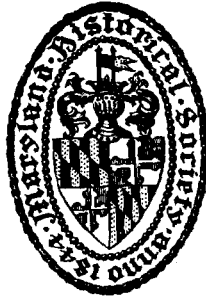


MARYLAND

HISTORICAL MAGAZINE

PUBLISHED UNDER THE AUTHORITY OF
THE MARYLAND HISTORICAL SOCIETY



VOLUME XXVII

BALTIMORE

1932

MARYLAND HISTORICAL MAGAZINE

VOL. XXVII.

SEPTEMBER, 1932.

No. 3.

THE INFLUENCE OF LUTHER MARTIN IN THE MAKING OF THE CONSTITUTION OF THE UNITED STATES.

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The close of the American Revolution left the former colonists in the throes of a severe economic depression. The protected markets of the British Empire were barred to them; and those of other nations were not opened, as the new states had expected. During the war agricultural production had been stimulated to supply the American, French, and British armies with food. With the disappearance of this demand for food products following the war, the country faced an acute economic maladjustment. The fall in prices inevitably brought in its wake the ills of political and social unrest. The cry of distress was soon heard, culminating at times in riots and rebellions—such as the Shay's Rebellion in Massachusetts.

These disturbing economic problems were accentuated by the political situation, created by the weak and inefficient central government existing under the Articles of Confederation. During the colonial period, each state had developed a theory of local autonomy, later to be called "State's Rights," a principle far more powerful and general than the spirit of nationalism. Each state, as a self-centered and self-conscious political unit, in an endeavor to guard jealously its own welfare, estab-

lished its own tariffs, issued its own bills of credit, and refused to grant sufficient funds to the confederate government to enable it to fulfill its obligations. A number of the outstanding political leaders attributed all of the country's difficulties to the weak central government. Although it is true that the Articles of Confederation had many weaknesses, they were probably distorted because of the economic distress within the country. This idea was suggested by a delegate to the Federal Convention on June 27, 1787, when he declared that "The states have shown a good disposition to comply with the Acts, of Congs. weak, contemptibly weak as that body has been, and have failed through inability alone to comply; that the heaviness of the private debts, and the waste of property during the war were the chief causes of this inability," and that the existing system of government was not the sole reason for their difficulties.¹ And in the closing days of the period of the Confederation, Benjamin Franklin believed that he saw a revival of commerce and industry. If his observations were correct, and it if were to become possible to collect taxes, then it is very probable that a few revisions of the Articles of Confederation would have at least prevented the political anarchy which many men believed was threatening the country. At least the responsibility for the economic depression cannot be attributed altogether to the Articles of Confederation.

Accompanying the economic unrest was a desire on the part of the people to solve their problems by resorting to temporary expedients. Larger issues of paper money were urged by the debtor class. An expansion of currency, however, without a corresponding expansion of "base," results in the decrease of the value of currency and an increase in prices, all other factors constant. If this programme had been fully realized it would have meant that people could have paid their debts with practically worthless money, and the debtor's profit would have been the creditor's loss. As conditions then were, it was said

¹ James Madison, "Journal," found in Max Farrand, *The Records of the Federal Convention of 1787*, New Haven, 1911, I, pp. 437, 438.

that often a creditor was seen being chased by a debtor who wished to pay his debt with the existing paper currency. It was all too evident that if something was not done to stem the tide, the masses would gain control of the government and seize all of the remaining wealth of the country.

Several attempts were made to alleviate the situation by holding conventions or conferences, culminating in the Annapolis Convention of 1786 which adopted the report of Alexander Hamilton, that the national affairs "are of a nature so serious that, in the view of your commissioners, to render the situation of the United States delicate and critical, calling for an exertion of the united virtue and wisdom of all members of the Confederacy." It also recommended the calling of a convention to meet in Philadelphia on the second Monday of May of the next year to render the Constitution of the "Federal Government adequate to the exigencies of the Union."² The convention was called and all the states except Rhode Island appointed delegates.

During the summer of 1787 fifty-five men visited Philadelphia at some time or other to aid in framing a new system of government.³ With possibly one or two exceptions, they were men who came from the financial and social aristocracy of America. Threatened with the loss of their wealth by the radical programme within the individual states and forming a

² Charles Warren, *The Making of the Constitution*, Boston, 1928, p. 23.

³ The following interpretation of the delegates and their class status in American Society is based upon a study of Warren, *op. cit.*; Charles Beard, *An Economic Interpretation of the Constitution of the United States*, New York, 1921; Moncure D. Conway, *Omitted Chapters of History Disclosed in the Life and Papers of Edmund Randolph*, New York, 1888; Bernard Fay, *George Washington, Republican Aristocrat*, New York, 1931; Bernard Fay, *Franklin, the Apostle of Modern Times*, Boston, 1929; Henry Ford, *Alexander Hamilton*, New York, 1920; Horace Hagan, *Eight Great American Lawyers*, Oklahoma City, 1923; J. T. Headley, *Washington and His Generals*, New York; Ellis Oberholtzer, *Robert Morris, Patriot and Financier*, New York, 1903; Theodore Roosevelt, *Gouverneur Morris*, Boston and New York, 1896; and *Sandersons' Biography of the Signers of the Declaration of Independence*, Robert T. Conrad, editor, Philadelphia, 1876.

small but powerful minority in all of them, they arrived in Philadelphia with a definite desire to preserve their own economic and social institutions. From the North came the wealthy lawyers, merchants, and shippers; and from the South came the slave holding planters and rich lawyers. One contemporary writer has declared that twenty-four of the delegates were large public securities holders, that fourteen of them were land speculators, that fifteen of them were personally interested in mercantile business or shipping, and that fifteen of them were slaveholders.⁴ Nearly all of them fell into one of these categories. Although the state governments were not completely under the control of these men, as is evidenced by some of the legislation that was passed, yet they were more influential in politics than their numerical strength would indicate. Aided by property qualifications which disfranchised many from the debtor class who would otherwise have been able to oppose their programme, they were partially successful in creating a political oligarchy.

It is interesting to note the predominance of lawyers in the convention, for thirty-three delegates practiced law at some time during their careers. Although many of them entered other vocations, they came to the convention with a broad legal and constitutional background. Noticeable also is the diversity of nationalities and religious creeds. Irish, Scotch, Germans, French, and Dutch were represented, although the English predominated. In religion Quakers, Episcopalians, Presbyterians, Congregationalists, Deists, Unitarians, and Methodists were ably represented. Diversity of religion was influential in preventing any mention of it in the Constitution. Probably the most distinctive fact to be noticed is the educational background of the members. Considerably over one-half were college graduates, of whom many were intensive students of history and government. Never before was a political convention so strongly dominated by intellectual and educated leaders. Even though it was not representative of all classes in America, at

⁴ Beard, *op. cit.*, pp. 141-151.

least it included most of the best trained minds. Without question the convention was composed of men from the highest social and economic class in America.

