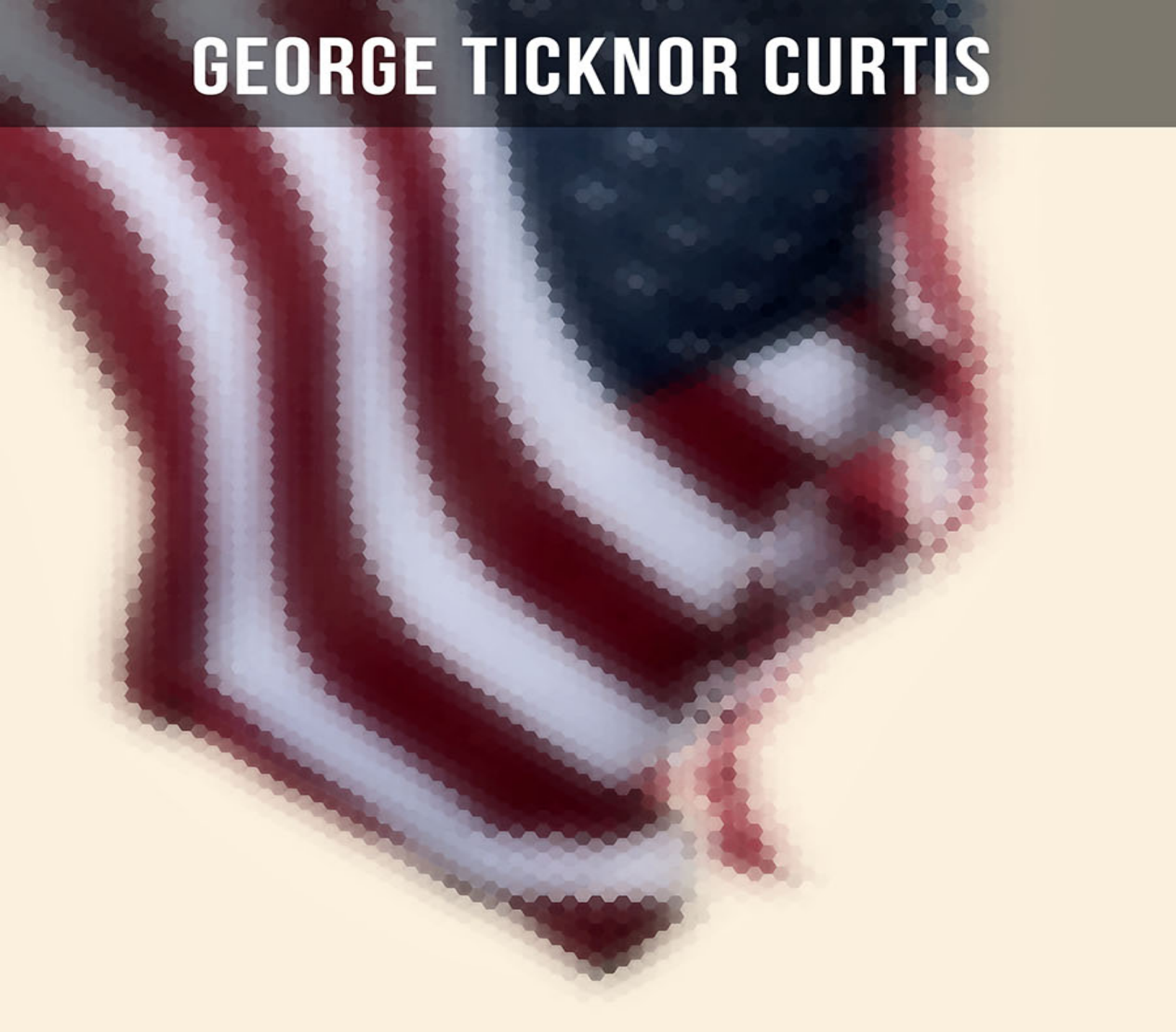


GEORGE TICKNOR CURTIS



**HISTORY OF THE
UNITED STATES
CONSTITUTION**

George Ticknor Curtis

History of the United States Constitution

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Table of Contents

[Volume 1](#)

[Volume 2](#)

VOLUME 1

[Table of Contents](#)

Table of Contents

PREFACE.

BOOK I.

CHAPTER I.

CHAPTER II

CHAPTER III.

CHAPTER IV.

CHAPTER V.

CHAPTER VI.

BOOK II.

CHAPTER I.

CHAPTER II.

CHAPTER III.

BOOK III.

CHAPTER I.

CHAPTER II.

CHAPTER III.

