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The Political Career of Edward Livingston.

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THE POLITICAL CAREER OF EDWARD LIVINGSTON

A DISSERTATION
SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR
THE DEGREE OF DOCTOR OF PHILOSOPHY
IN
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BY

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THE POLITICAL CAREER OF EDWARD LIVINGSTON

(Abstract)

The political career of Edward Livingston, jurist, codifier, statesman and diplomat, was closely interwoven with that of the leading statesmen in two important transitional periods in American political history prior to the Civil War. It was unique in that, separated by a period of more than twenty years, he exercised a positive influence on the course of events by giving militant expression to Jeffersonian republicanism and direction to Jacksonian democracy. Edward Livingston, the youngest of eleven children of Judge Robert R. and Margaret Beekman Livingston, was born at Clermont, Columbia County, New York, May 28, 1764. Endowed with a brilliant mind, he was well trained by tutors in the home and in the schools of Albany, Esopus, and Nassau Hall, now Princeton University, where he developed an interest in philosophy and became proficient in the languages.

Following his graduation from Nassau Hall in 1781, Livingston studied law under John Lansing where he was thrown into intimate contact with such brilliant legal minds as Alexander Hamilton, John Kent, and Aaron Burr. It was at this period that he became particularly interested in the study of Roman law which later greatly influenced his career. At the age of...
twenty-one he was admitted to the bar and opened his office in New York City. He served in the state military forces for four years and was commissioned captain before resigning from service in 1790. In 1788, he married Mary McEvans who died in 1801. After his removal to New Orleans in 1804, he immediately acquired an enviable position in the life of the city and aligned himself politically with the French faction that opposed the territorial governor, William C. C. Claiborne. In 1805, he married a young widow, Louise Moreau de Lassy, née Davezac, who was a French emigrée from St. Domingo. This brilliant, charming woman ably supported Livingston in his endeavors and was a decided asset to his political career.

The active political experience of Livingston was long, rich, and varied, extending from his unsuccessful candidacy as member of the state assembly of New York in 1793 to his resignation as Minister to France in 1835. He served in Congress as Representative from New York from 1795 to 1801. He declined to stand for re-election and in March 1801, President Jefferson appointed him United States Attorney for the District of New York and, later in the same year, the State Council of Appointments selected him as Mayor of New York City. He held these two positions until the summer of 1803, when he resigned following the peculation of a trusted employee in the office of the District Attorney. In 1820, he was elected Representative to the state legislature of Louisiana and, in 1822, he was unopposed as candidate for member of Congress from the New Orleans district. After serving three terms as member of the House he
was defeated in 1828, but in January, 1829, the Louisiana Legislature elected him United States Senator. He served in this capacity until President Jackson drafted him for Secretary of State in 1831. Two years later, May 29, 1833, Jackson withdrew him from the Cabinet and sent him to France as Minister to the Court of Louis Philippe, which position he retained until July 11, 1835.

Livingston was a product of the period of family politics and party leaders. He followed the lead of his eldest brother, the distinguished Chancellor Robert K. Livingston, and ceased to be a Federalist when Washington overlooked his family in the distribution of patronage. The restriction of the right of suffrage, the power of the State Council of Appointments, and his large family connections were the important factors that made for Livingston's success in New York politics. Later, it was the party leaders, who appreciated the political value of his ability and of his intellectual honesty, to whom he was indebted for preferment.

Independent in his views, honest in his thinking, Livingston was more uniformly consistent in his political philosophy than the majority of politicians. This patrician, who traced his ancestry back to the Scottish peerage, was rather cynical toward the masses and refused to appeal to their emotions and prejudices. In the expression of his democratic opinions there was no mixture of the demagogic view. Having once espoused the cause of republicanism, he became as firm a repub-

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lican as any of his Jeffersonian associates and as staunch a
democrat as any of his Jacksonian confrères. While a Representa-
tive from New York, he distinguished himself by brilli-
liancy in debate and vigor in attack. In his fight against
the Alien and Sedition Acts of the Adams administration, he
gained a national reputation as an authority on constitutional
law. He increased this reputation by his constitutional inter-
pretations in his speeches during the debates on internal im-
provements in the House in 1824 and on the Foote Resolution in
the Senate in 1830.

Naturally, there was a slight modification of his concept
of the nature of the Union as his views matured, but fundamen-
tally it remained unchanged throughout his life. In 1798, he
championed the right of individual liberty against encroach-
ment by the national government; in 1824, he pled for a concept
of union that would admit the existence of a nation able to act
unitedly on national questions unrestricted by sectional jea-
loisies; and in 1830, he contended for the indissolubility of
the Union and the full sovereignty of the national government
in all delegated powers. The climax of his arguments are to be
found in the Anti-Suffocation Proclamation which he prepared
for Jackson. Although there was little new expressed in this
document, it is a complete statement of his constitutional con-
cept of government.

The dishonesty of the clerk in the office of the District
Attorney ruined Livingston financially and terminated his poli-
tional career in New York. The desire to liquidate his indebtedness prompted his move to New Orleans in early 1804. In retrospect, the calamity appears to have been a boon, for it was in his new surroundings that he made his greatest contributions to the fields of law, social and penal reform, and politics.

Almost immediately upon his arrival in New Orleans, he attained success as an attorney and within a relatively short time he had earned the reputation as the outstanding member of the local bar. He, probably more than any other individual, was responsible for the continuance of civil law practices in Louisiana. In 1805, he drafted the acts providing for the charter of New Orleans, inland navigation, and the county court law for the territorial government.

Livingston's determination to pay his indebtedness to the national government brought him into difficulties that almost ruined his reputation and destroyed him politically before he became established in New Orleans. Among his creditors in New York was Aaron Burr, who transferred his debt to Mr. J. E. Bollman, July 26, 1806. Bollman presented the draft on Livingston in New Orleans and it was paid. When General James Wilkinson declared martial law in the city at the time of Burr's threatened invasion, Livingston successfully disputed his authority to overthrow the civil government. In retaliation of Livingston's court action to estop him, the General preferred charges of treason against the attorney and cited
as evidence the payment of the Burr draft. Livingston had hardly cleared himself of this calumny when the famous Burr controversy brought him into conflict with President Jefferson. Livingston had come into possession of certain turrett lands adjacent to the city and expected to realize sufficient profit on this property to pay his indebtedness to the government. On the ground that the land belonged to the United States as sovereign of the soil, the federal authorities ejected Livingston from the property. Great publicity was given to the long-drawn-out litigation that followed, on account of the prominence of the two principals. The able manner in which Livingston defended his rights to the property gained for him a national reputation in the field of law. While the question was not settled until after his death, Livingston, in 1826, realized a sufficient sum from a portion of the land in question to clear his accounts with the Washington government.

Livingston was a pioneer in the field of social and penal reform. Early in life he became interested in social legislation and, in 1795, eight days after entering Congress, he moved to revise the penal code of the United States. His plan to relieve the employment situation, which he submitted to the Mechanics Society of New York City in 1803, anticipated many of the features embodied in present day social legislation. He was a leader in the field of the codification movement of the 1820's in Louisiana and, during a five-year period, he drafted, or collaborated in the drafting of, seven codes and projects of
codes for the state. Although legislative sanction was restricted to the Civil Code, his plan of penal jurisprudence reform has served as a guide for enlightened legislators not only in the United States but also in South America and in Europe.

In the study of Livingston's diplomatic career, consideration should be given to the existing internal political situations in both the United States and France. Thrown upon his own resources in making critical decisions while in France, Livingston revealed exceptional judgment, keen discernment, and wise initiative. It was his tact and rare imperturbability of temper that had much to do in preserving peace between the two nations. While he failed to secure compliance with the terms of the 1831 Treaty with France, no one could have succeeded under the circumstances.

Keenly disappointed at his failure to settle the French problem, he returned to the United States in June 1835, and resigned his position July 11, 1835. Livingston retired to his country home at Montgomery Place, near Red Hook, Dutchess County, New York, where he remained until his death, May 23, 1836.

No less a product of history than a maker of history, Edward Livingston's theories of jurisprudence, of social reform, and of the nature of the Union continue to this day to influence the course of American life.
ACKNOWLEDGMENTS

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W. B. H.
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CHAPTER I

A PROMINENT NEW YORK FAMILY

The early political history of New York state is as difficult to comprehend as is that of a later period to which James Parton alludes in his *Life of Andrew Jackson* as "that most unfathomable of subjects, the politics of New York." Party lines were forming among the patriots as early as 1774 over a policy of intercourse with the mother country. As the years passed, the lines of cleavage became more sharply drawn; and the political contests were conducted with increasing bitterness. The leaders were men of wealth, education, and culture whose patriotic zeal was unsurpassed by those of any other state. Theoretically, they believed in the liberties of the people and so stated in the first article of the State Constitution. Practically, they feared the passions of the multitude as much as the tyranny of kings and proceeded to restrict the rights of suffrage greatly by adding a property qualification clause in subsequent articles of the same instrument.¹

¹ The Constitution of the State of New York (Fishkill, 1777), Art. I: "This Convention therefore, in the name and by the authority of the good people of this state, doth ORDAIN, DETERMINE and DECLARE, that no authority shall on any pre-tense be exercised over the people or members of this State,
Politics was an important business; and the leaders, being practical politicians, recognized the value of keeping power in the hands of a few. During the early days of the Republic, the majority of the men of wealth and influence were Federalists. However, George Clinton, head of the powerful "Clinton family" was the leader of a strong opposition party known as the Anti-Federalists in the ratification period and later as Republicans. Apostasy was practically unknown; but, in time, the factional strife in the Federalist ranks over the distribution of the spoils resulted in defections, which were ultimately responsible for the defeat of the party.

but such as shall be derived from and granted by them."

Art. VII: "That every male inhabitant of full age, who shall have personally resided within one of the counties of this State for six months immediately preceding the day of election, shall at such election be entitled to vote for representatives of the said county in assembly; if during the time aforesaid he shall have been a Freeholder, possessing a Freehold of the value of twenty pounds within the said county or have rented a tenement therein of a yearly value of forty shillings, and been rated and actually paid taxes to this State. . . ."

Art. X: "And this Convention doth further in the name and by the authority of the good people of this State, ORDAIN, DETERMINE and DECLARE, that the Senate of the State of New York, shall consist of twenty-four freeholders, to be chosen out of the body of freeholders, and they shall be chosen by the freeholders of this State, possessed of freeholds of the value of one hundred pounds, over and above all debts charged thereon."

Art. XXIII: "That all officers, other than those, who by this Constitution are directed to be otherwise appointed, shall be appointed in the manner following, to wit. The Assembly shall, once in every year, openly nominate and appoint one of the Senators from each great district, which Senators shall form a council for the appointment of the said officers, of which the Governor for the time being, or the Lieutenant Governor, or the President of the Senate, when they shall respectively administer the government, shall be President, and have a calling voice, but no other vote; and with the advice and consent of the said council shall appoint all said officers."
The first important defection from the Federalist ranks occurred in 1790, following the call of a political meeting of the Livingston family by its leader Robert R. Livingston. The results of this conference were far-reaching, as the shifting of the family's allegiance was in a large measure responsible for the domination of the state and national politics by the Republicans for several decades following the turn of the century. It also made possible the political advancement of Robert's youngest brother, Edward Livingston.

The Livingston family with its numerous connections was one of the largest, wealthiest, most influential and politically active kindred groups in the state of New York. The interest of the various members of the family in politics was not a recently acquired characteristic, as is evidenced by the activities of their forebears. The Livingston family of America is descended from Sir Alexander Livingston, who in 1437 was made one of the guardians of the infant King James II of Scotland. Alexander's descendant, Robert Livingston, came to the colony of New York about 1675, dropping the e from his name on the way. In 1686, he was granted the patent to Livingston Manor, which comprised approximately one hundred fifty thousand acres of land on the east bank of the Hudson River.

about half-way between Albany and New York City.5

This energetic young immigrant soon became one of the leading men of the colony; and, being interested in politics he served the colony as Secretary of Indian Affairs, Secretary of the Albany Commission, town clerk, and collector.6 He was a member of the General Assembly from 1707 to 1711, and in 1718 was speaker of that body.7 It was Robert Livingston and Peter Schuyler who were commissioned to receive the charter of the city of Albany from the governor of the colony.8

In 1683, Robert Livingston married a widow, Alida van Aensselaer, nee Schuyler.9 Their grandson, Judge Robert A. Livingston, later a member of the Stamp Act Congress, was married in 1742 to Margaret Beekman of Rhinebeck. Like a great many colonial families, and especially in the Livingston families, that of Robert R. and Margaret Livingston reached large proportions. To them were born eleven children.10 Of their children, it was the second and the eleventh, Robert E. and Edward, who became famous in law, politics, and diplomacy and assured the family name a permanent place in history.

Edward Livingston was born at Clermont, Columbia County, New York on May 28, 1764. His early education was received at home, at Albany, and at Esopus, now Kingston. In 1779, he entered the junior class of Nassau Hall, now Princeton University.

5 Ibid., 39.
6 Ibid., 30.
7 Ibid., 41.
8 Ibid., 24; Charles A. Padgett, "The Ancestry of Edward Livingston" in The Louisiana Historical Quarterly, XIX, 913.
10 Charles Havens Hunt, Life of Edward Livingston (New York, 1864), 15.
Upon his graduation, in 1781, he began the study of law at Albany under the future chancellor, John Lansing. Here he was thrown into intimate contact with such brilliant legal minds as Alexander Hamilton, Aaron Burr, and James Kent. After the British evacuated New York, in 1783, Livingston went there to complete his legal studies and was admitted to the bar in 1785. While he had not been a very diligent student of the classics at Princeton, his newly aroused interest in the Roman law now caused him to review his Latin, as well as to learn Spanish and French. In New York there was another stimulus to the study of Latin.\footnote{Mrs. Margaret Livingston to John Jay, April 21, 1782, in Henry P. Johnson (ed.), The Correspondence and Public Papers of John Jay, 4 vols. (New York, 1893), II, 333.} He became interested in Mary McEvers, a merchant's daughter,\footnote{Catharina Van Rensselaer Bonney, A Legacy of Historical Cleanings, 2 vols. (Albany, 1875), I, 58.} and had recourse to the Latin poets to aid his love letters. They were married in 1788. Livingston's brother John later married a sister of Mary.

All these dates show that Livingston's most impressionable age coincided with a momentous period in American history. Born the year before the passage of the Stamp Act, he was sent away to school in the fall following Concord and Lexington. In 1776, the Declaration of Independence, which his brother Robert had helped draft, was signed; and his brother-in-law, Richard Montgomery, was killed at Quebec. Two other brothers-in-law were in the army, and his brother John was manufacturing powder for
the troops. During 1777, memorable for Burgoyne's surrender, Kingston, where he was attending school, became the capital of the State for a short time. In order to avoid the British, the first "Convention of the State of New York" held there an adjourned session on March 12 and, on May 20, adopted the Constitution that remained the supreme law of the State for forty-four years. Robert, Livingston's brother, who was serving in both this convention and the Continental Congress, was appointed chancellor. Through his relatives, Edward made the acquaintance of Washington, Lafayette and other notables at an early age. He entered Princeton a few months after Wayne stormed Stony Point, and lived on the campus that had been the scene of one of Washington's victories. Cornwallis's surrender came a few months following his graduation and he moved to New York the year of the treaty of peace. He was admitted to the bar during the sessions of the Alexandria convention and was married within twelve months after the Federal Constitution was drafted. The next April he saw his brother Robert administer the oath of office to President Washington.

During the last third of the eighteenth century and in the first decade of the nineteenth, the Livingston family was not only a potent factor in New York politics, but a powerful influence in the councils of the national leaders, who were responsible for the policies of the government. Robert A. Livingston, the family leader, was one of the gifted men of his time; he added learning to great natural ability; brilliance to pro-
found thought; and wisdom to rare judgment. He occupied an important position in the revolutionary government, and his advice was sought by the members of his political party.

This family leader became the guide and counsellor of his brother Edward, following the death of their father in 1775.13 Believing that a knowledge of politics was an essential part of the education of a Livingston, Robert determined that this youth seventeen years his junior should receive thorough training in the practice of politics. At an early age, Edward exhibited a keen interest in the subject and, under the guidance of his tutor, became familiar with the intricacies of the game.14 He could have had no better instructor, and certainly no other school could have offered more thorough courses in practical politics than were to be found in New York.

In times of great stress and danger men mature early; so did Edward Livingston. His early interest in the important events of the day was to be expected, as these matters were usual topics of discussion in the homes of his mother and brothers where many of the leaders were frequent guests. New York was an important military and commercial center during the Revolutionary period; and, sooner or later, most of the important leaders were visitors to the city. Thus many opportunities were afforded young Livingston for making contacts and forming friendships that later were of practical value.

13 Hunt, Life of Edward Livingston, 30.
14 Ibid., 30-38.
While the majority of these earlier contacts were with the members of the party later known as the Federalists, he did not confine his associations to members of this group.

At the age of twenty-one, Livingston was admitted to the bar and opened his office at 51 Queen Street, New York City.\textsuperscript{15} While the city bar numbered less than forty, it counted among its members such men of high professional standing as Alexander Hamilton, Egbert Benson, Robert Toup, Morgan Lewis, William S. and Brockholst Livingston, James Kent, and Aaron Burr.\textsuperscript{16} That Livingston gained at once a respectable and soon an eminent standing among the members of his profession bespeaks for him ability, energy, and early industry. He possessed an analytical mind and, in the preparation of his briefs, developed an ability for clear and logical thinking. Through his frequent appearance at court, he gained an ease and poise in debate that were of great value in his political career.

The large family connection, the strong influence of the family name, and the Chancellor's reputation as a lawyer were valuable assets to the young attorney, who escaped the usual struggle against dire necessity experienced by most young lawyers. It was fortunate that he began his practice just when New York was beginning its rapid expansion following the close of the war. Litigation increased in proportion to the growth of the city, and the old court building at the corner of Wall

\textsuperscript{15} Ibid, 51.
\textsuperscript{16} Ibid, 48.
and Nassau Streets became the center of unusual activity.

The long military occupation of the city by the British; the losses arising from the suspension of rents, the processes for the confiscation of the property belonging to the Tories, the careless handling of records resulting in questionable property titles; the change in money values; and the tightening of credit—all gave rise to numerous legal questions. Livingston secured a large portion of this business and accumulated a modest fortune from the lucrative practice that he attained. During the period extending to 1794, his reputation as a lawyer steadily increased.

Young Livingston was socially inclined and, without neglecting his professional duties, availed himself of every opportunity to cultivate a standing and influence in the community. Military service has never been considered a political liability, so at the age of twenty-two, he accepted a commission as lieutenant in the state military forces and retained this rank until March 17, 1789, when the State Council of Appointments promoted him to the rank of Captain. An uneventful four year military career was terminated when he resigned from service in September, 1790.17

Thus in the early life of Edward Livingston there appear an imposing array of qualifications and circumstances that forecast for him the important part he was to play in politics. Just as the drama of American nationalism was reaching

17 Hugh Hastings (Comp.), Minutes of the Council of Appointments of the State of New York (New York, 1901), 1, 109, 155, 185.
its climax, he was born into a family of prominence, wealth, and political influence. His naturally brilliant mind was made keener by his education in the best schools afforded by the New World. His admission, while yet a youth, to the distinguished New York bar provided him with opportunities to widen his acquaintance and to broaden and deepen his understanding of politics. His opportunity to render military service enhanced his chances of securing political preferment. Family, schooling, early opportunities, and the times were all on his side.
CHAPTER II

POLITICAL APPRENTICESHIP

In political matters, Edward Livingston accepted Chancellor Robert R. Livingston's leadership, and thus in a large measure avoided the criticism that responsibility engenders. The appointment of Robert R. Livingston to the position of Secretary of Foreign Affairs by the Continental Congress in 1781, not only opened up for Edward new channels for making contacts, but made it possible for him to acquire an intimate knowledge of governmental operations under the Articles of the Confederation. As the inherent weakness of the government was revealed to him, he became an ardent advocate of the Federal Constitution. Practically all of the important members of the New York bar were opposed to the Clinton faction which had re-elected George Clinton governor triennially since 1777. Although Livingston was not particularly active in politics at this time, he did not hesitate to take a definite stand when public questions arose which he felt affected the welfare of the state and nation.

Governor Clinton's dilatory policy toward the calling of

1 Hammond, The History of Political Parties in the State of New York, I, 41.
a state convention to consider the adoption or rejection of
the Federal Constitution caused considerable anxiety among
the conservative interests of the state. The Livingstons
were favorable to its adoption and very much opposed to the
Clinton idea of holding off and allowing the other states to
try out the scheme. Edward Livingston, though not a member
of the assembly, rendered valuable service in the legislative
fight for the call of a state convention to consider the mat-
ter; it was a family friend who introduced the measure in the
state assembly calling for the constituent convention and the
election of delegates.2

This fight was continued in the convention that met at
Poughkeepsie in June, 1788. Of the sixty-one assembled dele-
gates, two-thirds were opposed to the Constitution,3 and the
Federalists throughout the country became alarmed over the
failure of New York to ratify. The opposition, under Clinton’s
leadership, gave no indication of weakening until after the de-
feat of Patrick Henry in Virginia. Again, the influence of
the Livingston family was found on the side of conservatism
and patriotism. "It was in the Jay home," says Alexander,
that "Livingston [chancellor] made those arrangements with
Hamilton and Jay, the Morrices and the Schuylers that result-
ed in the overthrow of Governor Clinton and his supporters in
the convention which ratified the constitution."4 The last

2 H. C. Lodge, Alexander Hamilton (Boston, 1898), 70.
3 William Jay, The Life of John Jay, 2 vols. (New York,
1833), I, 266.
4 D. S. Alexander, A Political History of the State of
blow needed for its ratification by a vote of thirty to twenty-seven was the speech delivered by Gilbert Livingston, a cousin of Edward.  

In 1789, two important events occurred in New York that were far reaching in their ultimate results. Robert R. Livingston administered the oath of office to George Washington as first chief executive of the young republic. The state of New York experienced its first genuine gubernatorial campaign, and George Clinton was re-elected for his fourth consecutive term. Neither of these events was viewed with apprehension, since no one at that time considered that they might in any way affect future political developments. However, they set in motion a train of political events that contributed in part to the disappearance of the leading political party and the domination of national policies by the Republicans.

Clinton's activities in the state fight over the adoption of the Federal Constitution made it inevitable that he should be opposed in the next governor's race. The governor's election was the first real political conflict in the history of New York and became sharp and bitter. It is significant also that it was the last important contest in which the Federalists presented a united front. The Federalists, under the leadership of Hamilton, selected Robert Yates as their candidate. Yates had voted against the adoption of the Federal Constitution and had

5 *New York Convention, 17 June, 1788* (Fishkill, 1788), 37.
been an ardent supporter of Clinton. In selecting him as their candidate, the Federalists hoped to form a coalition with the more moderate men of the Anti-Federalist faction, as they realized that only by such a combination could they defeat Clinton. However the arguments of William Duer, the powerful influence of Chancellor Livingston, the popularity of Jay, and the leadership of Hamilton could not avail. Clinton was elected by a majority of 429 in a total vote of 12,353.

Chancellor Livingston may have failed to realize the advantages that he and his family could derive from the restriction of suffrage, when, in 1777, he assisted John Jay in preparing the draft of the state constitution, but he certainly became thoroughly aware of them following the campaign and election of 1789. The constitution provided for a graduated scale of suffrage with a property qualification requirement. This requirement ranged from a value of twenty pounds for voters participating in the selection of assemblymen to one hundred pounds, free of debt, for those voting for governor. The right of suffrage was so restricted that as late as 1790, only 1303 of the 13,330 adult male residents of New York City possessed sufficient property to vote for governor. Such conditions

offered possibilities of political preferment to those mem-
bers of large and well-to-do families who recognized and util-
ized their advantages. The constitution further provided that
all state, county, city, and village officials except the gov-
ernor, lieutenant-governor, state treasurer, and city officers
below the rank of mayor were to be appointed by the State Coun-
cil of Appointments. With the exception of the governor, the
members of the council were selected by the State Assembly.\(^9\)
These conditions offered opportunities for the building of a
powerful political machine, which had not been overlooked by
George Clinton. Chancellor Livingston, being a practical pol-
itician, also realized these facts; and, since he desired pol-
itical preferment, his deaf ear was not turned toward Clinton
when the latter made overtures for peace, and at a later day
suggested an alliance between the Clintons and Livingsons.

When Washington was inaugurated, his close personal and
political friend Hamilton gained control of the dispensing of
federal offices. Robert Livingston naturally expected to have
his services to the new government rewarded. He was one of the
recognized Federalist leaders, and his associates were the lead-
ing Federalists; his principles were the pillars of his party;
and his ambitions centered in the success and strength of his
country. He, with seven members of the Livingston family, to-
gether with the Schuylers, had overthrown the Clintons in 1788
and turned the Confederation into the Union. He and Hamilton

were personal and political friends, and he had followed Hamilton's leadership in the campaign against Governor Clinton. Certainly the new union, which he had helped to create, would recognize his services and reward him.

Political New York at this time was like Caesar's Gaul, divided into three parts—the Clintons, the Livingstones, and the Schuylers. Parton says "the Clintons had power, the Livingstones had numbers, and the Schuylers had Hamilton." If there were no higher motive, prudence certainly required that the Livingstones should not be overlooked in the division of federal patronage. The Chancellor stood in line for promotion to the position of Chief Justice of the Federal Supreme Court, but this went to Jay, who stood nearer Hamilton, just as Philip Schuyler did, when United States senators were chosen. Governor Morris went to France, Thomas Pinckney went to England, William Short to Spain, and David Humphreys to Portugal. The Livingstones were left out.

Although the federal offices in New York were of trifling importance compared to the state patronage, the new Secretary of the Treasury Hamilton used them to strengthen federalism and if possible to destroy Clinton. Governor Clinton felt the full power of the federalist combination, but he governed his conduct with the toleration and foresight of a master politician. The call for the governor in 1789 was so close that

10 James Parton, Life and Times of Aaron Burr, 2 vols. (Boston, 1886), I, 168.
he immediately began to prepare for a repetition of the contest in 1792. He declined to punish those who had deserted his standard and did not bar the promotion of Robert Yates to the office of Chief Justice of the State Supreme Court. He appointed Aaron Burr as Attorney-General, and thus secured to his ranks a group of talented and spirited young men who were ardent admirers of Burr. If Clinton thought himself fortunate in gaining Burr, he was still more fortunate in securing the support of the influential Livingston.

Hamilton’s funding system, especially the proposed assumption of state debts, afforded a plausible cause for opposing federalism; and ostensibly for this cause, following a family meeting, the Livingsons ceased to be Federalists. True, some of the less conspicuous members, residents of Columbia County, continued their adherence, but the statesmen who gave the family its name in history wanted nothing more of a party whose leader was a "young adventurer," a merchant’s clerk from the West Indies.

The first public notice of the Livingston break was in the election of a United States Senator in 1791. Hamilton’s father-in-law, Philip Schuyler, confidently expected to be continued in office, since his re-election was understood when he had been selected for the short term. A few of the Federalist members of the Assembly preferred Aaron Burr, as they resented Hamilton’s influence over Schuyler. Governor Clinton

11 Alexander, Political History of the State of New York, I, 45.
was not slow to grasp this opportunity of striking back at Hamilton and of placing one of his own followers in such an important post. The support of the Livingston faction was necessary for the success of the scheme. And this was secured when Clinton promised Burr's place as Attorney-General to Morgan Lewis, a brother-in-law of Edward and Chancellor Livingston. Thus early, the Livingsons profited by their change of party affiliations, and the Chancellor was pleased with the part that he had played in delivering a powerful blow to Hamilton through the defeat of Schuyler. From this time forward, the political fortunes of the Livingsons were on the upgrade; the prestige of victory so necessary to political success spurred them on to greater activity.

The gubernatorial election, held in April 1792, was bitterly contested. George Clinton was nominated for re-election, and the Federalists selected John Jay as their standard bearer. "Seldom has an election," says Alexander, "been contested with such prodigality of partisan fury. The rhetoric of abuse was vigorous and unrestrained; the campaign lie active and ingenious; the arraignment of class against class sedulous and adroit, and the excitement most violent and memorable. If a weapon of political warfare failed to be handled with craft and courage, its skillful use was known."12

The campaign was epoch making in the history of politics. The people having cut loose from royalty, now proposed cutting

12 Ibid., 52.
loose from all emblems of nobility. Jay was accused of saying that "there ought to be in America only two sorts of people, one very rich, the other very poor," and to support this misrepresentation, the newspapers quoted his favorite maxim that "those who own the country ought to govern it," pointing to the state constitution, which he drafted, to prove that only the well-to-do could vote. The Federalists made much of Clinton's use of patronage and his opposition to the adoption of the Federal Constitution. The governor was even accused of secretly profiting by the sale of public lands.13

Jay lost the support of the Dutch, largely the slaveholders of the state, as he was accused of wishing to rob them through his efforts to abolish slavery at the time of the adoption of the state constitution. Clinton drew support from the commercial interests by the fierce attack on Hamilton's plan for the assumption of state debts and his financial system. The reign of speculation that flowered in the year 1791 was attributed to Hamilton's schemes, and the Republican orators branded the reports of the Secretary of the Treasury as "dangerous to liberty," the assumption of state debts as "a clever device for enslaving the people," and the whole fiscal system "a dishonorable scheme."

The federal foreign policy became a live issue in the campaign, and it was at this time that those feelings which furnished a distinguishing characteristic of the two parties were

13 Ibid., 54.
just beginning to take root in the minds of the party leaders. The Federalists criticised the outrages committed by Jacobins of France and expressed an apprehension that the intrigues of the French government might involve the American republic in an European war. They accused the Republicans of an undue attachment to France and attempted to hold them answerable for the wild theories both in politics and religion which at times appeared in France. The Republicans charged the Federalists with being unreasonably favorable to the British nation and claimed that this position was due to their commercial connections with the mercantile interests of Great Britain. The Federalists were further charged with being hostile not only to the French Revolution, but to liberty and freedom in this country as well as in France.

With the party lines of cleavage so sharply drawn, it was recognized early in the campaign that the election was to be closely contested and that victory or defeat depended upon the change of relatively few votes. The party leaders redoubled their efforts, and both the Federalists and Republicans drafted for active service every available worker. Many of these junior workers soon came to occupy higher and more influential positions than some of their elders and leaders. This was especially true in the case of Edward Livingston, who, up to the opening of this campaign, had devoted most of his time and talents to his chosen profession of law.

It was a deep grief to Jay that the Livingstons opposed him. The Chancellor and Edward were his wife's cousins, Brock-
holt her brother. Brockholst had been Jay's private secretary at the Embassy in Madrid, but violence now characterized his political feelings and conduct. Satirical letters falsely attributed to Jay greatly enraged the Livingsons, and although the Chief Justice denied the insinuation, the Chancellor gave battle with the enthusiasm of a new convert. Edward was less violent in his speech and actions than either the Chancellor or Brockholst. 14

At the election, the people gave Jay a majority of their votes, but at the count, a majority of the canvassers gave Clinton the governorship. The canvassers attempted to justify their action on the ground that the ballots from certain counties had not been conveyed to the Secretary of State in accordance with the provisions of law. 15 No member of the Livingston family raised his voice in protest against the perpetration of this vicious party precedent of disregarding the express wishes of the electorate. Since the Chancellor was one of the recognized Republican leaders, he and his family could not escape the odium attached to this party action.

The contest left deep and lasting scars; it so widened the breach between the Federalists and the Livingsons that

14 Ibid., 55.
15 Impartial Statement of the Controversy Respecting the Decision of the Committee of Canvass in New York, 1792, (New York, 1792), passim. [Pamphlet In Yale College Library].
a reconciliation was impossible. Edward Livingston's active participation in the campaign was in part responsible for his decision to seek political preferment. In this field of activity he attained renown and distinction as a politician and statesman that compared favorably with his reputation as a jurist.
CHAPTER III

A MEMBER OF CONGRESS FROM NEW YORK

The division in American politics in accordance with the divisions in Europe, which had its beginnings in the New York campaign of 1792, widened quickly, and continued until Napoleon was definitely defeated and France ceased to be at war with the powers that surrounded her. The Federalists became more and more sympathetic with England; the Republicans more and more favorably disposed toward France.

In 1793, France beheaded her king and almost immediately was at war with England and Spain. The year before she had begun a war with Austria and Prussia. The French government called upon the United States to take part in the war and sent over Edmond Genet to persuade the Americans to do so. Washington, fearing that the ardent French partisans would by some rash act bring on war with England, issued a proclamation of neutrality which both countries ignored. It soon became evident that the United States must come to an understanding with either France or England. The Republicans, early in 1794, took a bolder attitude, ceased to plead for France, and began to demand war against England.
accepted the Federalist policy of coming to terms with Eng-
land, and appointed John Jay special envoy to accomplish it.

This action of President Washington had an important
bearing upon the results of the New York Congressional elec-
tions, which were held in December of the same year. In New
York City, the acknowledged Federalist stronghold, the Repub-
licans selected Edward Livingston as their candidate. The
organization leaders had hit the nomination for willingly
having sacrificed himself to the party welfare by agreeing to
stand for state assemblyman in 1787, when defeat was inevi-
table. In this state election there were three tickets in the
field and the entire Federalist slate, composed of "citizens
attacked to the National Constitution, and that of the State,"1
was elected. With 814 votes, Livingston ranked fifteenth on the
list of twenty-one candidates. He ran fifth on his own party
ticket and was led in the final count by two opponents2 supported
by certain groups of laborers.3 As a strict organization worker,
he continued the fight in season and out of season which ser-
ved not only to embarrass the Federalists but also to keep
his name before the public. Upon the slightest pretext or
upon no pretext whatever, the administration was attacked.
On one occasion, it found expression in the form of a pub-
lic protest meeting held opposite Fantine's Coffee Shop.

1 New York Daily Advertiser, April 4, 1793.
2 Ibid., April 12, 1793.
3 Ibid., June 3, 1793.
4 Ibid., April 17, 1793.
The political manoeuvre was to focus public attention upon the seeming Federalist indifference to the military safety of New York. Asserting that Congress was negligent in providing adequate protection for the city, the assemblage called for the appointment of five citizens to formulate a petition requesting the state legislature to supplement the amount which Congress had appropriated for this purpose and forward the same by express to Albany. The activity of Livingston in this instance became quite apparent with his appointment as chairman of the committee.  

With only a few men of wealth and importance in the Republican ranks, with the powerful influence of his family, and with the party regularity and activity of Livingston, it was logical for him to have been selected to oppose John Watts, the Federalist incumbent. The usual procedure of holding a public meeting of interested citizens to launch the campaign was followed. On the evening of December 4, 1794, his political associates assembled at Hunter's Hotel and unanimously adopted resolutions pledging him their votes and support.

Among the several factors that contributed to the success of Livingston's campaign was the internal strife that developed in the Columbian or Tammany Society over the war issue. While the Society had always acted as a unit, the two contending factions refused to attend a joint meeting,  

as each feared the vote of the whole membership would necessitate the surrender of its position on the question.

Whenever the Federalist clique, under the guidance of the Grand Sachem, would meet and pass commendatory resolutions concerning the President, the Republican group, under the leadership of the Grand Secretary, almost immediately would follow with its gathering to pass resolutions designed to counteract those of its rivals. The fight was waged through the columns of the press and charges and countercharges continued to be made until the close of the campaign. This publicity led the editor of the Herald to remark facetiously that the "Tammany Society it would therefore seem is composed of persons of opposite politics. One favoring the Administration; the other opposed."7

More than a month prior to the election the Journal and Patriotic Register remarked that "The election in this district has been a severely contested one. . ."

The dissension in the Tammany ranks gave the friends of Livingston an excellent opportunity for effective work which they did not neglect. The workers made a personal canvass of every elector and made an accurate record of each voter's political affiliation. The work of each canvasser was checked by that of another and effective use of the questionnaire was made

6 New York Journal and Patriotic Register, January 21, 1795, et seq.
7 New York Herald, February 7, 1795.
8 New York Journal and Patriotic Register, December 13, 1794.
in evaluating public sentiment. The results proved to be so favorable to Livingston's candidacy that his friends had the temerity to predict he would be elected by a majority of approximately one hundred votes. Their estimate proved to be too conservative as he carried five of the seven wards of the city and defeated Watts by a majority of 205 out of a total of the 3481 votes cast.