When the delegates reached Philadelphia, they had already divided into two parties. The term "parties" is not used here to designate a well organized political entity, but rather an unorganized group bound together merely by common ideas on questions of public policy.⁵ The larger group was commonly referred to as the Nationalist Party, which included such eminent men as Alexander Hamilton, Robert Morris, Edmund Randolph, Roger Sherman, George Washington, and James Madison. According to a report given by James McHenry to the Maryland Legislature, the purpose of this group was to grant the central government the power to provide for the national defense, to prevent sedition among the separate states, to levy internal and external taxes, to restrain the emission of bills of credit issued at the sacrifice of foreign commerce, to secure national justice, to protect private contracts, to promote inland navigation, and to encourage agriculture and manufacturing.⁶ The other group, usually referred to as the Federalist Party by the delegates themselves but commonly called the State's Rights Party today, desired the retention of sovereignty by the respective states, and sought merely to strengthen the Articles of Confederation. For leadership it turned to Luther Martin of Maryland, called by Thomas Jefferson the "Bulldog of Federalism."⁷ Although there were a

⁵ The following division of delegates was made from a study of the records of the convention; James Madison, *The Debates in the Federal Convention of 1787 Which Formed the Constitution of the United States of America*, New York, 1920, 5 vol.; *Documents Illustrative of the Formation of the Union of the American States*, Washington, 1927; and Farrand, *Records*. For other interpretations of this cf. James Beck, *The Constitution of the United States*, New York, 1924, pp. 120-122; and Luther Martin, "Genuine Information," found in Jonathan Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention in Philadelphia in 1787*, Philadelphia, 1896, I, 350.

⁶ Farrand, *Records*, III, 145.

⁷ H. P. Goddard, "Luther Martin: The 'Federal Bull-Dog,'" *Maryland Historical Society Fund Publications No. 4*, Baltimore, 1886, p. 86.

number of other men in the convention who aligned themselves with the Federalists for certain specific issues, Martin was the only outstanding delegate to advocate consistently and uphold the principles of the party.

Although one of the outstanding lawyers in America and the spokesman in the Federal Convention for a powerful party, Luther Martin is not as well known a figure on the pages of history as is warranted by his work. Having a long and eventful legal career, he became one of the leaders of the bar in America. He served for twenty-eight years as attorney-general of Maryland, during which time he pleaded several celebrated cases before the United States Supreme Court, including "Fletcher vs. Peck" and "McCulloch vs. Maryland." But his greatest claim to legal fame lies in his defense of Judge Samuel Chase, whom the Senate failed to convict after being impeached by the House of Representatives; and his defense of Aaron Burr, who was tried for treason. Many writers consider those as two of the three most famous legal cases in American History. For this work he has been described by one contemporary as not only the "acknowledged and undisputed head of the profession in Maryland," but of the entire country.⁸

In 1787 he attended the Federal Convention not only as a lawyer and representative of a definite political faction in Maryland, but as a spokesman of the debtor class in America as well. His defense of the debtor class was in a large measure a defense of his own life. His ancestors were of English stock and among the first settlers in East Jersey, having come from New England and obtained extensive grants of land along the Raritan River.⁹ In 1748 the land was divided into small farms, and his father received one of them. Born at New Brunswick, New Jersey, in 1744, Luther Martin spent his early life in extreme poverty and toil.¹⁰ At the age of thirteen

⁸ Bernard C. Steiner, *Life of Roger Brooke Taney*, Baltimore, 1922, p. 25.

⁹ Ashley M. Gould, "Luther Martin," *Great American Lawyers*, William D. Lewis, editor, II, Philadelphia, 1907, p. 5.

¹⁰ *Ibid.*

he enrolled in the grammar school at Princeton and in 1762 he entered the College of New Jersey (now Princeton University).¹¹ While there he was one of the founders of the Oligophilic Society, a literary group, which played a prominent part in the undergraduate life. A very capable student and possessing an uncanny memory, he was able, later in life, to quote profusely from legal history. He also became familiar with the great political philosophers, such as Locke, Vattel, Lord Somers, Priestley, and Rutherford. In the Federal Convention he read long passages from them. The lack of finances forced him to leave college in 1763, when he secured a school at Queenstown, Maryland.¹² While there he studied law in Solomon Wright's library and continued teaching school until 1770, except for a short time when he returned to Princeton to finish his college work, graduating in 1766 at the head of a class of thirty-five.¹³

Admitted to the bar in 1771, he rapidly rose to eminence, soon earning five thousand dollars a year.¹⁴ Moving to Somerset, Maryland, his practice increased, and he probably earned over ten thousand dollars a year during the rest of his life.¹⁵ A profligate spendthrift of the worst type, he found himself always in need. In 1820 he suffered a stroke of paralysis; and unable to work, he became subject to the bounty of his friends. "Because Luther Martin came forward once voluntarily to stand at the Colonel's shoulder through the ordeal of a Richmond summer," Aaron Burr took him broken in health and feeble in mind into his own house and cared for him faithfully until his death in 1826.¹⁶ One cannot but pity this wretched

¹¹ For my information pertaining to Martin's formal education, I am indebted to V. Lansing Collins, Secretary of Princeton University.

¹² Goddard, *op. cit.*, pp. 12, 13.

¹³ In 1769 he received the degree of M. A. from Princeton.

¹⁴ He began practicing law in Accomac and Northampton, Virginia, and in one term before the Williamsburg Court he defended thirty-eight persons, twenty-nine being acquitted. Goddard, *op. cit.*, pp. 11, 12.

¹⁵ Edward Corwin, *John Marshall and the Constitution*, New Haven, 1920.

¹⁶ Samuel Wandell and Meade W. Minnigerode, *Aaron Burr*, New York, 1925, II, 308.

old man whom the Maryland bar revered to such an extent that the State Legislature placed a tax of five dollars annually on all lawyers for his support.¹⁷ Never being able to manage his own finances, he was not a man able to appreciate the desire of the aristocracy in America to protect its wealth, and was always an ardent supporter of the paper money movement.

Martin's greatest fault was his love of, and excessive indulgence in, strong drink, which earned him the title of "Lawyer Brandy Bottle."¹⁸ Many are the anecdotes to be found pertaining to this phase of his life, yet only one of them records him becoming so drunk as to interfere with the discharge of his professional duties. During the "Fletcher vs. Peck" case before the United States Supreme Court, he was so intoxicated that the court adjourned in order to prevent him from completing his arguments.¹⁹ He was living, however, in an age when a man was not condemned for the use of intoxicating liquors. Indeed most of the leading statesmen and lawyers did indulge in the practice. Yet Martin was an excessive imbibor, for nearly all of his contemporaries, in describing him, speak of this trait of his.

If a disappointed martial life is an explanation for the excessive indulgence in intoxicating liquors, then it is possible to find many reasons for the development of this habit by Martin. In 1783 he married the daughter of Captain Michael Cresap, a beautiful woman who died in the prime of life, leaving Martin with two very attractive daughters.²⁰ Although an elderly gentleman, he never ceased in an effort to find another mother for his children. In 1800 he began a passionate courtship of a wealthy widow, Mrs. Hager, who had

employed him on some legal business. She was a very shrewd woman, as evidenced by their correspondence, and did not refuse him until he had won her suits. Then she showed no reluctance in informing him that his aspirations were hopeless.²¹

Martin's love for Mrs. Hager was soon dwarfed by his burning infatuation for Theodosia Alston, the daughter of Aaron Burr. This passion carried him into one of America's most dramatic trials, and forced him to stop and gaze upon the beautiful young woman as he pleaded with the jury, declaring that he would be grateful to heaven if he were successful "in wiping away the tear of filial piety and in healing deep wounds inflicted on the breast of a child."²² Again the great lawyer was doomed to disappointment, for in a short time the beautiful Theodosia was drowned, and he retained only a memory. This was his last serious affair of the heart.

Although he devoted the latter part of his life to law, his early years were deeply involved in politics as is shown by his active work in the Federal Convention. His training had been conducive to the development of a "Federalistic" or "State's Rights" theory of government. In 1771 he was admitted to the bar, and the next year he came under the influence of Patrick Henry, the fiery American patriot.²³ The two men became close friends, and it is doubtless from Henry that he received many of his political ideas as well as his ardent patriotism for the cause of the colonists during the American Revolution. It was inevitable that a young man coming under the influence of Patrick Henry should be deeply impressed. Moving to Maryland, Martin became active in political life, and in 1774 was appointed a commissioner to the Annapolis Convention, for the purpose of opposing the tyranny of Great

²¹ She had a large estate in western Maryland and one daughter. Subsequently she married Col. Lewis. Cf. *ibid.*, pp. 32, 35.