CHAPTER IV.

CHAPTER V.

CHAPTER VI.

CHAPTER VII.

CHAPTER VIII.

CHAPTER IX.

CHAPTER X.

CHAPTER XI.

CHAPTER XII.
CHAPTER XIII.
CHAPTER XIV.
CHAPTER XV.
CHAPTER XVI.
APPENDIX.

PREFACE.

[Table of Contents](#)

A special history of the origin and establishment of the Constitution of the United States has not yet found a place in our national literature.

Many years ago, I formed the design of writing such a work, for the purpose of exhibiting the deep causes which at once rendered the Convention of 1787 inevitable, and controlled or directed its course and decisions; the mode in which its great work was accomplished; and the foundations on which our national liberty and prosperity were then deliberately settled by the statesmen to whom the American Revolution gave birth, and on which they have rested ever since.

In the prosecution of this purpose I had, until death terminated his earthly interests, the encouragement and countenance of that illustrious person, whose relation to the Constitution of the United States, during the last forty years, has been not inferior in importance to that of any of its founders during the preceding period.

Mr. Webster had for a long time the intention of writing a work which should display the remarkable state of affairs under whose influence the Constitution was first brought into practical application; and this design he relinquished only when all the remaining plans of his life were surrendered with the solemn and religious resignation that marked its close. It was known to him that I had begun to labor upon another branch of the same subject. In the spring of 1852 I wrote to him to explain the plan of my work, and to ask him for a copy of some remarks made by his father in the Convention of New Hampshire when the Constitution was ratified by that State. I received from him the following answer.

"Washington, March 7th, [1852].

"My Dear Sir,—

"I will try to find for you my father's speech, as it was collected from tradition and published some years ago. If I live to see warm weather in Marshfield, I shall be glad to see you beneath its shades, and to talk of your book.

"You are probably aware that I have meditated the writing of something upon the History of the Constitution and the Administration of Washington. I have the plan of such a work pretty definitely arranged, but whether I shall ever be able to execute it I cannot say:—'the wills above be done.'

"Yours most truly,

"Danl. Webster."

Regarding this kind and gracious intimation as a wish not to be anticipated in any part of the field which he had marked out for himself, I replied, that if, when I should have the pleasure of seeing him, my work should seem to involve any material part of the subject which he had comprehended within his own plan, I should of course relinquish it at once. When, however, the period of that summer's leisure arrived, and brought with it, to his watchful observation, so many tokens that "the night cometh," he seemed anxious to impress upon me the importance of the task I had undertaken, and to remove any obstacle to its fulfilment that he might have suggested. Being with him alone, on an occasion when his physician, after a long consultation, had just left him, he said to me, with an earnestness and solemnity that can never be described or forgotten: "*You* have a future; *I* have none. You are writing a History of the Constitution. *You* will write that work; *I* shall not. Go on, by all means, and you shall have every aid that I can give you."

The event of which these words were ominous was then only four weeks distant. Many times, during those short remaining weeks, I sought "the shades of Marshfield"; but now it was for the offices and duties, not for the advantages, of friendship;—and no part of my work was ever submitted to him to whose approbation, sympathy, and aid I had so long looked forward, as to its most important stimulus and its most appropriate reward.

But the solemn injunction which I had received became to me an ever-present admonition, and gave me—if I may make such a profession—the needful fidelity to my great subject. Whatever may be thought of the manner in which it has been treated, a consciousness that the impartial spirit of History has guided me will remain, after every ordeal of criticism shall have been passed.

And here, while memories of the earlier as well as of the later lost crowd upon me with my theme, I cannot but think of him, jurist and magistrate, friend of my younger as well as riper years, who was called from all human sympathies before I had conceived the undertaking which I have now completed. Fortunate shall I be, if to those in whom his blood flows united with mine I can transmit a work that may be permitted to stand near that noble Commentary, which is known and honored wherever the Constitution of the United States bears sway.

The plan of this work is easily explained. The first volume embraces the Constitutional History of the United States from the commencement of the Revolution to the assembling of the Convention of 1787, together with some notices of the principal members of that body. The second volume is devoted to the description of the process of forming the Constitution, in which I have mainly followed, of course, the ample Record of the Debates preserved by Mr. Madison, and the official Journal of the proceedings.¹

The period of our history from the commencement of the Revolution to the beginning of Washington's administration

is the period when our State and national institutions were formed. With the events of the Revolution, its causes, its progress, its military history, and its results, the people of this country have long been familiar. But the constitutional history of the United States has not been written, and few persons have made themselves accurately acquainted with its details. How the Constitution of the United States came to be formed; from what circumstances it arose; what its relations were to institutions previously existing in the country; what necessities it satisfied; and what was its adaptation to the situation of these States,—are all points of the gravest importance to the American people, and all of them require to be distinctly stated for their permanent welfare.