During the year that intervened between Livingston's election and the taking of his seat in the House, many events occurred that tended to accentuate his European prejudices. John Jay, whom the state canvassers had counted out of the governor's office in 1792, was in England attempting to negotiate with that nation a treaty favorable to the interests of the United States. The Federalists gained control of the New York Assembly and the Council of Appointments. In January, 1795, the State Assembly re-elected Rufus King as United States Senator. Governor Clinton, realizing that under existing circumstances he was not politically available, announced his retirement from politics. After a careful canvass of the situation, the Federalists chose John Jay as their candidate for governor. The Republicans, after anxiously looking about for a candidate, finally selected Robert Yates, Hamilton's coalition candidate of 1789 as their party leader. Though there was little hope of a Republican victory, the campaign was quite spirit-

9 Ibid.
11 Ibid., January 30, 1795.
ed, and Livingston did what he could in a futile attempt to defeat Jay.

The result of the state canvass was declared May 26, two days before Jay arrived in New York from the court of St. James after an absence of more than a year. "A large concourse of citizens," says William Jay, "assembled to welcome their new governor and to greet the envoy whose successful mission procured peace to the country; the crowd attended him to his dwelling, and the ringing of bells and the firing of cannon evinced the joy his arrival had inspired."¹² Jay was inaugurated governor July 1, and the day following the terms of the treaty became public. "This act," says William Jay, "was putting the torch to that vast mass of combustibles which the party had long been engaged in collecting and the intended explosion instantly followed."¹³ Livingston joined in the chorus protesting against the President's proclaiming the treaty, but he refrained from joining in the storm of vituperation that swept the country and seemed to center in New York.¹⁴

There was no question, at least in his attitude toward the European situation, that Livingston was a Republican in nature, in opinion, and in associations. His attitude toward England and France antedated this party division and continued as long as he lived. His admiration for France even preceded her decision to assist the colonies in their struggle with the

¹³ Ibid., 360.
¹⁴ New York Herald, July 22, 1795, at seq.
mother country. Many of the young men of France who came over to fight in the Revolution were more or less frequent visitors in the Livingston home. The most important of these was Lafayette, for whom young Livingston formed a deep and lasting attachment. To him, Lafayette typified France, and henceforward he was an ardent advocate of that nation.

Livingston's opposition to England was also partly due to a childhood experience. While he was still a school boy at Kingston, on a visit to his Clermont home, the family was forced to flee before the advance of the British troops, who fired the home before the fleeing family was out of sight of the house. The rising smoke that came from the burning home made an indelible impression upon the mind of the young boy and he never forgave the British nation for this wanton destruction which its agent had perpetrated. Twenty years later, when delivering a speech in Congress, he referred to this incident, thus indicating that the roots of his active opposition to the English were deeper seated than in political expediency.

When Livingston took his seat as a member of the House of Representatives December 7, 1795, the Republicans were in the majority. Among them were William B. Giles, a former classmate at Princeton, and James Madison from Virginia. Albert Gallatin, from Pennsylvania, was also an important member of the majority group known as the opposition party. Though a

member of this opposition party, Livingston's tone in his opposition was always dignified and moderate, and, in a short time, he gained such weight in the House as is not often attained by so young a member. Seven days after taking his seat, he was appointed a member of the important Committee of Commerce and Manufactures. On the day following, he introduced his first bill, which quite significantly provided for mitigating the punishment for certain crimes "for which infamous and capital punishments are now inflicted," since it indicated quite early his intense interest in penal reform to which at a later date he devoted much of his time and talents.

Livingston was a strict party man and regularly voted with the Republicans on all questions affecting party policies. At that time, it was the custom for the House to frame an address to the President in answer to his speech to Congress delivered at the opening of each session. During the six years that he served in the House from New York, the Presidents were Federalists, and he consistently voted against the addresses as prepared by the Congressional Committee because he felt that they were too indiscriminating in praise of the administration. Up until 1794, when the Senate ceased to sit in secret session, that chamber exerted little direct influence upon the people. The public interest was entirely in the House,

16 Annals of Congress, 4 Cong., 1 Sess., 143 (December 14, 1795).
17 Ibid., 144 (December 15, 1795).
and it was its members who held the positions of real power and influence. Livingston's activities soon brought him into public notice. His reputation, not only for party regularity, but also as a speaker of ready and forceful argumentative ability, spread beyond the borders of his state and the halls of Congress.

In the treaty negotiated with England, Jay had not succeeded in getting the British to abandon their claim to the "right of search" for the purpose of discovering Englishmen on American ships. On February 19, 1796, Livingston introduced a resolution in the House requesting that a committee be appointed to inquire and report as to whether any and what legislative provision would be necessary for the relief of such American seamen as might have been impressed into the service of any foreign power—and also to report a mode of furnishing American seamen with such evidences of their citizenship as might protect them from foreign impressment in the future.\(^\text{18}\) The resolution was directed primarily at the English and was a popular move. It also furnished its author with an opportunity to strike at Jay and to renew interest in the treaty by again directing public attention to its objectionable features, with the hope that an aroused public opinion might keep Washington from proclaiming it law. On March 1, the House instructed Livingston to prepare a bill providing for the relief and protection of American seamen. The bill

\(^{18}\) Ibid., 350 (February 19, 1795).
was passed by the House on March 28,\textsuperscript{19} after it was known that the Senate would act favorably on the Jay Treaty.

President Washington proclaimed the Jay treaty law, and on March 1, he sent a copy of it to each House of Congress. In the House it was referred to the Committee of the Whole and taken up for consideration March 7.\textsuperscript{20} Both political parties were aroused for a determined struggle over the legislation necessary to carry out the provisions of the treaty. Livingston led the fight against it and at once sprang into the front rank among the Republicans of the North. By this act, he called up the only serious conflict of authority between the Executive and the Legislative that occurred during Washington's administration. He moved that the President be requested to send to the House copies of the instructions given Jay when he went to England as minister and of the correspondence had with him during the progress of the negotiations of the treaty, except such papers as any pending negotiations might render improper to disclose.\textsuperscript{21}

The struggle was on. Livingston, during his speech in support of his resolution, had intimated that the constitutionality of the treaty might be questioned. Immediately Uriah Tracy of Connecticut asked if the papers had been called for on the grounds of impeachment. If so, against whom were the impeachment proceedings to be instituted, the negotiator or the President?\textsuperscript{22} He requested Livingston to state

\textsuperscript{19} \textit{Ibid.}, 820 (March 28, 1796).
\textsuperscript{20} \textit{Ibid.}, 424 (March 7, 1796).
\textsuperscript{21} \textit{Ibid.}, 426 (March 7, 1796).
\textsuperscript{22} \textit{Ibid.}, 427 (March 7, 1796).
explicitly his reasons for requesting the papers, and inquired of the author if he desired to ascertain whether or not a better treaty might have been made. Livingston replied that he might want the information for all the purposes enumerated but at that time he could not determine whether or not an impeachment was advisable without having the necessary information as to the conduct of the officers. 23

In the interest of peace, Madison offered an amendment asking only for "so much of said papers as, in the judgment of the President, it may be consistent with the interests of the United States, at this time to disclose." 24 It was rejected. The Federalists voted against it because they did not approve of any request for papers, and a few Republicans joined with them because they wanted the resolution to be as objectionable to the administration as possible. The debate lasted for more than a fortnight, and some thirty speeches were made on either side. The arguments for and against the Livingston resolution are interesting because the question involved has not yet been definitely settled beyond dispute.

The Federalists said that a bold attempt was being made to encroach upon the prerogatives of the President and the Senate who were the treaty-making powers. Treaties made by them were "the supreme law of the land," and the House had nothing to do with the question of how they were made. It was the duty of Congress to obey the law and pass such legis-

23 Ibid.
24 Ibid., 438 (March 7, 1796).
lation as a treaty required to carry it into execution.

The Republicans held that the Constitution vested in the House certain prerogatives, among them being the right to regulate commerce, raise revenues, and make appropriations. The general power of the Executive and Senate to make treaties could not supersede this particular authority. Whenever, therefore, a treaty required Congressional action to make it effective, Congress was bound to deliberate before enacting and to ask for information to assist its deliberations. The power to make treaties was not claimed, but the power to carry them out was insisted upon. The leading advocates of this view were Livingston, Gallatin, Samuel Smith of Maryland, and the Virginia members, John Nicholas, John Page, William B. Giles, and Richard Brent, with Madison to lead them. The other side had Sedgwick of Massachusetts, Vans Murray of Maryland, and Smith and Harper of South Carolina. The call for the papers was agreed to March 24th by a vote of sixty-two to thirty-seven. On March 30, the President's reply was received, refusing to comply with the request, on the grounds that it was an interference with the rights of the treaty making powers, which did not include the House of Representatives.25

When the President's message came before the Committee of the Whole, Thomas Blount, of North Carolina, offered resolutions reaffirming as the sense of the House the arguments

25 Ibid., 760-62 (March 30, 1796).
already made by the Republicans. Madison made a long speech in favor of the resolutions; but no arguments were made on the other side, and the resolutions were passed by a vote of fifty-seven to thirty-five.26 On April 15, when the treaty question came up again, Madison held out prospects of obtaining another and better treaty by further negotiations, and Joshua Coit of Connecticut sarcastically replied, "I should like to see the gentleman from Virginia wrapped up in his mantle of doubts and problems and going on a mission to London to clear up the business."27 Rather startling, however, on April 29, was the approval in the Committee of the Whole of the necessary provisions for the execution of the treaty by the deciding vote of Augustus Wahlenberg, the Chairman. The next day the House confirmed the action of the committee by a vote of fifty-one to forty-eight.28

Apparently, this quick retreat from a position twice affirmed was due to the realization among some of the opponents of the treaty that they were precipitating a political fight with Washington who had lost in the treaty quarrel little if any of his almost unanimous popular support. These opponents sensed that the people had rallied to the cry "to follow where Washington leads" and yielded to the popular reaction against the alleged Republican desire for war. If no principle had been settled, at least a very awkward situation had been relieved.

26 Ibid., 762 (March 31, 1796).
27 Ibid., 1151 (April 22, 1796).
28 Ibid., 1287 (April 30, 1796).
Whether or not this mistake of the Republicans in pushing the treaty fight too far had any determining influence on the fall elections is not clear, but they did lose control of the House at that time. Although Livingston himself did escape defeat, the Livingston-Burr-Clinton combination was unable to deliver New York's twelve electoral votes, and John Adams was elected President by a majority of two votes. The Republicans, however, largely due to Hamilton's activities against Adams, elected Thomas Jefferson vice-president by a majority of nine votes.

As might be expected, the Federalists, in coming to an understanding with England, had created trouble with France. France was disturbed by the rumors of a treaty of amity between the United States and England, but James Monroe, who had been sent to Paris in 1794, assured her that nothing would be accepted in the proposed agreement prejudicial to the interest of our oldest friend among nations. He not only neglected to defend the Jay Treaty in Paris, but six months later, when he learned that the French ministry was about to send an envoy to America to make a new treaty, he induced the ministry to delay their project, by holding out to them the prospect of a Republican victory in the coming presidential election. When Washington learned that he was sending to the Republicans at home information which was used to convince the voters that the Federal administration was about to plunge the nation into war with France, he ordered Monroe's immediate recall.

29 *New York Herald*, January 21, 1797.
Charles C. Pinckney was sent to succeed Monroe at Paris. When he arrived at his post of duty, he found the government in a resentful mood. The French Directory not only informed him that France would not receive an American minister until her grievances were redressed, but two months later officially notified him that he was liable to arrest. This rude reception was thrown into bolder relief by the evidence of good will that the Directory showered upon Monroe, when he took his departure about the same time in February 1797.

The humiliating treatment of Pinckney caused a violent outbreak of feeling in America, and party rancor became worse than ever. The Federalists maintained that the insult to our minister and the ill-concealed attempts of the French ministers at Philadelphia to direct American politics were convincing evidence that the French government worked in behalf of the Republican party. They wished to suspend relations with France. The Republicans claimed that the triumph of the Jay treaty showed that British influence was alive in the country. While they could not defend the action of France, they declared that it only indicated the mismanagement of the Federalist party.

As usual, Livingston came to the defense of France. On April 24, during the debate on the Address to the President, he championed her cause and requested that an examination of France's complaints be made. Since she felt herself injured,
he was in favor of an amicable discussion of the whole matter. At the same time he maintained that France had justifiable grounds for complaint, since the Jay treaty had weakened the preferential relations which the treaties of 1778 had given her. Six days later, he again spoke on this question and urged that a conciliatory attitude be assumed toward France. His requests looking toward a peaceful settlement of the question were disregarded by the Federalists, and steps were taken to put the nation in a state of defense.

In the meanwhile, the French navy had seized American ships, and the United States was on the verge of war. President Adams, hoping to effect a settlement, appointed a special commission composed of Pinckney, John Marshall, and Elbridge Gerry to treat with the French government. The commission arrived in Paris and began to negotiate in October, 1797. The members of the commission were informed both privately and officially that negotiations must remain in abeyance until certain monies were paid to Talleyrand and into the French treasury by the Americans. Talleyrand curtly informed the commissioners that he would treat with Gerry alone.

30 William O. Lynch, *Fifty Years of Party Warfare* (Indianapolis, 1931), 67-73. Lynch shows that the commission was not bi-partisan, as Gerry was an Adams Federalist at the time of his appointment. It was the Federalist attitude toward his action of remaining in Paris after the two other envoys had left France that led him to become a Republican later. There was no break between Adams and Gerry and, a decade later the former President gave the commissioner entire credit for securing the *A.Y.Z.* evidence and paving the way for peace.
On April 3, 1798, President Adams sent to Congress the correspondence of the American envoys, disclosing the French demands with Talleyrand's threat that in the event of failure to comply "steps will be taken immediately to ravage the coast of the United States by French frigates from St. Domingo." The moderate Federalists now joined the extremists and many acts were passed looking to war.

The Aurora and other Republican newspapers boldly declared it better to pay the money demanded by France than run the risk of war. The precautions deemed necessary by Congress as protection against French invasion excited their violent opposition. Within four weeks, however, Congress by a strict party vote authorized the establishment of a navy, the construction of war vessels, the recapture of American ships unlawfully seized, the purchase of cannon, arms, and military stores, and the raising of a provisional army of ten thousand men, with the acceptance of militia volunteers. The treaties of 1778 were repealed and the organization of the army was begun.

Livingston not only voted against all of the war measures, but he spoke in opposition to many of them. He consistently maintained that France had just grounds for complaint and that the Federalists were responsible for existing conditions. He denied that there was any danger of invasion and vigorously opposed the granting of discretionary powers to

32 Ibid., 1412, 1554, 2127, 2132.
the President. Just four days prior to the publication of the correspondence of the French envoys which included the letters usually known as the "X, Y, Z" papers, he introduced a resolution in the House demanding that the President furnish the House with the instructions given the envoys to France and all the information pertaining to the negotiations. On July 2, he presented a resolution requesting the House to demand of the President that he instruct Gerry, who had remained in Paris, to continue with the negotiations with the French Minister of Foreign Relations.33 He felt that there was no impropriety in this request, since it was probable that a treaty might be completed which the United States might honorably accept. As the French minister had indicated a willingness to treat with Gerry, he thought that it would be proper for the House to express a wish of this nature. Livingston’s resolutions were defeated by a strict party vote,34 for the Federalists felt that the United States had already gone too far in its efforts to conciliate France.

The wise and resolute policy of the government in its preparation for war was counteracted by its policy of internal defense. President Adams, like the rest of the Federalists, wished to command respect for public officials and resented the vast amount of abuse that came from the Republican editors

33 Ibid., 2083 (July 2, 1798).
34 Ibid., 2086 (July 3, 1798).
and writers. As many of these men were of foreign birth, some of them fugitives from their own countries, he felt that they ought to be restrained. It was charged that many of them were spies, and on that basis it was easy to conclude that they should be sent out of the country. Carried away by their hatred for France, the Federalists sought to put a stop to the interference of a foreign power in the internal regulations and policy of the government, and also to check the abuse of the liberty of speech and of the press, by the measures known as the Naturalization Act and the Alien and the Sedition Acts.

Livingston, having been absent from the House during the debates on the Naturalization Act, returned to his seat on the eve of the passage of the Alien Enemies Act. His opposition to the Jay treaty had earned for him a standing among the Republicans of the North, and now he achieved national fame by the conspicuous eloquence and vigor of his opposition to the Alien and Sedition Acts. On June 21, in opposing the enactment of the Alien law, he delivered what probably was the greatest speech of his career as Representative from New York, and definitely established his reputation as a fearless political leader, a scholar, and a jurist.

After stating that he believed the act "to be in direct violation of the Constitution and marked with every characteristic of the most odious despotism," Livingston attacked the proponents of the bill for this contemplated assumption
of undelegated power by the general government. He said that the provisions of the bill were not only unauthorized by the Constitution, but they were in direct violation of its fundamental principles and contradictory to "some of its most express prohibitions." The act was unauthorized by the Constitution since it empowered the President alone to make, construe, and apply the law. Such an union of the legislative, executive, and judicial powers was despotism, as it contravened the constitutional principle of distribution of these powers in separate hands. The act not only was in conflict with the fundamental principles of government, but violated several express prohibitions of the Constitution. Refuting the claim that the word persons as used in the ninth section of the first article of the Constitution related to slaves only, he maintained that since Congress could not prevent the arrival of aliens prior to 1808, it had no power to send them away. Article two provided that the judicial powers should be vested in the "Supreme and Inferior Courts" and that the "trials of all crimes shall be by jury," except in case of impeachment." In the seventh and eighth amendments this provision was repeated and enforced by others. There was not a minute article in these several provisions of the Constitution that was not violated in the bill. There was no indictment, no jury, no trial, no public procedure, no statement of accusation, no examination of witnesses in support of the accused, and no counsel for the defense. Having thus traced the long step that would be made
towards despotism by the enactment of this law so manifestly 
violating the Constitution, he openly predicted a resistance 
of the people. He even encouraged resistance to constituted 
authority by declaring that such resistance would be right and 
proper. The bill, however, passed the House by a vote of for-
ty-six to forty. 35

In spite of its radical spirit, the speech was well receiv-
ed by the public. Livingston's open declaration of war upon 
the government was followed by a still more active newspaper 
campaign. The epithets "liar," "scoundrel," "villain," and 
the charges of treason and despotism were exchanged by the 
editors without the least ceremony. Some of the Republican 
printers attempted to incite an insurrection while the bill 
was under consideration in the Senate. On June 29, the Aurora 
printed the following: "The period is now at hand when it will 
be difficult to determine whether there is more safety to be 
enjoyed at Constantinople or Philadelphia." Again, on July 3, 
it stated: "Where a law shall have been passed in violation 
of the Constitution, making it criminal to expose the crimes, 
the official vices or abuses, or the attempts of men in power 
to usurp a despotic authority, is there any alternative between 
abandonment of the Constitution and resistance?" 36

While the newspapers were attacking the government, states-
men, citizens, and each other, the Federalists proceeded with 
their plans of defense. On July 5, the Senate bill, known as 

35 Ibid. 
36 Philadelphia Aurora, June 29, July 3, 1797.
the Sedition Act, was received in the House. When the bill came up for consideration, Livingston moved its rejection without a second reading. 37

In criticizing this action of Livingston, John Allen of Connecticut said he hoped the bill would not be rejected, for there was a dangerous combination, hostile to free government and genuine liberty, that was attempting to overturn the government. The combination was extensive and included characters whose stations demanded a different course. The gentleman who had called upon the President to instruct Gerry to conclude a treaty with the French government, who predicted that the people would resist the government, and who now called upon the House to reject this bill was responsible for the conspiracy. Certain newspapers which reflected his sentiments had stated "that the people ought to raise an insurrection against the government." "The gentleman makes his proclamation of war on the government in the House on Monday and this infamous printer, Bache, follows it up with the toscin of insurrection on Tuesday." This same Bache in another issue of the Aurora directs an article to the "Irish Emigrants" wherein he endeavors to persuade them that they should not only refrain from defending this country against invasion but should join the enemy, since the French were seeking the relief of their countrymen in Ireland." "This paper is the great engine of

all these treasonable combinations and must be strongly supported or it would have fallen long ago." An attempt to conceal these approaches to revolution and Jacobinic domination is made by contentions for liberty of opinions and the press.38

Livingston used the same arguments in opposing the bill that he had advanced in his speech against the Alien Enemies Act. On July 5, he said: "This bill is not only an abridgment of liberty of the press, which the Constitution has said shall not be abridged, but it is a total annihilation of the press." Nor could he see how acts made contrary to the Constitution could be binding upon the people, "Unless gentlemen, say Congress may act in contravention to the Constitution." In reply to a question by Harrison Gray Otis of Massachusetts, he said that the judges of an infraction of the Constitution were to be the people of the United States.39 Again on July 10, the bill embodies "a principle which goes to the destruction of state authorities," and makes the Constitution mean anything or nothing. He viewed the bill as a link in a chain of events leading by steps of progressing tyranny to a change in the government. And to prove that the government was rapidly advancing to a despotism, he quoted from President Adams's "Defense of the American Constitution."40

The protests of the press, the warnings of the Republicans, and the eloquence of Livingston were of no avail. Having decided to still the abuse of the press, to rid the coun-

38 Ibid., 2093-2100.
39 Ibid., 2014.
40 Ibid., 2152-56 (July 10, 1798).
try of undesirable aliens, and to quiet the revolutionary activities of the Republicans, the Federalists carried through their program. On May 21, the House, by a vote of forty-seven to thirty-one, approved the Naturalization Bill. One month later the vote in favor of the Aliens Act was forty-six to forty and on July 10, the House, by a close vote of forty-four to forty-one, passed the Sedition Act.41

Livingston continued to champion the cause of France. During the third session of the Fifth Congress, he made several futile attempts to secure the repeal of the Alien and Sedition laws. He opposed the bill on Commercial Intercourse with France, because it would encourage revolts against France in the French dominions. The United States had no more right to negotiate with the several French dependencies than a foreign government had to negotiate with the separate parts of this government. On the last evening of the session, he strenuously opposed the passage of the "Law of Retaliation." He maintained that the bill granted the President too great a discretionary power, and the proponents of the bill reminded that the act was as applicable to Englishmen as to Frenchmen in this country. The majority ignored his protest, just as they had ignored them during all of the sessions of this Fifth Congress.42

Livingston's official actions in behalf of the French were not confined to political matters. Not only was he interested in the welfare of those persons who had assisted the colonies in their struggle for freedom, but in the members of their

41 Ibid., 1775, 2027, 2171.
42 Ibid., 5 Cong., 3 Sess., 3045 (March 2, 1799).
families. He never let pass an opportunity to render them all possible aid or service. Upon hearing that General Lafayette's son was in the United States, he requested the House in March 1796 to appoint a committee to inquire "whether any provisions were necessary for his support."\(^{43}\) On April 26, he reported back to the House that young Lafayette "had received the patronage of the President of the United States and needed no pecuniary services."\(^{44}\) In March 1797, by resolution, he requested the President to interpose in behalf of General Lafayette, who then was at Olmutz. In January, 1798, he supported a bill to provide for the payment of annuity of four hundred dollars to each of the four orphaned daughters of Count de Grasse.\(^{45}\)

In February, 1800, an opportunity was afforded Livingston to attack the Jay treaty again and at the same time to question the action of President Adams in the case of Jonathan Robbins. Robbins had committed murder on board a British frigate while on the high seas and had escaped to this country. He claimed to be a citizen of the United States and to have been impressed on board of the British ship of war. He was arrested and committed for trial in the federal court for the District of South Carolina. Subsequent to the commitment, the British minister at Washington made requisition on the President of the United States for the delivery of Robbins as a fugitive

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\(^{43}\) Ibid., 4 Cong., 1 Sess., 423 (March 4, 1796).

\(^{44}\) Ibid., 1202 (April 26, 1796).

\(^{45}\) Ibid., 4 Cong., 2 Sess., 794-95 (January 2, 1798).
under the provisions of Article 27 of the Jay treaty. President Adams advised and requested the judge who had committed Robbins for trial to deliver the prisoner to the British agent as he "considered an offense committed on board a public ship of war on the high seas, to have been committed within the jurisdiction of the nation to whom the ship belongs." The judge complied with the President's request. Robbins was surrendered to the British agent, tried by an English court, convicted, and executed.

In his resolutions of February 3, Livingston criticized the President for his actions in the case and requested that the executive furnish the House with copies of all correspondence pertaining to the case. These resolutions were responsible for a series of debates that lasted until March 10, during which period Livingston spoke at least ten times. He maintained that the questions involved in the case were matters of judicial inquiry. The judiciary was sole judge of the exercise of its functions in the case of an extradition when the individual in question was in its custody. The decision of those questions by the President was a dangerous interference of the executive in judicial matters. The compliance of the judge with the executive's suggestions in this case was a sacrifice of the judiciary's independence and exposed the court to suspicion and reproach.46

During the debates which the Livingston resolutions pro-

46 Ibid., 1043-44.
voked, a new member of the House attained national prominence by his vigorous defense of the President's actions. John Marshall, of Virginia, first took his seat at the opening of the first session of the Sixth Congress, and immediately became the administration leader in the House.

On March 7, Marshall displayed his great powers of exhaustive analysis, terse statement, and logical reasoning in vindicating the President. His arguments were based upon the constitutional provisions concerning executive authority. He maintained that the question was one for Executive rather than for Judicial decision. The President was not chargeable with an interference with Judicial decisions and it was not an assertion of the right to impress American sailors. A majority of the House agreed with Marshall and rejected Livingston's resolution by a vote of sixty-one to thirty-five.
CHAPTER IV

ELECTION OF THOMAS JEFFERSON AS PRESIDENT

While not fully apparent at the end of the century, certain events indicated that the period of Federal supremacy in national politics was rapidly drawing to a close. The congressional elections of 1798 had come when the country still looked for war with France, and the results had favored the Federalists. But that party was still divided into moderates and extremists. The split became more evident when Adams, in 1800, reorganized his cabinet and placed Marshall, who was not popular in the North, in Pickering's post as Secretary of State. In March, 1800, Congress ordered the dismissal of the new army, thus dealing a blow to the extreme Federalists. As it was evident that the Federalists would take Adams for their candidate for president in 1800, this dissension augured little for party success. Despite a more or less secret campaign against the President on the part of the irreconcilables, a caucus of Federalist members of Congress, in May, 1800, agreed to support Adams and Charles C. Pinckney.

Meanwhile, the Republicans were united for Jefferson. The Virginia and Kentucky resolutions gave them a strong
principle on which to appeal to the voters, and they strengthened their position by criticising the administration at every possible point. The Republicans, however, had their own internal jealousies. Virginia expected to carry most of the South for Jefferson, but she needed the support of a strong northern state, for which purpose New York seemed best fitted. Clinton of New York did not like the Virginia leadership, but at this time he was held in check in New York by Burr and the Livingstons. Burr, who felt that he had been badly treated in 1796, demanded assurances from the party leaders that he would be supported equally with Jefferson. His terms were accepted; and the fight for the control of the state legislature, which selected the presidential electors, was begun immediately.

The political situation in New York did not seem particularly favorable for a Republican victory. The proceedings of Genet, the excesses of the French Revolutionists, and finally the contemptuous treatment of the American envoys by Talleyrand and his effort to extract from them a bribe, combined to drive many men out of the Republican party. The leadership of the Livingstons' had been seriously challenged, and temporarily their political fortunes were at low tide. Although Livingston had been re-elected to Congress in 1798, his majority was reduced from 550 in 1797\(^1\) to 175 votes.\(^2\) The same year, while the agitation for war was at its height, Robert R. Livingston had

1 New York Herald, January 21, 1797.
unwisely accepted the Republican nomination for governor. It is significant of existing conditions that the party had failed to nominate a lieutenant-governor on the ticket with him. Jay had been re-elected governor by an increased majority,\(^3\) and the Federalists had retained control of the state.

But a reaction against Federalist excesses had begun. The Republicans contended that the President, by his actions in the Robbins case, had admitted the right of foreign nations to impress American sailors. The action of the House in sustaining the President was viewed as a complete surrender to England on this point, arousing great feeling against England, and reacting against the party which had usually stood by that country. As the Republicans had predicted when the Alien and Sedition Acts were passed, there was a deep resentment on the part of the public toward the Federalists, and a demand for the repeal of these laws. Persons convicted under the Sedition Act became martyrs to free speech in the eyes of the Republicans. The repeal of this act became an important issue in the election of 1800 and had great weight in convincing the voters that the Federalists were drunk with power. Perhaps in no other state was this issue used to a better advantage than

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\(^3\) Ibid., tabulation gave J. Jay 16,012 and R. R. Livingston 13,634 votes; New York Spectator, June 9, 1798, stated, "We congratulate the friends of the Federal interest on the re-election of Honorable John Jay to the office of governor by 2,380 votes majority, which proves that federalism, since the former election, has gradually extended its influence."
in New York. A certain Jedidiah Peck of Cooperstown, who circulated a petition to Congress for the repeal of the Alien and Sedition Acts, was arrested and carried to New York for trial in the spring of 1800. It is approximately two hundred miles from Cooperstown to New York, and the marshall and his prisoner were five days on the way. The newspapers reported Peck as "taken from his bed at midnight, manacled, and dragged from his home, because he dared ask his neighbors to petition Congress to repeal an offensive law." In the Revolutionary days, New York had not been more deeply stirred than now. "A hundred missionaries in the cause of democracy, stationed between New York and Cooperstown," says Hammond, "could not have done so much for the Republican cause as the journey of Jedidiah Peck from Otsego to the capital of the state. It was nothing less than a suffering of a martyr for the freedom of speech and press, and for the right of petition."  

Under existing conditions, Livingston decided not to seek re-election in 1800, but to devote his efforts to helping to carry New York for the Republican ticket. He was on friendly terms with Jefferson, and Burr was his intimate personal and political friend. Therefore, a Republican victory in New York would offer him opportunities for political preferment that were more certain of realization than was his return to Congress.

4 Jedidiah Peck, The Political Wars of Otsego or Downfall of Jacobinism and Despotism. . . (Otsego, 1799), passim.
5 Alexander, A Political History of the State of New York, I, 89.
Although in the 1796 election, Adams had secured the electoral votes of the state, the strength of the two parties was nearly equal in New York now and the result of the presidential election might hinge upon the results of the election of the members of the Legislature.

Such was the political situation in the spring of 1800, when Aaron Burr undertook to gain for the Republicans the twelve New York electoral votes by electing a majority of the state legislature. Seventy electoral votes were necessary to elect a president, and outside of New York the Republicans could count sixty-one. Without advertising his purposes, Burr introduced the sly methods that characterized his former campaigns. He selected a ticket that would commend itself to all and initiated an organization that would do credit to the management of the latter day chiefs of Tammany.

To avoid the already growing rivalry between the Livingston and Clinton factions, Brockholst Livingston and George Clinton headed the ticket. Burr stood for the county of Orange, and other candidates for the state legislature equally acceptable to the two factions were selected. When the polls closed on May 2, the Republicans had carried the legislature by a majority of five on a joint ballot.\(^7\) The value of the Livingston influence was apparent as the Republicans made a clean sweep in New York City by electing the entire thirteen

\(^7\) *New York Weekly Museum*, May 17, 1800.
Senators and Representatives to be chosen.

The ten months following the Republican triumph in New York were fateful ones for Hamilton and Burr. Hamilton, smarting under the decisive defeat by Burr, at once began the fight beyond the confines of New York; Burr's desperate schemes waited until after the election in November.

Because of the mutual dislike of Hamilton and Adams, Hamilton attempted to throw Adams behind Charles C. Pinckney in the electoral vote by resorting to the old "double chance" maneuver of 1796 when Thomas Pinckney was Hamilton's choice for President. Adams learned of the move and opened fire upon the "Essex Junto," calling them a British faction. Between Adams and Jefferson, Hamilton now preferred the latter. "I will never be responsible for him by my direct vote," he wrote in May, 1800, "even though the consequences be the election of Jefferson." In a word, all of the quarrels, resentments, and antagonisms which had torn and rent the party for four years became public information with the departure of Washington from the capitol. The party, already practically defeated by its Alien and Sedition legislation, was making defeat inevitable with internal strife. The party of Jefferson was successful at the polls as the final results of the election showed that Jefferson and Burr had each seventy-three electoral votes, Adams sixty-five votes, Pinckney sixty-four votes, and Jay one vote.

During the time the presidential electors of the several states were casting their votes, it was known that Jefferson and Burr had run evenly, and by the middle of December 1800, it became rumored that their vote was a tie. "It is highly probable that I shall have an equal number of votes with Mr. Jefferson"; Burr, under date of December 16, 1800, wrote Samuel Smith, Republican Representative from Maryland,

but every man who knows me ought to know that I would utterly disclaim all competition. Be assured that the Federalist party can entertain no wish for such an exchange. As my friends, they would dishonor my views and insult my feelings by a suspicion that I would submit to be an instrument in counteracting the wishes and expectations of the people of the United States. And I now constitute you my proxy to declare these sentiments if the occasion should require.  

When it was known in Washington that the electors from Tennessee, the last to register a choice, had voted regularly, there was much speculation as to the outcome of a House election, since the House must vote by states when choosing a President. In 1801, there were sixteen states in the union, consequently nine were necessary to a choice. A number of the members, who sat in the House during the 1800-1801 session, had been recently defeated, yet the Federalist majority could not control nine states. The representatives of some states were equally divided in party affiliation. In other states, the stronger side had a majority of one only, thus it came to be that great power was lodged in the hands of certain individuals. Such conditions, naturally, were favorable to intrigue

9 Parton, Life and Times of Aaron Burr, I, 267.
and bargaining.

Whether or not Burr was sincere in his letter to Smith was immaterial to those Federalists who were determined to disregard the will of the Republicans of the country. "To elect Burr would be to cover the opposition with chagrin and to sow among them the seeds of morbid division," wrote Harrison Gray Otis of Massachusetts. Gradually, this sentiment took possession of the New England and Middle States until it seemed the prevailing opinion of the Federalist Party. James A. Bayard of Delaware wrote Hamilton, "there appears to be a strong inclination in a majority of the Federalist party to support Burr." Hamilton was opposed to this plan, not only because he distrusted Burr more than he did Jefferson, but because he believed that the Federalists should leave the responsibility of a selection to the Republicans and thus in no wise be answerable for the consequences. Several prominent Federalists listened to Hamilton, but the rank and file of the party, resentful of defeat, eager for revenge, and not forgetful of Hamilton's campaign indiscretion, were in no temper to follow such prudent advice.

Burr remained at Albany attending to his duties as a member of the Legislature removed from the center of intrigue, bargain-

10 Ibid., 267.
11 Ibid., 270.
ing, and manoeuvring for positions of vantage. Jefferson attempted to bring him to an explicit understanding without avail. His only published utterance on the subject, except the letter to Samuel Smith, was in a family note to his son-in-law, Joseph Alston of South Carolina under date of January 15, in which he spoke of the tie as exciting great speculation and much anxiety, adding, "I believe that all will be well and that Jefferson will be our President."

Burr, in Albany, not only kept silent but mysteriously aloof, although his lobbyists thronged Washington in great numbers. That these agents understood their mission was evident by the reports sent Hamilton, who remained in New York. "Some who pretend to know his [Burr's] views" wrote Senator Morris, "think he will bargain with the Federalists." The situation was further complicated and fraught with danger to Jefferson's interest by the condition in New York.

Because, in 1800, the Clintons and Livingstons had acted in harmony with Burr, Hamilton and his friends were positive that Livingston was Burr's confidential agent, who at the proper time would throw his support to Burr. William P. Van Ness, who accompanied Burr to Albany as a favorite companion, wrote Livingston, "it is the sense of the Republicans in this state that, after some trials in the House, Mr. Jefferson should be

13 Parton, Life and Times of Aaron Burr, 1, 274.
14 Ibid., 272.
given up for Mr. Burr." This was wholly conjectural and
Burr and his young friend knew it; but it was part of the game,
since Burr, so Hamilton wrote Morris, "perfectly understands
himself with Edward Livingston, who will be his agent at the
seat of government," adding that Burr had volunteered the fur-
ther information "that the Federalists might proceed in the
certainty that, upon a second ballot, New York and Tennessee
would join him." 16

There is no doubt that Burr believed that Edward Living-
ston was his friend, but he did not know that Jefferson had of-
fered the position of Secretary of the Navy to Robert R. Living-
ston. 17 Nor was Burr informed that the Chancellor subsequently
had written a very peremptory letter to Edward, which probably
prevented the latter from throwing New York to Burr during the
House contest. 18 Had New York gone to Burr, other defections
in the Republican ranks might have occurred which would have
been disastrous to Jefferson. Edward Livingston, however, re-
mained on friendly terms with Burr and filled Jefferson's diary
with the doings and sayings of those who were interested in
Burr's election. 19

15 [W. P. Van Ness] An Examination of the Various Charges Ex-
hibited Against Aaron Burr, Esq., By Aristides (Virginia,
1804), Duana Pamphlets, III, Rare Book Room, Library of
Congress, 61.
17 Thomas Jefferson to R. R. Livingston, February 24, 1801, in
(New York, 1904-1905), IV, 360.
18 Charles R. King, Life and Correspondence of Rufus King, 8
vols. (New York, 1894), III, 460.
19 Anas, February 12, 1801, in Ford (ed.) The Works of Thomas
Jefferson, I, 291.
The great contest began on February eleventh; and, when
the votes of the first ballot were counted, it was found that
Jefferson had eight states, Burr six, with Maryland and Vermont
neutralized by an even party division. While there were fluc-
tuations in the voting within certain state delegations, there
was no change in the lineup of the states for thirty-five bal-
lots. Finally, on the thirty-sixth, the Vermont Federalist,
Morris, left the hall and Matthew Lyon was able to cast the
vote of that state for Jefferson. Save in New Hampshire, Mass-
achusetts, Rhode Island, and Connecticut, the opponents of Jef-
ferson voted blank ballots. Maryland cast her vote for Jeffe-
son, thereby giving him the election with the support of ten of
the sixteen states.20

Livingston's first congressional career closed with the
adjournment of the Sixth Congress, March 3, 1801. During this
period, the Federalists had been in control of all the branches
of government except the House during the Fourth Congress. Liv-
ingston had become Republican House leader following the retire-
ment of Madison in 1797. He had played an important role in
the election of Jefferson and had no cause to regret his deci-
sion not to stand for re-election in 1800, as the road to poli-
tical preferment was assured.