²² The emotions of Martin were so evident that Blennerhasset noted them in his diary. Cf. James Parton, *Famous Americans of Recent Times*, Boston, 1895, p. 417.

²³ Goddard, *op cit.*, p. 13.

¹⁷ *Ibid.*, p. 308. Only one lawyer contested the validity of the law, and he was soon persuaded to drop his suit. Upon Martin's death the bench and bar of Baltimore passed a resolution that "we shall wear mourning for a space of thirty days." Albert Beveridge, *The Life of John Marshall*, New York, 1919, III, 187.

¹⁸ Beveridge, *op. cit.*, III, 536.

¹⁹ Goddard, *op. cit.*, p. 35.

²⁰ Goddard, *op. cit.*, pp. 15, 16.

Britain. Taking a strong patriotic stand, he secured for himself the approval and support of the people of his state.²⁴ He made the acquaintance of Judge Samuel Chase, upon whose suggestion in 1778 he was appointed the attorney-general of the state.²⁵ During the war he persecuted the Tories most "vigorously and rigorously," thereby making life-long enemies as well as warm friends.²⁶ It was following the war that he became more closely associated with William Paca, William Pinkney, John F. Mercer, Samuel Chase, and Jeremiah T. Chase, all of them avowed Federalists.²⁷ During this period of economic distress a great appeal was made in Maryland under the direction of Samuel Chase for new issues of paper money.²⁸ Luther Martin, as a powerful and eloquent orator, was a great aid to him in the movement. In the winter of 1786-1787 another "paper money" bill was defeated, and immediately Chase declared that he would carry the question to the people in the coming elections.

During the winter Charles Carroll, R. H. Harrison, Thomas Stone, James McHenry, and Thomas Sim Lee were chosen by the legislature as delegates to the federal convention. But with the threatening situation created by Chase unrelieved, several of the delegates appointed felt that it was their duty to remain in Maryland and aid in the attempt to stem the torrent of the populace for paper money.²⁹ Therefore the next spring Luther Martin, John F. Mercer, and Daniel of St. Thomas Jenifer were appointed as substitutes for Harrison, Stone, and Lee.³⁰ It was because of these political complications that Martin, the

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Max Farrand, *The Framing of the Constitution of the United States*, New Haven, 1913, pp. 36, 37.

²⁷ Bernard C. Steiner, "Maryland's Adoption of the Federal Constitution," *American Historical Review*, V. 207.

²⁸ J. B. Cutting to Thomas Jefferson, July 11, 1788, Farrand, *Records*, III, 339.

²⁹ *Ibid.*

³⁰ Madison, *Debates*, pp. lxxxiii-lxxxv.

acknowledged leader in the convention of the Federalist party, was chosen as a delegate.

Not a man of striking appearance, Martin was of "medium height, broad-shouldered, near-sighted, absent-minded, harsh of voice," and with a face crimsoned by the brandy he continually imbibed.³¹ Yet when he began to speak his appearance was forgotten by his appealing and florid eloquence. Although at times he was tiring in his speech, when he was "aroused to action, his great resources made themselves apparent, a memory amounting to genius, a boyish delight in the rough-and-tumble of combat, a wealth of passion, kept in perfect curb till the enemy was already in rout before solid arguments and then let loose with destroying effect. This child of nature was governed in his practice of law less by retainers than by his personal hatreds."³² Perhaps the man he hated worst was Thomas Jefferson,³³ which is an explanation of his opposition to the Democrats in latter years. To him no other damnation was quite so scathing as to call a man "as great a scoundrel as Tom Jefferson."³⁴ Because of this passionate nature of his, in speaking he was often rude and cruelly aggravated his listeners. Then, too, his invectives were often coarse and gross, for he was incapable of restraint.³⁵

Yet he was well informed as is illustrated by Blennerhas-

³¹ Beveridge, *op. cit.*, III, 86. Henry Adams described him during the trial of Judge Chase as "the most formidable of the American advocates . . . the rollicking, witty, audacious Attorney-General of Maryland, boon companion of Chase and the whole bar, drunken, generous, slovenly, grand. Bull Dog of Federalism, as Mr. Jefferson called him." Henry Adams, *John Randolph*, John T. Morse, editor, *American Statesmen Series*, Boston, 1882, p. 141.

³² Corwin, *op. cit.*, p. 177.

³³ This was the result of the Cresap affair. In 1783 Martin married Major Cresap's daughter, whom Jefferson had accused of murdering the family of a half-breed, James Logan. Martin bitterly denied the charges, publishing a pamphlet in Cresap's defense, now lost. Goddard, *op. cit.*, pp. 15, 16.

³⁴ Corwin, *op. cit.*, p. 177.

³⁵ *The Blennerhasset Papers*, William H. Safferd, editor, Cincinnati, 1864, pp. 377, 378.

set's description of a talk by him after dinner during the Burr trial:³⁶

Were I now to mention only the subjects of law, politics, news, etc., on which he descanted, I should not be believed when I said his visit did not exceed thirty five minutes. Imagine a man capable, in that space of time, to deliver some account of an entire week's proceedings in the trial, with extracts from memory of several speeches on both sides, including long ones from his own, to recite half columns, *verbatim*, of a series of papers of which he is the author . . . to caricature Jefferson, give the history of his acquaintance with Burr, expatiate on his virtues and sufferings, maintain his credit, embellish his fame, and intersperse the whole with sententious reprobations and praises of other characters.

To his friends he offered a passionate devotion and it was Aaron Burr who declared that with "better breeding and redemption from habits of inebriety his would be a perfect character. His heart is overflowing with the milk of benevolence."³⁷ Just a rough and tumble fighter, a boon companion of the tavern politicians, possessing an uncanny memory, understanding all the tricks of debate, and passionate in his support of his convictions, this bulldozing "Thersites of the law" was to become the greatest obstacle to the success of the Nationalists party in the Federal Convention of 1787.

The convention had already begun its deliberations when Luther Martin arrived on June 9. It had been called for May 14, but a quorum had not arrived until the 24th. George Washington had been elected president, and the rules of the convention adopted. Edmund Randolph immediately presented the "Virginia Plan" of government,³⁸ which provided for a national legislature of two branches, the lower branch elected by the people, and the upper branch by the lower one. The legislature was to be given broad powers over matters in which the states had proven incompetent. The states were to be represented according to the number of free inhabitants or according to their wealth. A national executive and judiciary

³⁶ *Ibid.*

³⁷ Goddard, *op. cit.*, p. 31.

³⁸ May 29.

were included.³⁹ Discussion of the plan was postponed, but by its introduction the Nationalists had achieved a masterstroke; for they had made the first move, thus placing their opponents on the defensive. A resolution was then introduced and passed, declaring that a national government should be established.⁴⁰ Although the majority of the delegates had been merely authorized to regulate trade and to revise the Articles of Confederation,⁴¹ many of the members at an early date believed that the exigencies of the times warranted drastic measures. That is the reason they were willing to exceed their instructions. It was evident that the nationalistic sentiment was very powerful.

The Federalist party awaited the arrival of Luther Martin, who has left the following account of his entry into the convention:⁴²

I devoted my whole time and attention to the business in hand . . . and conscientiously . . . to decide what part I ought to adopt in the discharge of the sacred duty I owed my country . . . I attended the Convention many days without taking my share in the debates, listening in silence to the eloquence of others and offering no proof that I possessed the powers of speech than giving my yea or nay when a question was taken.