For the history of this Constitution is not like the history of a monarchy, in which some things are obsolete, while some are of present importance. The Constitution of the United States is a living code, for the perpetuation of a system of free government, which the people of each succeeding generation must administer for themselves. Every line of it is as operative and as binding to-day as it was when the government was first set in motion by its provisions, and no part of it can fall into neglect or decay while that government continues to exist.

The Constitution of the United States was the means by which republican liberty was saved from the consequences of impending anarchy; it secured that liberty to posterity, and it left it to depend on their fidelity to the Union. It is morally certain that the formation of some general government, stronger and more efficient than any which had existed since the independence of the States had been declared, had become necessary to the continued existence of the Confederacy. It is equally certain, that, without the preservation of the Union, a condition of things must at once have ensued, out of which wars between the various provinces of America must have grown. The alternatives,

therefore, that presented themselves to the generation by whom the Constitution was established, were either to devise a system of republican government that would answer the great purposes of a lasting union, or to resort to something in the nature of monarchy. With the latter, the institutions of the States must have been sooner or later crushed;—for they must either have crumbled away in the new combinations and fearful convulsions that would have preceded the establishment of such a power, or else they must have fallen speedily after its triumph had been settled. With the former alternative, the preservation of the States, and of all the needful institutions which marked their separate existence, though a difficult, was yet a possible result.

To this preservation of the separate States we owe that power of minute local administration, which is so prominent and important a feature of our American liberty. To this we are indebted for those principles of self-government which place their own interests in the hands of the people of every distinct community, and which enable them, by means of their own laws, to defend their own particular institutions against encroachments from without.

Finally, the Constitution of the United States made the people of these several provinces one nation, and gave them a standing among the nations of the world. Let any man compare the condition of this country at the peace of 1783, and during the four years which followed that event, with its present position, and he will see that he must look to some other cause than its merely natural and material resources to account for the proud elevation which it has now reached.

He will see a people ascending, in the comparatively short period of seventy years, from an attitude in which scarcely any nation thought it worth while to treat with them, to a place among the four principal powers of the globe. He will see a nation, once of so little account and so

little strength that the corsairs of the Mediterranean could prey unchecked upon its defenceless merchantmen, now opening to their commerce, by its overawing diplomacy and influence, an ancient empire, on the opposite side of the earth we inhabit, which has for countless ages been firmly closed against the whole world. He will first see a collection of thirteen feeble republics on the eastern coast of North America, inflicting upon each other the manifold injuries of rival and hostile legislation; and then again he will behold them grown to be a powerful confederacy of more than thirty States, stretching from the Atlantic to the Pacific, with all their commercial interests blended and harmonized by one superintending legislature, and protected by one central and preponderating power. He will see a people who had at first achieved nothing but independence, and had contributed nothing to the cause of free government but the example of their determination to enjoy it, founding institutions to which mankind may look for hope, for encouragement and light. He will see the arts of peace—commerce, agriculture, manufactures, jurisprudence, letters—now languishing beneath a civil polity inadequate and incompetent, and now expanding through a continent with an energy and force unexampled in the history of our race,—subduing the farthest recesses of nature, and filling the wilderness with the beneficent fruits of civilization and Christianity.

Surveying all this,—looking back to the period which is removed from him only by the span of one mortal life, and looking around and before him, he will see, that among the causes of this unequalled growth stands prominent and decisive, far over all other human agencies, the great code of civil government which the fathers of our republic wrought out from the very perils by which they were surrounded.

It is for the purpose of tracing the history of the period in which those perils were encountered and overcome, that I

have written this work. But in doing it, I have sought to write as an American. For it is, I trust, impossible to study the history of the Constitution which has made us what we are, by making us one nation, without feeling how unworthy of the subject—how unworthy of the dignity of History—would be any attempt to claim more than their just share of merit and renown for names or places endeared to us by local feeling or traditional attachment. Historical writing that is not just, that is not impartial, that is not fearless,—looking beyond the interests of neighborhood, the claims of party, or the solicitations of pride,—is worse than useless to mankind.

Boston, July, 1854.

BOOK I.

[Table of Contents](#)

THE CONSTITUTIONAL HISTORY OF THE UNITED STATES, FROM THE COMMENCEMENT OF THE REVOLUTION TO THE ADOPTION OF THE ARTICLES OF CONFEDERATION.