20 Washington National Intelligencer and Washington Advertiser,
February 13, 1801, at sec.
CHAPTER V

A FEDERAL AND CITY OFFICIAL

The leaders of the factions of the Republican party in New York fully recognized the political value of victory in the year 1800. They appreciated that a return of a Federalist majority to the legislature would insure to that party the electoral vote of the state with continued control of national affairs. Then too, the state Council of Appointment would remain Federalist with little chance of a Republican victory in the state election of 1801. The Republican defeat in the April 1799 election convinced its leaders of the necessity of subordinating their personal ambitions to the interest of party unity. Consequently, factional differences were forgotten and harmony prevailed during the campaign. Burr managed the campaign with consummate prudence, judgment and skill; he employed every known political artifice to ensure victory;¹ and the successful outcome was due primarily to his judicious selection of the candidates.

¹ New York Spectator, November 16, 1801.
Feeling that "the prevalence, if not the very existence of republicanism in the United States" depended upon the outcome of the election, Livingston remained in New York during the campaign for "the use I may be here" even though Congress was in session. Without publicly assigning a reason for his action, he declined to stand for re-election. This action was probably the result of his decision either to subserve individual aspirations to party interests with the likelihood of receiving suitable reward if the party were victorious, or to avoid possible defeat which would be a liability to future political preferment. When the polls closed, the Republicans had elected Dr. Samuel I. Mitchell to Livingston's seat in Congress. The selection of Republican electors gave assurance of a national victory and the control of the Council of Appointment which indicated a state victory the following spring. As Livingston's term in Congress ran until the following March, he could well afford to wait until after the 1801 election for his reward.

The election which had decided the contest for Jefferson, returned DeWitt Clinton to the State Senate and gave him the opportunity to come into his own. He was a selfish, inconsistent, imperious man, but possessed the ability of a statesman.

2 Edward Livingston to Thomas Jefferson, April 11, 1800, in Livingston Papers (Manuscript Division, New York Public Library).
From the beginning of his great career, this practical politician directed his actions to the end of gaining control of the Republican party in New York. His first move was to gain control of the Council of Appointment, for patronage has always been essential to the building of a political machine. When the Legislature met, he proposed the selection of a new Council of Appointment, even though the present one had served little more than half its term. The Federalists protested, but the Republicans were in majority and Clinton had his way; he proceeded to replace the existing Council with one which he, as a member, controlled.4

A break between Clinton and Governor Jay occurred at the first meeting of the new Council held February 11. Clinton contended that members of the Council, in addition to the governor, possessed the right of nomination; Jay held that the governor alone possessed this prerogative, while the right to confirm or reject was reserved to the other four Council members. A stalemate followed and Jay's failure to reconvene seemed so to gratify Clinton as to make it appear that he had deliberately attempted to provoke the governor into such a course of action. Clinton fully appreciated the advantage of delaying appointments until after the election, for no political organization

4 Ibid., November 15, 1800. "On the seventh the Assembly elected DeWitt Clinton, Ambrose Spencer, Robert Rosebloom and John Saunders the Council of Appointment by a 29 majority vote."
has sufficient patronage to satisfy every one. Disappointed office-seekers become either dissatisfied and work half-heartedly or become disgruntled and desert to the opposition; those who receive appointments prior to an election feel that they are either too important to be classed as workers or feel too self-satisfied to work diligently for victory. Besides, after the election, Clinton would know which of the ambitious leaders would be of value to him and the party. In receiving their appointments, these men would know that they were indebted to Clinton for their positions and would willingly do his bidding.

The state campaign of April 1801 was vigorously fought, but the Federalists could make no headway against the spirit of the times. Beyond the boundaries of New England, Federalism had become out-of-date in a year. The Republicans supported George Clinton for governor and Jeremiah Van Rensselear for second place on the ticket. The Federalists nominated Lieutenant-Governor Stephen Van Rensselear for governor and named James Watson as his running mate. The efforts of Hamilton, Jay, Rufus King and Gouverneur Morris could not counteract the work of the Clinton, Livingston and Burr followers who stood united in the campaign. The election of George Clinton gave the Republicans complete control of the state.  

DeWitt Clinton was jealous of Burr and felt that he stood in the way of his gaining control of the state political machine. This prototype of the political boss saw no room in
New York for two Republican leaders and decided to crush Burr. To accomplish this, Clinton first had to secure unquestioned control of the Council of Appointments by securing a change in the organic law which created that body. On April 6, a complaisant legislature called a constitutional convention for October 13, 1801, to make the necessary changes. Clinton so effectively concealed his intentions toward his rival, that Burr, who was president of the convention, favored and worked for the provision that gave to each member of the Council the right to nominate as well as to confirm. Thus, by his action, Burr gave Clinton the power to overthrow and humiliate him.

At the first meeting of the Council following the constitutional change, the proscription of the Burrites along with the Federalists was begun. DeWitt Clinton quickly disclosed his policy of destroying Burr and satisfying the Livingstons. Out of the six or seven thousand appointments made by the Council, not one went to a friend of Burr. The Clintons and the Livingstons fared royally. Plain Truth writing in the Evening Post lists the political places held by the Clintons and the Livingstons, and cites fourteen positions held by the Clintons which paid $53,000 in salaries, and twelve held by the "Noble Family of Livingstons" worth $33,950. While probably unwise politically, it was not an idle boast of one of the younger

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6 Civil List, For the State of New York (New York, 1888), 125.
7 Ibid.
8 New York Herald, February 24, 1804.
Livingston when he said "that to be born with their family name is a fortune to any man." When the famous Council of 1801 had finished its work, nothing remained for succeeding Councils to do, until Clinton returned in 1806 to crush the Livingstons.

Jefferson was in hearty accord with Clinton in his determination to crush Burr and appointed Clinton dispenser of federal patronage for New York. Jefferson sent the Chancellor to France and made Livingston United States Attorney for the district of New York, March 27, 1801. Later the Council of Appointment further rewarded Livingston by appointing him mayor of New York, from which appointment he derived from fees a salary variously estimated at from ten to fifteen thousand dollars annually. Livingston's brother-in-law, Thomas Tillotson, was secretary of state and John Armstrong, another brother-in-law, was a United States Senator. Smith Thompson, a third brother-in-law, and his cousin, Brockholst Livingston, were associate justices of the State Supreme Court. A fourth brother-in-law, Morgan Lewis, who had served as Chief Justice of the State Supreme Court, was the Clinton-Livingston candidate for Governor in 1804, when Burr with his

9 New York Evening Post, February 26, 1802.
10 New York Daily Advertiser, April 4, 1801; Civil List, For the State of New York (Albany, 1886), 490.
11 Richard Hildreth, The History of the United States, 3 vols. 2nd Series (New York, 1852), II, 427-28; New York Herald, February 24, 1804. The Herald itemized the positions and salaries held by the Clintons and Livingsons, with DeWitt Clinton's salary as Mayor listed as "about $15,000.00."
13 New York Spectator, January 9, 1802; Alexander, A Political History of the State of New York, I, 150.
14 Civil List, For the State of New York (Albany, 1887), 166.
Federalist supporters was defeated.

Both federal and state governments were generous to Livingston. The position of United States Attorney was profitable, as the salary was gratifying and he could maintain valuable contacts with the party leaders in Washington; it was congenial, as it permitted him to engage in the practice of his chosen profession. The Mayor's office was such a highly desirable position that Clinton gave up his seat in the United States Senate to accept the office when Livingston resigned in 1803.15 In this dual capacity, Livingston was an important personage, favorably situated to protect and promote his political affairs. However, the duties of the two offices entailed numerous responsibilities, very few of which he was able to delegate to his subordinates, as their selection had been made on the basis of political expediency rather than on merit. Either position was a full-time job, and more especially was this true of the mayor's office.

As United States Attorney, Livingston represented the Federal Government in all cases arising in the district in which the government was interested. Even when the opposing counsel was one of the leading New York lawyers, he was usually successful, yet he settled the majority of the cases without litigation. The duties of the office were varied and called for a wide range of activities: trial of admiralty cases;16 interpretation of laws relating to import duties; denying the

16 New York Spectator, February 24, 1802.
commander of a French vessel the privilege to land slaves in the city; institution of legal proceedings for collection of monies; and serving as collection agent for the national treasury. The most important source of revenue was from the payment of customhouse bonds which were small in amounts, but large in numbers. At regular intervals, settlement of these accounts was made with the federal treasury.

In the position of Mayor of the city, it was Livingston's duty to preside at the sessions of the Common Council as well as to exercise the executive functions of the office. He was judge of the city court of common pleas which possessed both civil and criminal jurisdiction and supervised the municipal affairs all the way from determining the assize of bread to the regulation of finance. The city was experiencing a rapid growth which brought in its wake many pressing problems to perplex the city fathers. In order to be able to attack these problems intelligently, he maintained close contact with the various civic and political organizations. The increase in population necessitated an expansion of public services that presented the problem of enlarging existing agencies, creating new departments, and providing additional office space to house the new employees. The political aspects of the problem required careful consideration. While the creation of new posi-

17 Minutes of the Common Council of the City of New York, 1784-1831, III, passim.
tions and the erection of new buildings would provide employment for additional persons, which was desirable from the standpoint of patronage, it raised the question of new taxes, which is always an effective weapon for the opposition to wield at election time. Livingston was progressive and genuinely interested in the welfare of the city, yet he acted cautiously to avoid unwise political moves which would have nullified his conscientious effort to administer the affairs of the city in a judicious manner.

The urgent problem of securing an adequate supply of pure water for the city received Livingston's immediate attention. Shortly after he became Mayor, the city awarded a contract to the Manhattan Waterworks, a subsidiary of Burr's Manhattan Company, to install a new waterworks system. The new plant, a forerunner of the present-day system of reservoirs and aqueducts, met the requirements of the city for several years. About the same time, it was decided to erect a new city hall, and in order to secure for the city the best available architectural talent, a cash prize was offered to the individual submitting the best plan. The prize was awarded to John F. Mangin and John LeCommb, Jr., and the corner-stone of the new building which "will vie in taste and magnificence with any public structure in the United States" was laid by the Mayor on May 28, 1803, with great ceremonies.18

18 Ibid., 133-34.
On strictly political questions, Livingston was a regular party man; the city patronage was distributed among the faithful, and the appointment of the inspectors for elections and the canvassers of election returns were reserved for the diligent workers. As certain acts of the Common Council were subject to final review by the State Legislature, it was highly desirable that harmonious relations should exist between the local officials and the leaders of the majority party at Albany. The unavoidable delays which this charter provision occasioned the city government were irritating and at times expensive. It was trying enough when the legislature was in session, but it was quite exasperating when that body was in recess. On account of his party regularity and friendly relationship with the Albany political powers, Livingston was able to put through the legislature certain charter amendments which gave the city full authority to act in such routine matters as the opening and extension of streets, and closer supervision of the Alms House.  

19 The lax and unbusinesslike manner with which the sessions of the Mayor's Court were conducted had resulted in irregularities and unnecessary delays in the dispatch of business. Unqualified persons were practicing before the Court, and the attorneys, rather than the judge, were determining the order of procedure for its sessions. The attorneys were not required to furnish the Court with a list of their cases, consequently, the Clerk was unable to keep a correct Calendar of the Court or

19 New York Spectator, May 28, 1803.
complete his minutes promptly. No standard form was used to issue a writ or a process and it was a common practice to subpoena witnesses for the sole purpose of receiving pay for a day's attendance in court without any regard to their knowledge of the facts relative to the case at trial. Necessarily, the dignity of the Court had suffered and the need of reform was generally recognized.

Livingston was admirably fitted by training and experience to serve as presiding officer of the court. His legal training had given him the knowledge necessary to render fair and sound judicial decisions; and his practice at the bar had taught him how the sessions of the court should be conducted. As judge, it was his duty to establish practices of procedure and rules of order for his court, and immediately after assuming office, Livingston inaugurated a program of reform that resulted in restoring its former dignity and prestige. The reform measures are to be found in the fifty-four "Rules and Orders" which he prepared for distribution among all persons doing business with the Court.20 He also had printed and placed in the hands of the members of the bar a selective list of his decisions for the purpose of having them examine the reasoning and the authorities on which they were founded. Since the decisions were without the "sanction of a higher tribunal they were to be con-

20 Edward Livingston, Judicial Opinions Delivered in the Mayor's Court of the City of New York In the year 1802 (New York, 1803), 1.
sidered more as opinions than judgments which determine the law."\textsuperscript{21} The list was selected to cover various principles of law, such as slander, use of profane and obscene language, assault and battery, trespassing, assumpsit, partnerships, marital relations, contempt of court, demurrers, and motions for new trials. The members of the bar were requested to examine them carefully in order that "such as are erroneous may be reviewed and corrected in other cases involving similar principles."\textsuperscript{22} The points which were settled, he informed them, could not again be raised for useless discussion.

Livingston not only used the courtroom as a temple of justice, but transformed it into a classroom in which was offered instruction in citizenship. Even before the turn of the century, many European immigrants were settling in New York and the largest of these racial groups was the Irish. Livingston recognized their potential political strength and began to cultivate them. Favors were granted and consideration was shown these newcomers with the purpose of enrolling them in the ranks of the Republican party. In order to render assistance in meeting the legal requirements of citizenship they were encouraged to come to the courtroom where his court clerk could help the applicants fill out all the necessary forms. The Federalists were indignant at his action and accused him of suspending all civil business of the court for the purpose of "transmogrifying

\textsuperscript{21} Ibid.  
\textsuperscript{22} Ibid.
Irish Emigrants into American Citizens." What mattered it to Livingston and his political associates that he was criticised for using the time of public servants to make citizens "of the drags and refuse of Europe"? What did it profit the opposition to charge that the "seat of justice is converted into an engine to further electioneering purposes" so long as those being helped were all good Republicans with votes in their pockets?23

Livingston was sincerely interested in ameliorating the status of the poor and in improving the conditions of the incarcerated criminal. His contact with the Mechanics' Society afforded him an opportunity to set forth his views upon these two questions. The Mechanics' Society was a large and powerful organization, which held an anniversary meeting each January. At the meeting held in 1802, Livingston's toast, "The Noblest Charity—that which is supported by industry and the spirit of improvement,"24 clearly reveals an intelligent interest in the field of social welfare far in advance of his times. In fact, this statement and the statements contained in the letter he addressed to the society at their 1803 meeting appear to be more in keeping with the spirit of the second quarter of the twentieth century than of the first decade of the previous one.25 When he challenged industry to bear its part of the burden of caring for

25 Livingston to the President of the Mechanics' Society, January 1, 1803, in New York Herald, January 19, 1803.
the poor; when he demanded that plans be made for the "restoration of citizens sunk by misfortune below their former standing in society"; and when he insisted that constant employment will provide "a comfortable subsistence for our fellow citizens," it sounds as though it were the voices of present-day social leaders advocating social reform and social justice through effective legislation. When he asserted that there were those capable of supporting themselves by their labor but by particular circumstances out of employment, who were thus forced either to experience want or to apply for relief, which they were reluctant to do as the funds were provided for the helpless poor, he had covered the main arguments advanced by those of the present times interested in a program of social welfare.

The germ of his Criminal Code, written at a later date, is to be found in this communication when he maintains that employment of the poor lessens crime, as the most hardened offenders against society "commenced their career of crime by some petty offense committed in distress or conceived in the vacant hour of idleness."26 His advocacy of solitary confinement of the criminal and of provisions by society to utilize his services when discharged from prison find expression in Livingston's great penal work as do certain of the features outlined in the plan which he proposed to the masters of the Mechanics' Society.

26 Ibid.
As a man of refinement and scholarly attainments, Livingston was desirous of developing cultural advantages for the people of the city and he identified himself with the small group of public spirited citizens, similar to that found in every community, who were attempting to provide such means of improvement. Their activities found expression in the organization of the Academy of Fine Arts with Livingston as its president. The purpose of the organization was to secure plaster casts of the valuable Paris collections; copies of the best masters of the several schools of painting, together with a few originals; and a carefully selected group of architectural modes, drawings and plans for the erection of a gallery for their exhibition. Livingston was one of the first subscribers and solicited funds for the program. His brother, the Chancellor, who was Minister to France, rendered valuable assistance by selecting the statues and arranging for the casts to be made, in addition to selecting the paintings for the Academy. The first exhibition was held in the Rotunda of the Circus just prior to the yellow fever epidemic in the year 1803.

The 1803 yellow fever epidemic was most virulent, and it took an enormous toll of life. During the months of July, August, and September, the daily newspapers carried long lists of names of the victims of the malignant fever which did not begin

27 New York *Daily Advertiser*, January 24, 1803.
to subside until the latter part of September. The first cases reported were in the area near the waterfront, but shortly thereafter the health department reported deaths in the better residential sections of the city. Fear gripped the people, and in their panic everyone who could departed New York.

Livingston remained at his post and devoted his time and energies to the service of his people. He attempted to quiet their fears and get them to meet the situation with courage and fortitude, without at any time attempting to deceive them or to withhold the facts. In order to allay alarm as much as possible, he carried on the functions of government in the ordinary manner until August 15, when the general prevalence of the disease necessitated suspending the sessions of the Common Council until September 29. By his whole conduct he gave an example of activity, courage, and benevolence rarely to be met with in public servants. Fearlessly he accompanied physicians daily on their rounds to the "most deserted and dangerous parts of the city and pays frequent visits to Bellevue" to examine the condition of the sick and to administer to their comfort from his own purse. Day and night he visited the different sections of the city to see that the watchmen were at their posts of duty and that the property of the citizens who had left the city was being guarded. Only a man of strong constitution could have stood the physical and nervous strain of these trying days and nights.

29 New York Daily Advertiser, August 6, 1803, et seq.
30 Minutes of the Common Council of the City of New York, 1784-1831, III, 375-78.
While Livingston slept and rested but little during these weeks, neither did politics. Reports were circulated that the city watchmen were not at their posts of duty and that the property of the absent citizens was not being protected. The appreciation of the obligation that the citizens of the city were under to Livingston for his exertions in alleviating the distress of the poor and in personally attending to the safety of the city during the calamity found expression in many newspaper articles. Such words of appreciation irritated the editor of the Herald to such an extent that he gave vent to his feelings with the following:

We are disposed to believe from what has come under our own observation (not wishing at the same time to derogate one iota from the Mayor) that the other members of the Board of Health have discharged their duty also with equally as much fidelity and attention as the Mayor and are entitled to every atom as much praise. Perhaps curiosity to see yellow fever in all of its different stages has not led them to visit patients in every hall and corner of the city, nor does the duty of their office make it necessary. It belongs to the physicians.

While in normal times the public is usually unappreciative of unselfish acts of public servants, in times of stress it is often resentful of any criticism of those who make personal sacrifices in the interest of the public welfare. In the latter part of September, Livingston was stricken with the fever and for several days there was uncertainty as to his recovery, but thanks to his vigorous constitution he soon was convalescent. While his life was in danger, the public was exercised

31 New York Spectator, September 26, 1803.
32 New York Herald, October 1, 1803.
about his condition and voiced their resentment of the derogatory statements of the Herald. The editor realized that a blunder had been made and a few days later published a second article in which he disavowed authorship of the editorial. Instead of there being any criticism of the Mayor, he continued, there should be unstinted praise and wholehearted thanks of the entire people for Livingston for his tireless efforts and unselfish actions. Had he not been absent from the city, no such article of criticism would have appeared in his paper, he assured his readers, promising that the individual responsible for the editorial would not again have the opportunity to express his sentiments through the columns of the Herald. But such is the game of politics, and he who plays it must expect criticism and accept it as did Livingston.

From the time of his last year in Congress, misfortune shadowed Livingston’s footsteps to the end of his life. At intervals misfortune would accelerate her pace and upon overtaking Livingston would deal him blows that only a man of strong courage and indomitable will could withstand. Such blows as he received weaken or strengthen a man decisively, for they break a character or consolidate it amazingly. Nothing bears a stronger witness to the strength of Livingston’s character than his ability to withstand adversity and his refusal to accept defeat.

33 Ibid., October 5, 1803.
The first of the series of his misfortunes came with the
death of his mother in July 1800; in March of the following
year his wife succumbed to an attack of diphtheria.34 His
home life had been a happy one, and he felt the loss keenly.
The period of readjustment was difficult and trying. A home
for his three children, who failed to inherit his robust con-
stitution, must be found; and a change must be made in his
daily schedule. Within a short time, the children made their
home with his brother, John R. Livingston, whose wife was Eliz-
za McEvers, a sister of their mother; and he gave more of his
time and energy to his public work.

Immediately following Jefferson's inauguration, the Re-
publican leaders began a campaign to discredit Burr. DeWitt
Clinton was in hearty accord with the plan as it fitted in
admirably with his scheme to destroy Burr politically in New
York. The battle in New York was waged through the columns of
the press, with numerous pamphlets and public statements. In-
discriminate charges, violent countercharges, and vehement
denials were made in rapid order. Partisans filled the news-
papers with accusations and explanations; and the friends of
each engaged in a bitter vituperative pamphlet warfare. The
fight spread beyond party lines and the Federalists made poli-
tical capital of the situation. Outside of New York the battle
raged with equal fury and was carried to the floor of Congress,

34 Edwin Brockholst Livingston, The Livingstones of Livingston
Manor. . . (New York, 1910), 403.
where Jefferson was charged with having purchased the presidency.

The actions of every congressman at the time of the election were subjected to the closest scrutiny; the underlying motives that determined the vote as cast by each member were carefully questioned; and when the full story of the election was told, the reputations of several individuals were badly shaken. During the period of the election, Livingston maintained friendly relations with Burr, who was attending a session of the State Legislature at Albany. He received letters from certain Republican leaders at Albany in which it was suggested that he throw the New York vote to Burr after the first or second ballot. The Jefferson forces were anxious to gain and hold the New York support, not only for its one vote but for the influence on the votes of other states. Livingston was lukewarm in his support of Jefferson and it was probably the Chancellor's insistence that finally influenced him against Burr. He was credited with the ability to deliver the New York vote to either Burr or Jefferson. It was also asserted that he could influence the votes of individual members in certain other state delegations. Whether or not these statements were valid, Livingston occupied an important position. Even though he were unable to deliver the New York vote to Burr, at least he could have nullified it by shifting his support at any time during the balloting for the delegation had consistently voted six to four for Jefferson.

35 (W. P. Van Ness), An Examination of the Various Charges Exhibited Against Aaron Burr, Esq., By Aristides, 61.
As Livingston had held such a strategic position, it naturally followed that he would be singled out for attack when the fight between the Jeffersonians and Burrites began. The situation as it developed came to be more and more embarrassing to him for he was a conspicuous target of attack by the friends of both Burr and Jefferson, as well as by the Federalists. Burr's adherents were firmly of the opinion that he was a political opportunist who had deserted to the enemy and sold out their leader. The friends of Jefferson knew that it was with difficulty that his support for the President had been secured and they were suspicious of his association with Burr. He had been unable to explain this relationship to the satisfaction of Jefferson and his friends. One who has vowed himself to politics is no longer a free agent, and nothing that Livingston did improved his situation. His denial of the charge, that he was the secret and confidential agent of Burr and was in full co-operation with the group that was attempting to raise the New Yorker to the presidency, did not change the opinion of anyone. It was expected that he would make such a denial. And when, in justice to Burr, he stated that Burr had never solicited his support or vote for the presidency, the followers of Jefferson were convinced that Livingston was still on friendly terms with the Vice-President. The Federalists were positive

37 Livingston to "The Vice President of the United States," April 28, 1803, in New York *Morning Chronicle*, April 28, 1803.
that he had sold his vote to Jefferson and pointed to the appointments of Livingston and the Chancellor as proof of the fact.

Livingston's actions during the election period were open to suspicion and subject to question. A man of his political acumen should have known that the only safe course of action was to align himself definitely and publicly with one or the other of the factions. With the lines of cleavage drawn as sharply as they were, his judgment should have told him that the failure of anyone to reach a decision promptly would subject that individual to charges of bartering which would ruin his reputation. For a man of the acumen, sagacity and judgment of Livingston, it is difficult to understand or explain satisfactorily his actions. He should have known that irrespective of who might be promoted to the presidency, repercussions would follow and full publicity would be given to the whole proceedings. This publicity, when it came, undermined his political influence in the state and destroyed his influence in national affairs for almost a quarter of a century.

In political battles, the rules of warfare fail to provide for the protection of any of the combatants. No one engaged in political controversies has the assurance that he will emerge unscathed. Reputations of the followers are as easily, or often more easily shattered, than those of the leaders. An attack was made on Livingston's reputation, not only along the
New York front, but it was a conspicuous target on the congressional sector. In the course of the debate William B. Giles had defended the Virginia President and was followed by James A. Bayard of Delaware who accused Jefferson of buying the office of president. In telling the story, Bayard created a sensation in the House of Representatives. "And now, sir, let me ask the honorable gentleman," said Bayard, "what his reflections and belief will be when he observes that every man on whose vote the event of Mr. Jefferson's election hung has since been distinguished by presidential favor." He then proceeded to call the roll of the more important congressmen who had been rewarded. The active and efficient Charles Pinckney had received the appointment of Minister Plenipotentiary to the Court of Madrid. James Lynn, who held the deciding vote of New Jersey, had been appointed to the profitable office of supervisor of his district. As for the important Matthew Lyons of Vermont, it was too much to give an office to him; "his character was low"; but his son had been provided for in one of the executive offices. The valuable W.C.C. Claiborne, who held the vote of Tennessee in his hands, "has since been raised to the dignity of Governor of Mississippi." In continuing the roll call he further stated:

I shall add to the catalogue but the name of one more gentleman, Mr. Edward Livingston of New York. I knew well— full well I knew—the consequence of this gentleman. His means were not limited to his own vote; nay, I always considered more than the vote of New York within his power. Mr. Livingston has been made attorney for the district of New York; the road to preferment has been opened to him, and his brother
has been raised to the distinguished place of Minister Plenipotentiary to the French Republic.38

Notwithstanding the criticism which had been directed at him generally, and the serious predicament that confronted both Livingston and the party leaders by the existing conditions, Clinton had Livingston reappointed Mayor.39 It was not personal interest in Livingston's welfare, but political expediency that prompted Clinton's action in this matter. All positions filled by the Council of Appointment were for a period of one year, and, at that particular time, Clinton could ill afford to antagonize the powerful Livingston family by refusing to reappoint the Mayor. Clinton's primary concern was the elimination of Burr and the disposition of all other questions was made with the view of gaining that end. Consequently, Livingston remained in office and waited for a shift of public interest.

This desired shift came with the outbreak of yellow fever. In the city, politics temporarily were forgotten, and Livingston's humanitarian work effectively silenced a majority of his critics. The memory of the public is short lived, and for a time it appeared that there would be a reaction in Livingston's favor and he would be able to re-establish himself politically. However, other complications arose that completely thwarted his hopes.

38 Annals of Congress, 7 Cong., 1 Sess., 640 (February 20, 1802.)
39 New York Daily Advertiser, April 2, 1803.
Many demands, both official and unofficial, were made upon Livingston and he had little time to supervise properly the work of his political assistants. Furthermore, he did not have the inclination to check carefully the work of the employees in the two offices. Such laxity in the conduct of business often leads to dishonest practices and in the case of Livingston his inefficient management and failure to exercise ordinary precaution proved most expensive to him.

In the District Attorney's office, Livingston placed one of the clerks in charge of the department that handled the collection of federal taxes. There were no provisions for supervising the work of the office, consequently there was no check made of the accounts of the clerk assigned to this responsible position except that periodic audits of the books by the agents of the United States Treasury Department were made. As these audits came at regular stated intervals, the clerk was able to use personally the moneys collected between the visits of the treasury agents and return it prior to an audit. Finally the amount taken became so large, that the clerk was unable to return it and the exposure resulted. His failure to exercise ordinary precaution to safeguard public funds entrusted to him, made Livingston as morally responsible as he was legally responsible for the dishonest practices of his confidential agent.

Early in August, 1803, while the yellow fever epidemic was at its height, the agents of the treasury department made one of their periodic visits to the office. A check revealed a
shortage in the clerk's accounts but the extent could not be
determined until a careful audit was made. They estimated the
shortage to be approximately one hundred thousand dollars, and
immediately notified Livingston of the existing conditions.
Livingston fully realized the seriousness of the situation:
his political reputation had been badly scarred during the Jeff-
ferson-Burr fight; and now his personal reputation was endan-
gered with the charges of being a thief and a defaulter. He
knew that his days for political preferment were passed and
that his legal practice would suffer as a result of the charge
of dishonesty. The outlook was far from bright; but he met
the crisis with courage and fortitude. He assumed full respon-
sibility for the acts of his agent and made no accusations
against the real culprit.

His first efforts were directed to the problem of securing
the necessary funds to discharge his obligation. During the
epidemic money was scarce, as everyone was hoarding; conse-
quently the banks were unable to finance a loan to the amount
of the indebtedness. While Livingston had enjoyed a handsome
income during the past few years, he was a liberal spender and
had little or no cash in reserve. He had large real estate
holdings, and the value of this property was sufficient to take
care of his indebtedness if it could be converted into cash.
The exact amount due the government was not determined for sev-
eral weeks. In the meanwhile, Livingston assigned all of

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40 New York Evening Post, December 30, 1803.
his real estate to an agent with instructions to dispose of it to the best advantage and apply the proceeds to the liquidation of the debt.

The unfortunate occurrence itself was mortifying to Livingston, and the publicity given the affair was embarrassing and humiliating. The Federalists gleefully pointed to such acts of dishonesty on the part of Jefferson's appointees as evidence of his unfitness for the office of president. In alluding to the policy of replacing federal officeholders with Republican supporters, the New York Herald's editor informed its readers that they "may see some of the first fruits of this precious system: a practical illustration of the superiority of a republican over a federal officer." As a proof of this he cited the fact that within two years the republican appointee had secured one hundred thousand dollars of public money for his own use "for which judgment is rendered against him by his own confession," while his federal predecessor had been unable to secure one cent during his fifteen years in office.41

With utter disregard of the facts, the Federalist newspapers circulated numerous reports tending to discredit the government. It was charged that the government not only had made no attempt to "secure the payment of the said sum or any part thereof" but had allowed Livingston to leave the state without requiring bond of him for the faithful discharge of the obligation.42 Reports were circulated without regard to truth.

41 New York Herald, January 4, 1804.
42 Ibid., January 16, 1804.
or facts; it was even charged that Livingston was a defaulter to the city in the amount of two thousand dollars.\textsuperscript{43}

Upon satisfying himself that his agent was dishonest, Livingston immediately resigned his position as Mayor, and upon the request of the Secretary of the Treasury, Albert Gallatin relinquished the office of District Attorney. In tendering his resignation as Mayor, he informed Governor Clinton that he would continue to discharge the duties of the office until the epidemic subsided.\textsuperscript{44} Ten days elapsed before the Governor acknowledged receipt of the resignation, and in his reply he gave Livingston an opportunity to reconsider. It was not until two months later that the Council of Appointment accepted the resignation, and it was during this interim that Livingston succumbed to an attack of yellow fever.

During his convalescence, Livingston arrived at the conclusion that a change of residence would be desirable to his interests, and that in a different location he could more easily and quickly regain his financial independence. The Chancellor had just completed the negotiations with France for the purchase of the Louisiana Territory. The newspaper accounts of the vast resources and the opportunities to amass a fortune in this new country\textsuperscript{45} probably were responsible for

\textsuperscript{43} "Short Queries to Make Long Faces," in New York Evening Post, December 29, 1803.
\textsuperscript{44} New York Herald, January 15, 1804.
\textsuperscript{45} New York Daily Advertiser, July 3, 1802, June 5, 1803, et seq.
Livingston's decision to migrate to Louisiana. Having reached a decision, he acted with dispatch. At the November term of the federal court, he voluntarily accepted judgment in favor of the national government to the amount of one hundred thousand dollars.46 When the audit of the books was finally completed, the exact amount of the deficit was placed at $43,666.47

"With the court judgment recorded, there was nothing to keep him in New York. By the middle of December, he had completed all arrangements for his departure, and during the latter part of the month he sailed for New Orleans. It was necessary for him to borrow the money from his brother to make the trip, and he arrived in New Orleans with only a hundred dollars in cash and a letter of credit for one thousand dollars48 to care for his expenses until he could establish himself in his new surroundings.

46 New York Evening Post, December 30, 1806.
47 Hunt, Life of Edward Livingston, 104.
48 "Communication explaining and defending Livingston's Actions Relative to the Charges of Treason Made by James Milksen," in Louisiana Gazette, December 30, 1806.
CHAPTER VI

NEW ORLEANS, THE NEW HOME

In its southward meanderings to the Gulf of Mexico, the Mississippi River turns toward almost every point of the compass. Approximately one hundred miles from its mouth, the river, after flowing to the northeast, veers sharply to the south for a short distance, then curves gradually to the east for several miles, thence changes its course to the north before again flowing toward the southeast, thereby forming a rough crescent. Almost in the center of the curve, on the left bank of the river, Jean Baptiste Le Moyne de Bienville founded New Orleans in 1718. During the succeeding eighty-five years of French and Spanish control, the town grew very slowly and on December 20, 1803, when O. C. Claiborne, governor of the Mississippi territory, took possession of the province of Louisiana for the government of the United States, New Orleans had a population of only 8,056 inhabitants, including both whites and blacks.

Other than the slaves and free persons of color who comprised one-half of the population, the inhabitants were largely of French and Spanish descent, with the former predominating. Besides the native-born citizens of Latin descent, known as Creoles, there were those who had come direct from France and Spain as representatives of their respective governments. Even the Americans, who outnumbered those from all other countries other than France and Spain, were almost lost in the city. The Americans were largely merchants and traders employed by the commercial interests of Philadelphia and Baltimore, which had established branch houses in Spanish New Orleans to compete for the western trade that was increasing in volume and value. In addition to the resident Americans, there was an almost steady stream of Western boatmen, traders, and frontiersmen from the Ohio and upper Mississippi river territory.


7 Grace King, *New Orleans, the Place and the People* (New York, 1925), 141; *Cable, The Creoles of Louisiana*, 121; Par M...., *Mémoires Sur Louisiane et La Nouvelle-Orléans*, 10.
pouring into the city with their wares, making full use of the "right of deposit" which the Treaty of 1795 with Spain had guaranteed to the citizens of the United States. After disposing of their wares, these rough unlettered backwoodsmen spent their profits in wild boisterous dissipations and engaged in brawls which made them obnoxious to the populace who found it difficult to appreciate the Americans even at their best.

The Creoles developed a distinctive civilization which persists to the present. Refinement, sociability, and the capacity for the full enjoyment and appreciation of the finer aspects of life are among their outstanding characteristics. The people spoke French almost exclusively, just as they worshipped almost exclusively in the Roman Catholic Church.

8 Par M... , Mémoires Sur Louisiane et La Nouvelle-Orléans, 10; Martin, History of Louisiana, 317-18, gives the following estimate of produce shipped from New Orleans in the year 1802 which included that from the settlements on the Mississippi and Ohio rivers:
Flour, 50,000 barrels Molasses, 800 hogsheads
Salt beef and pork, 3,000 barrels Cotton, 34,000 bales
Tobacco, 2,000 hogsheads Pelts, 450 tons
Sugar, 4,000 hogsheads Naval stores, 500 tons
Potash, cornmeal, hemp, hides, beans, peas, hams, ginseng, garlic, etc., 6,650 tons.


10 King, New Orleans, the Place and the People, 141.

11 Ibid., 189.
Many of the wealthier citizens owned plantations near the city on which were being introduced the cultivation of sugar cane that was practically supplanting the growth of indigo and precluding an increased acreage of cotton; others engaged in the manufacture of cordage, vermicelli, shot, distilled liquors, molasses, and sugar. In addition, there were the shopkeepers and those engaged in inland and coastwide trade.

As the easy-going disposition of the Creoles was not conducive to the development of those traits and characteristics essential to a successful trader, the export trade was largely controlled by the American shipping interests.