Within a few days he realized that the paramount question before the convention was "federalism vs. nationalism." By "federalism" he meant a system of government in which the states were "free and sovereign" and equally represented in a central government whose duty it was to protect them from foreign aggression and aggression on the part of the larger states. By "nationalism" he meant the creation of a strong central government through the destruction of the power of

³⁹ Warren, *op. cit.*, p. 141.

⁴⁰ May 30. Later the word "United States" was substituted for "national." Luther Martin declared that it was done because of the fear that the word "national" might create alarm. Charles R. Martin, *An Introduction to the Study of the American Constitution*, New York, 1926, p. 40.

⁴¹ Martin, "Genuine Information," Elliot, *Debates*, I, 345.

⁴² Warren, *op. cit.*, pp. 201, 202.

the individual states. It was as a means of preserving the principles of federalism that he waged a relentless struggle until July 16, when the Connecticut Compromise was approved, for the retention of equal representation by the sovereign states. He was confident that if that were achieved, the power of the states would be preserved. Many delegates from the small states supported him, because they feared that the people from several of the larger states might otherwise try to assume tyrannical power over the smaller states. After equality of representation was guaranteed in the upper branch, they were satisfied. To Martin, however, it was not a question of representation alone. He was fighting for the preservation of the state of Maryland as a political entity. This is the key to his work during the first month of his participation in the convention's deliberations.

On June 15, William Paterson presented the New Jersey plan of government,⁴⁵ which merely revised the Articles of Confederation, increasing the powers of Congress and providing for an executive of several men elected by Congress. It was in defense of this plan that Martin first addressed the convention, arguing that all the states had entered the Confederation on the footing of equality, and that was the way they would remain.⁴⁶

Yet it was not until the next day that he hurled his vicious attack upon unequal representation. Fearing that a strong national government would destroy the state governments, he declared that "upon separation from the British Empire, the people of America preferred the establishment of themselves into thirteen separate sovereignties, instead of incorporating themselves into one."⁴⁵ Realizing that the central government had to be supported, he was willing to grant it more power, and modify it as long as state governments were not endangered.⁴⁶ Speaking of representation, he declared that it would be unfair

⁴⁵ "Its authorship is not known, but probably Roger Sherman, Luther Martin, and William Paterson took the leading part in drafting it." *Ibid.*, p. 221.

⁴⁶ June 19. Elliot, *Debates*, V, 213.

⁴⁶ June 20. Madison, *Debates*, Elliot, *Debates*, V, pp. 217, 218.

⁴⁶ Yates, *Minutes*, Elliot, *Debates*, I, pp. 429, 430.

to the smaller states to give the larger ones more votes, citing the example of ten free men, nine of them equal, one ten times as wise, receiving ten votes while each of the others received one. The nine would be the slaves of the one, just as the smaller states would be the slaves of the larger ones. In refuting the arguments for representation on the basis of taxation, he pointed out that if one state paid more to the federal government, it would be because as a state, it enjoyed greater blessings from it, and would have more wealth to be protected.⁴⁷ The appeal was successful in rallying the small states to the support of the Federalist party. As yet the majority of the members had not consented to a strong national government. It was merely a question as to whether the small or the large states should dominate in the new government. With this solidification of the opposition, the Nationalists began to lose some of their confidence.

Only a few days later Martin opened a two day oration in defense of equal representation, driving many members, supporters and opponents alike, to despair.⁴⁸ The weather was warm, his audience was rude and inattentive, his speech was excessively voluble; but the logic of his arguments seemed unanswerable, and as a contemporary writer has said, "the world lost a great oration for Madison gives only a fragment of it."⁴⁹

Again this "Bull-Dog of Federalism" demanded that the state governments be preserved, arguing that the existing situation was due to the heaviness of the private debts and the waste of property during the war. Magnificently defending federalism, he read passages from Locke, Vattel, Lord Somers, Priestly, and Rutherford to prove that it was essential in a fed-

⁴⁷ Martin, "Genuine Information," Elliot, *Debates*, I, pp. 351-355.

⁴⁸ June 27, 28. Months later Ellsworth wrote to him, "You opened against them in a speech which held during two days, and which might have continued two months, but for those marks of fatigue and disgust which you saw strongly expressed on whichever side of the house you turned your mortified eyes." Farrand, *The Framing of the Constitution*, p. 93.

⁴⁹ Beck, *op. cit.*, p. 90.

eral government that the states have equal representation, since "States like individuals were in a State of nature equally sovereign and free." He contended with great length that the central government was created merely to preserve the state governments, not to govern the individuals, and therefore the power of the general government should be kept within marked limits. Adroitly he reminded the Nationalists that their complaints against the Confederation were not the result of equality of representation but lack of power. Why then, he demanded, should the entire system be revolutionized?⁵⁰ Thereupon he read them a lecture on ancient and modern confederation, such as the Amphictyonic Council, Holland, and Switzerland.⁵¹ And in conclusion he accused some of them of revolutionary designs when he declared that they were "already confederated, and no power on earth can dissolve it but by the consent of all the contracting powers—and four states, on this floor have already declared their opposition to annihilate it. Is the old Confederation dissolved, because some states wish a new Confederation?"⁵² In commenting on the speech, Rufus King, an ardent Nationalist, declared that the "principles are right, but cannot be carried into effect."⁵³ Perhaps this is the best analysis of the speech that can be offered, as well as the doctrine of federalism itself. At least the motion for equality of representation was defeated by a vote of six to four. The speech was so effective, however, that when Madison attempted and failed to answer it, Benjamin Franklin asked for prayer.⁵⁴ The two parties were drifting farther and farther apart.

The debates during the following days became more bitter, leading Martin to declare defiantly that "if we cannot confederate on just principles, I will never confederate in any other manner."⁵⁵ A few days later he protested that it was

⁵⁰ Madison, "Journal," Farrand, *Records*, I, pp. 437, 438.

⁵¹ Yates, "Journal," Farrand, *Records*, I, pp. 453-456.

⁵² *Ibid.*

⁵³ Farrand, *Records*, I, 443.

⁵⁴ Madison, "Records," found in Farrand, *Records*, I, 452.

⁵⁵ June 30. Yates, "Minutes," Elliot, *Debates*, I, 471.

again attempted to compromise. You must give each state an equal suffrage, or our business is at an end."⁵⁶ Necessity demanded a compromise, and a committee on representation was appointed, including Martin as a member.

The committee met on July 3, and we are indebted to Martin for the existing record of its work. Immediately, he says, the delegates of the large states insisted on an inequality of suffrage in both branches of the legislature, while the delegates from the small states insisted on equality of representation. At length it was proposed by the delegates of the large states that if the small ones acceded to their wishes on the first branch, they would accede to theirs on the second. The representatives of the small states answered no, for the proposal only was consenting, "after they had struggled to put *both their feet on our necks*, to take *one of them off*, provided we would consent to let them keep the *other on*," while they knew they couldn't keep the other one on "unless we consented," and if they were permitted to keep one on, afterwards they would be able to put the other on when they pleased.⁵⁷ The delegates of the small states were insistent that they had the rights of equality of representation, secured to them by the existing confederation, now being torn from them. "Will you," they asked, "tell us we ought to trust you because you *now enter a solemn compact with us*?" They asked if an appeal would be made to the Supreme Being to guarantee its observance, reminding them that they did just that with the Articles of Confederation and were violating it in the most wanton matter.⁵⁸

Finally the temper of the opposition subsided, and the famous "Connecticut Compromise" was approved by a majority of the members of the committee.⁵⁹ It provided for a lower branch in the legislature consisting of one member for every forty thousand inhabitants, that all appropriation bills

⁵⁶ July 2. *Ibid.*, pp. 474, 475.