CHAPTER I.

Table of Contents

1774-1775.

Organization of the First Continental Congress.—
Origin of the Union.

The thirteen British colonies in North America, by whose inhabitants the American Revolution was achieved, were, at the commencement of that struggle, so many separate communities, having, to a considerable extent, different political organizations and different municipal laws: but their various populations spoke almost universally the English language. These colonies were Virginia, Massachusetts, New Hampshire, Connecticut, Rhode Island, Maryland, New York, New Jersey, Pennsylvania, Delaware, North Carolina, South Carolina, and Georgia. From the times when they were respectively settled, until the union formed under the necessities of a common cause at the breaking out of the Revolution, they had no political connection; but each possessed a domestic government peculiar to itself, derived directly from the crown of England, and more or less under the direct control of the mother country.

The political organizations of the colonies have been classed by jurists and historians under the three heads of Provincial, Proprietary, and Charter governments.

To the class of Provincial governments belonged the Provinces of New Hampshire, New Jersey, Virginia, the two Carolinas, and Georgia. These had no other written constitutions, or fundamental laws, than the commissions issued to the Governors appointed by the crown, explained by the instructions which accompanied them. The Governor, by his commission, was made the representative or deputy

of the King, and was obliged to act in conformity with the royal instructions. He was assisted by a Council, the members of which, besides participating with him, to a certain extent, in the executive functions of the government, constituted the upper house of the provincial legislature; and he was also authorized to summon a general assembly of representatives of the freeholders of the Province. The three branches thus convened, consisting of the Governor, the Council, and the Representatives, constituted the provincial Assemblies, having the power of local legislation, subject to the ratification and disapproval of the crown. The direct control of the crown over these provincial governments may also be traced in the features, common to them all, by which the Governor had power to suspend the members of the Council from office, and, whenever vacancies occurred, to appoint to those vacancies, until the pleasure of the crown should be known; to negative all the proceedings of the assembly; and to prorogue or dissolve it at his pleasure.

The Proprietary governments, consisting of Maryland, Pennsylvania, and Delaware, were those in which the subordinate powers of legislation and government had been granted to certain individuals called the proprietaries, who appointed the Governor and authorized him to summon legislative assemblies. The authority of the proprietaries, or of the legislative bodies assembled by the Governor, was restrained by the condition, that the ends for which the grant was made to them by the crown should be substantially pursued in their legislation, and that nothing should be done, or attempted, which might derogate from the sovereignty of the mother country. In Maryland, the laws enacted by the proprietary government were not subject to the direct control of the crown; but in Pennsylvania and Delaware they were.²

The Charter governments, consisting, at the period of the Revolution, of Massachusetts, Rhode Island, and

Connecticut, may be said, in a stricter sense, to have possessed written constitutions for their general political government. The charters, granted by the crown, established an organization of the different departments of government similar to that in the provincial governments. In Massachusetts, after the charter of William and Mary granted in 1691, the Governor was appointed by the crown; the Council were chosen annually by the General Assembly, and the House of Representatives by the people. In Connecticut and Rhode Island, the Governor, Council, and Representatives were chosen annually by the freemen of the colony. In the charter, as well as the provincial governments, the general power of legislation was restrained by the condition, that the laws enacted should be, as nearly as possible, agreeable to the laws and statutes of England.

One of the principal causes which precipitated the war of the Revolution was the blow struck by Parliament at these charter governments, commencing with that of Massachusetts, by an act intended to alter the constitution of that Province as it stood upon the charter of William and Mary; a precedent which justly alarmed the entire continent, and in its principle affected all the colonies, since it assumed that none of them possessed constitutional rights which could not be altered or taken away by an act of Parliament. The "Act for the better regulating the government of the Province of Massachusetts Bay," passed in 1774, was designed to create an executive power of a totally different character from that created by the charter, and also to remodel the judiciary, in order that the laws of the imperial government might be more certainly enforced.

The charter had reserved to the King the appointment of the Governor, Lieutenant-Governor, and Secretary of the Province. It vested in the General Assembly the choice of twenty-eight councillors, subject to rejection by the Governor; it gave to the Governor, with the advice and

consent of the Council, the appointment of all military and judicial officers, and to the two houses of the legislature the appointment of all other civil officers, with a right of negative by the Governor. The new law vested the appointment of councillors, judges, and magistrates of all kinds, in the crown, and in some cases in the Governor, and made them all removable at the pleasure of the crown. A change so radical as this, in the constitution of a people long accustomed to regard their charter as a compact between themselves and the crown, could not but lead to the most serious consequences.