Following the cession of Louisiana to the United States, the inhabitants, regardless of racial antecedents, were discontented and gloomy. The action of the United States government in consolidating all executive, judicial, and legislative power and authority in the hands of Claiborne as "Governor-

12 Martin, History of Louisiana, 317; William O. Scroggs, "Rural Life In the Lower Mississippi Valley About 1803" in Proceedings of the Mississippi Valley Historical Association, VIII, 262.
13 Martin, History of Louisiana, 318.
14 Ibid., 318; states that in 1802, there entered the Mississippi 107 American, 97 Spanish, and 1 French merchantmen, bringing 23,725 registered tons. Of these vessels, 72 American and 12 Spanish ships came in ballast. In the same year there sailed from the Mississippi:

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<th>Vessels</th>
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<td>158 American</td>
<td>21,383</td>
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<td>104 Spanish</td>
<td>9,753</td>
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<td>3 French</td>
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15 Gayarré, History of Louisiana, IV, 2.
General and Intendant of the Province of Louisiana was viewed with grave concern. Such action seemed to portend the establishment of a more despotic government than that administered by Spain, under which the authority and power had been divided between two officials. The new Governor-General was charged with the duty of maintaining and enforcing the Spanish laws and municipal regulations which were to remain in force until changed by the United States government; and as he was not only ignorant as to the laws but was unable either to speak or read the language in which they were written, it is not surprising that the people were apprehensive of Claiborne's actions and policies.

The citizens continued to hope for an improvement of conditions until March 26, 1804, when Congress passed the act relative to the organization of the Louisiana Territory. When it was learned that Louisiana, while as a French and Spanish possession always a unit, was to be divided into the "Territory of Orleans" and the "Territory of Louisiana," each with its own executive, judicial, and legislative departments, the keen resentment of the people was aroused. They felt that such
action diminished their importance and tended to delay their admission into the Union as a state. As the power previously exercised by the Governor-General was transferred to the Supreme Court, since a single one of the three judges could constitute the Court, it was contended that the government was as despotic as formerly.

In designating English as the official language of the government, no consideration was given to the preference of the people, their needs, pride, and native customs. It appeared to the Creoles that there was further discrimination against them when importation of slaves was forbidden, while at the same time Americans settling in the Territory were permitted to bring their slaves with them. There was a general resentment against the provisions to declare "null and void" certain concessions of lands made by the Spanish Government, and the authority granted the President of the United States to appoint "Registers and Recorders of Land Titles" was viewed with anxiety. This anxiety was not groundless, as the Registers were empowered to receive and record all titles to property acquired under both the French and Spanish Governments. With the agents of the government adopting their own methods of procedure for investigating land claims, for rendering decisions, and for reporting their findings to Congress for review and

final action, it was natural for property owners to be apprehensive of a period of endless ruinous litigation and arbitrary spoliation. 20

The representatives of the French and Spanish governments, who were not averse to embarrassing the territorial government, further aggravated the local situation by remaining in Louisiana. Colonial Prefect Pierre Clement de Laussat, who had been the agent of France in delivering the territory to the United States, delayed his departure for several months. He realized the vast possibilities in the development of Louisiana and regretted the loss of this former province by France. He hoped that France some day would regain Louisiana, and suggested to his government that something should be done to keep alive the resentment of the former colonists against the United States. 21 To certain Creoles, he intimated that the Louisiana transfer was a political trick and in time the colony would be returned to France. 22 To the most zealous in favor of the French control, "as a feeble testimonial of the satisfaction and good will of that Government" he distributed over seven hundred pounds of powder and inferred that as they were good huntsmen the gift would be duly appreciated. 23 On every available occasion, he appealed to the racial pride of the

20 Gayarré, History of Louisiana, IV, 5-7.
21 Ibid., 12.
22 Martin, History of Louisiana, 322.
23 Gayarré, History of Louisiana, IV, 9.
French Creoles as a means of keeping them loyal to France. 24 Among certain of the citizens of French descent, expressions and acts of opposition to the American government were to a degree but a reflection of the attitude of Laussat. 25

The Spanish officers and officials lingered in New Orleans beyond the time prescribed for their withdrawal by the Treaty of April 30, 1803. 26 The former Governor, Marquis de Casa Calvo, a man of winning manner, charming personality, and distinguished appearance, insisted that he was remaining to wind up the affairs of the King of Spain in Louisiana. Don Juan Ventura Morales, ignoring the protests of Governor Claiborne, continued to exercise his functions of Spanish Intendant on American territory, thereby making himself so obnoxious to the United States Government that he was requested to depart. 27 Intense rivalry and hatred existed between Caso Calvo and Morales, and each naturally had his following in the city. 28 In their disputes and conflicts, both appealed to Claiborne, who not only declined to interfere in their quarrels, but had to check their attempts to exercise authority in matters over

28 Claiborne to Madison, May 24, 1804, ibid., II, 166.
which they no longer had jurisdiction. 29 By following this policy, the Governor naturally gained the ill will of the intense partisans of both Casa Calvo and Morales. While these two Spaniards were in personal disagreement, they were in accord in their attempts and efforts to embarrass Claiborne at every possible turn by their intrigues and intimations of a Spanish invasion. 30 Both the French and the Spanish relinquished the colony with reluctance and many of the inhabitants cherished the opinion among them that the United States was holding the place only in trust during the war and that a European peace would restore it to its ancient masters. 31

To this New Orleans, where the people were split into parties and factions, divided in their loyalties and affections, and made the sport of foreign and domestic intrigues, 32 came Edward Livingston, February 7, 1804. 33 Adventurous Americans by the thousands were being attracted to this city of opportunity whose population by 1808 had trebled in number,

31 A Faithful Picture of the Political Situation of New Orleans at the Close of the Last and the Beginning of the Present Year 1807, (Boston, 1808), 5. A pamphlet reprinted from the New Orleans edition.
reaching 25,000, and by 1818 boasted of a population of 40,000. From the backwoods of the upper Mississippi River region, from the wharves of the Atlantic seaboard towns, and from the commercial centers of the Middle Atlantic States, came the hardy pioneers, salty skippers and shrewd traders—all answering opportunity's call. The easy-going Creole was rudely jarred by this influx of bustling Americans and was resentful of the changes which these aggressive Yankees wrought in his manner of living. With the increasing business activity, there came a corresponding increase in the demand for legal services. Lawyers were needed to draw up commercial contracts, examine property titles, settle land disputes, prepare bills of sale, and prosecute law violators. There was much litigation, as the Americans were not familiar with the prevailing civil law practices, but were accustomed to common law usage, and practically all of the American lawyers had been trained to practice in common law courts. Success was assured the members of the legal profession, who, in addition to possessing the necessary personal qualifications of adaptability, thrift, and industry, as did Livingston, were trained in both the Roman and the common law.

It required courage, fortitude, and a keen sense of obligation for Livingston, in his late thirties, distinguished,

34 Martin, History of Louisiana, 347.
35 Niles' Weekly Register (Baltimore, 1811-49), XV (September 1818-March 1819), 175 (November 7, 1818).
with a well-established law practice, to break the ties of youth, to forego the security of family and friends, to attempt to re-establish himself in a new environment. However, he had a financial obligation to discharge and he felt that the opportunities for earning the necessary money to liquidate the debt were better in New Orleans. Even though he was more successful than he could have anticipated and even though it was while in Louisiana that he made those contributions to society that gave him a lasting place in history, he always considered New York his home and planned to return as soon as he could.
Livingston availed himself of the opportunities to attain success that New Orleans offered a man of his talents, training, and energy. As a man of culture, refinement, and gracious manners, it was not difficult for him to make the desirable social, business, and professional connections essential in building up a lucrative law practice. He entered into the life of the city and within a short time became acquainted with its leading citizens. He actively participated in civic and political affairs, and associated himself with the faction opposed to Governor Claiborne and the government which he represented. On the other hand, he remained on friendly terms with the followers of Claiborne and was the recipient of favors at their hands.

His alignment with the "opposition" group may have been the result of any one or more of several causes. From early childhood, Livingston had been an ardent admirer of the French, and it was natural for him to find the society of the French Creoles congenial. Many of them were antagonistic to the Governor and their attitude probably had its influence on him.
In addition thereto, he had always belonged to the opposition party in national politics, consequently it was more or less natural for him to continue in this opposition, even though he had contributed to the election of Jefferson. It may have been that he had a personal resentment against Claiborne. Both of them were members of Congress in 1800, and, following the election, Jefferson had appointed each to important political positions. Claiborne's subsequent political career had been successful, while that of Livingston had not. The latter had not only lost his political influence and patrimony but had been forced to resign from office charged with a shortage in his accounts. After having sought new fields in order to recoup his fortunes, the situation was not made easier for Livingston by finding Claiborne the dominant political factor in the community of his adoption as well as the official representative of the government to which he had resigned his lucrative position as a federal officer. Then, too, realizing that his future clientele in the main must come from the Creoles, just as would any political preferment, it is not surprising that he should join in their protests against the government.

Livingston almost immediately identified himself with the leading business and professional men of New Orleans and acquired considerable influence among the inhabitants. ¹ Claiborne recognized this fact when, in March, 1804, in issuing

the Ordinance Providing for the Establishing of a Bank, he placed Livingston on the committee to receive subscriptions for capital stock with John McDonogh, Pierre Sauvé, Nicholas F. Girod, Paul Lanusse, Evans Jones, Benjamin Morgan.

2 John McDonogh: successful business man; came to New Orleans as agent for Baltimore Mercantile house but soon entered business for himself; acquired large holdings in sugar lands near New Orleans; amassed a great fortune; philanthropist; elected director of State Bank, 1806; active in defense of New Orleans; unsuccessful candidate for United States Senate in 1818. Dictionary of American Biography, 20 vols. (New York, 1928-55), XII, (1933), 19.

5 Pierre Sauvé: member of Council during short lived French domination; actively opposed the territorial policies of the federal government; one of the three delegates selected to present to Congress the protest of the Louisianians in 1804; refused to accept appointment as member of first legislative Council under American control; later served as elective member of the Council. S. C. Arthur and G. C. H. de Kernion, Old Families of Louisiana (New Orleans, 1931), 81.


5 Paul Lanusse: successful merchant; member of city government under Spanish régime; actively opposed territorial policies of federal government; one of the petitions of protest against federal government was left at his store for signatures; member of city council 1811; unsuccessfully opposed Girod for mayor in 1814. Ibid., 93-96.

6 Evans Jones: successful business man; member of city council during French rule; actively opposed federal territorial policies; refused appointment as member of first legislative council under American control. Henry Righthor, Standard History of New Orleans (Chicago, 1900), 110.

7 Benjamin Morgan: wealthy merchant and banker; member of the first board of directors and president of the Bank of Orleans established under the Act of the Legislature in 1811. Ibid., 585-86.
Fortier, and other outstanding business and professional men of the city.

For a city of the size and with the financial resources of New Orleans of that day, the plan was quite ambitious. The Bank was to begin operations when capital stock to the amount of $600,000 had been subscribed. However, this could be increased to two million dollars. For a time, it appeared to be a very popular venture, as more than $100,000 of the stock was subscribed within a few hours after the books were opened. The interest, however, soon waned, and even though opposition from Washington had not been encountered, the bank would not have been organized. Nevertheless, it was fortunate for Livingston that he had been appointed on the Committee, as it gave him the opportunity to become acquainted with the financial leaders of the community.

In the rapidly increasing American population of the city, there were many individuals not in sympathy with the governmental policies. Livingston's association with the American and

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8 Michel Fortier: merchant; ship owner; planter; member of first city council under French régime; took part in the campaigns of Governor Galvez in 1779; rendered valuable service during War of 1812; his son was aide-de-camp to Claiborne during the war. Alcée Fortier, A History of Louisiana, 4 vols. (New York, 1904), I, 426; II, 248, 288, 292; III, 25, 89, 165.
10 Ibid., 29.
11 Ibid., 33.
12 Ibid., 42.
13 Claiborne to Albert Gallatin, May 23, 1804, in ibid., 102.
14 Claiborne to Thomas Jefferson, June 5, 1804, in ibid., 207.
Creole opposition groups and his friendly attitude toward the Casa Calvo and Morales Spanish factions caused Claiborne considerable concern. More than once the Governor complained to the Secretary of State, Madison, that Livingston and Daniel Clark moved their hostility to him and by dangerous political views had injured the interest and character of the Government in the territory.

The dangerous political views to which the Governor alluded found expression in a number of public meetings held for the purpose of consolidating the various elements opposed to the policies of the government. The first of these meetings was held March 10, 1804, and was called by a certain Mr. Tupper, recently from Boston, whom Claiborne called an adventurer. As it was stated, the purpose of the meeting was "to discuss the grievances of the Louisianians against the American rule and formulate a petition to Congress demanding relief." Mayor Etienne de Boré presided over the assemblage which was attend-

17 Claiborne to Madison, March 16, 1804, in ibid., 42-43.
18 Jean Etienne de Boré: prosperous sugar planter, popularly credited with manufacturing first sugar in Louisiana; mayor of New Orleans during French rule; continued to serve in same capacity for short time after the territorial transfer to the United States; chairman of first citizens' protest meeting against federal territorial policies; refused seat in first legislative council under American rule." Ibid., II, (1929), 461.
ed by a few Americans and a large number of merchants from New Orleans and planters from the vicinity of the city. It was the intention of Tupper and Bore to ignore the Governor by sending the memorial direct to Congress. A friend of Claiborne, Dr. John Watkins, later mayor of New Orleans, blocked this move. Watkins prevailed upon the assembly to authorize the appointment of a committee to prepare suitable resolutions which were to be submitted for signatures at a subsequent meeting. 19

While Livingston may not have attended the gathering called by Tupper, he not only was present, but also was in large part responsible for the meeting of protest held June 1, the same year. Of the Americans who participated in the deliberations on this occasion, the leaders were Livingston and Clark, who were responsible for the method of procedure, and for the persistent policy that resulted in the success attained. 20 The March, 1804, Act of Congress which provided for the partition of Louisiana, the restrictions on the importation of slaves, and the deferring of the admission of Louisiana into the Union 21 caused general dissatisfaction. The public meeting on June 1 was called to solidify the opposition and induce as large a group of citizens as possible to join in petitioning Congress at its next session to repeal the objectionable sections of the Act. The

20 Claiborne to Madison, July 1, 1804, in ibid., 234-235.
meeting was well attended, and among those present were some of the most influential merchants and other citizens of the city and numerous planters from the vicinity of New Orleans. Among those who participated most actively in the discussions were Livingston, Clark, Evans Jones, Boré, Pierre P.tit, and James Pitot.

Unlike the procedure followed at the meeting called by Tupper, the leaders responsible for this public gathering conducted the proceedings in a calm, deliberate manner. The consensus of opinion of the assembly, as brought out in the free and full discussion, was that Congress should be requested to repeal the three obnoxious sections of the Act and that the memorial would carry more weight if it were signed by the citizens of the country parishes in addition to those of New Orleans. The assembly accordingly appointed a committee of four to draft such a petition and submit the document for the disposition of the assembly at a subsequent public meeting. If the report of the committee were satisfactory, those present at the next meeting would sign the petition and then it was to be sent to the country parishes for the signatures of the leading citizens. It was also agreed that Claiborne was to be

24 National Intelligencer and Washington Advertiser, August 10, 1804.
notified of the action taken at the meeting. In compliance with instructions, Livingston and Pitot the next day called at the office of the Governor and informed him personally and by letter of the action taken. 25

The committee was composed of Livingston, Jones, Pitot, and Petit, but the writing of the memorial was the work of Livingston. 26 While the tone of the document was respectful, Livingston wrote in clear, definite, and forceful language. Following the example of the Declaration of Independence, he listed the grievances of the people and demanded of Congress attention to their complaints, not as a favor, but as a right. 27 When the memorial was presented at the second public meeting held July 1, it was well received. Without any discussion or amendments, the work of the committee was ordered approved and it was immediately signed by approximately two hundred fifty "respectable merchants, planters and other respectable inhabitants" who were present. 28

It was the opinion of the meeting that there should be

26 Claiborne to Madison, July 1, 1804, in ibid., 233; Louisiana Moniteur, quoted in National Intelligencer and Washington Advertiser, August 24, 1804.
28 National Intelligencer and Washington Advertiser, August 10, 1804.
appointed a committee of twelve citizens to circulate the petition in the country parishes and secure the signatures of the leading citizens. It was further agreed that the expenses incurred by those responsible for this work were to be defrayed by voluntary contributions. After completing their work, they were to report back to the assembly for final disposition of the matter. Accordingly, the committee was appointed, and Clark, Claiborne's particular aversion, was selected as one of the twelve. The committee members were successful in their mission, and upon their return to the city, the third and last meeting was held on July 18. At this adjourned session Pierre Derbigny, Jean Noel Destrehan, and Pierre Sauvé were selected as delegates to present the memorial to Congress. While the meetings of protest and the work of the delegates in Washington had very little immediate effect in influencing the action of Congress in regard to the wishes of the people of Louisiana, they gave Livingston an opportunity to enlarge his circle of acquaintances.

The provisions of the Breckenridge Bill, passed by Congress March 26, 1804, providing for the first territorial government of Louisiana, were put into operation October 1, with Claiborne as Governor. The members of the Legislative Council appointed by the President were Etienne Boré, A. D. Bellechasse,

29 Ibid., August 24, 1804.
30 Ibid.
32 Louisiana Moniteur, quoted in National Intelligencer and Washington Advertiser, August 24, 1804.
Michel Cantrelle, Daniel Clark, Gasper Dubuys, Robert Dowe, Evans Jones, William Kenner, Benjamin Morgan, Julien Poydras, James Roman, John Watkins, and William Wikoff. The members of the Superior Court were Kirby, Duponceau, and Prevost, a stepson of Aaron Burr. The Judge of the United States District Court was D. Hall, the District Attorney, Mahlon Dickenson, and the Marshall, LeBreton D'Orgeny.

Evidently for the purpose of embarrassing Claiborne and at the same time continuing the protest against the establishment of a government so manifestly obnoxious to the populace, Beré, Bellechasse, Jones, Cantrelle, and Clark refused their appointments as members of the Council. They evidently were influenced by the attitude of Livingston who pointed out to them that they could not with any consistency aid in establishing the government which they, as active leaders of the opposition, had protested. Under date of October 8, Jones wrote Claiborne, "I cannot therefore accept, with any Degree of Consistency, any office, under a law, of which I have from the beginning, so openly expressed my Disapprobation; and which, for the happiness of my fellow Citizens, forgive me if I add, for the honor of my native Country, I ardently wish to be annulled." Claiborne realized Livingston's influence and was fully aware of

34 Martin, History of Louisiana, 325.
the effect that the refusal of these men to accept their commissions would have on the other members as indicated in his letter to Madison on the same date that he received Jones' letter. "Mr. Jones," wrote Claiborne, "declines, and the Reasons which influence him, will, I fear, operate with all those named for the Council, who had signed the Memorial to Congress: Mr. Edward Livingston has found that their acceptance would betray a Dishonorable Inconsistency, and the opinions of those who advised and wrote the Memorial, cannot fail to make an Impression."

Claiborne's apprehension was not unfounded as subsequent events proved. For several weeks the remaining members for whom commissions had been issued, while not refusing to accept them, deferred final action in the matter. Claiborne's conciliatory attitude was responsible for their final acceptance; however a quorum could not be obtained prior to December 7. There probably would have been a longer delay in organizing the Council had not the Department of State furnished Claiborne with blank commissions which were filled with the names of other citizens who had signified their willingness to accept the appointment. To complicate the situation further, the first session

37 Louisiana Gazette, December 7, 1804; National Intelligencer and Washington Advertiser, January 25, 1805.  
38 Martin, History of Louisiana, 326.
of the territorial court was not held until November 5, and then with only one judge, J. B. Prevost, present. Duponceau had declined to accept his appointment to the bench, and Kirby, while en route to New Orleans, was detained at Fort Stoddart by serious illness which later proved fatal.

While the zeal and ability displayed by Sauvé, Bestrehan and Derbigny in presenting the memorial to Congress failed to secure the desired results, it is probable that their efforts did eventuate in accelerating the action of that body and in influencing its decision with reference to certain provisions incorporated in the Act of March 2, 1805. This Act, authorizing the establishment of a new form of government in the territory, not only failed to satisfy the people, but also added to the already innumerable perplexing problems confronting the Governor. The provisions of the Act with regard to the right of suffrage met with general disfavor. If the citizens were qualified and capable of selecting the twenty-five members of the House of Representatives, why should it be necessary, they inquired, for the President to select the five members of the

39 Claiborne to Madison, October 5, 1804, in Howland (ed.), Letter Books of W. C. Claiborne, II, 392; National Intelligencer and Washington Advertiser, December 12, 1804, stated "A New Orleans paper says 'On the 5 ult. the court was opened by hon. J. B. Prevost. . . Among other rules of the court it is determined that all action shall be brought by petition and that all pleadings shall be in French and English.'"
Legislative Council from a list of the names of ten individuals nominated by a body which the people had elected? The modicum of self-government granted them was not sufficiently liberal to afford much gratification, for it carried with it many checks and curbs which created general dissatisfaction. The conciliatory action of the President in appointing Bellechasse, Destrehan, Sauvé, Maecarty, and Jones as members of the Legislative Council, thereby giving the Creole element a majority in this important body, failed in its purpose. The general public was still dissatisfied, and the members of the Council who were friends of Livingston were not friendly to Claiborne nor to his policies.

In the main, the Act provided for general conformity with the provisions of the Ordinance of 1787. This Ordinance prescribed that legal procedure in civil and criminal cases should be in conformity with the common law practices. When an attempt was made to establish common law Courts in the Territory, the active opposition of all "ancient" Louisianians followed. The French and Spanish settlers had brought with them the Roman civil law which was in force in Louisiana. They were unfamiliar with the English common law practices and opposed the adoption of such procedure in the courts of the territory. Trial by jury was an unknown procedure, and the practice of instituting suits by petitions in the form of a bill in chancery

42 Martin, History of Louisiana, 329.
43 Gayarre, History of Louisiana, IV, 67.
 grated on the ears of the old inhabitants. Because they were unable to understand these procedures, it seemed to them that they would not be able to secure justice in the courts.44 On the other hand, to the settlers from the common law states, the civil law and its practices and applications were as much of a mystery as were the common law practices to the old inhabitants of the territory. The American settlers maintained that as Louisiana was a part of the United States, common law practices, as prescribed in the original ordinance of 1787 from which the territorial government was descended, should be established here as in the rest of the Union. Why, they inquired, should it be necessary to promulgate the laws and proclama-
tions in both the French and English languages, thereby making it necessary for litigants to employ two lawyers for each case, one to address the jury in French, the other in English? They maintained that by making English the legal language and the common law of England the law of the territory, the work of the court thus simplified would be expedited, with a resultant re-
duction in costs.

Court action was taken to effect the change, and the pop-
ulace was divided over the question along racial lines. As was to be expected, the Creole lawyers opposed the change, while the English speaking members of the bar, with the

exception of Livingston, insisted that the common law practices should replace those in use.

Livingston was familiar with the civil law practices and would suffer no inconvenience if the practices in force were continued. In fact, he would have an advantage over a majority of the lawyers from the common law states provided the Civil Law of Spain as derived from the Roman jurisprudence were retained as the foundation of the local jurisprudence. An array of English, Scotch and Irish lawyers represented the proponents of the English common law practices; L. Moreau Lislet, Stienné Mazureau, and Pierre Derbigny were among the attorneys for the opposition. The common law proponents contended that the Act of Congress in question provided *totidem verbis* for the Common Law of England. While the talents of Lislet, Mazureau, and Derbigny compared favorably with those of the attorneys representing the opposition, it was the logical arguments of Livingston, towering above all others in ability, that demolished the contentions of his opponents. Livingston's argument that the law already in force in Louisiana was Roman and not English and that the words "common law" were to be construed as the "common law of Louisiana" and not of England was sustained by the Court. The Judge of the Superior Court of the Territory, John E. Prevost, held that the law in

45 "An Old Louisianian" in *Louisiana Courier*, January 15, 1824.
force being Roman, Spanish, and French, it resulted that the
term Common Law when applied to the Territory must be equivalent
to the common law of the land or the civil law of the
land.

Livingston's action won for him the gratitude of the Creoles; it established his reputation as a clear, forceful, and
logical public speaker; and it stamped him as one of the out-
standing lawyers, if not the leading attorney, in the terri-
tory.47 The reputation which he earned, the friends he made,
and his knowledge of the French and Spanish languages were res-
ponsible for his employment by the members of the Legislative
Council appointed by the governor to assist in the preparation
of the civil and criminal codes for the territory.48

He and W. Brown were the two attorneys appointed for this
important task, for which they were to be paid $2,500.00 each.49
Livingston's selection came as a recognition of his legal abil-
ity and was fully justified by the results of his work. His
individual contribution to the new system of jurisprudence is
to be found in the acts providing for the Charter of New Or-
leans, inland navigation, and the county court law.50 The

47 Henry S. Foote, The Bench and Bar of the South and South-
west (St. Louis, 1876), 193. "Perhaps the highest rank
at the bar of Louisiana, in the earlier days of that res-
pected commonwealth, should be accorded Edward R. [sic.]
Livingston."

48 James Workman, Address to the Citizens of New Orleans,
in Louisiana Gazette, April 10, 1807.

49 "Council Proceedings December 10, 1804" in ibid., December
21, 1804; "Pinder Letter No. 2," in ibid., September 6,
1811; Acts Passed at the Second Session of the First Legis-
lature of the Territory of Orleans (New Orleans, 1807), 190-92.

50 "Pinder Letter No. 2," in Louisiana Gazette, September 6, 1811.
Legislative Council accepted the work of the attorneys without amendment and officially approved the draft of the laws March 31 and April 10 and 19, 1805.\textsuperscript{51}

With the establishment of the new government, many perplexing problems arose which gave Claiborne much concern. The position which the Governor took on many of these questions was unsatisfactory to Livingston, who opposed him vigorously, as was the case when the Delegate to Congress was to be elected. The candidates for the position were Dr. Watkins, Evans Jones, and Daniel Clark. Claiborne favored the election of his friend Watkins, to whom he referred as "the sincere friend of his country."\textsuperscript{52} He feared that Clark, if elected, would attempt to undermine his influence at Washington and cause him considerable trouble at home.\textsuperscript{53} Although not a member of the Legislature which elected the Delegate, Livingston actively opposed the election of Watkins and supported Clark. The native citizens of the United States in the Legislature supported Watkins, and the support of the "ancient" Louisianians was divided between Clark and Jones.\textsuperscript{54} Clark, however, was elected, thus giving Livingston a friend at Washington.

The Legislative Council, in 1805, passed an Act providing

\textsuperscript{51} Acts Passed at the First Session of the Legislative Council of the Territory of Orleans (New Orleans, 1805), 122-44, 144-208, 322-334.


\textsuperscript{53} Claiborne to Jefferson, May 21, 1806, in ibid., 304.

\textsuperscript{54} Claiborne to Jefferson, May 21, 1806, in ibid., 303.
for the establishment of a university for the territory, but interest in collegiate education failed to advance "with the rapidity which was contemplated," and it was several years before any definite results were obtained. The act provided for the appointment of Livingston to the Board of Regents of Orleans University, and he contributed two hundred dollars of the $3,040 raised to establish the institution.

During the first year or two of American control of the territory, the primary attention of the newcomers was given to the political and commercial activities. Gradually, they came to the realization that matters pertaining to the religious life of the city could not be disregarded, and about the same time that the second territorial government was inaugurated, a movement was started to establish a Protestant church in New Orleans. By June, 1805, $2,275.00 had been raised for this purpose, and a meeting of interested persons was held in the Cabildo to perfect the plans of organization. By a majority

57 The Louisiana Gazette, July 2, 1805; Acts Passed at the First Session of the Legislative Council of the Territory of Orleans, 304.
58 Document giving the list of subscribers is preserved in the Cabildo, New Orleans, Louisiana.
59 The Louisiana Gazette, August 27, 1805.
vote of those in attendance, it was decided that the church
organization was to be Episcopal. At the request of the or-
ganization, the Legislature passed the Act providing "For In-
corporating a congregation of the Protestant Episcopal Church
in the County of Orleans and for other persons therein men-
tioned," and in Section One of the Act Edward Livingston was
designated as one of the "body politic and corporate." 60

For many years, Livingston had been an active member of
the Masonic fraternity, and in New York had been honored with
the highest office of his Lodge. He affiliated with the Louisi-
ana Lodge shortly after his arrival in New Orleans, and almost
immediately was elected Worshipful Master. In an eloquent,
forceful address, he consecrated the lodge hall as a Temple to
Harmony and Virtue, which made a lasting impression on his
audience and added to his reputation as an orator. 61

On June 3, 1805, Livingston was married to a refugee
from the black uprising in French San Domingo, Madame Louise
Moreau de Lassy, née Davezac de Castara, the young widow of
a Jamaica planter. 62 Prior to the revolution, the family of
Madame de Lassy had possessed wealth and influence, but from

60 Acts Passed at the Second Session of the Legislative Coun-
cil of the Territory of Orleans (New Orleans, 1805), 89-95.
61 Hunt, Life of Edward Livingston, 119.
62 Louise Livingston Hunt, Memoirs of Mrs. Edward Livingston
(New York, 1886), 51-32.
affluence the family was reduced to poverty. During the re-

volution, the young widow, seventeen years of age, lost her
father, two brothers, and her grandmother; and she, her infant
sister, her mother, and her brother—later known as Major Dave-
zac—narrowly escaped being put to death. It was with difficul-
ty that they made their way to the United States by different
vessels. Later they were re-united in New Orleans, where Liv-
ingston met his future wife. Though Madame de Lassy knew no
English, this was no barrier to her romance with Livingston.
Mrs. Livingston was a slender, delicate, graceful woman who
possessed a keen intellect, and while gracious in her manner,
was inclined to be somewhat pensive and serious. She appreciat-
ed her husband, always retained an interest in his work, and
made his home life so satisfactory that Livingston was able to
devote his energies whole-heartedly to his legal labors and pol-
itics. For a time Livingston lived with the members of his
wife's family in a house on Chartres Street\(^6^3\) where in 1806 a
daughter, Cora, was born. Later, they made their home on Royal
Street\(^6^4\) where came almost every visiting celebrity, as the
charm of Mrs. Livingston as a hostess was spread far and wide.
The outlook for a period of peace and prosperity seemed bright
for Livingston. However, a situation was crystallizing in
which an attempt was made to implicate him, that almost destroy-

\(^6^3\) Ibid.
\(^6^4\) *Louisiana Gazette* and *New Orleans Daily Advertiser*, April
28, 1810.
ed his reputation and ruined his chances for establishing himself in his new home.

Even before the new territorial government was thoroughly organized, many of the recent American settlers were clamoring for the acquisition of Mexico and were openly agitating a war with Spain. These adventurous spirits, according to John Watkins, Mayor of New Orleans, organized the Mexican Society of New Orleans for the purpose of collecting useful Mexican data in case of war with Spain. Livingston probably was not a member of the Society, but he was so closely associated with certain of its leaders that it was generally felt he was identified with the organization. The general feeling that he was a member of the Society and the knowledge that he had been associated with Burr in New York and that they had had business dealings with each other subsequent to Livingston’s arrival in Louisiana, lent color to General James Wilkinson’s charges that he was a party to Burr’s conspiracy.

Following Jefferson’s election, Burr was a marked man, but in a strategic position. He fared well enough in Washington until 1804, when the important New York election came around. When Burr’s overtures to Jefferson came to nothing and he

67 Lynch, Fifty Years of Party Warfare, 164.
failed to secure a single vote in the caucus that nominated George Clinton as Jefferson’s running mate, he began to lean toward the Federalists. Timothy Pickering and the extreme New England Federalists, who were planning to take the New England section out of the Union, offered their support to Burr if he would run for Governor of New York after Hamilton refused to have anything to do with their scheme. Hamilton contributed to Burr’s defeat at the polls, by disclosing the object for which he had been nominated. This action by Hamilton was a culmination of acts against Burr which led to the duel on July 11, 1804, in which Hamilton was killed and Burr’s political influence was blasted.

When Burr saw his career ended in the East, he turned to the West to rehabilitate his fortunes by founding a state of his own. For such an adventure, he possessed the necessary genius in leadership, but lacked men and money. The first he hoped to get in the West, the latter from England.

68 Aurora, November 27, 1806, stated that Burr was purported to have asserted “that the western States, except Ohio, were ripe for the enterprise”; ibid., November 26, 1806, “forming a distinct empire in the western country.”

69 Thomas Hobson Hey, “Charles Williamson and the Burr Conspiracy” in The Journal of Southern History (May, 1936), II, 185-87. Burr cultivated Williamson, an English subject in New York, to utilize his services in contacting the British Minister, Anthony Merry, and through the latter communicate directly with the British government. As Williamson was favorably known to Merry, in 1803 he transmitted to the minister Burr’s “offer to lend his assistance to his Majesty’s government in any manner in which they think fit to employ him, particularly in endeavoring to effect of the Western part of the United States from that
or Spain. He dealt with many people—honest as well as unprincipled men and with fools. He revealed one project to certain individuals, and a different plan to others; consequently, it is difficult to state definitely just what his plan was. Some persons contend that he wanted to wrest Louisiana from the Union and set up an independent state; others, that his real purpose was to conduct a band of New Orleans adventurers on a filibustering expedition against Vera Cruz and Mexico City. According to popular opinion, the conspiracy was aimed at Louisiana; but it is possible that he hoped to secure Louisiana first and then operate against Mexico. Whatever his plan was, Burr established headquarters at Blennerhasset Island, near Parkersburg, West Virginia, and which lies between the Atlantic and the mountains, in its whole extent." Williamson on returning to England in 1804 delivered Merry's communication concerning Burr's proposal to the British government, which disallowed it. While anxiously waiting for a reply from Williamson, Burr seriously considered sending another messenger to London to submit a substitute plan that he hoped would receive more favorable consideration.

70 Aurora, December 1, 1806, "we do not hesitate to offer as our opinion, that the movements of the Spaniards some time since and those more recently, are the results of an understanding and cooperation between the Spaniards and Colonel Burr"; ibid., December 24, 1806, "Yrujo takes his departure for Europe in April; the expedition of Burr having been frustrated, he now returns to Madrid, like a dog with his tail in an awkward position."

71 Ibid., December 2, 1806. "To the Yazoo, therefore, he held out realization of their speculations. . . To the disaffected and disappointed, [in Kentucky] he held forth the temptation of a new and separate government. . . To others who had views and speculations in Louisiana, he held out the name of Baron Bastrop's grant. . . To others the idea of a new government comprehending Mexico and Louisiana under an emperor— which emperor he was to be."

72 Ibid., December 1, 1806. "The professed design of Col. Burr,
from this base, he traveled hither and thither in the West. 73

As early as June 26, 1805, 74 he visited New Orleans, bringing with him a letter of introduction from Wilkinson to Daniel Clark, the prominent merchant and influential citizen. 75 During his ten or twelve days' visit to the city, he was received everywhere with cordiality, but there has been and still is a dispute as to the society most frequented by him. 76 Henry Adams maintained that he was entertained by the enemies of Claiborne; 77 Charles Gayarré contended that he conferred with the Spaniards; 78 and Wilkinson stated that he was in close contact with the members of the Mexican Society and influenced them to adopt his scheme of disunion. 79 Probably, the real purpose of Burr's visit was to observe the drift of public opinion and to engage the adventurers in his filibustering enterprise against the Spanish possessions. 80 If this was

no doubt has been an attack upon Mexico, but every man who is at all acquainted with that man's depth of design, and qualifications for mystery, must be assured that he is not likely to disclose his real designs through indiscretion or excess of candor and openness of character."

73 Richmond Enquirer quoted in Aurora, November 22, 1806; Scioto Gazette, November 13, 1806, quoted in ibid., November 26, 1806, "he was raising forces and purchasing up the necessary provisions and the stores for the purpose."


75 "Daniel Clark" in Dictionary of American Biography, IV, 125.