⁵⁷ Martin, "Genuine Information," Farrand, *Records*, III, pp. 188-190.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

should originate there, and an upper branch was to provide each state with an equal voice.⁶⁰ Then the plan was submitted to the convention.

For several weeks the controversy continued, during which period, Martin says, "we were on the verge of dissolution, scarce held together by the strength of an hair, though the public papers were announcing extreme unanimity."⁶¹ Not approving of two branches nor the inequality of votes in the first branch, yet Martin did urge its acceptance and expressed himself as willing to try the plan rather than do nothing.⁶² Then on July 16 the compromise was adopted by a vote of five to four.

The idea of a strong national government was now being viewed with more favor. The problem of representation was decided, and many of the small state's men were willing to support the Nationalist programme. They had not really subscribed to Martin's philosophy, but merely aligned themselves with him for a definite issue now decided. Now delegates were arriving. And Luther Martin was forced to realize that, while the small states had previously supported him, in the continuance of his struggle for federalism, he would stand practically alone. Seeing the growing strength of the Nationalists and without an doubts that they were going to draft a document, if possible, which would increase the power of the central government at the expense of the states, he threw himself into the melee in an endeavor to retain as many federalistic principles as possible. Knowing the impossibility of securing a truly federal system, he struggled merely to modify and limit the power of the growing nationalistic programme. At times his efforts were futile, but the final document did contain marks of his labor.

(To be Continued.)

⁶⁰ Warren, *op. cit.*, p. 309.

⁶¹ Martin, "Genuine Information," Farrand, *Records*, III, 190.

⁶² Madison, "Debates," Elliot, *Debates*, V, 310.

THE INFLUENCE OF LUTHER MARTIN IN THE
MAKING OF THE CONSTITUTION OF
THE UNITED STATES.

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(Continued from Vol. XXVII, p. 190.)

In an effort to strip the states of some of their sovereignty, the Nationalists suggested that Congress should have the power to disallow all state laws. Considering this intolerable, Martin reminded the convention that that had been one of their criticisms of the English system before the war, centralized power in the hands of the King who had the right of veto.⁶³ Finally, by way of compromise, he moved "That the legislative acts of the United States, made by virtue and in pursuance of the Articles of Union, and all treaties made and ratified under the authority of the United States, shall be the supreme law of the respective states, as far as those acts or treaties shall relate to the said states or their citizens and inhabitants, and that the judiciaries of the several states shall be bound thereby in their decisions, anything in the respective laws of the individual states to the contrary notwithstanding."⁶⁴ Slightly modified, this clause was eventually incorporated in the Constitution. At first, one might think that he was attempting to give Congress strong power, but in reality he was merely trying to give it less obnoxious power than previously advocated.

During the debates pertaining to the power of the executive, Luther Martin again found that federalism was to be sacrificed on the altar of nationalism. When he moved that the executive be chosen by electors appointed by the state legislatures, his motion was defeated.⁶⁵ When it was suggested, however, that

⁶³ Madison, "Journal," Farrand, *Records*, II, 27.

⁶⁴ July 17. Madison, "Debates," Elliot, *Debates*, V, 322.

⁶⁵ Madison, *Debates*, p. 270.

the executive should be chosen by the national legislature, voting jointly, the small states were frightened and unani- mously expressed their opposition. Although the convention did not specifically provide for the choice of the electors by the state legislatures, it is true that this was the customary practice for many years after the new government was placed in operation.⁶⁶ But Martin's bitterest criticism of the executive was that he was given too much power. In reality he was to be a king, given the power of nomination which is in reality the power of appointment. With civil and military officers under his control, he could not be impeached and would not be responsible to anyone. With all the patronage at his disposal, he could easily secure a reelection, and would thus become an elective despot.⁶⁷ Therefore, Martin suggested that the president be declared ineligible for reelection, but failed three times in this endeavor.⁶⁸ He also hurled powerful invectives against the granting to the president the right of veto. Arguing that there was no need for this, since the two houses were so checked as to prevent rash or hasty legislation, he attempted to keep the executive power out of legislation. Being given the precedent of the English king, he later wrote that they were "eternally troubled with arguments and precedents of the British govern- ment," he pointed out that sovereignty in America did not rest in the president, as it did in the king, but in the legislature.⁶⁹ But he failed, for the president was given a limited veto.

Turning to the judiciary, he struggled in vain for the appoint- ment of the judges by the upper house, since they would repre- sent the states and "be best informed of characters and most capable of making a fit choice."⁷⁰ As a final plea, he decried the plan of the nationalists whereby the judges would be nomi- nated by the executive. Maintaining that points as to the con- stitutionality of laws would come before them in their proper

⁶⁶ Warren, *op. cit.*, pp. 523, 524.

⁶⁷ Martin, "Genuine Information," Elliot, *Debates*, I, pp. 378-380.

⁶⁸ Madison, "Debates," Elliot, *Debates*, V, pp. 334, 338, 359.

⁶⁹ Martin, "Genuine Information," Elliot, *Debates*, I, 367.

⁷⁰ July 18. Madison, *Debates*, p. 275.

official character, he declared that they would have a negative on all laws, "and joined with the Executive, it would mean giving the Executive a double negative." On the other hand, being appointed by the upper house, they would need the support of the people and would not dare to oppose popular acts of the legislature.⁷¹ But it was decided to remove the judiciary from the influence of popular opinion, and the executive was given the power of nomination. For the purpose of soothing Martin's wrath, however, all nominations were to be made with the advice and consent of the Senate. Martin's prophecy was later to be proven true when the Supreme Court of the United States often opposed popular legislation, as the judges did not remain in close touch with the people.

Himself a man who was always in financial difficulties, and an ardent supporter of the issuance of paper money, it is natural that Martin should oppose the "hard money" policy of Hamilton, Morris, Sherman, Washington, and others. Therefore, when the convention agreed⁷² to forbid the states to emit bills of credit and to make only gold and silver legal tender he was one of the few men to oppose the measure.⁷³ Here indeed, he declared, was a public calamity, for the states may need help to prevent "the wealthy creditor and the moneyed man from totally destroying the poor, though industrious debtor." And at a sheriff's sale, with only gold and silver as legal tender, the poor man may get only one-tenth of the value of his goods.⁷⁴ But he was striking his bare fists against a stone wall, for he was the only representative of the debtor class.

Without success in his efforts to grant the states the right to issue paper money, he worked desperately to grant the central government that power. The Committee of Detail, in its report on August 6, vested in Congress the power "to borrow money and emit bills on the credit of the United States." On August

⁷¹ July 21. *Ibid.*, pp. 297, 298.

⁷² August 28.

⁷³ Warren, *op. cit.*, p. 550.

⁷⁴ Martin, "Genuine Information," Elliot, *Debates*, I, pp. 376, 377.

16, Gouverneur Morris and Pierce Butler moved to strike out the words, "emit bills on the credit of the United States," from the resolution. James Wilson, John Langdon, Gouverneur Morris, and James Madison were anxious to destroy the right of issuance of paper money by all governments, both state and national. Only two states voted for the retention of this privilege by the central government, New Jersey and Maryland.⁷⁵ The views of those who opposed depriving Congress of this power were well expressed by Luther Martin later, when he wrote:⁷⁶

Against the motion we urged, that it would be improper to deprive Congress of that power, that it would be a novelty unprecedented, to establish a Government which should not have such authority; that it was impossible to look forward into futurity so far as to decide that events might not happen that should render the exercise of such a power absolutely necessary; and that we doubted whether, if a war should take place, it would be impossible for this country to defend itself without having recourse to paper credit . . . that, considering the administration of the Government would be principally in the hands of the wealthy, there could be little reason to fear an abuse of the power by an unnecessary or injurious exercise of it. But a majority of the Convention, being wise beyond every event, and being willing to risk any political evil rather than admit the idea of a paper emission in any possible case, refused to trust this authority to a Government which they were lavishing the most unlimited powers of taxation, and to the mercy of whom they were willing blindly to trust the liberty and property of the citizens of every State in the Union.