* * * * *

The statements which have now been made are sufficient to remind the reader of the important fact, that, at the commencement of the Revolution, there existed, and had long existed, in all the colonies, local legislatures, one branch of which was composed of representatives chosen directly by the people, accustomed to the transaction of public business, and being in fact the real organs of the popular will. These bodies, by virtue of their relation to the people, were, in many instances, the bodies which took the initiatory steps for the organization of the first national or Continental Congress, when it became necessary for the colonies to unite in the common purpose of resistance to the mother country. But it should be again stated, before we attend to the steps thus taken, that the colonies had no direct political connection with each other before the Revolution commenced, but that each was a distinct community, with its own separate political organization, and without any power of legislation for any but its own inhabitants; that, as political communities, and upon the principles of their organizations, they possessed no power of forming any union among themselves, for any purpose whatever, without the sanction of the Crown or Parliament

of England.³ But the free and independent power of forming a union among themselves, for objects and purposes common to them all, which was denied to their colonial condition by the principles of the English Constitution, was one of the chief powers asserted and developed by the Revolution; and they were enabled to effect this union, as a revolutionary right and measure, by the fortunate circumstances of their origin, which made the people of the different colonies, in several important senses, one people. They were, in the first place, chiefly the descendants of Englishmen, governed by the laws, inheriting the blood, and speaking the language of the people of England. As British subjects, they had enjoyed the right of dwelling in any of the colonies, without restraint, and of carrying on trade from one colony to another, under the regulation of the general laws of the empire, without restriction by colonial legislation. They had, moreover, common grievances to be redressed, and a common independence to establish, if redress could not be obtained: for although the precise grounds of dispute with the Crown or the Parliament of England had not always been the same in all the colonies, yet when the Revolution actually broke out, they all stood in the same attitude of resistance to the same oppressor, making common cause with each other, and resting upon certain great principles of liberty, which had been violated with regard to many of them, and with the further violation of which all were threatened.

* * * * *

It was while the controversies between the mother country and the colonies were drawing towards a crisis, that Dr. Franklin, then in England as the political agent of Pennsylvania, of Massachusetts, and of Georgia, in an official letter to the Massachusetts Assembly, dated July 7th, 1773, recommended the assembling of a general congress

of all the colonies. "As the strength of an empire," said he, "depends not only on the *union* of its parts, but on their readiness for united exertion of their common force; and as the discussion of rights may seem unseasonable in the commencement of actual war, and the delay it might occasion be prejudicial to the common welfare; as likewise the refusal of one or a few colonies would not be so much regarded, if the others granted liberally, which perhaps by various artifices and motives they might be prevailed on to do; and as this want of concert would defeat the expectation of general redress, that might otherwise be justly formed; perhaps it would be best and fairest for the colonies, in a general congress now in peace to be assembled, or by means of the correspondence lately proposed, after a full and solemn assertion and declaration of their rights, to engage firmly with each other, that they will never grant aids to the crown in any general war, till those rights are recognized by the King and both houses of Parliament; communicating at the same time to the crown this their resolution. Such a step I imagine will bring the dispute to a crisis."⁴

The first actual step towards this measure was taken in Virginia. A new House of Burgesses had been summoned by the royal Governor to meet in May, 1774. Soon after the members had assembled at Williamsburg, they received the news that, by an act of Parliament, the port of Boston was to be closed on the first day of the succeeding June, and that other disabilities were to be inflicted on the town. They immediately passed an order, setting apart the first day of June as a day of fasting, humiliation, and prayer, "to implore the Divine interposition for averting the heavy calamity which threatened destruction to their civil rights, and the evils of civil war, and to give them one heart and one mind firmly to oppose, by all just and proper means, every injury to American rights." Thereupon, the Governor dissolved the House. But the members immediately assembled at another

place of meeting, and, having organized themselves as a committee, drew up and subscribed an Association, in which they declared that the interests of all the colonies were equally concerned in the late doings of Parliament, and advised the local Committee of Correspondence to consult with the committees of the other colonies on the expediency of holding a general Continental Congress. Pursuant to these recommendations, a popular convention was holden at Williamsburg, on the 1st of August, which appointed seven persons as delegates to represent the people of Virginia in a general Congress to be held at Philadelphia in the September following.⁵

The Massachusetts Assembly met on the last of May, and, after negating thirteen of the Councillors, Governor Gage adjourned the Assembly to meet at Salem on the 7th of June. When they came together at that place, the House of Representatives passed a resolve, declaring a meeting of committees from the several colonies on the continent to be highly expedient and necessary, to deliberate and determine upon proper measures to be recommended to all the colonies for the recovery and establishment of their just rights and liberties, civil and religious, and for the restoration of union and harmony with Great Britain. They then appointed five delegates⁶ to meet the representatives of the other colonies in congress at Philadelphia, in the succeeding September.