76 McCaleb, The Aaron Burr Conspiracy, 29.

77 Adams, History of the United States, III, 223.

78 Gayarré, History of Louisiana, III, 81.


the real purpose of his visit, he was successful, for at the time of his departure for St. Louis, he let it be known that he proposed to return to New Orleans in October 1806. 81

Shortly after his departure, it was generally rumored that Burr was conspiring to separate the West from the Union and that Judge Prevost, Edward Livingston, General Wilkinson and John Brown of Kentucky were his associates. 82 Unperturbed, Burr busied himself collecting boats, supplies and men at Blennerhasset and preparing for his departure in November 1806. In October 1806, when the rumor became rife all through the West that Burr would attack New Orleans, he was arrested for treason in Kentucky. As no positive evidence could be produced against him, he was acquitted. 83 After the trial, he continued his preparations, but the indictment had checked the volunteering and delayed his departure. This delay was fatal for the success of his plan, as the situation in New Orleans was favorable—provided Burr had designs there. The legislature was about to meet and Wilkinson had taken his

82 "A Kentucky paper called the Western World," says the editor of the National Intelligencer, "attracts very great attention here; among others, Judge Prevost, Edward Livingston, General Wilkinson, Mr. Burr, Mr. John Brown of Kentucky are charged as concerned in a new conspiracy against the peace of the whole Union, and with meditating a separation of this section from the eastern parts of the Union." Washington National Intelligencer, quoted in McCaleb, The Aaron Burr Conspiracy, 131.
83 Ibid., 191.
army to the Texas border, leaving the city unprotected. Burr needed men, and Wilkinson, able to take care of himself, decided to desert a failing cause. Concealing his connection with the plan, Wilkinson informed Jefferson that a conspiracy to seize Louisiana existed and hastened his return to New Orleans and noisily gave orders to make the city safe against attack.

For some time after his return to the city, November 23, Wilkinson kept the people in complete ignorance as to the object of all of his military preparations. He urged the Governor to order the impressment of seamen, to suspend the writ of habeas corpus, and to declare martial law. Claiborne's lack of decision as to the proper course of action to pursue was probably due to his lack of instructions from Washington and Wilkinson's domineering manner. He did, however, refuse to declare martial law or to implicate himself in the cases arising from military arrest. While he informed Wilkinson that he could not suspend the powers of the territorial judiciary, he issued a proclamation December 16, during the excitement following the first arrests, in which he warned the citizens against participating in a conspiracy either to overthrow the

84 James Wilkinson to Jefferson, November 12, 1806, in Wilkinson, Memoirs of My Own Times, II, Appendix C.
85 Ibid., 229-30.
86 A Faithful Picture of the Political Situation of New Orleans at the Close of the Last and the Beginning of the Present Year 1807, p. 14.
federal government in the territory or in an expedition against the Kingdom of New Spain.\(^{87}\)

Acting on his own authority and without any regard to Claiborne, Wilkinson declared martial law and proceeded to arrest and detain whomever he pleased.\(^{88}\) His first arrests were on the evening of December 14, just about the time Burr was approaching Nashville. Without warning, Percy V. Ogden, Samuel Swartwout and Dr. Erriick Bollman were seized, their papers were confiscated, and they were denied the privilege of counsel. Wilkinson had so timed their arrest that within twenty-four hours he had Swartwout and Bollman on board ship bound for Washington beyond the jurisdiction of the court, before a writ of habeas corpus could be secured.\(^{89}\)

It was Livingston who disputed Wilkinson's authority to assume dictatorial powers and challenged his right to overthrow the civil government. His connection with the fight to preserve civil liberties was the result of a request of Bollman's attorney, James Alexander, to assist in securing a writ for his client. On December 15, Alexander applied to Judge Spriggs for a writ in favor of Bollman. Alexander was a young attorney, and, as the Judge had refused to grant it then and had directed the attorney to make the motion in open court, he had sought the assistance of Livingston. Both attorneys appeared in court the following day and secured the writ after

\(^{87}\) Orleans Gazette, December 18, 1806.
\(^{88}\) Wilkinson, Memoirs of My Own Times, II, 332-35.
\(^{89}\) Orleans Gazette, February 27, 1807.
a short argument. Wilkinson agreed to have the writ returnable to the Supreme Court of the Territory, December 18. On that date, accompanied by his staff and in full dress uniform, the General appeared in court to deliver in person the writ in the case of Bollman.90

Wilkinson was enraged at Livingston and planned to destroy him for challenging his authority and daring to dispute his power. His return of the Bollman writ was in the form of a signed statement in which the General assumed full responsibility for the arrests and threatened all persons who might participate in a lawless combination. After having read the return, he then preferred charges of treason against both attorneys. Livingston, he declared, had recently paid Bollman a two thousand dollar draft which Burr had drawn against the accused. In addition, he held in his possession an affidavit, signed by the Surgeon of the United States Navy, to the effect that Livingston had agreed to undertake an expedition against Mexico.91

Livingston immediately demanded that Wilkinson at least present the evidence of his own oath before leaving the court, but the General replied he was not prepared to make any affidavit at that moment. The judges offered to put the affidavit in form for him, but he declined their assistance and to the

90 Ibid., December 18, 1806.
91 A Faithful Picture of the Political Situation of New Orleans at the Close of the Last and the Beginning of the Present Year 1807, pp. 19-20.
astonishment of the spectators, the judges agreed to call at
his headquarters for it at his convenience. However, Wilkin-
son made no attempt to produce any evidence against Livingston,
even though he made every effort to have the General substan-
tiate his charges of treason.

Not only Alexander and Livingston, but all other citizens
who dared to incur Wilkinson's displeasure and enmity received
similar treatment. Judge John Workman was accused of being a
member of the conspiracy and was placed under arrest, as was
Colonel Kerr, a friend of the Governor. General Adair was
seized and sent to Washington, and James M. Bradford, editor
of the Orleans Gazette, found himself more than once in con-
fine ment. The press was controlled by Wilkinson, as all of
the printers were either in the army or militia, and were told
"that soldiers' backs should smart for the printers' insolence."
Slander became an effective weapon; and indeed few escaped sus-
pic i ó n. 93

That Wilkinson had no evidence against either Alexander
or Livingston seems clear. Livingston adduced sworn evidence
to disprove Wilkinson's charges. His acquaintance with Boll-
man had been slight and he did not know either Ogden or Swart-
wout. It was Alexander and not Bollman who was responsible
for Livingston's connection with the case, and the payment to
Bollman was in settlement of a debt which he had incurred while

92 Ibid., 20.
93 Ibid., 26-27.
still in New York. The previous year, Burr's New York agents had forwarded the notes to Daniel Clark in New Orleans for collection. He had been financially unable to make any payment on the notes prior to Bollman's arrival in Louisiana, and it was more than two months after Bollman presented the draft before settlement was made. Even then, the payment was not made in cash but by an order on Samuel B. Davis, who was in debt to Livingston to the amount of the purchase price of a plantation. Livingston had made no effort to conceal the details of the transaction with Bollman, and had told Wilkinson of the affair on the latter's return to the city November 26.

In mentioning the incident to Wilkinson, he had expressed surprise that Burr was indebted to Bollman, and not until the charges were made in court, had the General given any intimation that he had been impressed by the transaction or had placed any significance in the statement. The surgeon furnished Livingston with an affidavit in which he affirmed that the statements contained in his former affidavit were based upon hearsay. Furthermore, the surgeon was of the opinion that the accusations were groundless since the man who had given him the information was undependable. 94

Wilkinson attempted to use the courts in his plan of in-

94 For Livingston's communication explaining and defending his actions relative to the charges of treason made by James Wilkinson, see Louisiana Gazette, December 30, 1806.
timidation. When the Judge of the Federal District Court refused to convene court and summon a grand jury in order that he might present important accusations to it, the territorial superior court obligingly complied with his request. The fact that it had no jurisdiction over federal questions did not disturb the court; but the grand jury was not impressed by Wilkinson's accusations, and through its foreman, Evans Jones, criticised the recent court scene. In the grand jury report, it was intimated that Wilkinson might have suggested the procedure. The report displeased the court and the jury was summarily dismissed without the usual formal thanks for its labors.95

Thwarted in his efforts to receive help from the courts, Wilkinson next turned to the Legislature for assistance in his effort to establish a legal military dictatorship. By the time it convened January 13, he had prevailed on Claiborne to urge that body to suspend the writ of habeas corpus.96 The government had a majority in both houses, and for some time it appeared that the bill would be acted upon favorably. The opponents of the bill were afraid to take any action that would incur Wilkinson's wrath for fear they would be charged with treason, probably arrested and possibly deported.

95 A Faithful Picture of the Political Situation in New Orleans . . . 1807, pp. 36-37.
Fortunately, the question as to the authority of a territorial legislature to enact such a law was raised and the members of the legislature applied to the Attorney General for an opinion. His ruling was not satisfactory to the members, and they requested the federal judges and the United States District Attorney for a ruling. When District Attorney James Brown gave a unanimous negative decision, the bill was withdrawn from the calendar. In this way a crisis was avoided, for the persons to be arrested were well known in the city as men marked for destruction.97

Livingston not only fought to clear himself of the charges of treason, but to preserve the civil rights of the citizens. Following the arrest of Alexander, John Williamson became associated with Livingston, and they applied to Judge John Workman for writs in favor of Bollman, Ogden, and Alexander.98 Wilkinson's replies to the writs were so evasive that Livingston pressed the matter in order to force from Wilkinson a "more explicit return to the writs or show why an attachment should not be issued against him."99 The judges, Messrs. Hall, Matthews, and Workman, inquired of Claiborne whether he would assist the civil authorities against Wilkinson. The Governor gave them no satisfaction and in the mean-

97 A Faithful Picture of the Political Situation in New Orleans . . . 1807, pp. 38-40.
98 James Workman, In Louisiana Gazette, April 10, 1807.
99 A Faithful Picture of the Political Situation in New Orleans . . . 1807, p. 30.
while, Wilkinson ignored the decrees of the court.

On December 26, Livingston moved for an attachment against Wilkinson. It was ignored, and at this impassé the court paused. The sheriff was in Wilkinson's battalion, and Workman realized that an attempt to enforce the process against the General would result in exposing the court to further indignity. On January 5, he wrote the Governor to explain the delicate situation and to inquire whether he meant to support the civil government against the military. Claiborne failed to reply, and contented himself with appealing to Wilkinson to yield to the civil authorities. When a week passed without an answer from Claiborne, the Judge notified the Governor that he had adjourned court.100

Workman reported the conditions to the legislature when it convened January 13, and appealed to it to protect the civil government. As that body was considering the question of suspending the writ of habeas corpus, his request received no consideration. The day following his report to the Legislature, Workman and a friend of Claiborne were arrested, but both of them were released at the request of the Governor, as Wilkinson felt it inadvisable to break with the executive just at that time. Being unable to receive any assistance from the legislature or any support from the Governor, Workman ceased to protest and resigned his office February 23.101

100 Ibid., 31.
101 Ibid., 32-33.
Wilkinson's reign of terror was drawing to an end, as Burr's scheme had collapsed. When Burr learned at Natchez that the wily General had deserted him, he abandoned his followers to their fate, and, disguised, sought to escape through the woods of West Florida. When he was captured near Fort Stoddert, the whole scheme collapsed, and shortly thereafter Wilkinson moved on to Richmond to appear against Burr at the trial. All of the persons who had been arrested or arrested and deported were released by February 21, and within a short time there was a return to normal conditions in New Orleans.

The charges of treason failed to ruin Livingston's reputation, yet, from time to time, his political enemies attempted to use the Burr episode against him. Wilkinson's policy of indiscriminately charging every one with treason who challenged his authority soon resulted in his accusations losing their force and effectiveness. His dictatorial manner incensed many persons and they were inclined to sympathize with those who had felt the weight of his wrath. While only a few individuals had the temerity to thwart Wilkinson, every one appreciated Livingston's fight to preserve the civil rights and liberties. His legal services and his public stand in the contest served a valuable purpose in bringing him prominently before the public and enlarging his circle of acquaintances.

Livingston's knowledge of the civil law practices gave him an advantage over the other attorneys in the city, both
the Creole and the American. Within a relatively short time he established one of the largest and most lucrative law practices in the territory. The period of general prosperity that was ushered in with the great influx of immigrants and the increase in trade and commerce resulted in a rapid rise of land values. With the numerous transfers of property, the question of clear titles became quite important, which proved to be a rich harvest for the lawyers, as there was much litigation.

During the period of land speculation that followed, Livingston became quite a successful trader. He felt that with the returns from his legal practice and the profits from his land deals that he would soon be able to amass a fortune. He accepted land as payment for legal services, and within a short time his cash and paper profits from his real estate business amounted to thousands of dollars. 102

Livingston had been able to pay the draft which Burr had drawn against him in favor of Bollman, clear a tract of land of all encumbrances, receive negotiable paper to the amount of twelve thousand dollars from the profit on a real estate transaction. 103 His speculations were not confined to lands in the lower Mississippi valley region, but extended to property in the northern portion of Orleans Territory. While Louisiana was under the Spanish rule, Baron de Bastrop had secured the grant of a tract of land, comprising about one

102 For Livingston, communication explaining and defending his actions relative to the charges of treason made by James Wilkinson, see Louisiana Gazette, December 30, 1806.
103 Ibid.
million acres situated in what is now North Louisiana on the Ouachita River. The Baron was unable to finance the project alone, and Livingston acquired a considerable interest in the property. It appears that Colonel James Lynch of Kentucky had acquired approximately three fifths of the land, but had outstanding debts against the property which he was unable to meet. In order to sell the land and not lose the whole of his investment, Lynch was forced to include in the sale provisions to pay Livingston for his interest in the property. Burr contracted to purchase the whole tract under the stipulations that he was to pay Edward Livingston the amount of Lynch's purchase price, four or five thousand dollars in money to Lynch and take up certain paper valued at thirty thousand dollars.\(^{104}\)

Livingston also acquired a large tract of land in the vicinity of Pass Christian, Mississippi, upon which the United States military forces were quartered during the war with Great Britain. The Federal troops used considerable timber from this property for the construction of barracks and houses. The land was again used by United States army troops in 1817 and on both occasions, considerable damage was done to the property. Livingston attempted to secure a settlement for damages with the War Department, but an agreement could not be reached. It appeared that in every instance that he had

\(^{104}\) *Annals of Congress, 10 Cong., 1 Sess., Appendix 655 (November 23, 1807).*
dealings with the federal government, there was an interminable delay in closing the transactions.\(^{105}\) Finally, settlement was made when the Twenty-Second Congress passed "An Act for the relief of Edward Livingston" in which the Treasurer was authorized to pay the claimant for the timber used and the other damages incurred to the property during the two periods the land was occupied by the United States troops.\(^{106}\)

The property Livingston was most anxious to acquire was that portion of the river front immediately below the city limits of New Orleans. He believed it was essential to the growth of the city and within a very short time it would be extremely valuable. He was of the opinion that if the possibilities of this property were properly exploited it held the greatest opportunity of yielding the most handsome profit of any investment he could make. While his judgment as to the value of the land was correct, it was unfortunate for Livingston that he attempted to secure title to this property for speculative purposes.

\(^{106}\) *Act of Congress*, 22 Cong., 1 Sess., 20 (March 15, 1832).
CHAPTER VIII

CONTROVERSY WITH JEFFERSON

The Mississippi River, like most meandering streams in a flat country, conforms to no permanent river bed. In its meanderings, the river current flows against a bank, washes away the soil at this point, and deposits it further down stream where the current is not so strong, usually behind some protecting point. In time, this silting-up of the river builds land which is above low water level. This built-up land is known as a batture. For some thirty or forty years before 1800, such a batture was being formed just below the New Orleans city limits opposite Fort St. Louis and was known later as the Fauxbourg (Suburb) Ste. Marie.

The Batture Ste. Marie formed a part of a grant of twenty arpents fronting on the Mississippi, by fifty deep, which the French crown had made to the Society of Jesus in 1726. Later, by purchases, it was enlarged twelve more arpents on the River front.¹ In 1763, the order was suppressed, and

¹ Ira Flory, Jr., "Edward Livingston's Place in Louisiana Law" in The Louisiana Historical Quarterly, XIX, 358.
the property of the Jesuits in Louisiana was seized and sold for the benefit of the Crown of France, as the Spaniards had not yet taken possession of the colony. The legal preliminaries to the sale of this property were begun July 14, 1763, with orders from the provincial governor as to what property was to be sold.2

The land was divided into six plots, and the one just beyond the walls of the city at the Chapitoulas gate, consisting of seven by fifty arpents was purchased by one Jean Pradelle.3 On June 11, 1773, Pradelle’s widow, Alexandrina de la Chaise, transferred this property to André Renard. In his will, dated May 29, 1782, Renard bequeathed at death the whole of his estate to his wife, Maria Josepha Deslonde. Following Renard’s death August 6, 1785, Madame Renard married Bertrand Gravier and by her will of November 18, 1792, left to Gravier all of her property.4

As early as 1788, Gravier, acting for his wife, laid off the land facing the road running beside the levee into four ranges of lots. In 1796, other land was divided into lots, and the Faubourg Ste. Marie was created.5 The grants were

2 Edward Livingston, Examination of the Title of the United States to the Land Called The Batture Note A, 47-48.
3 Piery, "Edward Livingston’s Place In Louisiana Law," in The Louisiana Historical Quarterly, XIX, 358.
4 "Report of the case of John Gravier vs. The Mayor and Inhabitants of the City of New Orleans," in Edward Livingston, Address to the People of the United States... (New Orleans, 1808), 7-9.
5 "P. Derbigny, Case Laid Before Counsel for their Opinion on the Claim to the Batture Situated in Front of the Suburb St. Mary." in ibid., IX-X.
made in different terms; in a few instances the batture was included; in others, the boundary was the levee. In 1797, Bertrand Gravier died intestate. An inventory of Gravier's estate, in which was included the thirteen acre tract of land, was made; and was appraised at $2,470.00. John Gravier acquired all of the inventoried effects of the estate at the estimated price. It was this restricting provision which later gave rise to the question as to the inclusion of the batture in the inventory, for if it were not, Bertrand Gravier's other brothers and sisters living in France had a legitimate claim against the batture property. The possession of the plantation, including the batture, had always gone with these several conveyances in the following order; Jesuits, Pradelle, de la Chaise, Renard, Madame Renard, Bertrand Gravier and John Gravier.

Prior to 1800, the batture remained unimproved and the inhabitants of New Orleans were allowed to take sand and dirt from it. The water front was used by anyone in the city for the anchorage of ships, stacking goods on the bank, or transporting merchandise without cost. This uninterrupted use of

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6 "Report of the case of John Gravier vs. The Mayor and Inhabitants of the City of New Orleans," in Livingston, An Address to the People of the United States, 10, 11.
7 Ibid., 11.
8 Claiborne to Mr. Recorder and Gentlemen of the Council, August 9, 1813, in Rowland (ed.), Letter Books of H.C.C. Claiborne, VI, 254-56.
the property led a majority of the people to conclude that
the land was the property of the city. Some of the shrewd-
er business men recognized the future value of the land and
purchased parts of it from John Gravier.

At this time, it was customary for owners of property
abutting the river to raise new levees to protect the newly
formed land from inundation and add it to their plantations.
The road was generally moved to the base of the new levee and
the old road and levee were no longer kept in repair, but were
cultivated. Finally in 1803, Gravier began to reclaim with a
levee a portion of the batture, about four hundred feet square,
and completed it in the latter part of 1803 or early in 1804. Naturally, there was a general protest when Gravier began to
enclose this land and put a stop to the public use of the pro-
erty. In response to public opinion, the city corporation
maintained that the batture was public property and that the
inhabitants possessed the right to use the land as formerly.
This claim of the city resulted in raising the question of a
clear title to the property, which stopped future sales.

9 Edward Livingston, An Address to the People of the United
States ... 11; Claiborne to Jefferson, October 24, 1808,
10 Livingston, "An Answer to Mr. Jefferson's Justification of
his Conduct in the Case of the New Orleans Batture," in
11 "Proceedings of the Council Meetings, November 30, 1803-
March 29, 1805," and December 28, 1804, Book I, Vol. I,
(New Orleans City Hall Archives), 227.
12 Claiborne to The Mayor and Municipality, July 17, 1804, in
When Livingston arrived in New Orleans in 1804, the batter had become an object of consequence and promised to be very valuable within a short time. The controversy which had arisen, between Gravier on the one hand and the city corporation and the general public on the other, directed Livingston's attention to the question. He became convinced that the property could be improved to the extent of providing wharfing and warehouse facilities for the growing city. He realized that this property offered opportunities for financial gain and if his judgment was sound a handsome profit could be made in a relatively short time. He turned his attention toward acquiring an interest in the batter as a means of securing sufficient funds to pay his indebtedness to the government.

Whether it was on Gravier's initiative or whether at the suggestion of Livingston that a suit against the city was filed to establish clear title to the property remains a question. Certain facts with regard to the whole transaction are subject to close scrutiny. Livingston's examination of the Gravier title convinced him that the batter went with the estate unless it had been specifically included in the bills of sales of the lots sold in 1788 and 1796. He maintained that the suit was brought at the unsolicited request of Gravier. Livingston further asserted that his interest in the land was acquired after the court had rendered its decision. It was from Nicholas Girod, and the trustees of Peter de la Bigrarre,
under the title of the said John Gravier, and from the said Gravier, himself, that he had purchased his interest in the Batture for a sum of $80,000.00.\textsuperscript{13} At any rate the suit was filed and Livingston was Gravier's counsel.\textsuperscript{14}

The general impression in the city, however, was that Livingston had originated the whole proceedings and had taken the case on a contingent fee which was to be paid in land located on the batture. Bigarre did bear the expense of the suit. In return for this, Gravier, on December 14, 1806, executed a deed in favor of Bigarre for two-thirds of the property, with the provision that Bigarre was to pay Gravier fifty thousand dollars in case the land were recovered. The land, in the meanwhile, was to remain unsold and hypothecated for the purchase money until paid. A further provision of the agreement was that Bigarre was to receive nothing in return in case the court decision was unfavorable. The deed to the property was not executed in favor of Bigarre before witnesses or a notary and was not recorded until the day before the court's decision was rendered.\textsuperscript{15}

On October 22, 1805, Livingston filed a petition in the Supreme Court of the Territory in behalf of Gravier praying

\textsuperscript{13} "Case for the Consideration of the Counsel," in Livingston, \textit{Address to the People of the United States. . ., LXXI.}

\textsuperscript{14} Thomas Jefferson, "The Proceedings of the Government of the United States in Maintaining the Public Right to the Beach of the Mississippi River Adjacent to New Orleans Against the Intrusion of Edward Livingston," \textit{American Law Journal, V, (1814), 10.}

\textsuperscript{15} \textit{Ibid.}, 10-11.
that the said Gravier "is the lawful owner of a certain portion of land called Batture in front of Suburb Ste. Marie."
The city contested this action and selected Moreau Lislet and Pierre Derbigny as attorneys for the defense. The case was postponed several times, but finally, on May 2, 1807, it came to trial with Judges Spriggs, George Matthews and Joshua Lewis occupying the bench. The unanimous judgment of the Court was rendered May 23; and Judge Spriggs, in delivering the decision, stated that according to civil and Spanish laws the right of alluvium is incident to the land which is formed by the river. In this instance, that antecedent to the time when Bertrand Gravier ceased to be proprietor, alluvium had been formed adjoining the levee sufficient to be incorporated with the inheritance. Therefore the petition of the city was denied and the claim of John Gravier was quieted in lawful enjoyment of the property in question.16

As soon as the Court had rendered its judgment, Livingston and Peter de la Bigarre made additional investments in batture holdings to the amount of $77,000.00. A few days after the decree of the court, improvements to the property were begun, which included the building of a new levee, digging a canal, and constructing a dwelling. The popular resentment at the action of the court became very great, and the citizens, whom Livingston called a mob, drove the negroes who were en-

gaged in digging the canal from the property. On the follow-
ing day, Livingston in person went to the property with the
view of exercising his right of ownership, but he was opposed
by the citizens. Each day the citizens assembled to prevent
the use of the property by Livingston and he determined to
bring the issue to a head even though there might be blood-
shed.17

Finally, on Monday, August 31, Livingston, after having
given public notice of his intention, resumed work on the bat-
ture. The laborers started work about ten o’clock in the
morning, but by four or five in the afternoon, a sufficient
number of people had assembled to drive his workers away again.
The Governor, who had been absent from the city for a short
time, returned the following day and Livingston immediately
applied to him for protection.

Upon his return, Claiborne found the public greatly agi-
tated over the situation.18 Immediately following Livingston’s
request for protection, the City Council, by resolution, called
upon him for prompt action in prosecuting the claim of the
United States to the Batture, since the corporation had lost
its fight in the courts.19 "I must confess," Claiborne wrote
Jefferson September 3, "that I feel much embarrassed what

17 Louisiana Courier, November 4, 1807.
18 Ibid., November 4, 16, 1807.
19 "Documents of the City Council," Book II, Vol. I (New Or-
leans City Hall Archives), 84.
course to pursue." While the opposition to the decision of the court could not be countenanced, it was so general "that I feel myself compelled to resort to measures the most conciliatory, as the only means of avoiding still greater tumult, and, perhaps bloodshed." He felt that the court was in error in quieting Gravier's claim to the property, for he was of the opinion "that the United States are the legal claimants to it." Livingston's employment of United States District Attorney Brown as one of his counsel concerned him greatly, as Brown might "feel a delicacy in prosecuting the claim of the United States, but, under existing circumstances, I have esteemed it my duty to urge his doing so."

In the meanwhile, Livingston instituted civil action against the most prominent citizens who had opposed his activities on the Batture. After delaying activities on the Batture for several days, on September 14, Livingston again attempted to resume work and placed constables on the ground to protect the negro laborers. The constables were instructed to prepare a list of the names of the individuals who attempted to interfere with the work. As usual, a crowd soon assembled and drove the laborers from the property. They also took the lists of names which the constables had prepared and destroyed them.

21 Ibid., 14.
The morning of the day following, September 14, Livingston informed Claiborne by letter that he intended putting his laborers to work again that day at twelve o'clock and he would not be surprised if the people should "change the insolence of riot into the crime of murder." Thus matters had come to a crisis.

At noon, about a dozen white men were put to work on the Batture. Near four o'clock, several hundred citizens assembled, roused by the beating of a drum, and bloodshed probably was prevented by the appearance of the Governor. In addressing the assemblage, Claiborne urged the people to allow the courts to handle the case. It was their duty to submit to the law, and force would injure their cause, while the Supreme Court of the Territory had put Livingston in possession of the property, he was of the opinion that the decision was not final. Further inquiry into the right of the property must be begun by and conducted in submission to the government and in conformity with the laws. In his effort to preserve order, he continued, "I entreat you to retire in peace to your respective homes" for I have already transmitted all information relative to conflicting claims to the Batture to the President and will continue to furnish him with any other information that may

be furnished me." Claiborne agreed to the appointment of an agent to present the grievances of the people to the President. Colonel A. F. Macarty was chosen by acclamation, and it being understood that the entire management of the affair was left to him, the citizens dispersed and returned to their homes. 25

Livingston not only resented Claiborne's refusal to protect his interests, but complained that the Governor had further aggravated the situation by suggesting that the judgment of the court was not conclusive. He was unaware, however, that Claiborne was adding to his difficulties by the reports and suggestions which he made to Washington. In writing to Madison, the Governor suggested that in certain instances provisions should be made for appeals from the Court of the Territory to the Supreme Court of the United States. He felt that it was unfortunate that the Superior Court of the Territory should be the court of last resort, for suits of immense importance are frequently brought in the territory which involve many intricate questions of law, and "in determination of which all Judges may sometimes err." 26 Claiborne's recommendations were fortified by the opinions of Pierre Derbigny, formerly counsel for the city, who now was supporting the

25 Louisiana Gazette, September 18, 1807.
26 Livingston, "An Answer to Mr. Jefferson's Justification of his Conduct in the Case of the New Orleans Batture," loc. cit., 135.
claim of the United States to the property. 27

Livingston, on learning of the government's interest in
the Batture, requested that the Attorney General "would not
advise a suit" until he had seen a statement from the owner
of the property. 28 The statement was sent in two parcels, but
only the first of them reached its destination. President Jef-
ferson, in the meanwhile, had personally taken charge of the
matter. With Jefferson's advent in the case, it ceased to be
solely a legal question and became one not of legal prosecution
but of personal persecution. Having once reached a decision
as to his course of action, Jefferson refused to admit an er-
or of judgment by receding from his position, even after leav-
ing the president's chair. It is difficult to explain Jeffe-
son's actions other than on the ground of personal prejudice
toward Livingston. Jefferson had been displeased that Livin-
gston had not more actively supported him in 1801, when effort
was made by the Federalists to elect Burr as president. He
had not forgiven Livingston for the conduct of the office of
United States Attorney whereby grounds were given for criti-
cism of his party and its appointments. Jefferson's attitude
toward Livingston had not been improved by the latter's close
association with the "opposition party" in Louisiana and by
Wilkinson's charges of treason. In addition, Jefferson bitter-

27 Derbigny, "Case Laid Before Counsel for Their Opinion on
the Claim to the Batture Situated in front of the Suburb
St. Mary," in Livingston, Address to the People of the
United States.

28 Ibid., xxi-xxii.
ly resented Livingston's interference with Wilkinson's plans to "suppress treason" in New Orleans. 29

Following Macarty's arrival in Washington, the President took up the question with lively interest and cabinet deliberations were devoted to it. Jefferson did not follow the legal form of procedure of having the Attorney-General file suit for the possession of the property. No examination of the title of the property was made and Jefferson failed to give any consideration to the fact that if the batture did not belong to Livingston, it might be the property of the City of New Orleans. He simply assumed that it belonged to the United States; and acting in accordance with the provisions of the Squatters' Act of 1807, 30 he directed Secretary of State Madison to have all persons removed from the land in dispute. 31 The Squatters' Act provided for the removal of individuals intruding on public lands and of persons guilty of raising works detrimental to public health. Livingston maintained that both provisions were judicial questions and should not be decided without an investigation and trial. He further contended that there was no possible check to tyranny, if the government could seize any property it thought belonged to it, and reserved the right to grant or deny its permission of trial. 32

31 Albert J. Beveridge, The Life of John Marshall, IV, 103.
32 Livingston, An Address to the People of the United States, xix-xii.
Not only did Jefferson ignore the request of Livingston to be allowed time to submit evidence of his claim, but he proceeded against the "intruder" with dispatch. The letter under date of November 30, 1807, authorizing the United States Marshal in New Orleans to eject the "intruder" and his laborers was received in New Orleans January 24, 1808. At the same time the Secretary of War ordered the commanding officer at New Orleans to assist the Governor by force of arms to carry out this object if it became necessary. The Marshal, Le Breton D'Orgeny, took possession of the property and ordered Livingston's workmen to leave the premises. Livingston had his men return to their work and secured an injunction from the territorial Supreme Court against the Marshal from further molesting them. That official ignored the court order and again removed Livingston and his workmen from the Batture.33

No longer did the two principals of the controversy confine their activities to pleadings in court. In an effort to influence public opinion, each resorted to the use of pamphlets. Each had his partisans and each had aligned with him some of the leading lawyers and jurists in the country. In Louisiana, many of Livingston's friends severely criticised Jefferson's orders ejecting Livingston from the Batture. On the other hand, the Territorial Legislature passed a resolution expressing appreciation and thanks to the President for his action.34

34 Ibid., 86.
Jefferson referred the question to Congress and refused to consider Livingston's request that the controversy be submitted to arbitration on judicial decision. His numerous trips to Washington to protect his interests were fruitless. Jefferson denied him an audience; and Congress ignored his petition for relief. Prior to Livingston's arrival in Washington, Jefferson in a communication to Congress May 9, 1807, gave a very characteristic account of his actions. In calling attention to sundry lots of land in the City of New Orleans, reserved by the former government as sites for public offices, hospitals, markets, etc., he referred also, as if incidentally, to a certain plot of land known as a batture adjoining Suburb Ste. Marie, always used by the city, but quite recently claimed by a private citizen. "The title had been adjudged not to be in the city; and it being alleged that the United States had a claim to it, measures were taken according to law, to prevent any change in the state of things and keep the ground clear of intruders." He failed to state that similar action was not taken against the other owners of property in this area. Jefferson's action in attempting to deprive a citizen of property, under the guise of an executive order, is most unworthy and indefensible.

In December 1807, Livingston prepared for distribution

his first pamphlet, "Examination of the Title of the United States to the Land Called the Batture." In this tract he attempted to disprove the contentions of the opposition. In a second pamphlet, August 16, 1808, he charged Jefferson with committing an illegal act and subsequent thereto securing from Congress approval of his action. Again, in his October 21, 1808, pamphlet, he appealed to those who would approach the question with an open mind for he was of the opinion that they would declare "that the rights of private property have been infringed; constitutional privileges broken; the judiciary degraded; and the sacred trial by jury violated without excuse." In reply to Livingston, the former Counsel for the City of New Orleans, Derbigny, issued a pamphlet in which he presented his arguments supporting the claims of the United States government to the Batture. This effort in turn brought forth a reply from Peter S. DuPonceau, an attorney of Philadelphia, who rendered valuable assistance to the claimant in the fight. Livingston followed with his "Case for the Consideration of the Counsel," in which he reviewed the history of the Batture.

37 Livingston, "Answer to Mr. Livingston's Thirteen Queries," in Livingston, Address to the People of the United States, LXXV.
38 Livingston, Address to the People of the United States on the Measures Pursued by the Executive with Respect to the Batture at New Orleans, XXXII.
39 Derbigny, "Case Laid Before Counsel for Their Opinion, on the Claim to the Batture Situated in Front of the Suburb Ste. Mary," in Livingston, Address to the People of the United States.
40 Peter S. DuPonceau, "Opinion on the Case of the Alluvion Land or Batture, Near New Orleans", in ibid., I-XLIX.
and propounded thirteen questions relative to ownership of
the land.

Finally, after a long silence, the Sage of Monticello, on
July 31, 1810, issued a pamphlet of ninety-one pages entitled,
"The Proceedings of the Government of the United States in
Maintaining the Public Right Against the Intrusion of Edward
Livingston. Prepared for the Use of Counsel by Thomas Jeffer-
son." In this treatise he offered explanation for his action
three years previous and accused Livingston of selfishly en-
couraging Gravier to institute court action for the acquisi-
tion of the land. The former president made a mistake to
challenge and provoke such an opponent as Livingston. Wearied
with his futile attempts to secure relief from either Presi-
dent Madison or Congress, Livingston made a reply to Jefferson
and completely destroyed Jefferson's arguments of defense. He
placed Jefferson in the vocative with the charge that the for-
mer President more than once used a mistranslation to bolster
up his case, \(^{41}\) and suppressed a portion of the report of the
surveyor, Charles L. Trudeau. \(^{42}\) In the meanwhile, the inde-
fatigable Livingston brought suit against the United States
Marshals in the United States District Court in New Orleans

\(^{41}\) Livingston, "An Answer to Mr. Jefferson's Justification of
his Conduct in the Case of the New Orleans Batture," in

\(^{42}\) Ibid., 206.
Soon thereafter he filed suit in Virginia against Jefferson for one hundred thousand dollars damages. This was the beginning of the famous "Bat-ture Controversy" in which Jefferson and Livingston engaged in a pamphlet warfare for several years.

When Jefferson learned that Livingston had filed suit against him in the Federal Court at Richmond, he was much concerned and greatly alarmed. With an anti-Republican political complexion of the Federal Court, the former President was much concerned as to how he would fare at the hands of that body. The mutual dislike that existed between Jefferson and Marshall had led the former president to be most critical and censorious of Marshall. Jefferson had written that in the hands of Marshall "the law is nothing more than an ambiguous text, to be explained by his sophistry into any meaning which may subserve his personal malice." He believed this, but the fact that Madison was fully aware of the derogatory state-

43 "Livingston vs. D'Orogenoy" in Martin, Cases Argued and Determined in the Superior Court of Orleans (1811) U. S. I, 87-96. Martin stated, "The following case has excited so much interest and curiosity that it has been deemed proper to be inserted, although the original plan of this work did not extend to cases determined by the District Court of the United States."


45 Beveridge, The Life of John Marshall, IV, 103.

ments caused him to be alarmed, as he realized his fate would rest in the hands of the Chief Justice.

About this time a situation developed which gave Jefferson an idea as to a way out of his dilemma, and without considering the ethics of the question he availed himself of the opportunity. Judge Cyrus Griffin, Justice of the Federal District Court of Virginia was "in a low state of health" from which he was not expected to recover. Governor John Tyler wanted the position and wrote Jefferson adroitly requesting a recommendation to President Madison for his appointment "in case of accidents." With political astuteness, he proceeded to criticize Marshall and condemned him for his opposition to the War of 1812.

This was too good an opportunity to let pass, and Jefferson immediately wrote to President Madison:

From what I can learn Griffin cannot stand it long, and really the state has suffered long enough by having such a cypher in so important an office, and infinitely more from the want of any counterpoint to the rancorous hatred which Marshall bears to the government of his country, & from the cunning & sophistry within which he is able to ensnare himself. It will be difficult to find a character of firmness enough to preserve his independence on the same bench with Marshall. Tyler, I am certain would do it. . .

After reciting other reasons why Tyler would be an excellent appointment, Jefferson stated, "You have seen in the papers that Livingston has served a writ on me, stating damages at 100,000 D." A little further he pointedly informed

the President that he might be forced to summon as witnesses his "associates in the proceedings" which of course would include Madison. He concluded this astonishing letter with the following plainly suggestive statements:

It is a little doubted that his [Livingston's] knowledge of Marshall's character has induced him to bring this action. His twistifications of the law in the case of Marbury, in that of Burr & the late Yazoo case show how dexterously he can reconcile law to his personal biases; and nobody seems to doubt that he is ready prepared to decide that Livingston's right to the batture is unquestionable, and that I am bound to pay for it with my private fortune.