It is interesting to note that years later the Supreme Court of the United States declared that under the "necessary and proper" or "elastic" clause of the Constitution, Congress did have the power to emit bills of credit and also the power to make them legal tender in the payment of private debts. Thus Martin's political economy was ultimately accepted by the nation, although rejected in the convention.

⁷⁵ Warren, *op. cit.*, pp. 693-695.

⁷⁶ Martin, "Genuine Information," Elliot, *Debates*, I, pp. 369, 370.

When the question of taxation was discussed, he again clashed with the Nationalist leaders. Gouverneur Morris and other leaders from the North urged the equal apportionment of direct taxes among the states, in order to curb the power of the new western states which might gain in population more rapidly than in wealth, and acquiring a majority in Congress, tax unduly the property of the propertied class in the East. Martin was opposed to the equal apportionment of direct taxes among the states, since duties on commerce would bear most heavily on the commercial states, and they would be paying more taxes than the other ones.⁷⁷ When he failed in this, he suggested that direct taxes be levied only in times of absolute necessity,⁷⁸ but no one heeded him. On this problem he was doubtless speaking as a Maryland man, for that state was strongly interested in commerce. At the same time he was not afraid of the possibility of the property in the East being unduly taxed. It was for the protection of the commerce of Maryland, however, that he later moved that "the Legislature of the United States shall not oblige vessels belonging to citizens thereof, or to foreigners, to enter or pay duties or imposts in any other state than in that to which they may be bound, or to clear out in any other than the State in which their cargoes may be laden on board, nor shall any privilege or immunity be granted to any vessels on entering or clearing out, or paying duties or imposts in one State in preference to another."⁷⁹ Fresh in his memory were the famous "Navigation Acts" during the days of the empire, and he was desirous of preventing the resumption of similar commercial restrictions by the new government. This led him to declare that it was no better to rid the country of the English tyranny, if a national government practiced the same tyranny.

Alarmed at the danger of uniting the control of the "purse" with the control of the army, he urged the limitation of the army in times of peace.⁸⁰ Whereupon Washington whispered to an

⁷⁷ *Ibid.*, p. 365.

⁷⁸ Elliot, *Debates*, V, 453.

⁷⁹ August 25. Madson, *Debates*, pp. 469, 470.

⁸⁰ August 13. *Ibid.*, p. 443.

adjoining delegate who then satirically made the motion that no nation should invade the country with an army of over three thousand men.⁸¹ Being laughed into defeat on this motion, Martin then argued that the central government should not be permitted to call the state militia out of a state. To him the militia was the "only defense and protection which the state can have for the security of their rights against arbitrary encroachments of the general government." But the militia, it was decided, should be organized, armed, and disciplined by the national government.⁸²

Exaggerating at times, it is true, the dangers to be found in a strong national government, nevertheless, he accurately visioned the day when certain states would feel obligated to resist the central government by arms. Opposing the use of force to subdue a rebellion (secession) on the part of any state as unnecessary and dangerous, he declared that the "Consent of the State ought to precede the introduction of any extraneous force."⁸³ A few months later he raised a very interesting question when he wrote:⁸⁴

The time may come when it shall be the duty of a state, in order to preserve itself from the oppression of the general government, to have recourse to the sword; in which case, the proposed form of government declares, that the state, and every one of its citizens who acts under its authority, are guilty of a direct act of treason; reducing by this provision, the different states to this alternative,—that they must tamely and passively yield to despotism, or their citizens must oppose it, at the hazard of the halter, if unsuccessful, and reducing the citizens of the State which shall take arms to a situation in which they must take arms to oppose the despotism and yet be exposed to punishment . . . if they obey the authority of their state governments, they will be *guilty of treason against the United States*; if they join the general government, they will be guilty of treason against their own state.

⁸¹ Warren, *op. cit.*, p. 483.

⁸² Martin, "Genuine Information," Elliot, *Debates*, I, 371.

⁸³ Madison, *Debates*, p. 417.

⁸⁴ Martin, "Genuine Information," Elliot, *Debates*, I, 382.

He was successful in inserting a clause that "No person shall be convicted of treason unless on confession in open court, or the testimony of two witnesses to the same overt act."⁸⁵

Viewing the growing strength of the nationalists, and noticing the willingness of his old followers to compromise on issues which he considered fundamentally wrong, he stubbornly continued his work of opposition. The convention agreed that the importation of slaves should not be prohibited for twenty years and that five slaves were to be counted as three whites in the apportionment of representatives. This, he declared, was wrong, "inconsistent with the principles of the Revolution, and dishonorable to the American character, to have such a feature in the Constitution."⁸⁶ Later he argued that no principle could justify the counting of slaves for apportioning representation, since it was absurd to increase the power of states in making laws for free men in proportion as that state violated the rights of freedom. Slaves could not be counted as men, since they were not admitted to citizenship. If property is the basis of representation, he declared, why not count horses, cattle, and mules also?⁸⁷ As a slave-owner himself, he struck the liberal chord of the "Revolutionary principles," but was completely out of harmony with the spirit of the convention.

Time and time again he found himself foiled by the delegates from the larger states. During the controversy on the question of the admission of new states, Gouverneur Morris moved that "New States may be admitted by the Legislature into this Union; but no new State shall be erected within the limits of any of the present States, without the consent of the Legislature of such State, as well as of the Genl. Legislature."⁸⁸ Martin immediately opposed the latter part of the resolution, declaring that nothing "would so alarm the limited states as to make the consent of the large States claiming the Western lands, necessary

⁸⁵ August 21. Farrand, *Records*, II, pp. 349, 350.

⁸⁶ August 21. Madison, *Debates*, p. 457.

⁸⁷ Martin, "Genuine Information," Elliot, *Debates*, I, 363.

⁸⁸ August 29. Farrand, *Records*, II, 455.

to the establishment of new states within their limits. Shall Vermont be reduced by force in favor of the State claiming it? Frankland and the Western country of Virginia are in a like situation."⁸⁹ The next day he again pleaded for the people living in the west. "In the beginning," he declared, "when the rights of the small states were affected, they were but phantoms—ideal beings. Now with the larger states affected, political societies are of a sacred nature. G. Morris said yesterday that if the large states were split to pieces without their consent, their representatives were ready to leave. If the small states are to be required to guarantee them in this manner, it will be found that the Representatives of other States will with equal firmness take their leave of the Constitution on the table."⁹⁰ The threat was in vain, for Morris secured his demands. And Martin, finding his efforts futile, was already planning to withdraw from the convention. A national government was taking form, so powerful that it was alarming to him.

Before his withdrawal, he made one last effort to defeat the adoption of the Constitution. He argued that all the states had to consent to it before it was binding, since they were still united by the Articles of Confederation. Later he wrote, "No alteration could be made (to the Articles) by the consent of a part of these states, or by the consent of the inhabitants of a part of the states, which could release the states so consenting from the obligations they are under."⁹¹ Yet it was decided that whenever nine states accepted it, it would be adopted.