These examples were at once followed by the other colonies. In some of them, the delegates to the Continental Congress were appointed by the popular branch of the legislature, acting for and in behalf of the people; in others, they were appointed by conventions of the people called for the express purpose, or by committees duly authorized to make the appointment.⁷ The Congress, styling themselves "the delegates appointed by the good people of these colonies," assembled at Philadelphia on the 5th of September, 1774, and organized themselves as a

deliberative body by the choice of officers and the adoption of rules of proceeding. Peyton Randolph of Virginia was elected President, and Charles Thompson of Pennsylvania Secretary of the Congress.

No precedent existed for the mode of action to be adopted by this assembly. There was, therefore, at the outset, no established principle which might determine the nature of the union; but that union was to be shaped by the new circumstances and relations in which the Congress found itself placed. There had been no general concert among the different colonies as to the numbers of delegates, or, as they were called in many of the proceedings, "committees" of the colonies, to be sent to the meeting at Philadelphia. On the first day of their assembling, Pennsylvania and Virginia had each six delegates in attendance; New York had five; Massachusetts, New Jersey, and South Carolina had four each; Connecticut had three; New Hampshire, Rhode Island, Delaware, and Maryland had two each. The delegates from North Carolina did not arrive until the 14th.⁸

As soon as the choice of officers had taken place,⁹ the method of voting presented itself as the first thing to be determined; and the difficulties arising from the inequalities between the colonies in respect to actual representation, population, and wealth, had to be encountered upon the threshold. Insurmountable obstacles stood in the way of the adoption of interests as the basis of votes. The weight of a colony could not be ascertained by the numbers of its inhabitants, the amount of their wealth, the extent of their trade, or by any ratio to be compounded of all these elements, for no authentic evidence existed from which data could be taken.¹⁰ As it was apparent, however, that some colonies had a larger proportion of members present than others, relatively to their size and importance, it was thought to be equally objectionable to adopt the method of voting by polls. In these circumstances, the opinion was

advanced, that the colonial governments were at an end; that all America was thrown into one mass, and was in a state of nature; and consequently, that the people ought to be considered as represented in the Congress according to their numbers, by the delegations actually present.¹¹ Upon this principle, the voting should have been by polls.

But neither the circumstances under which they were assembled, nor the dispositions of the members, permitted an adoption of the theory that all government was at an end, or that the boundaries of the colonies were effaced. The Congress had not assembled as the representatives of a people in a state of nature, but as the committees of different colonies, which had not yet severed themselves from the parent state. They had been clothed with no legislative or coercive authority, even of a revolutionary nature; compliance with their resolves would follow only on conviction of the utility of their measures; and all their resolves and all their measures were, by the express terms of many of their credentials, limited to the restoration of union and harmony with Great Britain, which would of course leave the colonies in their colonial state. The people of the continent, therefore, as a people in the state of nature, or even in a national existence as one people standing in a revolutionary attitude, had not then come into being.

The nature of the questions, too, which they were to discuss, and of the measures which they were to adopt, were to be considered in determining by what method of voting those questions and measures should be decided. The Congress had been called to secure the *rights* of the colonies. What were those rights? By what standard were they to be ascertained? By the law of nature, or by the principles of the English Constitution, or by the charters and fundamental laws of the colonies, regarded as compacts between the crown and the people, or by all of these combined? If the law of nature alone was to determine their

rights, then all allegiance to the British crown was to be regarded as at an end. If the principles of the English Constitution, or the charters, were to be the standard, the law of nature must be excluded from consideration. This exclusion would of necessity narrow the ground, and deprive them of a resource to which Parliament might at last compel them to look.¹² In order, therefore, to leave the whole field open for consideration, and at the same time to avoid committing themselves to principles irreconcilable with the preservation of allegiance and their colonial relation to Great Britain, it was necessary to consider themselves as an assembly of committees from the different colonies, in which each colony should have one voice, through the delegates whom it had sent to represent and act for it. But, as if foreseeing the time when population would become of necessity the basis of congressional power, when the authority of Parliament should have given place to a system of American continental legislation, they inserted, in the resolve determining that each colony should have one vote, a caution that would prevent its being drawn into precedent. They declared, as the reason for the course which they adopted, that the Congress were not possessed of, or able to procure, the proper materials for ascertaining the importance of each colony.¹³