In answering Tyler's letter, the day following the communication to the President, Jefferson stated that he had "laid it down as law never to embarrass the President with any solicitations." Nevertheless in your case I "have done it with all of my heart and in the full belief that I serve him and the public in urging the appointment." 49

Even should Griffin be considerate enough to die in time for Tyler to be appointed before the case came to trial, Jefferson's anxiety would not be at an end. If the case should go to a jury, it would be impossible to tell what the verdict would be with Marshall delivering the instructions. As the case might be appealed to the Supreme Court, Marshall would see to it that he received an adverse decision from that body unless the vacancy caused by the death of Associate Justice William Cushing, September 10, 1810, were also filled by a

49 Ibid., 141-43.
man on whom Jefferson could depend.

In December, Judge Griffin accommodated Jefferson by passing from the scene of action, and in due time, John Tyler was appointed to succeed him. Jefferson, now, was able to devote his attention to the appointment of Cushing's successor. As Cushing had presided over the New England circuit, the new Justice must come from that area. With the selection of Cushing's successor, the Republican party would have a majority of the court for the first time since its organization, but it was difficult to find a Republican lawyer from that district who was fit to serve on the bench.

As soon as Jefferson learned of Cushing's death, he wrote Gallatin that "the event is a fortunate one and so timed as to be a God-send to me." He heartily recommended his former Attorney-General, Levi Lincoln, for the position. After allowing time for Gallatin to convey his message to the President, Jefferson wrote directly to Madison. Following his congratulations to the President upon several matters he came to "another circumstance of congratulation is the death of Cushing." Continuing, he recommended Levi Lincoln and suggested that if Lincoln were unavailable Gideon Granger would be an admirable second choice. As far as Joseph Story was concerned, Jefferson concluded, he was "unquestionably a tory" and "too young."

50 Jefferson to Gallatin, September 15, 1810, in ibid., 152-54.
51 Jefferson to Madison, October 15, 1810, in ibid., 150-52.
Thus, the great champion of civil liberties, the founder of
the Republican party of reform, the former chief executive of
the nation stooped to a manipulation of the appointments of
the federal judiciary for selfish ends. This great exponent
of the theory of political equality attempted to prostitute
justice by stripping a citizen of his property in denying him
the privilege of a fair legal trial.

Madison endeavored to comply with Jefferson's desires.
He offered Cushing's place to Lincoln, who declined it because
of approaching blindness, and his recommendation of Granger
failed to secure confirmation by the Senate. That body proved
somewhat obstinate and refused to confirm the nomination of
Alexander Wolcott. John Quincy Adams, who had been read out
of the Federalist Party and who was Minister to Russia, was
appointed, but Adams preferred to continue in his diplomatic
post, and refused the appointment. Through the process of
elimination, Joseph Story became the only possible choice.
On November 18, 1811, the Senate approved Madison's recommen-
dation and Story became an Associate Justice of the Supreme
Court of the United States. Jefferson now could breathe more
easily, but he still was apprehensive of the final outcome of
the case.

Although declaring after the trial that he "had a strong
desire that the public should have been satisfied by a trial
Jefferson acquiesced in the plan of his counsel to prevent the case from coming to trial if they could. He prepared for their use the exhaustive digest of his version of the facts and his views of the law in case they were unable to have the case dismissed on the grounds of "no jurisdiction."

The case aroused keen interest throughout the country, and especially did the lawyers manifest interest as to the outcome. Tyler was so ill when the case came up for hearing that he was hardly able to attend court, but he remained through the entire session as he had "determined to give an opinion." The only question argued before the court was that of jurisdiction. Both Marshall and Tyler agreed that the court had no jurisdiction, though it was with great reluctance that Marshall did so. The father of a later President of the United States of the same name reported to Jefferson after the trial that Marshall would have transferred the case to the Supreme Court if he, Tyler, had not insisted upon a decision.53

In delivering his written opinion, Marshall questioned Jefferson's action in avoiding a trial on the merits of the case. He virtually accused Jefferson of availing himself of a technicality to avoid going to trial, while prior to this

52 Jefferson to William Virts, April 12, 1812, in ibid., 226-27.
time he had always denounced such a practice. By hiding behind a technicality, the former President had prevented a trial where "the injured party may have a clear right without a remedy." Clearly, Marshall pointed out that this condition was certainly true,

in a case where a person, who has done the wrong, and who ought to make compensation, is within the power of the court. .. I have not yet discerned a reason other than a technical one, which can satisfy my judgment" for evading trial in order that justice may be denied. Since other judges have struggled against such practices and there seems to be no remedy, I must submit to it. 54

The outcome of the trial was most fortunate, almost lucky, for Jefferson. There is little doubt as to what the decision would have been had the case been decided upon its merits. This is clearly indicated not only by the emphatic statements of the Chief Justice, but also by the opinion which that great jurist, Chief Justice of the Supreme Court of the State of New York, James Kent, expressed in his letter to Livingston on this subject. Being sensitive to public opinion, Jefferson was anxious for the public to think he had pursued the proper course, for he was aware that the motive of his action was being questioned. He therefore carefully prepared his statement of the controversy in which he asserted that since the suit had been decided on the grounds of "no jurisdiction," he desired to ex-

plain the points of controversy. The publication of Jefferson's statement of the controversy was timed to appear at the time that Livingston's suit against the United States Marshall in New Orleans, still pending before the court, was approaching a close. Following the publication of Livingston's one hundred ninety-five page answer to Jefferson, Kent wrote to express to Livingston his sympathy over the shameful persecution that he [Livingston] had been subjected to by the executive authority of the United States. As he had studied the brief submitted by both the contestants, he would "be as willing to subscribe my name to the validity of your [Livingston's] title and to the atrocious injustice you have received, as to any opinion in Johnson's Reports."\footnote{55}

Finally, August 4, 1813, the United States Court of the Orleans District rendered its decision in the case of "Edward Livingston against LeBreton D'Orgenois, the United States Marshal." The decision declared "illegal" the interference of President Jefferson in the case of the Batture and directed the claimant to be restored to the possession of the property.\footnote{56}

\footnote{55} James Kent to Livingston, May 13, 1814, in Hunt, The Life of Edward Livingston, 182; Kent's opinions are contained in Johnson's Chancery Reports, to which he refers; Claiborne to Mr. Recorder and Gentlemen of the Council, August 9, 1813, in Rowland (ed.), Letter Books of W.C.C.Claiborne, VI, 254-56.

\footnote{56} Livingston, An Answer to Mr. Jefferson's Justification of his Conduct In the Case of the New Orleans Batture, 290.
The decision was rendered during the midst of the war agitation and the population of New Orleans was thrown into a ferment. To the possibility of invasion by the British was added the loss of the use of the Batture for wharfage privileges and source of supply of sand and soil for road and levee construction.

The Marshal refused to appeal from the court decision, and the New Orleans City Council passed a resolution requesting the Governor to appeal the case in behalf of the city and state on the grounds that the rights of both were infringed in the premises. In reporting the affair to the former President, Claiborne informed him of his intention of enjoining Livingston in the State Courts from exercising any acts of ownership over the property or in any way obstructing the navigation of the Mississippi river. Livingston, he continued, had found "means either to neutralize, or to make active partisans of, most of the lawyers in the state"; but we are fortunate in possessing the support of Attorney General F. X. Martin, Moreau Lislet and Fielding Turner, who may be able "to maintain the rights of the public." 57

Upon the application of Attorney General Martin, the Parish Judge, James Pitot, 58 at first granted an injunction, but later

58 Claiborne to Julien Poydras, August 16, 1813, in ibid., 260-61. "You have heard of the decision of Judge Hall in the suit brought by Livingston vs. LeBreton D'Orgency. The interference of Mr. Jefferson is declared illegal and the Plaintiff is to be restored to his possession. . . Messrs.
dissolved it on the grounds that until it was shown that Livingston had committed some act which deprived the citizens of the use of the Batture or erected some works thereon which obstructed the free navigation of the Mississippi, judicial interference would be premature and improper. That Claiborne was almost as persistent as was Jefferson in his effort to deprive Livingston of his property is clearly revealed in his letter to the Louisiana Representative in Congress, Thomas Bolling Robertson. "Thus the case rests for the present," he told Robertson, "nor has Mr. Livingston yet thought proper to prosecute the Mayor of New Orleans, or the inhabitants, who are in the habit of taking, as formerly, dirt from the Batture." Continuing, he expressed the desire to have the title to this property finally and definitely settled, but was in a quandary as to the best manner of getting the question fairly before the courts. 59

With the dissolution of the injunction, it appeared that Livingston's labors would reach fruition; his most earnest desire of discharging the indebtedness to the United States government would be realized, by deriving a handsome profit from the sale of his Batture property. Livingston was careful to

Martin, Moreau Lislet and Turner, are employed to prevent all intrusion upon the Batture, & to this end, application has been made to Judge Pitot, to enjoin Mr. Livingston against exercising any act of ownership over the same or erecting thereon any kind of works." 59 Claiborne to a Representative in Congress [Robertson], September 4, 1813, in ibid., 264.
avoid the performance of any act which Judge Pitot had ruled 
was justifiable grounds for the granting of an injunction. Not 
only were the citizens permitted to remove soil from the Bat-
ture, but he made an effort to reach an amicable understanding 
with the city corporation. He stated to that body that he had 
always desired to live in peace with his fellow citizens and 
render them every service in his power. As evidence of this, 
he offered to donate to the city that part of the batture ly-
ing between the levee and the city boundary. 60 When his offer 
was rejected "on the account of the expense of making the levee" 
he informed the City Council of his willingness to construct a 
levee at his personal expense. 61

Again in 1817, Livingston and the heirs of De la Bigarre 
made an attempt to conciliate the interests of the city with 
their rights. In the proposal they agreed: to convey to the 
city all that part of the Batture lying between the City and 
the continuation of Poydres street; to donate two hundred feet 
on each side of Julia Street at the levee and guarantee the er-
rection of a market building on the property at a cost of not 
less than ten thousand dollars within two years; to widen Chop-
itoulas Street to sixty feet and open it to the river at inter-
vals of not less than three hundred feet; to construct at their

60 Livingston to Felix Arnaud, Recorder, August 1, 1816, in 
Livingston Papers, (Cabildo, New Orleans, Louisiana).
61 Livingston to the Mayor of New Orleans, October 16, 1816, 
in Livingston Papers, (Cabildo, New Orleans, Louisiana).
expense a levee sixty feet from the low water mark which could be used by the general public; and to release all action they might have against the corporation for any disturbance, trespassing, or any other cause. In return, the city was only requested to guarantee not to pass any laws or ordinances which would prevent boats from landing opposite their property and give assurance that no effort would be made to prevent the owners from enclosing and improving the property that they retained.62

As a further effort to conciliate the city authorities, on April 17 of the following year, Livingston agreed to place the levee one hundred feet from the low water mark instead of sixty feet and to donate to the city the land lying between the proposed levee and the river.63 After some delay the City Council finally accepted the proposition September 20, 1820.64

It appeared now that no further question as to title could be raised. The territorial Supreme Court had ruled that the title to the Batture was not vested in the City; the Federal

62 Louisiana Gazette and New Orleans Advertiser, March 11, 1817.
63 Livingston to Mayor of New Orleans, April 17, 1818, in Livingston Papers, Cabildo, New Orleans, Louisiana.
64 Louisiana Acts, 3 Leg., Sess. (1850) 197. Act No. 257 states "the compromise in relation to said Batture, entered into between the Mayor, Aldermen and inhabitants of the city of New Orleans and Edward Livingston and others, before Hughes Lavergne, Notary Public, on the twentieth of September, eighteen hundred and twenty."
District Court had ordered that Livingston be put in peaceful possession of the land; the Parish Court had refused to grant the City an injunction to estop Livingston from taking possession of the land; and finally, the city, by its acceptance of Livingston's offer of compromise, had practically renounced all claim to the property. But litigation was to follow and it was not until 1823 that Livingston obtained a sufficiently clear title to a portion of the land that he was able to dispose of it. Litigation kept a greater portion of the property tied up until many years after his death. It was with difficulty that his widow was able to realize anything on the residue of this property after a long delay.

One of the points which Livingston had used so effectively

65 Randell Hunt to Mrs. Edward Livingston, December 30, 1850, in Louise Livingston Hunt, Memoir of Mrs. Edward Livingston (New York, 1886), 157-59. Hunt had succeeded in placing the Batture claim in a position that enabled Mrs. Livingston to enter into a compromise which would secure a portion of the property withheld and appropriated by the city. This was effected by the passage of Act No. 257 of the Third Legislature (1850) referred to above, which repealed the compromise entered into by the City and Livingston, thereby making it possible for Mrs. Livingston to participate in the proceeds accruing from the sale of the property.

66 William H. Hunt to Mrs. Edward Livingston, April 15, 1853, in ibid., 160. "The Batture suit is at length at an end, so far as the claim of the front proprietors is concerned. The accounts of the battures are now being made out, and the notary promises them and the money on Thursday next. I do not doubt but that this word 'batture' which you have so long regarded with horror, will prove the means of adding more comfort in your old age."
in his arguments to substantiate his claim of ownership to the
batture was later used against him. Benjamin Morgan, an owner
of one of the lots in Suburb Ste. Marie, filed suit against Liv-
ingston and de la Bigarre for possession of the batture in front
of his lot. The courts decided in favor of the plaintiff,
ruling that the alluvium adjoining the land was a part of the
property. As the owner of the property ran the risk of losing
the land by the encroachments of the river, he should benefit
by the additions thereto. The road lying between the property
and the levee did not prevent this, and the title, the Court
ruled, "meant front to the river."

The damage which Jefferson had done Livingston was not
liquidated in full when he was put in possession of the Bat-
ture. Jefferson had shown a paternal interest in the welfare
of the brothers and sisters of John Gravier who lived in France.
He maintained that if the property had descended from Bertrand
Gravier, that the property should be divided equally with the
other heirs. He stressed the point that the Batture was not
comprised in the adjudication and therefore remained the proper-
ty of the co-heirs. Since this point had been given so much
publicity, it was to be expected that the absentee brother and
sister would be prevailed upon to file suit to recover a share
of the property.

67 "Morgan vs. Livingston et al" in Francois-Xavier Martin
(ed.), *Louisiana Term Reports or Cases Argued and Determined
in the Supreme Court of the State of Louisiana*, 12 vols.
O. S. (New Orleans, 1811-1823), VI, (1819), 19-256.
68 Ibid., 255.
The suit of Gravier et al. versus Livingston et al. was filed by the absentee co-heirs of Bertrand Gravier. The contention of their attorney, Mazureau, was that John Gravier had sold their share of the property as well as his own. Whether all of the Batture had been awarded to John Gravier in the inventoried sale by the Spanish Court as a part of the plantation or whether it belonged to the general estate was a fine point of distinction. The district court decided in favor of the defendant and an appeal to the Supreme Court was made. The higher court ruled that an heir might bring suit for an act of partition against a person who had purchased the entire property from a co-heir at any time within thirty years. By this decision, Livingston lost the greater portion of his holdings in the Batture and thereby lost most of the profit he had expected to realize from the sale of the land. In 1823, he offered for sale a few lots opposite the New Market in Suburb Ste. Marie. Finally, owing to the phenomenal increase in the value of the land, he was able to discharge in full his long-standing indebtedness to the government by the sale of a portion of his Batture holdings. The remaining principal with its accumulations of interest, which then amounted to more than the principal, totaled $100,014.89. To make the settlement, Livingston

69 Ibid., 281.
70 Ibid.
71 Ibid., 281-415.
72 Louisiana Courier, June 17-June 28, 1823.
offered certain of his Batture lots, to which his title was no longer in dispute, to the Treasury department for exact balance due. After a careful consideration of his proposal, the national administration agreed to accept his proposition, and took the property and discharged the debt.

The arrangements were made through the form of a sale of the lots by the United States Marshal on an execution of a court order, and the United States, through its agent, became the purchaser.73 It was an excellent business transaction for the government, as it not only cleared out Livingston's account, but returned to the Treasury a profit of more than six thousand dollars when the property was sold shortly thereafter. Livingston did not receive his formal discharge from the Government, however, until August 20, 1829.74

Finally, after twenty-three years, Livingston paid his debt to the Government in full, but during the remainder of his life he was frequently charged with being a defaulter. Whenever he was a candidate for public office, the old charges were revived and especially when he received political recognition, were these charges aired in public speeches and through

74 Hunt, Life of Edward Livingston, 310.
the columns of the press. Except during the trying times of the Burr episode and during his controversy with Jefferson, he completely ignored all references to this unfortunate affair, even refusing to defend himself against the charges.
CHAPTER IX

JACKSON'S AIDE-DE-CAMP

Claiborne was opposed to the Legislature, when, in 1809, it memorialized Congress to grant an early admission of the Territory into the Union. In his letter of transmittal to Secretary of State Madison, he expressed his opposition and, probably as a result of the Batture Controversy, urged that the laws pertaining to the territorial judiciary be amended.

The political situation that developed by the end of 1810 caused Claiborne to discontinue his active opposition to the question of admission. The local political conditions were further aggravated by the action of the West Florida Convention of September 26, 1810. This Convention declared the district to be "a free and independent state" and requested the United States, in case it determined to annex the "free state" to one of the neighboring states, to join it to the Territory of Orleans.

2 Ibid.
3 Isaac Jaslin Cox, The West Florida Controversy, 1796-1813 (Baltimore, 1918), 415.
Public opinion in the Territory was divided over the question. The group favoring statehood feared that an attempt to annex this district to Orleans would weaken their cause. The members of the French faction, irrespective of their position on the question of statehood, were opposed to the incorporation of the West Florida area. The inclusion of this section would strengthen numerically the American group, and, in addition, it was known that Claiborne was favorable to the plan. When President Madison issued his proclamation ordering Claiborne to take possession of West Florida, active opposition developed both in New Orleans and in Washington. As the friends of statehood locally feared, the action of the President was one of the causes of the opposition that developed in Congress over the admission of the Orleans Territory into the Union. Notwithstanding, the action of Madison was sustained, and by February

4 Ibid., 330-34.
5 Journal Des Délibérations De La Convention D'Orleans, Jackson Le 1614, (Imprime par Jerome Bayon, Pour L'Usage De La Convention De 1844) (January 13, 1812), 13. The Convention passed to the third reading the Preamble to the Constitution which defined the limits of the State. It was the French party that defeated, by a vote of twenty-five to fourteen, the amendment to include the West Florida area in the territorial limits of the state.
6 Louisiana Courier, February 22, 1811.
8 Louisiana Gazette, September 4, 1810, February 18, 1811, and March 12, 1811.
18, 1811, the Act providing for the admission of the Territory of Orleans had passed both Houses of Congress and had been signed by the President. \(^{10}\) It was not, however, until April 14, 1812, \(^{11}\) six days after admission of the Territory as a State, \(^{12}\) that Congress added the West Florida district to the State of Louisiana. As the Territorial Legislature failed to give official assent to the Act of Congress until August 4, this section had no representation in the Constitutional Convention. \(^{13}\)

The Territorial Legislature was in session when the official news of Congressional action was received, and that body proceeded to call an election and to perform the other provisions required by the Act. \(^{14}\) The election was set for September 17, and a spirited campaign followed. It differed little from those of the present and became very bitter and closely contested. Each faction made a bid for general support by placing on its ticket men both from the ranks of the "ancient" Louisiana and the recent immigrants from the United States. Several tickets were proposed by various enthusiastic groups of each faction, but the leaders centered their efforts on the candidates whom they had selected. Livingston's name

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11 Ibid., 226-28.
13 Ibid., 230-32.
14 Louisiana Gazette, April 9, 1811; Acts Passed at the Second Session of the Third Legislature of the Territory of Orleans (New Orleans, 1811), 1-4.
appeared upon several of the proposed lists, where certain groups of citizens stressed the importance of selecting men who had proven their "true love of country," and were "in favor of becoming a state."

The usual charges of bribery and attempted bribery were made during the last days of the campaign, and effective use was made of the revived Burr episode. A whispering campaign against the election of lawyers aroused the ire of one "Pindar" who reminded the voters through the columns of the press that "The greatest men America has to boast of were lawyers." He cautioned the electorate to "let not their poisonous tales" influence them to vote against a man on account of his profession. "Must the Territory of Orleans," he continued, "be deprived of the talents of Mr. Livingston and Mr. Brown because they are counsellors at law?" and, "must Judge Moreau and Judge Martin be incapacitated from serving as members of the Convention because they are good judges?"

Evidently the citizens of New Orleans failed to appreciate fully the logic of Pindar's argument, for none of the four candidates he recommended so highly was elected. In New Orleans

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15 Louisiana Courier, September 16, 1811.
16 Louisiana Gazette and New Orleans Daily Advertiser, September 16, 1811; Moniteur de la Louisiane, May 7, 1811.
17 Louisiana Courier, September 16, 1811.
18 Louisiana Gazette and New Orleans Daily Advertiser, September 2, 1811.
19 Note: Not one of the three papers, the Courier, the Gazette, nor the Moniteur gave the votes received by the defeated candidates in their tabulations of the election returns.
the Claiborne faction elected fifteen of the twenty members
and throughout the state they secured a good working majority
in the Convention. The opposition party in the City returned
John Watkins, Thomas Urquhart, Sam Winter, Colonel Belchasse
and Jacques Villé.

The defeat of Livingston was not surprising; the surprising feature was his candidacy, and the respectable vote he received at the polls. He was the principal target of the Claibornites; personally, he was most objectionable to Claiborne, who exerted himself on every occasion to thwart him. The controversy over the Batture, which had somewhat subsided after the question had been transferred to the courts, was now revived and used against him effectively. The question of his connection with the Burr conspiracy and his association with the group who had protested to Congress in 1804 had a bearing on the results. J. B. Thierry, editor of the Courier, never allowed an opportunity to pass to contribute to his defeat, and the charges of being a land speculator and a defaulter did not help his candidacy.

Louisiana Courier, September 11, 1812. In the congressional
election of the same year Thierry in a signed editorial stated, "I will oppose his election to the utmost of my power, because I am assured that he aspires to the title of representative of the State in Congress only for the purpose of intriguing against the citizens of this city and against the respectable Mr. Jefferson in the important affair of the Batture." And again on September 28, he assured his readers that "Mr. Livingston has made every effort to obtain your suffrage; but I still indulge the hope that he will be disappointed in his expectations. Mr. Livingston has ever labored to promote his own fortunes."
Even though Livingston failed to win a seat in the Convention, his interest in the welfare of the State continued and he made what contributions he could by working in connection with his friends in that body. His definite and positive influence was resented by Claiborne, who credited him with many of the provisions incorporated in the organic law, especially that pertaining to the method of electing the governor. The final draft of the constitution provided that the vote of the electorate was not conclusive; that at a joint session of the two houses, by majority vote, the governor was to be selected from the two candidates receiving the highest number of votes at the polls.

The Convention, which met in New Orleans November 4, 1811, continued its sessions until January 28, 1812. Its work proved acceptable to Congress, and on April 8, 1812, President Madison approved the congressional "act of admission" of Louisiana, effective April 30. In conformity with constitutional provisions, an election for the various State officers was called for June 29. Prior to May 3, Claiborne announced his intention of becoming a candidate for the position of governor.

23 Ibid.
24 Louisiana Gazette and New Orleans Daily Advertiser, May 26, 1812.
26 Claiborne to Gallatin, May 3, 1812, in ibid., 91.
Two other candidates, Jacques Villeré and Jean Noel Destréhand announced for the position, but the real contest was between Claiborne and Villeré. The fight was a continuation of the Convention election fight and became very bitter. Thomas B. Robertson and Livingston were conspicuous leaders of the opposition to the governor. To James Monroe, June 27, Claiborne wrote, "The opposition to me is very violent, & I am undergoing all the Calumny which Malice can invent."27 Again he says, "My name also is with the people; But with what probability of success, I know not—much wealth, & considerable Intrigue are enlisted against me."28

As election day approached, public excitement became greater than during the convention campaign,29 and Claiborne was in doubt as to the final results. The Claiborne machine worked smoothly and efficiently, however, and the results showed that he overestimated the strength of the opposition. He received a majority in every district and carried the state by a vote of almost three to one over all the other candidates.30 Even in New Orleans, the stronghold of the French Party, he led Villeré

27 Claiborne to Monroe, June 27, 1812, in ibid., 118-19.
28 Claiborne to Gallatin, May 3, 1812, in ibid., 91.
29 Louisiana Gazette and New Orleans Daily Advertiser, June 5, 1812. "The election of state officers aroused a great deal of excitement. The main idea being "for or against Governor Claiborne."
30 Ibid., July 2, 1812; Louisiana Senate Journal, 1 Leg., 1 Sess., 10. The vote was Claiborne 2,757, Villeré 945, Destréhan 168.
five hundred thirty-seven to three hundred eighteen. Under the provisions of the constitution, he assumed the duties of the office of Governor until final action by the Legislature on July 27. The Legislature, or General Assembly, convened on that day, and the Claiborne forces organized both houses and elected Julien Poydras president of the Senate, and G. St. Martin speaker of the House. On a joint ballot of the two houses, Claiborne was officially elected by a large majority. He was very powerful politically, but the opposition continued to work, and, within a short time, it had sufficient strength in the Senate to embarrass him.

On September 4, the General Assembly elected Jean Noel De- trasshan and Allan B. Magruder United States Senators, each receiving twenty-one votes. Had the opposition forces centered their efforts in the interest of a particular candidate, they could have elected one of the two Senators, but the failure to concentrate on one man resulted in James Brown receiving sixteen, Eligais Fromentin five, and Livingston three, or a total

32 Louisiana Gazette and New Orleans Daily Advertiser, July 28, 1812.
33 Louisiana Senate Journal, 1 Leg., 1 Sess., 4. (French edition).
34 Louisiana Gazette and New Orleans Daily Advertiser, July 28, 1812.
35 Claiborne to John Dawson, August 10, 1812, in Howland (ed.), Letter Books of C.C.Claiborne, VI, 156. He stated, "I have obtained a majority in each and every county in the state."
of twenty-four votes. 36

Not at all discouraged by his defeat for the Senate, Liv-
ingston became one of five candidates for Representative in
Congress from the New Orleans district. 37 The election was for
the remainder of the twelfth in addition to the thirteenth Con-
gress. Thomas Bolling Robertson, former Secretary of the Ter-
ritory, and one of the leading opponents of Claiborne, was el-
lected by a majority of three hundred eight votes. 38 While run-
nin fourth in New Orleans, Robertson carried the Florida par-
ishes by a large majority. 39 Fromentin led in New Orleans, and
while Livingston ranked fourth in the returns of the district
as a whole, he received a respectable vote in the City, ranking
next to Fromentin. 40

Destréhan resigned his position as United States Senator,
and Livingston's friend, James Brown, was elected to succeed

36 Louisiana Gazette and New Orleans Daily Advertiser, Sep-
tember 5, 1812; Louisiana Senate Journal, 1 Leg., 1 Sess.,
7 (French edition).
37 Louisiana Gazette and New Orleans Daily Advertiser, Sep-
tember 10, 1812; ibid., September 24, 1812, "we give the
list of Candidates for Representative to Congress. Ste-
phen A. Hopkins, Thomas B. Robertson, Henry F. Johnson,
Edward Livingston, E. Fromentin, G. F. Favre."
38 Ibid., October 28, 1812; Moniteur de la Louisiane, October
20, 1812, Robertson 875, Johnson 567, Hopkins 450, Living-
ston 299, Fromentin 288.
39 Louisiana Gazette and New Orleans Daily Advertiser, October
8, 1812.
40 Ibid., October 3, 1812.
Brown and Robertson, by judiciously dispensing the federal patronage, were able to increase the numerical strength and power of the opposition. As a protest against the Claiborne government, many of the Creole-elected representatives of the general assembly resigned their positions, and still others refused to take their seats. Every possible attempt to embarrass the Governor was made; and, on the question of executive power of nomination, the Senate was equally divided seven to seven. The Senate claimed the power of nomination and the executive insisted that constitutional provision granted him that authority. Claiborne held Livingston and Robertson responsible for the situation, and he informed Monroe that "the unprincipled intriguers of New Orleans with Livingston at their head will prevent me from effecting many objects." The Claiborne party, nevertheless, had a majority of the general assembly on a joint vote. At the special session of the general assembly, November 23, the three electoral votes of the state were given to Madison by a majority of seven.

41 Ibid., December 3, 1812, stated, "On Tuesday last Mr. James Brown, a friend of Mr. Livingston, was elected Senator to fill the vacancy created by the retirancy of Mr. Destréhan"; Louisiana Senate Journal, 1 Leg., 2 Sess., ii. The vote on December 1, 1812: Brown 26, Thomas Posey 13, Richard Butler 6.

42 Claiborne to John Dawson, August 10, 1812, in Howland (ed.), Letter Books of W.C.C. Claiborne, VI, 156.

43 Ibid.

44 Claiborne to Monroe, August 10, 1812, in ibid., 159.

45 Louisiana Gazette and New Orleans Daily Advertiser, December 1, 1812. "For the Madison ticket 23; For the Clinton ticket 16; Majority 7, consequently the three votes of the State of Louisiana are for the present encumbrant."
The tide, however, was beginning to turn against Claiborne.

Congress, June 18, 1812, declared that a state of war existed between the United States and Great Britain. Louisiana was in a defenseless condition and the General Government showed no inclination to remedy the situation. The War Department removed the only regiment of troops stationed in New Orleans, which greatly agitated the people, who were becoming convinced that the British contemplated an attack against Louisiana. The Governor lodged a complaint with the two Senators, but failing to secure federal assistance, proceeded to organize the state militia. The unfriendly attitude of certain Indian tribes and the probable necessity of enforcing the draft made it advisable for Claiborne to mobilize the militia and hold a detachment under orders.

The militia problem proved to be embarrassing, and the attempt to meet the federal requisition on Louisiana for troops by enforcing the draft resulted in considerable discontent. The legislature had refused the Governor's request to provide for a more efficient organization of the militia and he experienced difficulty in filling the state quota set by the national government. Through the media of the press

and circulars, the public was told that there was "no law to authorize and no necessity to justify the requisition." Claiborne was denounced as "the tyrant of the day" and resistance to his orders was advised. Not only were his orders disregarded, but he was presented with resolutions from the noncommissioned officers of several corps protesting against entering the service of the United States either as volunteer or drafted militia. Maintaining that the discontent was being fomented by an "unprincipled faction in this city," he issued orders December 25, 1813, for the enrollment of forces to fill the federal quota. The orders met with no opposition in the interior, but a spirit of insubordination was manifested in New Orleans. The State Senate declared the requisition illegal and unnecessary; and the House refused to approve the action of the executive by a majority vote of one.

On February 21, 1814, Claiborne issued a second proclamation, in which he reiterated the orders of December 25, and warned those refusing to comply with the provisions thereof that they would be prosecuted in accordance with military usage and law regardless of rank. This proclamation further incensed the public and at one time the impeachment of the Governor was contemplated. The militia, composed chiefly of Americans from the interior, and stationed at the Magazine

Barracks, now protested to the executive against being mustered into service until his orders of December 25, 1813, and February 21, 1814, were obeyed by the city militia. The tender of their services to enforce the orders was wisely declined, as bloodshed would have resulted. After the refusal of their offer, more than forty men stationed at the Barracks deserted in one night, and Claiborne discharged the remainder of them before they were able to desert.

While there were many individuals who really believed the requisition was unnecessary, illegal, and oppressive, there were many whose opposition was due more to personal and political than to public considerations. Those against the Governor found the requisition a fitting opportunity for retaliation and aroused public prejudice against the measure as well as the man. If Claiborne was correct in his surmise, the opposition party had gone too far in its fight upon him, for the contentions against the requisition had served as a screen, behind which the disloyal groups had worked effectively.

There were many citizens in the state who felt that their connection with the United States had become precarious. The British were enlisting the discontented Indians and were concentrating their forces for an attack on Fort Bowyer on Mobile

48 Claiborne to Eligais Fromentin, October 24, 1814, in *ibid*., 28.
Day, which was to serve as one of the bases of operations against Louisiana. A large portion of the Spanish element in the State was partial to the English, for it was their plan "to wrest Louisiana from the hands of the United States and restore it to Spain." The British appealed to the disloyal element in the State, and, August 29, the commanding officer of the British forces at Pensacola issued a circular addressed to the "Natives of Louisiana." The citizens were urged to join with the British forces "to assist in liberating from a faithless, imbecile government, your paternal soil." It was openly declared that the Spaniards, who were lawful owners of the land, were to be put in possession and that a Spanish squadron was expected to co-operate with the British fleet.

In addition to securing Fort Bowyer as a base of operations, the British attempted to secure a footing in Louisiana. In the Barataria region, a number of outlaws under the leadership of Jean Lafitte lived and engaged in smuggling. These privateers, cruising with letters of marque issued by France and the Republic of Carthagena to prey upon Spanish commerce, had failed to confine their activities to the Spanish trade. On one occasion they had seized goods held by the United States revenue officer and the federal government had made

49 Martin, History of Louisiana, 363.
50 Claiborne Circular, August 8, 1814, in A. Lacarrière Latour, Historical Memoir of the War in West Florida and Louisiana in 1814-15 (Philadelphia, 1816), Appendix xvii. Subsequently listed as Latour, Historical Memoir.
51 Appendix, vii-viii.
Several futile attempts to suppress them. Claiborne had issued proclamations cautioning the citizens against giving assistance, support, or countenance to these sea rovers, and had offered a reward of five hundred dollars for the arrest of Lafitte.

On September 3, the British made overtures to Lafitte and his Baratarian smugglers. In return for their support and aid, Lafitte was offered a captaincy in the British service and the sum of thirty thousand dollars. A few days to consider the proffer were requested in order that he might communicate with the Americans and tender his services to the United States. Upon receipt of the communication, Claiborne submitted the offer to a council composed of the principal officers of the army, navy and militia. The decision was that there should be no intercourse with any of "those people." The Governor immediately instigated an expedition against the Baratarians, and with the assistance of United States troops, broke up their establishment and captured many of them. A few, however, among whom were Jean and his brother Pierre Lafitte, escaped to the German Coast and found shelter there.

Livingston knew that there was a disloyal element in the City, but he considered it a problem for the constituted authorities to handle. Until the British offer to Jean Lafitte

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52 Jean Lafitte to Claiborne, in Latour, Historical Memoir, Appendix xiii.
53 Martin, History of Louisiana, 363.
became known, he had conceived it no more his duty to interfere in this matter than it was to assist Claiborne in his difficulties over the militia question. The Governor's action in moving against the Baratarians at this particular time perturbed him, for he knew that if Lafitte should reconsider and join the British forces, it would be most serious. With a disloyal element operating in the City, and with the Baratarians, who were thoroughly acquainted with all the water routes through the swamps, bayous, bays and lakes in the vicinity of New Orleans, acting as guides, it would be practically impossible to repel the invaders. At best, general apathy existed; rebellion was probable; the chief executive was incapable of coping with the situation; the national government had not fortified the City; the defection of Lafitte would cause the wavering to desert to the British; and New Orleans probably would surrender without offering any resistance whatsoever.

He realized the gravity of the situation, and was aware that prompt, vigorous, although tactful action must be taken by the loyal element in the city if the British and Spanish

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54 Livingston to the President of the United States, October 24, 1814, James H. Padgett (ed.), "Letters of Edward Livingston to Presidents of the United States," in The Louisiana Historical Quarterly, XIX (October 1926), 950. Livingston, after informing Madison of the "state of public Opinion" following their citizens' meeting, broached the question of pardoning the Baratarians and enrolling them in the cause of the United States. He stated, "the number of them as well as their influence is great" and gaining their support "would quiet the public mind and add to our Maritime Strength at least 500 Sailors who have Embraced that kind of life. . . I pray [sic] Sir that you will pardon the liberty I take in making these suggestions which think will be approved by all who are acquainted with the State in this Country."
propaganda was to be counteracted. He recognized the necessity of ignoring political and personal differences and arousing support among those whose loyalty was under doubt. Livingston, of all the American residents, was the most influential with his class, and had more weight with the French population than any other American in New Orleans. He laid aside his prejudices for Claiborne and took the lead in the movement to unite all groups for the support of the nation. This patriotic action proved to be one of the most important steps in his career.

He conferred with many of the loyal French and American leaders of the City as to a plan of action. It was decided that a public meeting should be held to consider the question of naming a committee of citizens to co-operate with the State and General Government authorities in suggesting measures of defense, and in calling out the force of the country in the existing emergency. Pursuant to public notice, a general gathering of citizens was held, and while, according to Claiborne, it was "very thinly attended," the Louisiana Gazette stated that, "on September 15, a very numerous and respectable meeting of citizens of New Orleans and its vicinity was held" at Tremoulet's Coffee House.