Just before Martin left Philadelphia, federalism received its most severe blow as a result of a compromise between the northern and southern states. During the convention's deliberations, Martin had often been aided by the sectionalistic sentiments prevalent. As early as July 10, Charles C. Pinckney declared that if the southern states were "to form so considerable a minority and the regulation of trade is to be given to the

⁸⁹ *Ibid.*

⁹⁰ August 30. *Ibid.*, pp. 463, 464.

⁹¹ Martin, "Genuine Information," Elliot, *Debates*, I, 386.

General Government they will be nothing more than overseers for the Northern States." Morris and Gerry feared that the southern states would join with the new western states in oppressing the commerce of the eastern states. But on August 29, a compromise was effected. Previously, the convention had prohibited the imposition of export taxes, which was advantageous to the southern exporting states. Then on August 29, the convention agreed to permit the importation of slaves until 1808, that a tax not to exceed ten dollars per head could be levied upon imported slaves, and the elimination of the requirements of a two-thirds vote for the passage of any navigation act or act to regulate commerce. According to George Mason the compromise was a result of a coalition between New Hampshire, Massachusetts, Pennsylvania, New Jersey, Delaware, South Carolina, and Georgia. It was very significant. If the two-thirds vote for laws regulating commerce had been retained, the course of American history would have been vitally changed. Enactment of protective tariffs might have been practically impossible. The whole political relationship between the South and the North growing out of commercial legislation would have been changed. The Nullification movement in the 1830's, which arose out of opposition to a Northern tariff, might not have occurred. But the significance of the compromise is even more marked from another viewpoint. After the agreement between the leaders of the north and south had been reached, sectionalism was weakened, and the men desirous of a strong central government were consolidated. Forming a majority in the convention, unified on the important issues, they were invincible. Martin was forced to admit defeat.⁹²

Representing a very small minority, Luther Martin decided it was useless for him to remain any longer within the convention. During his attendance he had delivered at least twenty-four speeches, varying from a few minutes to the better part of two days in length, and he had introduced many resolutions. Al-

though not taking as active a part in the debates as some of the Nationalists, his influence had been obvious. The federalistic principles found in the Constitution are largely a result of concessions to his demands. Without his presence in the convention, the new national government would have been far more powerful. Other men such as Roger Sherman, William Paterson, Oliver Ellsworth, and George Read believed in equal representation for all of the states; other men such as Benjamin Franklin and Elbridge Gerry worked for the limitation of the power of the central government; other men such as Charles C. Pinckney, James Madison, and George Mason were desirous of protecting the South by restricting the power of Congress to regulate commerce; other men such as Gerry, Franklin, and Pinckney were anxious to include a "Bill of Rights"; but Luther Martin was the only man to consistently advocate the principles of federalism. Relying on sectional prejudices, local fears, and other motives, he was able to modify the form of government being drafted. Yet one of the greatest factors to be taken into consideration is that all of the delegates realized that they did not dare create a national government which was too centralized, or the people would not adopt it. Without that situation, Martin would probably have accomplished far less.

In the convention he did present the viewpoint of the debtor class who wanted easy money, of the small states who feared encroachments upon their liberty and freedom, and the common people who feared that a strong government would lead to the same tyranny that existed before the war with the English king. While other delegates were fearful of granting the common people too much democracy, Luther Martin stood out as the lone champion of the "Revolutionary principles." He was an ardent democrat. Yet he had failed. He was opposed by the majority of the delegates who represented the highest economic and social order in America. When he was later asked why he had not mentioned trial by jury and a bill of rights in the convention, he replied, "Is it not possible that the many rebuffs which I met, the repeated mortifications I experienced, the

⁹² Warren, *op. cit.*, pp. 567-587.

marks of fatigue and disgust with which my eyes were assailed," might have prevented me from doing more?⁹³ He had, however, drawn up a bill of rights, and conversed with several members before leaving, but they all declared that it was impossible to do anything with them.⁹⁴ With no cooperation in the convention, he withdrew on September 4, to begin his campaign against ratification in Maryland, although several more weeks were spent in completing the work of the convention on the document.

In November, 1787, the Assembly of Maryland summoned the delegates from Philadelphia to give their reports. Martin spoke to them for three days, and was followed by McHenry. By a majority of one vote the meeting of the state convention was postponed until the following April.⁹⁵ This address, which was later revised considerably and printed under the title of "Genuine Information," in Dunlap's *Maryland Gazette and Baltimore Advertiser*, December 28, 1787, is considered by many scholars as one of the best short accounts in existence of the work of the convention.⁹⁶ In it he discusses the instructions of the delegates, the rules of the convention, and the plans submitted; defends his actions; and argues against ratification. In a number of his letters, James Madison declared that Martin's passion and prejudice betrayed in this letter could not fail to color his statements.⁹⁷ Although this may be true, it should be remembered that most of our knowledge of the work in the convention has been based on material written by strong National-

⁹³ "Luther Martin's Reply to the Landholder," *Maryland Journal*, March 21, 1788, printed in Farrand, *Records*, III, pp. 286-296.

⁹⁴ *Ibid.*

⁹⁵ George Bancroft, *History of the Formation of the Constitution of the United States of America*, New York, 1882, II, pp. 278, 279.

⁹⁶ The speech of Luther Martin before the Maryland House of Representatives is to be found in Farrand, *Records*, pp. 151-159. The "Genuine Information" is to be found in Elliot, *Debates*, I, pp. 345-389.

⁹⁷ James Madison to James Robertson, March 27, 1831, *The Writings of James Madison*, Gaillard Hunt, editor, New York and London, 1910, IX, 446; James Madison to John Tyler, Farrand, *Records*, III, 531; and James Madison to W. A. Duer, June 5, 1836, Farrand, *Records*, III, 537.

ists, probably nearly as partial to their cause as Martin was to his.

After the publication of this letter in Maryland, the struggle became very bitter over the question of ratification, with the Anti-Federalists under the literary leadership of Luther Martin. On February 29, 1788, in a published letter from "A Landholder to Luther Martin,"⁹⁸ Oliver Ellsworth ridiculed Martin's work in the convention. He declared that he had scarcely had time to read the propositions before he opened with a two-day speech,⁹⁹ whereupon Gerry replied that he admired Martin's "fungs and profound knowledge in the first principles of government."¹⁰⁰ Listing his criticisms of Martin's work and actions, he claimed that:

(1) He advocated the political heresy that people ought not to be trusted with the election of their representatives.

(2) He held the jargon that although the states had an equal number of votes in the Senate, yet they were unequally represented.

(3) He espoused tyrannic principles when he requested that if a state refused to comply with a requisition for money, an army was to be marched into its bowels, fall indiscriminately upon property innocent and guilty, instead of the mild and equal operation of laws.

(4) He contended that the powers and authorities of the new Constitution would destroy the liberties of the people, but the same power could be safely intrusted in the old Congress.

(5) He exhausted the politeness of the convention so at length they prepared to slumber when he rose to speak.

(6) He was appointed a member of a committee only twice, then merely to avoid his endless garrulity.

⁹⁸ *The Federalist and Other Constitutional Papers*, C. H. Scott, editor, Chicago, 1894, pp. 588-594.

⁹⁹ Martin entered the convention June 9 and delivered this speech June 27, 28.

¹⁰⁰ Elbridge Gerry denies this statement in his "Reply to a Landholder," appearing in the *New York Journal*, April 30, 1788, found in Farrand *Records*, III, pp. 298-299.

Gerry did commend Martin for several constructive contributions, declaring that:

(1) He originated the "supremacy" clause in the Constitution.