It appears, therefore, very clear, that an examination of the relations of the first Congress to the colonies which instituted it will not enable us to assign to it the character of a government. Its members were not elected for the express purpose of making a revolution. It was an assembly convened from separate colonies, each of which had causes of complaint against the imperial government to which it acknowledged its allegiance to be due, and each of which regarded it as essential to its own interests to make common cause with the others, for the purpose of obtaining redress of its own grievances. The idea of separating themselves from the mother country had not been generally

entertained by the people of any of the colonies. All their public proceedings, from the commencement of the disputes down to the election of delegates to the first Congress, including the instructions given to those delegates, prove, as we have seen, that they looked for redress and relief to means which they regarded as entirely consistent with the principles of the British Constitution.¹⁴

Still, although this Congress did not take upon themselves the functions of a government, or propose revolution as a remedy for the wrongs of their constituents, they regarded and styled themselves as "the guardians of the rights and liberties of the colonies";¹⁵ and in that capacity they proceeded to declare the causes of complaint, and to take the necessary steps to obtain redress, in what they believed to be a constitutional mode. These steps, however, although not directly revolutionary, had a revolutionary tendency.

On the 6th of September, 1774, a resolve was passed, that a committee be appointed to state the rights of the colonies in general, the several instances in which those rights had been violated or infringed, and the means most proper to be pursued for obtaining a restoration of them. Another committee was ordered on the same day, to examine and report the several statutes affecting the trade and manufactures of the colonies. On the following day, it was ordered that the first committee should consist of two members, and the second of one member, from each of the colonies.¹⁶ Two questions presented themselves to the first of these committees, and created a good deal of embarrassment. The first was, whether, in stating the rights of the colonies, they should recur to the law of nature, as well as to the British Constitution and the American charters and grants. The second question related to the authority which they should allow to be in Parliament;—whether they should deny it wholly, or deny it only as to internal affairs, admitting it as to external trade; and if the latter, to what

extent and with what restrictions. It was soon felt that this question of the authority of Parliament was the essence of the whole controversy. Some denied it altogether. Others denied it as to every species of taxation; while others admitted it to extend to the regulation of external trade, but denied it as to all internal affairs. The discussions had not proceeded far, before it was perceived that this subject of the regulation of trade might lead directly to the question of the continuance of the colonial relations with the mother country. For this they were not prepared. It was apparent that the right of regulating the trade of the whole country, from the local circumstances of the colonies and their disconnection with each other, could not be exercised by the colonies themselves: it was thought that the aid, assistance, and protection of the mother country were necessary to them; and therefore, as a proper equivalent, that the colonies must admit the right of regulating the trade, to some extent and in some mode, to be in Parliament. The alternatives were, either to set up an American legislature, that could control and regulate the trade of the whole country, or else to give the power to Parliament. The Congress determined to do the latter; supposing that they could limit the admission, by denying that the power extended to taxation, but ceding at the same time the right to regulate the external trade of the colonies for the common benefit of the whole empire.¹⁷ They grounded this concession upon "the necessities of the case," and "the mutual interests of both countries";¹⁸ meaning by these expressions to assert that all legislative control over the external and internal trade of the colonies belonged of right to the colonies themselves, but, as they were part of an empire for which Parliament legislated, it was necessary that the common legislature of the whole empire should retain the regulation of the external trade, excluding all power of taxation for purposes of revenue, in order to

secure the benefits of the trade of the whole empire to the mother country.

The Congress, therefore, after having determined to confine their statement to such rights as had been infringed by acts of Parliament since the year 1763, unanimously adopted a Declaration of Rights, in which they summed up the grievances and asserted the rights of the colonies. This document placed the rights of the colonies upon the laws of nature, the principles of the English Constitution, and the several charters or compacts. It declared, that, as the colonies were not, and from their local situation could not be, represented in the English Parliament, they were entitled to a free and exclusive power of legislation in their several provincial legislatures, where their right of representation could alone be preserved, in all cases of taxation and internal polity, subject only to the negative of their sovereign, in such manner as had been before accustomed. At the same time, from the necessity of the case and from a regard to the mutual interests of both countries, they cheerfully consented to the operation of such acts of Parliament as were in good faith limited to the regulation of their external commerce, for the purpose of securing the commercial advantages of the whole to the mother country, and the commercial benefit of its respective members; excluding every idea of taxation, internal and external, for raising a revenue on the subjects in America, without their consent.¹⁹