56 Claiborne to Andrew Jackson, September 20, 1814, in James Spencer Bassett (ed.), Correspondence of Andrew Jackson, 6 vols. (Washington, 1926-33), II, 55.
57 The Louisiana Gazette and New Orleans Daily Advertiser, September 20, 1814.
Livingston was made permanent chairman and Richard Belf was chosen secretary. Livingston delivered an eloquent patriotic speech in which he called upon the people to unite in order to disprove the English charges of disaffection in Louisiana. After calling upon all citizens irrespective of political affiliation "to aid their magistrates by a proffer of their support in the performance of their functions" he submitted five resolutions, which were unanimously adopted. The resolutions called for: denying the insidious charges of disaffection; rendering the Union assistance in proportion to the strength of the State; counteracting all attempts to create disaffection and weaken the forces of the country by exciting dissensions and jealousies at the moment union was most necessary; appointing a committee of nine members to co-operate with the civil and military authorities; and calling forth the energies of the country to repel invasion and preserve domestic tranquility. 58

Care was exercised in selecting the personnel of the committee which was decided upon prior to the hour of convening. The five Creoles and four Americans selected were chosen because of their pronounced loyalty to the Union and of their influence in the city. It was hoped that the adherents of these men would follow their lead and become outspoken advocates of the General Government. The list of names which

58 Ibid., September 20, 1814.
Livingston presented to the assemblage was unanimously ap­proved and the Committee membership included Livingston, Pierre Foucher, Dusuan De la Croix, George M. Ogden, Benjamin Morgan, Dominique Bouligny, John Blanque, and Augustin Macar­ty. 59

Promptly, the Committee issued a public statement written by Livingston, which was addressed to their "Fellow Citizens." In the appeal, the public was informed as to the kind and ex­tent of the dangers that threatened the people of Louisiana. The enemy not only was preparing an attack from without, but was attempting to incite insurrection which made perfect unity necessary. The citizens of the State, through their representa­tives in Convention had contracted a solemn obligation of be­coming an integral part of the United States and "God forbid there should be one disposed to fail in the sacred duties re­quired by fidelity and honor." Those base enough to under­value their duty and true interest were warned that they would bring down upon themselves and the State dreadful ev­ils; if in their criminal indifference they should favor the enterprises of the enemy, let them recall, it urged, that the millions of Westerners held the navigation of the Mississippi essential to their well-being and would never allow a foreign power to occupy it. Should there be a desertion to the enemy, the address continued, a ruinous war to the State would be the

59 Ibid., September 20, 1814.
consequences, for the Louisianians would be forced to fight against those very men they had voluntarily chosen for fellow citizens. "Listen to the voice of honor, of duty, and of nature! unite! form but one body. . . defend to your last extremity your sovereignty. . . lives. . . existence of your wives and children."  

The very language of the address, the very tone of the appeal shows that its authors had misgivings, probably more than doubts, as to the existence of that unity of feeling that they so pathetically recommended. Certainly they felt far from assured of the united action of which they affected to have no doubts. The action of the Committee, however, was at a propitious time and temporarily served to check the disloyal movement until the defeat of the British at Fort Bowyer and the receipt of the information that General Andrew Jackson, stationed at Mobile, would soon arrive in New Orleans to prepare the defense of the city. These two news items encouraged the wavering spirits, thereby checking the work of the British in their attempt to win over the population of Louisiana.

In this crisis, Claiborne's reputation and character suffer by comparison with those of Livingston. The latter put aside personal differences and political prejudices in order that he might serve his country. Neither Madison nor Claiborne had shown him any consideration, and the latter had

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69 Ibid., September 24, 1814; Latour, Historical Memoir, Appendix xxviii.
consistently fought him on every occasion, while the former
had leaned with Jefferson in the Batture controversy and had
treated Livingston with scant courtesy. Claiborne had been
unable to check the disloyalists and was in bad repute through-
out the state at that time. Livingston and his Committee were
accomplishing that which the Governor was unable to do and the
latter was resentful of his success and was attempting to un-
dermine the influence of the patriotic citizen. In writing
to Jackson concerning the Citizens' Meeting of September 15,
Claiborne complimented the Committee on the whole, but criti-
cised the manner in which it was selected. Jackson was in-
formed that "many have no wish that Livingston should be a
member," and that he was fostering

a joint meeting of the City Council and the Parish Jury for
the purpose of co-operating with the constituted authorities
and naming a Committee of Defense. In this way Mr. Livin-
gston's Committee would be superseded, but in the meanwhile it
continues to act. 61

Claiborne's vacillating policy and critical manner were
not conducive to the arousal of patriotic fervor among the
people. His frequent complaint that there were "individuals
on whose friendly disposition to the United States, I cannot
depend," 62 and the open admission of fear that New Orleans

61 Claiborne to Jackson, September 20, 1814, in Basset (ed.),
Correspondence of Andrew Jackson, VI, 441; Warring and
Cable, Social Statistics of Cities, History and Present
Condition of New Orleans, Louisiana, 39.
62 Claiborne to Frouenlin, October 24, 1814, in Koen land
would offer but little resistance from without" were not calculated to react favorably upon the public morale. His official reports to Jackson were confusing in that they were often contradictory. At one time he would report the militia could not be counted upon and he feared the attitude of the Legislature. Later, Jackson would be assured he could count upon the support of the Legislature and the quota for militia was filled with patriotic men. "The Governor was not unwilling," according to Martin, "to increase his own merit by magnifying the obstacles he had to surmount," and represented as inimical to the country all who did not agree with him. While this judgment may be too harsh, Claiborne's attitude toward Livingston and his Committee cannot be excused. His actions reveal a smallness of character that does not comport with a man in his position. He was fully aware of the valuable services these patriotic citizens were rendering the country, but he was too jealous to admit it for fear it would detract from him. His action in reporting to Jackson, "there certainly has been a sensible change in the Public mind," without giving any recognition to the work of the Committee of Public Defense, was petty.

Claiborne's jealousy of and antipathy for the Chairman

63 Claiborne to Thomas Flournoy, September 29, 1813, in ibid., 271.
64 Claiborne to Jackson, November 5, 1814, in ibid., 310.
65 Martin, History of Louisiana, 367.
of the Committee of Public Defense is further illustrated by his reaction to the appointment of Livingston as Volunteer Aide-de-Camp to Jackson, December 17, 1814. Upon the announcement of the personnel of Jackson's Aides-de-Camp, Claiborne observed to his own Aide, Captain B. I. Shaumburgh, "that the general had taken into his confidence men, whose primary object would be to create a Schism between him & me." The Governor's jealousy and love of the limelight prompted him to write Secretary of War Monroe and suggest that Jackson be instructed to place him in command of the militia. While admitting that he had "but a limited knowledge of military affairs" he would be happy "to be honored with a Commission" as second to Jackson in command. The failure to receive the commission and the feeling that Jackson ignored him led to strained relations between the General and the Governor, which Claiborne maintained were due to the intrigues of Livingston.

As Chairman of the Committee of Public Defense, Livingston had frequent correspondence with General Jackson. Both had served in the 1796 Congress, and the renewal of acquaintance proved to be mutually advantageous. On September 18, three days after the public gathering at Tremoulet's Coffee

67 Claiborne to B. I. Shaumburgh, October 1, 1815, in ibid., 371.
68 Claiborne to James Monroe, December 9, 1814, in ibid., 321-23.
69 Claiborne to Shaumburgh, October 1, 1814, in ibid., 371.
Hence, the Committee communicated with Jackson, giving him certain information with regard to the local vulnerable points that supplemented the material included in the maps. Jackson was informed "that we are sure we need make no apology for the liberty we take" and they believed "that steps will be taken to comply with our request" with regard to the plans for the defense of the city. On November 5, Livingston informed Jackson that the greater part of the citizens were in sympathy with the steps that the General had taken for the protection of the City, and offered the Committee's opinion as to what would constitute proper military protection. The legislature appointed a Committee of Defense, Livingston informed Jackson, November 21, "but I am greatly mistaken if anything efficient be done, unless by your agency." He gently hinted that it might be wise for the General to authorize him officially to confer with the Committee for the good effect it would have. He recommended L. Latour as an excellent engineer and informed Jackson should there be need of "a man of this description" he could do no better than to secure Latour's services.

When Jackson arrived in New Orleans December 1, 1813,

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70 From Committee for the Safety of the City of New Orleans to Jackson, September 18, 1814, in Jackson Papers (Manuscripts Division, Library of Congress), XXIII, 2229-2230. Subsequently listed Jackson Papers.
71 Livingston to Jackson, November 21, 1814, in ibid., XXVI, 2615.
72 Livingston to Jackson, November 21, 1814, in ibid., 2nd series, II, 57.
Livingston, as Chairman of the Citizens' Committee of Public Defense, was present with the Governor and the other authorities to welcome the General officially to the city. That same day, Jackson dined at the Livingston home, and during the campaign the two men were closely associated. On the day of his arrival in New Orleans, Jackson reviewed the battalion and addressed the troops. In his speech, which was rendered in French by Livingston, Jackson expressed pleasure and satisfaction with their work and assured them of his determination to save New Orleans. Following a tour south and east of the city, he made an effort to prepare it against attack. In compliance with his request, Claiborne, December 14, recommended to the legislature that it suspend the writ of habeas corpus for a limited time. On December 16, the Governor suggested to the general assembly that it recess for fifteen or twenty days. Both requests were refused on the grounds of inexpediency and the latter on the additional grounds that conditions might arise when the interference of the legislature would be necessary. The obstinacy of the legislature reacted unfavorably upon Jackson and he immediately declared martial law.

74 Hunt, Life of Edward Livingston, 197-98.
75 Latour, Historical Memoir, 53.
76 Ibid., 53-54.
77 Martin, History of Louisiana, 371; Louisiana Senate Journal, 1 Leg., 2 Sess., 30.
On December 18, Jackson reviewed the troops that were stationed in New Orleans, and following the inspection, Livingston read the General's eloquent, complimentary, and patriotic address to them. It was a timely and skilfull appeal to the diverse sentiments and motives of the various groups. "General Jackson," wrote Latour, "had electrified all hearts; all were sensible of approaching danger; but they awaited for its presence undismayed." New Orleans took on the appearance of a camp; and "concord prevailed among all ranks and conditions of people." The transformation had been wrought by Jackson; confidence had displaced gloom, despondency, and distrust. Apathy was fast disappearing and concerted action to repel the invaders was taking its place. The work of the Citizens' Committee of Public Defense was beginning to show tangible results.

Livingston was not noted for his modesty when the question of promoting his welfare was involved. On September 21, 1813, he had written Jackson requesting an appointment as aide-de-camp without pay. The request was made on the grounds that

78 Jackson's Address to the Troops, December 18, 1814, in Bassett (ed.), Correspondence of Andrew Jackson, II, 118; Latour, Historical Memoirs, Appendix xxxvii. "On Sunday, the 18th December, [sic] general Jackson reviewed the militia of the city, the battalion commanded by major Pleuche, and a part of the regiment of men of colour. Being drawn up on their respective parades, the following addresses were read to them by Mr. Livingston, one of his aids."

79 Ibid., 72-73.
Jackson's duties would probably detain him in Florida, and he might be of service in Louisiana, performing the duties of a secretarial aide. He was desirous of rendering such services to his country as he could "without abandoning a place where my profession is necessary to the support of my family." Jackson's "ideas of military etiquette would not admit the solecism of an aide de Camp detached from Head quarters," but this was no longer applicable to the situation after his arrival in the City; consequently, Livingston renewed the request and this time it was granted.

The Livingston trait of providing for all of the family connections now evidenced itself. Immediately following his appointment as voluntary aide, Livingston secured the appointment of his brother-in-law, August de Castera Davezac, as Judge Advocate. Upon his request, his son Lewis, visiting in New Orleans, received a commission of Captain and served as an engineer under Major Latour.

Throughout the campaign, Livingston served as Jackson's aide-de-camp, military secretary, orator and confidential

80 Livingston to Jackson, September 21, 1814, in Jackson Papers, 2nd Series, II, 35.
81 Jackson to Livingston, September 30, 1814, in Bassett (ed.), Correspondence of Andrew Jackson, II, 65.
82 Livingston to Jackson, December 14, 1814, in Jackson Papers, 2nd Series, II, 66.
advisor. He and his son both saw active duty and during the Battle of December 23, Livingston was under fire. In the afternoon, he went aboard the ship, Carolina, to explain Jackson's plan of attack to the commander of the vessel. In the night battle which followed, he was almost constantly exposed to fire of the enemy while transmitting on horseback in all directions the orders of the General. He and the other aides were cited for bravery by Jackson in his official dispatch to Secretary of War Monroe. The report under date of December 27, 1814, recited "that the General's aides de camp, Thomas L. Butler, and Captain [John] Reid my other aid, and Messrs. Livingston, Duples-sis, and Davesac who volunteered their services faced danger wherever it was to be met and carried my orders with the utmost promptitude." Again, in his General Orders of January 21, Jackson availed himself of the opportunity to commend publicly his aides for their services and assert that they "have merited the thanks of the general by the calm and deliberate courage they have displayed on every occasion and in every situation that called it forth."
Shortly after the arrival of Jackson in the City, Jean Lafitte renewed the offer of his services to the United States Government. Jackson had determined to have nothing to do with the "pirates and infamous bandits" unless it was to have them hung. When the proffer of their services reached him, his first inclination was to refuse it curtly; but since his arrival in Louisiana, he had come to recognize more fully the critical situation that existed. Livingston was acquainted with the Lafittes, as he and John R. Grymes had been retained as their attorneys at a fee of twenty thousand dollars each to defend the smugglers in the Federal District Court. Probably he was able to convince the General as to the value of the Baratarians and point out the results should they go over to the British. In any event, the fiery commander reversed his decision, accepted their services, assigned the leaders to important commands, and experienced no regret for his actions in the premises. In the meanwhile, the federal government dropped all judicial proceedings against them.

The action of the Legislature during the crisis more than justified Claiborne's apprehension that it would do more


87 Claiborne to John Dick, February 11, 1815, in Kowland (ed.), Letter Books of C.C. Claiborne, VI, 338. Not only was Livingston probably responsible for Jackson's reversal, but his letter to Madison, October 24, 1814, referred to above, may have influenced the federal government to drop all judicial proceedings against the Baratarians.
harm than good. During the Battle of December 23, a report
was circulated that Jackson had given positive orders to fire
parts of the city in case the British forced his ranks. Cer-
tain members of the legislature, acting in an unofficial capa-
city, had called upon the officer left in command of New Or-
leans to ascertain the truth or falsity of the report. He
properly declined to make any statement whatsoever.88 Just
after the engagement of the Americans and British had begun,
December 28, Jackson was informed that "the Assembly were a-
bout to give up the country to the enemy."89 The General,
while stating he did not believe the report, sent word to Clai-
borne that "if true; to blow them up."90 The Governor ordered
the doors of the State House closed,91 and maintained he had
acted with prudence under the circumstances as the legislature
was under suspicion and had they met on that day there might
have been a general commotion.92 The order was revoked the
following day and the first act of the legislature was to ap-
point a joint committee to investigate the causes for such
action upon the part of the military forces.93

Evidently, there was some basis for doubting the loyalty
of the legislature for the suspicion concerning that body was

88 Martin, History of Louisiana, 376.
89 Louisiana Senate Journal, 2 Leg., 1 sess., 37.
90 Ibid., 64.
91 Ibid., 53.
92 Ibid., 40.
93 Ibid., 36.
more or less general. It was for that reason that both Claiborne and Jackson had desired the adjournment of the General Assembly, and in spite of its policy of obstruction, the military leader was successful in his movements against the British. The battles on December 28, 30 and 31 were brought to successful issues by the American Commander. The battle on January 1 was hotly contested; but Jackson, though defeating the purpose of the enemy, failed to force the British to retreat. The Battle of January 8 began a little before daybreak, and the British soldiers could not withstand the withering fire of the Tennesseans and Kentuckians. When their commander-in-chief and other high ranking officers fell mortally wounded, the soldiers became demoralized and refused to return to the attack. The enemy held its position until January 9, when the commanding general, John Lambert, under a flag of truce, notified General Jackson that the British were evacuating their position on the Mississippi River and had for the present relinquished all effort against New Orleans.

On February 6, the General Assembly adjourned sine die. Prior to adjournment, that body voted an expression of thanks to everyone except General Jackson who had in the slightest degree contributed to the defense of the state. To make the action more pointed, the Senate rejected the bill passed by the House to present a sabre of the value of eight hundred dollars to General Jackson, as a testimonial of gratitude.
The Legislature had evened scores with the Commander.

Livingston was not in New Orleans at the time the general assembly adjourned. On February 4, Jackson had dispatched Livingston, R. D. Shepherd and Captain White, under a flag of truce, to negotiate with Vice-Admiral, Sir Alexander Cochrane, and General Lambert for an exchange of prisoners. The British, at the time of the arrival of the Americans, were on the point of sailing in order to make a second attack on Fort Bowyer. As a matter of precaution, the Livingston party was detained on board a British vessel and made the trip to Mobile Point and were present at the surrender of Fort Bowyer, February 12. On the following day, the British having received official information of the signing of the treaty of peace, Livingston departed for home and reached there February 19 after an absence of fifteen days. An exchange of prisoners was made in accordance with the arrangements of Livingston and Cochrane, even though Jackson did not receive official information of the signing of the treaty of peace.

94 Ibid., 76-77.
95 Vice Admiral Sir Alexander Cochrane to Jackson, February 12, 1815, in Bassett (ed.), Correspondence of Andrew Jackson, II, 164.
96 Jackson to Major General Lambert, February 26, 1815, in Jackson Papers, 2nd Series, II, 117.
97 Jackson to Major General Lambert, February 26, 1815, in Ibid., II, 117. "In conformity with arrangements entered into with Adml. Cochrane by my aid de Camp, Mr. Livingston, I dispatched from this place on the 22d. Inst. four hundred sixty British Prisoners... Others will be sent to complete the exchange so soon as they arrive from Natchez."
cial notification of the peace treaty until March 13, twenty-two days after Livingston's return. On receipt of official advices of the ratification and the exchange of the treaty of peace, Jackson notified General Lambert that he had empowered Livingston "to make such arrangements for the restorations required by the 1st article of the treaty and to receive all places now in your possession, as well as the slaves mentioned in your former letters." 99

While the British at Mobile received official notification of the signing of the treaty of peace February 13, the dispatch from Washington did not reach Jackson until one month later, March 13. In the interim, American newspapers containing notices of the peace treaty were delivered in New Orleans, but Jackson continued to keep the City under martial law.

There was an insistent demand for mustering out the militia, and the French citizens who had volunteered were particularly restive. At first, Jackson discharged those who presented a certificate of nationality from the French Consul; but when the certificates became too numerous, he suspected connivance and discontinued the practice. This brought a protest from the French citizens and February 28, the General issued a General Order commanding all French subjects to retire within

three days to the interior not nearer than Baton Rouge. 100

The Consul's appeal to Claiborne, who informed him that
relief might be secured upon application to the courts, 101 re-
sulted in his being ordered to leave the city. This aroused
the resentment of the French citizens and charges were made
against Jackson to the effect that he hated the French and
had surrounded himself with newcoons as advisers who were
notorious for their prejudice against the old population. In
a newspaper article, Louis Louaillier, a member of the Legis-
lature, severely criticised the action of retaining French
citizens in the militia and called upon the military authori-
ties to rescind the order requiring the French subjects to re-
tire to the interior. He further stated that those Frenchmen
who had become American citizens, as had he, believed that
Jackson was actuated by a feeling of dislike for the French
population. 102

The publication incensed Jackson, and on March 5, he had
Louaillier arrested as a spy. E. H. Bell, Judge of the United
States District Court, granted a writ of habeas corpus. Im-
mediately, the General ordered the arrest of the Judge for
aiding, abetting and exciting mutiny in his camp and had him
confined in the same room with Louaillier. By threats, he

100 Claiborne to Monroe, February 10, 1814, in Lowland (ed.),
101 Ibid.
102 The Louisiana Courier, March 7, 1814; Gayarre, History of
Louisiana, IV, 585.
secured Louaililier's petition from the Clerk of the United States District Court on the back of which Hall had written the order for the issuance of the writ. 103 It was held on the grounds that Hall had committed forgery in changing the date of his order from March 5 to the 6th instant. The situation was further aggravated when John Dick, United States District Attorney, was arrested for having a writ in favor of Hall served upon Jackson. 104

Claiborne’s request of Jackson to disband the militia and raise the martial law 105 received scant consideration. The Governor then instructed his Attorney-General Étienne Mazureau, to render whatever legal assistance he could in the premises. He informed Mazureau that he “can no longer remain a silent Spectator of the prostration of the Laws,” as the plea of necessity had ceased to have any justification. 106 He next issued a circular criticising the General’s actions and accusing him of being particularly resentful of the “Executive” and of observing “a Course of Conduct which cannot be easily excused.” 107

In this effort to regain popularity, all of his actions seemed

103 Martin, History of Louisiana, 397.
104 Ibid.
106 Claiborne to Étienne Mazureau, February 24, 1815, in Ibid., 339.
107 Circular of W.C.C. Claiborne, February 7, 1815, in Ibid., 346-47.
to indicate a preparation to resist the Federal authority exercised by its military representative. The public became excited over the prospect of a conflict, and the Governor was heard to declare "that serious difficulties would be shortly witnessed in New Orleans." 108

Meetings of citizens were held and at one of the gatherings it was suggested that the United States Marshal be invited to call out the posse comitatus of the district to support the judiciary. Counsels of moderation prevailed and the only act of violence was the destruction of an illuminated portrait of Jackson which hung in the Exchange Coffee House. A number of the military officers required the proprietor of the coffee house to replace the picture and illuminate the hall in more than the usual manner. 109 Troops stood in readiness to march upon summons, and New Orleans had become like a magazine of gun powder. The least spark might have produced a frightful explosion.

By many persons, Livingston was suspected of being responsible for the policy adopted by Jackson and was accused of upholding the very tyranny which he so courageously opposed in 1806. Why, they inquired, had this champion of civil liberties opposed Wilkinson in 1806 and in 1815 was assisting Jackson when the situations were identical unless it was that

108 Martin, History of Louisiana, 392.
109 Ibid., 398-400.
Wilkinson was then thwarting his desires and Jackson now favoring them? The populace was advised to follow the counsel of Livingston at the time of Burr and give "no pretext" to General Jackson to indulge in his favorite acts of violence. 110

Livingston allowed the unjust accusations to pass unanswered. He had made his position on the question of martial law clear to Jackson and had not reversed himself on the question. "My opinion," he had written, "is that such proclamation is unknown either to constitution or laws of the United States." Martial law, he ruled, can be justified only by the necessity of the case and "the General proclaims it at his own risque under his responsibility, both to the government and to individuals." He maintained, however, that under the process of such law "all persons capable of defending the country are subject to such laws and may be tried during its continuance by virtue of such law." 111 Since Jackson had disregarded his advice relative to proclaiming martial law and had assumed full responsibility for his action, there was nothing further Livingston could do in the matter. According to his ruling, the commanding military officer possessed the legal right to arrest and try Loueillier during the continuance of martial law, consequently, he was in no position to take issue with him on this point. Any defense he might offer would be con-

110 Gayarré, History of Louisiana, IV, 600-601.
111 Edward Livingston, Opinion as to Martial Law, in Jackson Papers, XXXIV, 3073-3074.
strued as being in disagreement with his chief and disloyal to his superior officer, therefore he made no attempt to silence his critics.

On March 7, Louaillier's case came before the court martial; the General disturbed the militia March 8; and Louaillier was acquitted the following day. Jackson refused to release either him or Hall and, on the 11th instant, he had the Judge removed from the city and forbade his return until official notice of the peace treaty was received. On its arrival March 13, he ordered the release of the prisoner and allowed Hall to return to New Orleans. The United States District Attorney proceeded with action against Jackson on the charges of contempt of court by obstructing the cause of justice, depriving Louaillier of protection, and the seizing and holding records of the court. On the return date of the warrant, Captain John said, the General's only counsel in court presented an answer to the rule in the form of

113 Ibid., cii.
114 Louisiana gazette and New Orleans advertiser, April 8, 1815. "We refrained during its pendency, from noticing a judicial proceeding on the part of the United States against Major General Jackson which excited so much interest and which terminated last week... At the commencement of the proceedings Mr. Livingston and Mr. Duncan acted as Counsel for General Jackson, but stated in the progress that the general was represented solely by Major Stid."
Jackson's sworn statement which had been prepared by Livingston.\footnote{115}

In the brief, Jackson protested against the unconstitutionality and illegality of the proceedings. He denied the authority of the District Attorney to institute proceedings against him or the Court to punish him for contempt, which, if committed, had not been in court. He maintained that statutory offenses should be prosecuted only on indictments and before a jury. He held that the proclamation of martial law was justified on the grounds of the Governor's reports of disaffection of the people; of the opposition of the legislature; of a sentiments portion of the population; and of the little hope for success except on the regular forces to be sent by the United States. He contended that under the rule of martial law the publication of a libel aids the agent a soldier, his offense enlazable by a court martial and the imprisonment of the judge a matter of necessity. The Court, however, decided against him and he gratefully accepted the sentence of a thousand dollar fine and costs of court.\footnote{116}

A reaction in favor of Jackson occurred before his departure April 10, and, by the end of senior elections in the State were returning to normal. The past eighteen months were important ones for Jackson and Livingston; the incidents

\footnote{115} Hunt, Life of Edward Livingston, 203. Hunt stated he had seen the rough draft of this brief in Livingston's handwriting, much crossed and interlined.

\footnote{116} Louisiana Gazette and New Orleans Advertiser, April 8, 1815.
of this period formed an important link in the chain of events that resulted in elevating one to the presidency and starting the other again on the road to national prominence. Each assisted the other to attain these results; and each continued to respect the outstanding qualities, as well as to exhibit a charitableness toward the weaknesses of the other. If the two, Livingston profited more from the association; he always gave his chief the same efficient, conscientious service that typified his work as aide-de-camp; the General, in return, rewarded his friend with the highest political honors at his disposal.
CHAPTER X

A LOUISIANA LEGISLATOR

The war hardly interrupted the prosperity or hindered the development of the vast resources of the state. Neither the yellow fever epidemics nor the floods of the Mississippi River appeared to have retarded the influx of persons from the other states of the Union. Immigrants continued to arrive in great numbers and the population of the commonwealth experienced a phenomenal increase.¹ New Orleans was developing into a great trade center; thousands of ships visited its wharves annually; and it was the natural market for the upper Mississippi region.² The foreign, intercoastal, and Mississippi River trade were the sources of great wealth and provided the financial sinews necessary to the development of the City and State.³ The agricultural development supplemented the

¹ Warring and Cable, Social Statistics of Cities, History and Present Conditions of New Orleans, Louisiana, 43.
² Ibid.
³ Ibid., 43. "In 1817 the produce of the great valley came to New Orleans in 1500 flat boats and 500 barges. In 1821 the arrival of laden river craft at the levee numbered 287 of steamboats, 174 of barges, and 441 of flatboats."
wealth derived from trade and was the principal occupation of
the people living outside of New Orleans.

Louisiana was giving her attention to and directing her
energies toward internal expansion. Plans were being formulated
for the construction of roads, the building of canals, the
erection of charitable institutions and the establishment of
a system of public schools and educational institutions of
higher learning. The general concern in the social, economic,
and industrial development of the state did not diminish the
interest or lessen the active participation of the people in
political affairs. This interest continued to be positive and
vibrant.

Conditions in New Orleans at this period were never quiet
for very long at a time. In certain quarters, the Governor
continued to be severely criticised for placing the militia
under the command of a Federal officer. He attempted to jus-
tify his actions and silence his critics in his next annual
message to the general assembly. Unfortunately for him, he
made reference to the violent measures of Jackson and thereby
aroused the resentment of many of the General's friends. In
replying to his message, the House of Representatives took

4 John C. L. Andreassen, "Internal Improvements in Louisiana
1824-1837" (M.A. Thesis Ms., 1965, in Louisiana State Universi-
ity Library), 17-22, passim.
5 Louisiana Journal De La Chambre Des Representans, 2 Leg.,
2 Sess., 3-10.
advantage of the opportunity to rebuke the Governor by expressing its "gratitude to Heaven, to the hero who had led the forces, and to the men who served." It further asserted that "where there is so much to admire, we are not disposed to dwell upon some deeds which we cannot approve."6 Claiborne, possessing sufficient political sagacity to realize that the House had spoken the final word upon the subject, wisely allowed the matter to drop.

Under American rule, he was the only executive the people of Louisiana had known, and on the whole he had been an excellent administrator. His thirteen years of service as governor would draw to a close at the end of 1816, and the constitutional provision prohibited his re-election. He was not anxious to retire to private life and sought the position of United States Senator. The election for the six-year term was to be held in January 1817, and his annual message to the general assembly in November 1816 was an excellent campaign document.7 It was most conciliatory, tactful, and complimentary, and even though Claiborne's candidate for governor was not elected, there was still a majority of both Houses in the new administration favorable to his candidacy. The election was held January 13,8

6 Ibid., 16.
7 Louisiana Senate Journal, 2 Leg., 2 Sess., 4-6.
8 Miles' Weekly Register, XI (1816-1817), 430, (February 22, 1817); Louisiana Senate Journal, 3 Leg., 1 Sess., 28.
but unfortunately he never took his seat, as he died November 23 of the same year before Congress re-convened. Henry Johnson, who later served as governor of the state, was elected to succeed him in the Senate.

The 1816 gubernatorial campaign was hard fought and closely contested, and the outcome was in doubt until the final election returns were received. The Claibornes or the American faction supported Joshua Lewis; and the Creoles nominated as their candidate Jacques Villeré, one of their own countrymen. The causes of the rivalry existing between the native citizens and those of foreign origin were fundamental and not restricted to politics. In the absence of an issue, all bitterness would seem to have disappeared; but latent prejudices would be brought into open conflict upon the slightest provocation. The "ancient" Louisianians felt they had been ignored; they were resentful of the American domination; and they were desirous that some of the more important positions being held by the Americans should go to members of their own group. This division in the body politic that remains to the present day became definitely marked during the campaign. The West Florida, the Central, and the Northern sections of the State supported Joshua Lewis, while New Orleans and South Louisiana gave their votes to Villeré.

Livingston, having acquired considerable property in Plaquemines Parish, adjoining New Orleans on the south,
changed his official domicile to this rural parish. In 1816 he was a candidate for the state legislature and was opposed by H. Forstall. Livingston supported Villeré and his contest proved to be as close as the governor's race. The referendum for governor gave Villeré 2,314 votes and Lewis 2,145. The general assembly ratified the action of the people by electing Villeré governor by a vote of forty-three to four. While Villeré carried Plaquemines Parish, Livingston was defeated by Forstall by a vote of forty-eight to forty-three. There were several factors that contributed to his defeat, but the most important was the Batture question. While the citizens of Plaquemines had not been affected in any way by this controversy, it was used so effectively during the campaign that his alignment with the dominant political faction in the state failed to counteract its effect.

In 1818, when party spirit seemed to have disappeared almost entirely, Livingston announced his candidacy for Representative in Congress. Josiah Stoddart Johnston, Thomas Butler, and Pulwar Skipwith also were candidates for the position. The geography of the district was unfavorable to Livingston's candidacy and his only hope for election was dependent upon his

9 Ibid., 4. The vote: Villeré, 2314; Lewis, 2145.
10 Louisiana Journal De La Chambre Des Representans, 3 Leg., 1 Sess., 4.
11 Louisiana Gazette and New Orleans Mercantile Advertiser, July 8, 1816.
12 Ibid., June 15, 1818.
three opponents dividing the votes of the interior section. The district included all of that portion of Louisiana east of the Mississippi River and west of the River from Rapides Parish to the Gulf of Mexico. He recognized the weakness of his candidacy in the interior but counted upon a good majority in New Orleans and South Louisiana where the Creole vote was heavy.

The campaign aroused all of the old prejudices and animosities and a very bitter contest followed. The Louisiana Gazette remarked, "Never perhaps was an election marked with such low intrigue as that which commences today." The results proved that Livingston had misjudged the situation and missed his calculations. Skipwith's candidacy proved to be unpopular, and he received a very small vote. Livingston failed to draw votes from the other two candidates in the interior, but his opponents cut heavily into his New Orleans following, where their combined vote totaled almost one-half his vote in the City. While he carried Plaquemines Parish by a vote of twelve to one, the West Florida district and the territory west of the Mississippi went almost six to one against him, with Butler leading him eleven to one in Baton Rouge. The tabulation of the election returns gave Butler a vote of

13 Ibid., July 6, 1818.
14 Ibid., July 9, 1818.
15 Ibid., July 25, 1818.
16 Ibid., July 21, 1818.
17 Ibid., July 21, 1818.
eighteen hundred sixty-six to thirteen hundred eighty-four votes for Livingston. Johnston ran third and Skipwith was a very poor fourth.\textsuperscript{18}

In 1820, Livingston again was a candidate for member of the state legislature from Plaquemines Parish. Pierre Derbigny, J. N. Destrehan, Abner L. Duncan, and Thomas B. Robertson were the candidates for governor. Robertson and Livingston had led the fight against Claiborne in 1812 and later in the same year, they were opposing candidates for Congress. The former won the election and served the State at Washington for three terms. Livingston supported Robertson for governor and both were elected.\textsuperscript{19} Finally, twenty years after resigning his seat as Representative in Congress from New York, Livingston, the perennial, or rather biennial, candidate for office, was successful in securing an elective office.

The victory started Livingston again upon the political road to national prominence, where he attained greater distinction and renown than perhaps he had contemplated. He was interested in legislative procedure and devoted much of his time and talents to the service of the state. By training and experience he was admirably fitted for the work and brought to the job the benefit of his sound judgment. He was one of the

\textsuperscript{18} Ibid., July 25, 1818.
\textsuperscript{19} Niles' Weekly Register, XIX, (1820-1821), 280 (December 28, 1820), Robertson 1903, Derbigny 1187, Duncan 1031, Destrehan 627; Louisiana House Journal, 5 Leg., 1 Sess., 4 (French edition); Louisiana Courier, July 7, 1820.
most important and useful members of that body and might have rendered the state far greater service had he not returned to the field of national politics.

His desire for office was accentuated by the recent success at the polls. The general assembly convened in New Orleans, November 20, 1820, and on the opening day of the session he was quite conspicuous. He was nominated for the position of Speaker, but received only two of the twenty-eight votes cast, and Armand Beauvais of Pointe Coupée was elected. However, he was assigned to numerous special committees and served as chairman of several of them. In addition, he was appointed chairman of the important standing Committee of Ways and Means.

The question of eligibility of the member-elect from Plaquemines Parish was raised by his political opponents. One of the instigators of the movement to deny Livingston his seat in the House was James Wilkinson who had returned to the state and was living in Plaquemines Parish. He had never forgiven the Representative-elect for his actions during the Burr episode and was attempting to use a possible technicality to even scores. On November 23, the Committee on Elections made a favorable report as to the credentials of all the members, but stated that some question relative to residence had been raised with regard to the gentleman from Plaquemines. Philip Caldwell of Catahoula Parish attempted to have the House disregard

that portion of the report relating to Livingston and seat
him, but a select committee of five was appointed to investi-
gate the charges and further examine the credentials of the
member in question.22

The day following, November 24, Wilkinson presented a mem-
orial to the legislature in which he alleged that Livingston
was not qualified to occupy a seat in that body. He was dis-
qualified on the constitutional grounds of not residing in
the district from which he was elected during the period of a
year immediately prior to the election. In addition, the mem-
ber-elect during this one year period had not owned landed pro-
erty to the value of five hundred dollars. The memorial pre-
cipitated considerable discussion, but was finally referred to
the special committee of five.