(2) He agreed to the clause that the ratification of nine states would be sufficient to put the Constitution into operation.¹⁰¹

Such a bitter attack called for a number of replies on the part of Martin.¹⁰² In these replies he took up Ellsworth's points one by one, in an attempt to refute them. He declared that:

(1) He had not committed political heresy in opposing the election of representatives by the people, for in state governments power flowed immediately from the people in their individual capacity, and thus if, with the idea of federalism, the states should choose the representatives, the system would be more democratic.

(2) The Landholder in speaking of the jargon on the Senate "has all merit of its absurdity nor can I conceive what sentiment it is that I ever have expressed, to which he, with his usual perversion and misrepresentation, could give such a colouring."

(3) He had not advocated letting loose the army indiscriminately. He tried to get an amendment that "whenever the legislature of the United States shall find it necessary that revenue shall be raised by direct taxation . . . and in case of any of the states failing to comply with such requisitions, then and then only, to have the power to devise and pass acts directing the mode, and authorizing the same in the state falling therein." This was rejected and that power which he had wished given to the government only in particular and limited instances, was given without any restraint or limitation.

¹⁰¹ On April 30, 1788, he repeated these criticisms of Martin.

¹⁰² "Luther Martin's Reply to the Landholder," March 3, 1788, found in Farrand, *Records*, III, pp. 276-281; "Luther Martin's Reply to the Landholder," March 18, 1788, found in Farrand, *Records*, III, pp. 281-286; and "Luther Martin's Reply to a Landholder," March 21, 1788, found in Farrand, *Records*, III, pp. 286-295.

(4) He admitted that he argued that the convention was "destroying the liberties of the people" by giving so much power to the central government. Yet he denied that he ever declared that the powers could be entrusted to the old Congress, since they by nature could not be entrusted to any government.

(5) He admitted originating the clause providing for the Constitution, the laws, and the treaties made thereof, to be the "supreme law of the land." But it was merely offered as a compromise measure to prevent granting to the central government the right to negative state laws.

(6) He admitted voting for adoption upon the ratification of nine states, but explained that he voted from the highest number (13) down. He would have voted for eight if nine had not received a majority, but desired thirteen.

(7) He refuted the accusation that he had not mentioned trial by jury or a bill of rights by replying that he had drawn up a bill of rights, shown it to several members, but they had declared it would be impossible to secure even a discussion of them. Furthermore, under a federal system there would have been no need for any.

Martin was not content merely to refute the charges against himself, but continued his attacks on the Constitution through a series of letters to the citizens of Maryland, appearing at different times in the *Maryland Journal*.¹⁰³ But the Federalists were not silent and under the name of "Aristides," Alexander C. Hanson attempted to counteract Martin's writings.¹⁰⁴

Continuing his work of opposition, he turned to the taverns, where he was at home, and fought against ratification. In these tavern harangues he used a list of the names of twenty delegates in Philadelphia who were supposed to have desired a monarchy and the total abolition of state governments.¹⁰⁵ Receiving the

¹⁰³ March 18, 21, and 28, 1788. Scott, *op. cit.*, pp. 678-704.

¹⁰⁴ Steiner, *op. cit.*, pp. 33, 34.

¹⁰⁵ Cf. Farrand, *Records*, II, pp. 191, 192. This episode was the result of a mistake on the part of McHenry, used to advantage by Martin.

list from McHenry, a strong Nationalist, it proved to be a very persuasive argument.¹⁰⁶

The election of delegates to the state convention was held during the early part of 1788; and only twelve opponents to the Constitution out of seventy-seven delegates were chosen.¹⁰⁷ The convention met at Annapolis on Monday, April 21. The opponents to ratification were led by Luther Martin, John F. Mercer, Samuel Chase, Jeremiah Chase, William Paca, and William Pinckney. The supporters of ratification were under the leadership of Alexander G. Hanson, James McHenry, ex-governor Thomas Johnson, and ex-governor Sim Lee.¹⁰⁸

The convention was well organized by the majority party, and they found little opposition. They met in caucus, and decided that they know what the Constitution was, that they were elected to vote for it, and that no arguments would change their minds.¹⁰⁹ Six states had already approved, while in South Carolina, Virginia, New Hampshire, and New York the result was in grave doubt since the conventions had adjourned without a vote. Believing that the crisis was too great to discuss the separate provisions, they agreed not to debate, but to vote for the Constitution.¹¹⁰

Thus the document was read and reread, and on April 24 the debating began. Chase, Mercer, and Martin discharged their whole artillery of inflammable matter, yet no converts were made. They offered some amendments, which were rejected. Then the minority continued to state their objections and called on the majority members repeatedly to answer their objections if they were not just. The supporters of the Constitution remained inflexibly silent, defending themselves on the grounds that they had been elected to ratify the document, not to argue about it. Laboring in vain, their strength spent, the opposition

¹⁰⁶ Farrand, *Records*, III, 306.

¹⁰⁷ Steiner, *op. cit.*, p. 39.

¹⁰⁸ *Ibid.*, p. 207.

¹⁰⁹ *Ibid.*, p. 208.

¹¹⁰ *Ibid.*, p. 210.

acknowledged defeat. On April 26, by a vote of sixty-three to eleven, Maryland ratified the Constitution.¹¹¹

With Martin's final defeat in the Maryland Convention, his active political career was ended, and he turned to the field of law in which he achieved great eminence. His political defeat may be explained partly by the fact that he was out of harmony with the prevalent political philosophy of the day—nationalism. Yet he was the spokesman, and a brilliant one, of a definite political philosophy, which was later to be called "State's Rights." It was defeated, but not destroyed, for it was to appear time and time again in American History. And John C. Calhoun, the great exponent of nullification, is said to have found many of his arguments in the writings of Luther Martin.

The political thought of Martin, as expressed by his work in the convention and in his opposition to the ratification of the Constitution, is quite definite:

(1) He believed in democracy. He desired a bill of rights attached to the Constitution, but was stubbornly resisted.

(2) He believed in local democracy, arguing that the power of the states flowed from the people, and in this way it was easy to express the desires of the people through the state governments.

(3) He believed that governments should protect the common people. Speaking for the debtor class, he opposed the "hard money" party, and always argued that the people had the right to demand "paper money." In this respect he was a forerunner of "Bryanism."

(4) He believed in federalism. As the states were more responsive to the will of the people, they should be the sovereign units of government. The central government was merely an instrument to defend the states against a foreign enemy or the aggression of the larger states.

(5) He believed that a powerful central government meant tyranny and oppression. Only a few years before the colonists

¹¹¹ *Ibid.*, p. 211.

had left the British Empire because of the tyranny of the King, and he could not see the advantage of changing the source and seat of tyranny from the King to the national government. It would mean the annihilation of the states, and government by the majority. But the minority would have no voice, and would be oppressed. It was in connection with this point that he prophesied the day when some minority groups would attempt to secede from the union.

The Nationalists, who had drafted the main part of the Constitution, and supported it, then assumed the name Federalists, as they argued that the government was partially federalistic. The opponents of the Constitution assumed the name Anti-Federalists. In this way the party names of the two groups changed, although their political philosophy remained the same. Although the Constitution, as finally adopted, was partially modified to meet the demands of the Federalists, it was more nationalistic than federalistic. But even with these concessions, the opposition to ratification on the part of the anti-nationalists was so powerful, that it is very probable it would have never been accepted if the Nationalist's programme had not been modified. Thus, ratification might not have been achieved, paradoxically as this idea may be, without the work of this "Bull-Dog of Federalism," the bitter opponent of strong national government.

BAMFORD'S DIARY.

(Continued from Vol. XXVII, p. 259.)

June 2^d to June 8th 1776

Eastern

Battery

23^d week

Mem^{dms}

2 Su. heavy rain all day S. W. high wd To Mr Bullard sent a Bill for £20—Irish