In addition to this, they asserted, as great constitutional rights inherent in the people of all these colonies, that they were entitled to all the rights, liberties, and immunities of free and natural-born subjects within the realm of England; to the common law of England, and especially to trial by a jury of the vicinage; to the immunities and privileges granted and confirmed to them by royal charters, or secured by their several codes of provincial laws; and to the right of

peaceably assembling to consider grievances and to petition the King.²⁰

In order to enforce their complaints upon the attention of the government and people of Great Britain, and as the sole means which were open to them, short of actual revolution, of coercing the ministry into a change of measures, they resolved that after the 10th of September, 1775, the exportation of all merchandise, and every commodity whatsoever, to Great Britain, Ireland, and the West Indies, ought to cease, unless the grievances of America should be redressed before that time; and that after the first day of December, 1774, there should be no importation into British America, from Great Britain or Ireland, of any goods, wares, or merchandise whatever, or from any other place, of any such goods, wares, or merchandise as had been exported from Great Britain or Ireland, and that no such goods, wares, or merchandise be used or purchased.²¹ They then prepared an association, or agreement, of non-importation, non-exportation, and non-consumption, in order, as far as lay in their power, to cause a general compliance with their resolves. This association was subscribed by every member of the Congress, and was by them recommended for adoption to the people of the colonies, and was very generally adopted and acted upon.²² They resorted to this as the most speedy, effectual, and peaceable measure to obtain a redress of the grievances of which the colonies complained; and they entered into the agreement on behalf of the inhabitants of the several colonies for which they acted.

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This Congress, which sat from the 5th of September to the 26th of October, 1774, had thus made the restoration of commercial intercourse between the colonies and the other parts of the British empire to depend upon the repeal by

Parliament of the obnoxious measures of which they complained, and upon the recognition of the rights which they asserted; for although their acts had not the foundation of laws, the general adoption of their recommendations throughout the colonies gave them a power that laws rarely possess. Before they adjourned, they recommended that another Congress of all the colonies should be held at Philadelphia on the 10th of the following May, unless their grievances were redressed before that time, and that the deputies to such new Congress should be chosen immediately.²³

But while the Continental Congress were engaged in the adoption of these measures of constitutional resistance, and still acknowledged their colonial relations to the imperial government, the course of events in Massachusetts had put an end to the forms of law and government in that colony, as established or upheld by imperial authority. The last Assembly held in the Province upon the principles of its charter had been dissolved by the Governor's proclamation, at Salem, on the 17th of June, 1774. The new law for the alteration of the government had taken effect; and in August the Governor received from England a list of thirty-six councillors, who were to be called into office by the King's writ of *mandamus*, instead of being elected, as under the charter, by the House of Representatives. Two thirds of the number accepted their appointment; but popular indignation, treating them as enemies of their country, compelled the greater part of them to renounce their offices. The new judges were prevented everywhere from proceeding with the business of the courts, which were obstructed by assemblies of the people, who would permit no judge to exercise his functions, save in accordance with the ancient laws and usages of the Colony.

Writs had been issued for a new General Assembly, which was to meet at Salem in October; but it was found, that, while the old constitution had been taken away by act

of Parliament, the new one had been rejected by the people. The compulsory resignation of so many of the councillors left that body without power, and the Governor deemed it expedient to countermand the writs by proclamation, and to defer the holding of the Assembly until the popular temper should have had time to cool. But the legality of the proclamation was denied; the elections were everywhere held, and the members elect assembled at Salem, pursuant to the precepts. There they waited a day for the Governor to attend, administer the oaths, and open the session; but as he did not appear, they resolved themselves into a Provincial Congress, to be joined by others who had been or might be elected for that purpose, and adjourned to the town of Cambridge, to take into consideration the affairs of the Colony, in which the regular and established government was now at an end. Their acts were at first couched in the form of recommendations to the people, whose ready compliance gave to them the weight and efficacy of laws, and there was thus formed something like a new and independent government. Under the form of recommendation and advice, they settled the militia, regulated the public revenue, provided arms, and prepared to resist the British troops. In December, 1774, they elected five persons to represent the Colony in the Continental Congress that was to assemble at Philadelphia in the ensuing May. They were met by a proclamation, issued by the Governor, in which their assembly was declared unlawful, and the people were prohibited, in the King's name, from complying with their recommendations, requisitions, or resolves. Through the winter, the Governor held the town of Boston, with a considerable body of royal troops, but the rest of the Province generally yielded obedience to the Provincial Congress. In this posture of affairs, the encounter between a detachment of the King's forces and a body of militia, commonly called the battle of Lexington, occurred, on the 19th of April, 1775.