The Committee's signed report was submitted through its
chairman, David A. Randall, November 24. The House was inform-
ed that a thorough examination of the charges preferred by Wil-
kinson had been made and the report and recommendations were
based upon the testimony of qualified witnesses who had been
subpoenaed. According to the testimony of Judge Joshua Lewis
of the first district court, he had been a resident of the State
since 1807, and, during this time, he had been acquainted with
Livingston. Often it had been necessary for him to continue
cases in his court where Livingston was one of the attorneys

22 Ibid.
as he knew Livingston was visiting his plantation in Plaquemines Parish. Thomas E. Kennedy, Clerk of the Court, corroborated the statements of the Judge, and numerous other witnesses substantiated the fact that the gentleman had complied with the election requirements. Any number of persons had stated that the Representative had, four years previous, declared publicly his intention of changing his legal residence and, at that time, had been a candidate for the position to which now he had been elected. The investigation showed that he was the owner of a plantation where he often entertained his guests, on which was a steam operated sugar mill. While the title to the hundred thousand dollar property was clouded by a conditional deed of sale, it was nothing more than security. He owned other property in the parish valued at more than the minimum constitutional requirements and his house in the city was rented property. By a vote of twenty-three to twelve, the recommendations of the Committee were accepted and Livingston was officially declared a member of the House.23

Livingston was quite active on the floor of the House during the first session, but during the second session he confined his activities largely to committee work. During the first few days of the session, while his eligibility was still under consideration, he offered practically one-half of the resolutions and motions that were presented. Most of them pertained to such

23 Ibid., 14-15.
legal matters as reforms in civil law practices, criminal law procedures, and the judiciary.

Immediately following Governor Villere’s address to a joint session of the general assembly November 21, the member from Plaquemines moved the appointment of a committee to draft a reply to the Governor. As it was customary to appoint the author of a motion as chairman of the particular committee, he, Moreau Lislet, and Philemon Thomas were charged with this duty. Upon moving to refer that part of the Governor’s message relating to the amelioration of the criminal code to a select committee, he drew the chairmanship and the names of Grymes and Lislet were added.24 To the same three were referred the questions pertaining to the judiciary; but, probably through oversight, the Speaker failed to include Livingston on the special committee on public health.25 Of the six special committees created as a result of his motions the first day of the session, he was appointed chairman of three of the four to which he was assigned. His record for the day was unusual and he had no cause for complaint. From time to time he received additional assignments and on several occasions he was selected to represent the House in joint conferences with representatives from the Senate.26

On November 28, he requested the House to memorialize

24 Ibid., 7.
25 Ibid., 8.
26 Ibid., 38.
Congress to acquire a military road in Plaquemines Parish on each side of the River from Ft. St. Philip to English Turn. While the project was probably desirable, Livingston would have benefited materially from its construction, but his personal interest did not deter him from serving on a joint committee from the two houses to draft the memorial. He was no more successful in securing favorable action on this bill by Congress than he was in persuading the general assembly to increase the salary of the sheriff of his parish.

On December 26, he introduced a bill providing for the control of contagious diseases, and by his vote, February 7, 1821, the act authorizing the Governor to appoint a sanitary officer passed the House by a vote of sixteen to fifteen. He prepared the act providing for a change in the time of making assessments on property and the payment of taxes in New Orleans. He sponsored the request for relief submitted by the masters of vessels in the port of New Orleans, and was largely instrumental in securing favorable action on the bill.

The unwise and parsimonious plan to reduce the necessary governmental operating expenses from twenty to ten thousand dollars annually failed to elicit his support. The vote on this amendment to the general appropriation bill was equally divided.

27 Ibid., 13.
28 Ibid., 17.
29 Ibid., 77-78.
30 Ibid., 85.
31 Ibid., 42.
32 Louisiana Acts, 5 Leg., 1 Sess., 116.
in the House, but the Speaker cast the deciding vote in the negative. 33 Livingston consistently voted in the affirmative on all bills concerning the improvement of the public school system, the judicial procedures in all the courts, and the betterment of undesirable conditions in the state.

In addition to the routine legislative procedure, Livingston devoted considerable time and effort to the problems relating to judicial and social reforms. Here he rendered his most effective service and made his greatest contributions. The practice of securing divorces by legislative action was repugnant to him, as he considered it a legal rather than a legislative function. His remedial acts prescribing the procedure to be followed in securing divorces and granting the district courts the right to dispose of such cases failed to be enacted into law. 34 He was also unsuccessful in his attempt to establish the practice of trial by jury in the Supreme Court 35 and provide for the right of appeal in criminal affairs. 36 These efforts, though unsuccessful, give an index to his progressive and constructive statesmanship.

The disorders and crimes occurring in New Orleans following the close of the war occasioned the governmental authorities much concern. Villéé called the attention of the general assembly to the existing conditions in his inaugural ad-

33 Louisiana Journal de la Chambre des Representans, 5 Leg., 1 Sess., 75. 
34 Ibid., 80. 
35 Ibid., 79. 
36 Ibid., 82.
Gress, 1816, and recommended that attention be given the matter. In 1819, he informed the legislature that as a result of its wise action in creating the criminal court a decided improvement in the conditions had resulted, as the three judges had fearlessly discharged their duties. By 1831, improvement of conditions had made it possible to reduce the number of judges by one, but public attention had been directed to the problem of further eliminating crime by providing for the proper punishment and treatment of the lawbreakers.

In his inaugural address to the general assembly, December 18, 1820, Governor Robertson devoted considerable time to the discussion of the above problem. His clear, intelligent analysis of the question, and his specific recommendations reveal an unusual grasp of the situation. The prevalence of crime among the youth was especially deplored, and the practice of placing young, first offenders in the same prisons with hardened criminals was most severely criticised. He condemned reform schools as training institutions for crime and asserted that proper methods "had never been invented for the punishment of crime." Solitary confinement, chains, and even death had not solved the problem and the debtor prisoners in the "same quarters with murderers and robbers is repugnant to all sentiment of justice and humanity." The state of affairs was as blameable in principle, he maintained, as it was fatal in effect, and the power of the State should be applied to the solution of the
problem. The legislature should, he urged, give careful considera-
tion to this important problem and, at least, should
make provisions for the erection of a penitentiary where the
violators of the law could be incarcerated in a suitable build-
ing under proper conditions. 37

The striking similarity of the Governor's ideas upon this
subject and those which Livingston had held for many years
would indicate that the latter had inspired this part of the
message. It was logical that the question of the erection of
a penitentiary should have been referred to Livingston's Com-
mittee, and the act providing for its erection was undoubtedly
written by him. 38 While the House approved the act, it failed
to become a law during the current session; however, during the
second session he was able to bring it to a successful conclu-
sion. 39 The act authorized the Governor to proceed with its
construction. 40

While Livingston was in sympathy with the plan providing
for the erection of a penitentiary, it was his keen concern
in the criminal procedures as a whole that influenced the gen-
eral assembly to provide for a revision of the entire criminal

37 Ibid., 33-35.
38 Ibid., 90.
39 Ibid., 5 Leg., 2 Sess., 62.
40 Ibid., 5 Leg., 1 Sess., 88.
Undoubtedly, he drew the Act of 1820, providing for the revision, in its entirety, as it is a clear expression of his mature thought and judgment and a definite statement of the thesis of his great work, the Penal Code. The whole scheme was his own; it was conceived deliberately; the entire proposed reform and the grounds for it were fully matured; and the whole was put in outline before it was given to the public.

The Act, which was approved by the Governor, February 10, 1821, recites:

A person learned in law shall be appointed by the Senate and the House of Representatives at this session, whose duty it shall be to prepare and present to the next General Assembly, a code of criminal law, in both the French and English language designating all criminal offenses punishable by law; defining the same in clear and definite terms; designating the punishment to be inflicted on each, laying down the rules of evidence on trials, directing the whole mode of procedure and point out the duties of the Judicial and Executive officers in the performance of their functions under it.

A joint session of the House of Representatives and the Senate was held February 12, to select the individual to prepare a code of criminal law for the state. Of the forty-five votes cast, Livingston received thirty, Moreau Lislet ten, and Abner L. Duncan five. The day following, Livingston submitted a report regarding the establishment of a house of correction in which he again enunciated his thesis on penal reform.

41 Ibid., 82.
42 Louisiana Acts, 5 Leg., 1 Sess., 30-32.
43 Louisiana Journal De La Chambres Les representants, 5 Leg., 1 Sess., 84.
The practice of housing first offenders with habitual criminals was severely criticized. He maintained that such practices would result in making confirmed law breakers of the youth of the state, as they would be taught the art of law violation by those associates who were adept in such practices. The indiscriminate use of the power of pardon was deplored, as repeaters were liberated while it should be restricted to cases involving first offenders. Provision should be made for the segregation of the prisoners, with especial attention being given to the care of the youthful first offender.44

Livingston was as interested in clarifying the civil law of the state as he was in penal reform. The Louisiana civil law was a maze of laws drawn from the Spanish and French with the addition of the English common law following the acquisition of the territory by the United States. The first serious effort toward codification of the civil laws was made by the general assembly in 1819. On March 3 of that year, the Legislature authorized the translation of the Partidas or Spanish Law into both the French and English languages. Moreau Lislet and Henry Carleton who had already begun the work were the officially designated translators. The legislature further provided that their work was to be approved and certified by Livingston, Derbigny and Etienne Mazureau, the Attorney-General of the state. The translators were to report to the general

44 Ibid., 86-87.
assembly during the current session; consequently, Livingston, in addition to his legislative and legal duties, found it necessary to devote considerable time to this difficult task.

Moreau Lislet and Carleton, in making their report to the House during the last days of 1820, requested an extension of time. Livingston's committee in its report to the House, January 3, 1821, highly complimented the work of the translators. The definite statements concerning specific portions of the translation indicated clearly that the examiners had taken their assignment seriously and were pleased with the work as far as it was completed. Realizing the absolute necessity of the translation as a prerequisite to the preparation of the civil code, they recommended that an extension of time be granted, and that the legislature appropriate to each translator an additional sum of five hundred dollars, all of which was granted.

The hundred-day legislative session was a busy one for Livingston, but he enjoyed the period from November 20, 1820, to February 17, 1821. The time devoted to this work, however, proved to be valuable to him and the state. His interests were sufficiently broad to enable him to participate intelligently in the numerous discussions directed toward the solution of the varied and, in many instances, ordinary problems. The respect which he commanded in the general assembly was indicated when that body designated him to procure a Penal Code which, in turn, brought to him an international reputa-
tion as a scholar, statesman, and jurist.

During the recess of the legislature, Livingston attended to his practice of law, his business affairs, and worked upon the Code. When the general assembly re-convened January 7, 1822, he again was in his seat, but was not so active on the floor of the House as he had been during the previous session. He failed to receive an appointment on any of the important standing committees, but was assigned as chairman of such important ones as the judiciary and the penitentiary. On January 10, he was selected to represent the House in a conference with designated members of the Senate to frame a protest to the general government as to "the alarming situation of our fortifications." He also was designated one of the three representatives of the House to serve on the joint committee of the two Houses to investigate "the present judicial system" and report as to the changes deemed necessary. His special assignments and the work on the Penal Code kept his time well occupied in a field of work which particularly interested him.

Several bills he had sponsored during the first session failed to receive legislative sanction, and to these he gave

46 Ibid.
47 Ibid., 8.
48 Ibid., 13.
his personal attention and in most cases he was successful in having them enacted into law. Three of the most important of these questions dealt with the preservation of the trial by jury, the establishment of the mode of suing for divorce, and the designation of specific dates for the sessions of the Supreme Court and the district court in New Orleans. In addition, he introduced several bills designed to effect certain necessary changes in the existing practices of the Supreme Court.

Robertson in his message to the general assembly, January 9, devoted considerable time to the questions of the jurisprudence and the preparation of a code of laws to be published in "the two languages of the country." The legislature was requested to procure the means for the people of the state to become familiar with its laws. It was particularly complimented by the Governor upon its selection of Livingston to prepare a criminal code, for his hasty examination of the compilation had convinced him that it would prove useful to the public and add dignity to the juriconsult whom they had put in charge of it. In addition, he requested that additional courts be created and changes in court procedures be made in order to expedite justice.

Moreau Lislet, Chairman of the Committee on the Revision of the Civil Code, made a report to the House February 15. In

49 Ibid., 26.
50 Ibid., 36.
51 Ibid., 7-8.
reciting the difficulties which confronted the Committee in their effort to revise the existing code, it was stated that the members were of the opinion that there was not sufficient time during the current session of the legislature to perform the task in a satisfactory manner. It was urged that a more thorough study of the Partidas should be made and an investigation of the existing code with reference to the introduction of the common law of England be made before the work was undertaken. A code would not be satisfactory unless due regard were given to the entire system which required: careful consideration of the several parts of the civil law; harmonizing and unifying all details; including all amendments and corrections; and compiling a digest of all laws relative to commercial transactions, judicial actions, and practices in the civil courts. This research, evaluation, and compilation should be undertaken by lawyers well versed in the civil law and upon the completion of the task their work should be given legislative sanction. Action should be deferred until it was decided to comply with these provisions, for otherwise it would result in a revision of the Code in its present state which would be entirely useless.52

Moreau Lislet, Charles Bushnell, and Livingston had submitted an excellent report and it was favorably received by the House. A resolution, introduced by Grymes and later

52 Ibid., 45.
amended, incorporating the recommendations of the special committee was passed by the House and the Senate. Three juriconsults were to be selected by a joint vote of the Senate and the House to revise the Civil Code, the Code of Procedure, and prepare a Commercial Code. After the approval of the concurrent resolution by the Governor, a joint meeting of the two Houses was held at two o'clock March 14, to elect the three juriconsults. Of the forty-eight members present and voting Moreau Lislet received forty-three votes, Livingston twenty-five, Derbigny twenty-five, Workman twenty-three, Mazureau twenty-one, J. Smith three, Moreau two, and Carleton one vote. Lislet, Livingston, and Derbigny were declared the duly elected juriconsults to revise the Civil Code, and Code of Procedure, and prepare a Commercial Code.

On March 1, 1822, Livingston reported for the Penitentiary Committee that had been "appointed to examine the several plans for a penitentiary transmitted by the Governor to the General Assembly." After having carefully examined and compared the several plans, considered all the circumstances, the Committee recommended the selection of the South Carolina plan as uniting

53 Ibid., 74.
54 Ibid., 75; Louisiana Acts, 5 Leg., 2 sess., 108, "an adequate sum of money shall be allowed to each of the said juriconsults... and that one thousand dollars shall be immediately paid to each of them on account thereof in advance."
all of the advantages specified in the resolutions of the general assembly. The estimated cost of duplicating such a plant was three hundred thousand dollars, but by reducing the plan to provide for the confinement of only two hundred convicts and for their employment at hard labor in solitude, the cost could be reduced in the amount of one hundred thousand dollars. "If an ill-judged economy prevents the erection of such buildings as are necessary for the classification and proper employment of the convicts," the system will be as in other states, inefficient. While due regard had been given to economy in the selection of a plan, the Committee had not rejected the best one available "on account of some additional expense." Since the utility of the penitentiary system and "perhaps the very existence of that mode of punishment, depends on the liberal and wise plan on which the buildings are to be erected," the Committee prepared and submitted a bill for the erection of a prison incorporating the above provisions. 55 The act providing for the erection of a penitentiary passed both Houses and the Governor was authorized to proceed with its construction. 56

During the latter part of the session, Livingston submitted a report to the legislature upon the progress made in the

56 Ibid., 62.
preparation of the Criminal Code. The general assembly instructed him to proceed with its completion; however, the task was not finished until some years later when he was no longer a member of the House of Representatives.

Livingston's career in the legislature was not unusual; he was one of the more important members of the House, but made no greater contributions than did Moreau Lislet, Grymes and several others. The greater part of his time and efforts were devoted to routine matters, and his activities did not stamp him as the outstanding personality of the general assembly. The experience was valuable to him, nevertheless. He had been honored with public office in his adopted state; he had received appointments on special commissions that would bring to him an international recognition of his scholarly attainments; and it prepared the way for his re-entry into the field of national politics where his greatest work awaited him.

When his two year term as Representative from the Parish of Plaquemines expired in 1822, he decided not to stand for re-election. Instead, he again sought a seat in the House of Representatives in Congress and this time he was successful.

57 Ibid., 80.
58 Ibid., 77; Louisiana Acts, 5 Leg., 2 Ses., 108, "and earnestly solicit Mr. Livingston to prosecute this work according to said report, that two thousand of the same together with the part of the projected code hereeto annexed be printed in pamphlet form, one thousand of which shall be printed in French and one thousand in English under the direction of the said Edward Livingston, Esqr."
CHAPTER XI

THE CODIFIER

The genesis of the Louisiana codes is to be found in the numerous conflicting statutes and judicial decisions and the general recognition of the need of eliminating all contradictory principles of law. While a prerequisite for the preparation of a code is a general knowledge of the subject, an author in addition must possess the training and ability to utilize all available source materials. The work calls for an analytical mind, and the compiler should have selective and evaluative rather than creative ability. The Louisiana General Assembly acted wisely in selecting Derbigny, Moreau Lislet, and Livingston to compile a Commercial and a Civil Code and in appointing Livingston to prepare a Penal Code for the State.

In a division of the work, the Committee assigned Livingston the task of preparing the Commercial Code in addition to collaborating in the work on the Civil Code.¹ Livingston's

work on these two individual assignments did not preclude his making valuable contributions to the Civil Code. It is no disparagement of his ability or work that neither of the two codes which he himself prepared received official sanction.

In the preparation of the Commercial Code, Livingston attempted to select from the numerous conflicting French, Spanish and American laws those decrees, ordinances, and statutes that were acceptable to the commercial interests and would serve as the basis of a uniform course of procedure in the relations of the general public and those engaged in trade. The two hundred fifty-two page Code, divided into two Books, Commerce in General and Maritime Commerce, contains one thousand nine hundred eighty-seven articles. Hardly a point can be raised that is not covered either in one of the five main divisions of Book One or under one of the seven titles of Maritime Commerce.

The Code, as submitted to the Legislature, 1825, deals with all questions relating to the activities of individuals engaged in the various commercial pursuits. Not only are such terms as Merchants in General, Partnerships, Commercial Agents, Brokers, ship owners, captains and crews of ships defined, but their rights, obligations, responsibilities, and liabilities under various conditions are fully set forth. The field relating to banking, with the bills of exchange and the various kinds of insurance, are exhaustively treated. After defining ships as movable property, it proceeds to recite the conditions under
which and describe the manner by which ships may be seized to satisfy the payment of debts. 2 The failure of the Legislature to give official sanction to Livingston's work may be due in part to the adoption of the Civil Code which clarified many of the points at issue and in part to the great detail with which he handled the problem.

The Roman law was the basis of both the French and Spanish Louisiana Colonial law and, while Governor O'Reilly, in 1769, had officially abolished the French laws in the colony, they still possessed a strong influence upon the French Creoles. When the United States acquired possession of the Territory, 1803, the Spanish Partidas was in force with the exception of certain criminal laws and acts pertaining to the Catholic religion. 3 The American emigrants attempted to change the existing laws by introducing in toto the English common law practices found in all of the other courts of the United States.

The congressional statute providing for the occupation of the territory left the fundamental law of the land unchanged by declaring that the civil, military, and judicial powers exercised under the existing system were to be distributed in

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accordance with the wishes of the president. The Act Creating the Territories of Orleans and Louisiana, 1804, made no changes as it recited that the laws in force in the territory "shall continue in force until altered, modified or repealed by the legislature." Practically the same provision is found in the Congressional Act of 1805 relating to the organization of the Territory of Orleans. The policy of the Federal Government was one of non-interference with local conditions which was not appreciated by the newcomers who were demanding the introduction of the common law.

The necessity of reducing the maze of laws of the territory into a single practical system was recognized by the members of the legislature in 1805. Moreau Lislet was selected for the work, and his Digest of Civil Laws, based upon the Code of Napoleon was given official sanction March 31, 1808. His work failed to remedy conditions, as the entire French and Spanish laws were not repealed, but only those acts that conflicted with the provisions of the Code.

5 Ibid., 162.
6 Ibid., 172.
7 Acts Passed at the First Session of the Legislative Council of the Territory of Orleans, 416-54.
Neither the Congressional Enabling Act of 1811 nor the Act for the Admission of Louisiana of 1812 remedied the conditions. The framers of the State Constitution of 1812 made no attempt to clarify the conditions, as that instrument, in Article IV, Section 11, recites that "All laws now in force in this territory, not inconsistent with this constitution, shall continue and remain in full effect until repealed by the legislature." Finally, in 1819, the State Legislature gave serious consideration to the question of providing a remedy for the existing evil, of being obliged in many cases to seek our Laws in an un消化- ed mass of ancient edicts and statutes, decisions imperfectly rendered, and contradictory opinions of Jurists; the whole rendered more obscure by the heavy attempts of commentators to explain them.

Recognizing the necessity of translating the Partidas into French and English before a complete code could be written, Moreau Lislet and Carleton had begun a translation of this Spanish law prior to 1819. In that year, the Legislature gave official recognition to their work by providing for an examination of their translation when finished by competent jurists. If the examiners, Derbigny, Livingston and Mazureau were satisfied with the accuracy of the work, it was to receive official sanction. The Legislature further provided that each translator was to receive three thousand five hundred dollars for his work.

9 Ibid., 220-26.
10 Ibid., 108.
12 Louisiana Acts, 4 Leg., 1 Sess., 44-46.
With the translation of the Partidas completed, the Legislature took the first step toward the writing of a Civil Code when it selected the "three jurists," instructed them to proceed with the work, and authorized the payment of one thousand dollars to each. The three men were eminently qualified for the task, and each supplemented the work of the others. Derbigny's knowledge of the Spanish laws gained by his work on the translation of the Partidas; Lislet's experience in the work on the Code of 1808; Livingston's understanding of the Roman, French, Spanish and English systems of jurisprudence; all made possible an early beginning and a satisfactory prosecution of the work.

In its report on the progress of the work to the General Assembly, February 13, 1823, the Committee recognized its function to provide a remedy for the evils existing in the Digest of Civil Law in force. The adoption of the Digest had been an advance toward the clarification of the law, and the establishment of system and order in the several points of jurisprudence. It was an advance because it removed the necessity of referring to the Roman and Spanish authorities on these subjects, and "because it demonstrated the practicability of a more extensive reform." The Digest, however, was imperfect, as it did not purport to be a legislation on the whole body of the law, nor a

13 Louisiana Courier, October 16, 1807, carried an advertisement announcing the publication of a Code of Civil Laws, by Edward Livingston that included the "Code of Ancient Jurisprudence... the Opinions and Institutes of the Caesars... a digest of the Pandects and Edicts of Justinian."
reference to that which existed before. Consequently it be-

came necessary to refer to "all those cases (and they were many)
which it did not embrace."14

"In the Napoleon Code, that rich legacy which the expiring
Republic gave to France and the world," the report continued,
"we have a system approaching nearer to perfection than any
which preceded it." That code was to supersede all the other
laws of the country and "to for future cases the only rule of
conduct." The law putting it into effect declared that from
the time it went into operation, the "Roman Laws, the Ordin-
ances, the general or local customs, the Statutes and Regula-
tions shall cease to have any force" in the matters which
"form the object of the Code."15

The Committee felt it was its duty to "comprise in the
several codes we were directed to prepare," all the rules it
deemed necessary for stating and defining the rights of indi-
viduals in their personal relations to each other. Force and
effect would be given to the different modes of acquiring, pre-
serving and transmitting property; rules relating to rights of
individuals, civil redress of injury offered would be defined;
and attention would be given to the principles that had receiv-
ed the sanction of time and the preceding legislators. The
Committee would draw from the Partidas, the existing digest of
the Louisiana laws, the stores of English jurisprudence, the

14 Livingston, Report on Revision of the Civil Code, 3-4.
15 Ibid., 5-6.
codes of France, and the Roman codes. 16

No change would be made unless there was some inconvenience with the existing law and no new provisions would be introduced which had not been examined carefully and every consequence considered. In all cases, laws would be borrowed from some code "of which the operation is known, rather than from our own resources." 17 When written laws were to be used they would be framed in accordance with the spirit of the legislation on which "they are to be engrafted." 18

In exercising discretionary power, the judge was to be confined to the application of facts in cases of construction only. He should give voice, utterance and effect to legislative decree, and in case of no law he could neither pronounce, nor expound, nor apply it. In cases where no precedent existed in civil cases he should make one, but his decisions unless based upon the code should not possess the force of precedent unless sanctioned by legislative will. In order to relieve the courts of the necessity of referring to all existing laws before deciding the law and giving an opinion doubting its legality as shown later by some obscure decision, the repeal of "all former laws and usages defining civil rights and indicating the means of preserving and asserting them," was recommended. 19

In concluding the report, the Commissioners asserted that

16 Ibid., 6.
17 Ibid., 7.
18 Ibid., 8.
19 Ibid., 9.
in their work, they were actuated by the desire that the code would be practical and be able to furnish the citizens with a single book,
in which each may find an intelligible and concise rule to ascertain his rights, direct him in his duties, regulate his contracts, explain his civil relations, and guide him in his application for justice while the other work [Penal Code] to which we have alluded, unconnected with this, will complete the system, and shew him what acts are offense, and what penalty is attached to their commission.20

The report of the Committee, signed by Edw. Livingston, Moreau Lislet, and P. Derbigny in the order listed, was acceptable to the General Assembly. The new Civil Code for the State of Louisiana, which has served until the present as the basis of succeeding codes, was approved by the Legislature April 12, 1824.21 On May 20, 1825, after having been distributed to the officials of the state, it was officially promulgated and became operative one month subsequent thereto. "Louisiana thus enjoys the honor," says the Washington Daily National Intelligencer, "of having made the first effective movement in the world of legal reform and was fortunate in possessing a citizen [Livingston] so well qualified to fulfill the important design which the Legislature of the state had the wisdom to adopt and persevere in."22

21 Louisiana Acts, 6 Leg., 2 Sess., 172-79.
The week following the selection of the Committee on the Civil Code revision, Livingston submitted to the General Assembly a preliminary report relative to the progress of his work on the Penal Code. The detailed report covering the entire plan was approved, the author was instructed to proceed with its completion, and the Legislature voted him one thousand dollars on account. Consequently, during the next three years Livingston worked concurrently upon the three codes in addition to attending to his legal practice and serving in the national legislature. In May 1824, during the recess of Congress, Livingston and his family resided at 60 Broadway, New York, where the Penal Code was finished. On the night of its completion, the entire work with the exception of some notes and a few pages at the printers was destroyed by fire in his library.

The loss seemed irreparable, but, characteristic of the man, Livingston refused to be daunted by obstacles. Facing the tragedy calmly, he was again at work on the project the next morning. As the work progressed he found that much that he had done was easily recalled, and within two years the Louisiana Code was ready for submission to the Louisiana Legislature. Probably owing to its provisions of radical departure from existing practices, it failed to receive the

25 New York Mercantile Advertiser, November 14, 1824; Louisiana Courier, January 17, 1825.
legislative sanction necessary to make it the law of the State. The plan was opposed vigorously by a large number of judges who resented the provision to restrain them from following precedent in rendering a decision unless sanctioned by legislative enactment. Judge Seth Lewis, of the fifth judicial district, issued a pamphlet attacking the program. According to a correspondent in the Courier, "Judge Lewis shudders at the idea that Mr. Livingston has dared to place some limits to the boundless powers hitherto granted to Judges, as regards the punishment of what is termed contempts of court." The writer suggests that "one should peruse [in the pamphlet] the lamentations of Judge Lewis" for "It is then that one can see at full length... the sad fate reserved to judges deprived of the power of deciding arbitrarily and without appeal." He maintained that, with few exceptions, it was the judges "who voice opinions against the Code," and "Self is the only object in the meditations of such men" whose career is "closed except to draw pay." Had the author continued as a member of the Legislature and remained in the State, he may have overcome the indifference, objections and fears of that deliberative assembly by his personal influence.

While in Congress, Livingston prepared a uniform System of Penal Laws for the United States. It was similar to that

26 Louisiana Courier, January 30, 1826.
27 Ibid., February 6, 1826.
28 Ibid., February 4, 1826.
which he had prepared for Louisiana, with the addition of questions relating especially to the General Government. It provided for "offences against the Sovereign Power of the United States" and Offences Against the Laws of Nations." The Code was printed by order of the House in 1828, but was followed by no legislation, probably for the same reasons that existed with reference to the Louisiana Code.

Livingston's approach to and solution of the penal problem had been clearly indicated in his official acts and communications. His letter to the President of the Mechanics Society of New York in 1803, his work in 1820 on the special legislative committee relative to providing a penitentiary for Louisians, and the concise and exact phraseology of the act authorizing the preparation of a code of penal reform, state succinctly his philosophy upon the subject. His object was to ameliorate and not to avenge society; to reform the criminal and to prevent crime; and to clarify existing laws and write them in language comprehensible to all the people.

For an appreciation of the importance of Livingston's project, it is necessary that some attention be given to the sources, the history, and the condition of the criminal laws as they existed in 1821. The laws, statutes, and ordinances of France

were operative in the colony until 1769 when Spain came into possession of the territory and promulgated its whole system of laws for the province. These laws remained in force until 1803, when the United States came into possession of the territory. The laws of Spain were not repealed in the territory by the new government, but, in 1804, Congress put into operation certain laws of the United States. While the right of trial by jury and the writ of habeas corpus became a part of the law of the territory, all laws presently operative in the territory continued in force unless changed by the legislature. 30

In 1805, the Territorial Legislature specified a limited number of ordinary crimes and misdemeanors. It declared that the offences enumerated were to be construed and tried according to the common law of England, but offenses, other than those listed, remained subject to the definition and mode of punishment prescribed by the Spanish laws which were strictly a part of the law of the state. 21 The Constitution of 1812 had made no effort to clarify the situation and, in 1814, Governor Claiborne complained to the legislature of the confusion that existed in the penal jurisprudence, composed, as it was, of the common law, the statutory law, and the various modifications of the Roman law found in the laws of the French and Spanish nations. Already there were so many acts amendatory

30 Ibid., I, 96.
31 Ibid., 98-101.
The supplementary to former acts, he stated, that research was made extremely difficult. The State Legislatures failed to give consideration to his recommendations and, as late as 1821, none of the Spanish penal laws had been abrogated.

While many of the old Spanish laws might be practically obsolete in Louisiana, they remained a dangerous part of the law of the State. Among the dangerous unrepealed laws was that dealing with infancy in Book Seven of the Partidas called 

Disfamieniento and that known as falsedades or crimen falso. In the latter, among other provisions it was made a criminal offense for a lawyer to betray the secrets of his client or purposely cite the law falsely punishable with banishment and confiscation of all property. The same punishment is provided for those changing their names for more honorable ones and for women feigning maternity and producing counterfeit heirs. By the same Code, not only were adulterers, seducers, and their agents punishable with stripes and confinement, banishment, confiscation of property or death, but their offenses were subjected to severe definitions and harsh rules of evidence. Even vestiges of the system remained which inflicted bloody penalties upon the crimes of Judaism, heresy, blasphemy, and which regulated torture of the pillory, public flogging, and burning to death.

The Spanish system of laws did not furnish all of the penal

\[^{32}\text{Ibid.}, 134-38.\]
\[^{33}\text{Ibid.}, 144.\]
\[^{34}\text{Ibid.}, 102-115.\]
that needed to be eliminated. There was much in
the common law of England relating to definition, evidence, and
procedure that should be omitted as well as certain provisions
incorporated in the Territorial Act of 1805. There existed a
definite need for clearness and certainty in place of vagueness
and mystery and for a written law that would, as far as possible,
supersede precedent, custom, and tradition.

Livingston used as material for his Penal Code, the laws
of the Partidas, other statutes of Spain, the Code of France,
the English common law, and all other available information on
the subject, gleaned from books, secured by correspondence, and
from personal investigation. The influence of Montesquieu, Bent-
ham and other social reformers of Europe as well as of America
is reflected in his work. He has attempted to define clearly
and fully the rights of individuals in their personal rela-
tions to each other and to substitute remedial legislation for
vindictive laws. The work was far in advance of his time and
shows that Livingston was desirous that Louisiana should lead
the age in humanitarian legislation.

In the two elaborate preliminary reports to the General
Assembly, Livingston reviewed the existing conditions, recited
the difficulties he was encountering in the preparation, and
submitted for approval the plan of his proposed system from

35 Ibid., 84-87.
36 Ibid., 174.
which he made but few departures in its execution. The system consisted of a Code of Crimes and Punishments; a Code of Procedure; a Code of Reform and Prison Discipline; and a Book of Definitions. To each of the four Codes was prefixed an elaborate Report, in which its principles, purposes and provisions were fully explained. It was recommended that there be legislative action especially designed to abolish all constructive offences and all distinctions between strict and liberal constructions of penal statutes. It was proposed that enactments be made which would forbid any departure from the plain letter of the written law, and required the courts to acquit an accused when criminally prosecuted under an ambiguous act, the same to be reported immediately to the Legislature.

His attempt to introduce remedial legislation finds expression in his effort to abolish capital punishment and his plan to reform offenders. As a practical reformer, the importance of a proposed change did not rest upon a narrow doctrine or a precise theory of penal law. The grounds upon which he urged the abolition of capital punishment were not those of a sentimentalist. In opposition to the lex talionis, he offered, in the true interest of society, the substitute of solitary life imprisonment as being a more effective public example than death.38 "I have found," he stated, "that the punishment of death has no terror upon a common thief; indeed,
much more the subject of ridicule among them than of serious deliberation." Again he continued, "The certain approach of an ignominious death does not seem to operate upon them, for after the warrant has come down, I have seen them treat it with levity."

The most original and probably the most important feature of the proposed penal legislation was the establishment of public workshops to provide employment for all who were in need of the bare necessities of life. The criminal ranks drew their recruits from those who either were unable to secure employment or were able to work but refused to do so. Provision was to be made not only for the punishment of crime, but, in a large degree, for preventing it by placing one central agency in charge of the administrative machinery of the workhouse, the workshop and the reform school. As independent organizations, these agencies had failed to function efficiently and effectively: the agency directing the execution of the penal laws could protect society by acting only after crimes had been committed; the organization charged with the administration of the poor laws was limited to the care of the needy and could exercise no control over them; consequently, each was a preparatory school for the other and the persons of poverty and crime were shunted backward and forward without benefit to

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39 Ibid., 46.
40 Ibid., 529.
either themselves or the community.

As society was obligated to support its members who were incapable of supporting themselves, it should possess the right to pass upon their incapacity. This right could be exercised only when a designated agency of society was clothed with supervisory authority over all persons who either were incapable of support or pretended to be so, or desired to work but lacked employment. The whole question should be dealt with as a unit and a central agency should be placed in complete charge of the whole. Vagrants and beggars were to be taken into custody immediately and each assigned to his proper place. Persons unable to work were to receive simple support; unfortunate able and willing to work, but unable to secure employment, were to be furnished temporary subsistence and occupation; and individuals capable of work but refusing to earn a livelihood were to be compelled to do so.

In conformity with the uniform provisions of the entire system, all persons were to be classified and separated by sexes in such manner as to guard, as far as possible, against social contamination. Illegal idleness would no longer possess the appeal which the existing systems gave to it and would be shunned by many whom it presently attracted. The proposed machinery for the operation of the system contemplated: a House

41 Ibid., 533-34.
42 Ibid., 536.
43 Ibid., 540.
of Detention; a Penitentiary; a House of Refuge and Industry; a School of Reform; all under the general superintendence of five inspectors. One chaplain and one physician would be sufficient for the four; but one warden and one matron would be required for each institution. In addition, a clerk would be required for the Penitentiary and one teacher each for the School of Reform and for the Penitentiary. 44

The House of Detention was designed to be a place of simple imprisonment of those persons whose liberty, for the good of society, must be restrained. This group consisted of "either those upon whom imprisonment is imposed merely for the purpose of securing their appearance when the purpose of justice requires it or those upon whom it is inflicted as a punishment." 45 The House was to be divided into departments, to keep separate while in confinement, those held for investigation, those accused of misdemeanor, and those charged with crime.

The careful classification of individuals prior to the trial was urged as strongly as that following conviction and for the reason, among others, that it was intended to discriminate between culprits. 46

The Penitentiary was the subject of Livingston's most intense study. He believed that while education could not be expected to produce uniform reformation, yet it would cause

44 Ibid., 584-85.
45 Ibid., 541.
46 Ibid., 543.
most convicts to emerge from the penitentiary improved in char-
acter and in some instances would work a total reclamation to
industry and virtue. He secured statistics and information
from the other states and from Europe and made a careful study
of the history of the penitentiary systems of Massachusetts,
New York and Pennsylvania.47 While parts of several of the
existing systems possessed value, he did not approve of any in
operation. He concluded that the most desirable system that
could be devised would provide for solitary penal confinement
of every convict. The prisoner was to have sufficient whole-
some but coarse food, and human attention only in the case of
physical disability and religious instruction. The prisoner
of good conduct, desirous of reforming, could secure a better
diet, partial relief from solitude, and visitors at stated in-
tervals by perseverance in labor, obedience, and moral conduct.
Following a probationary period, the convict might be admitted
to a class for instruction and after a long probationary period
he would be permitted to work outside of the prison and receive
on discharge a portion of the proceeds of his labors. Deserving
convicts, on being discharged, would receive a certificate of
good conduct, industry, and skill in the trade learned or prac-
ticed while in prison, which might enable him to regain the con-
fidence of society. These advantages were liable to suspension
and forfeiture through idleness, irregularity or lapse of good

47 Ibid., 507-523.
Disclaiming that his theories were too refined to be adapted to convicts, he contended that, "Convicts are men." Their minds were moved in the same springs that give activity to others; "they avoid pain with the same care, and pursue pleasure with the same avidity that actuates their fellow mortals." It was the false direction only of these great motives that produced the criminal actions which they commit. To turn them into a course that would promote the true happiness of the individual, by making them cease to injure that society, should be the great object of penal jurisprudence.

| Their nature was not so inferior as to be incapable of elevation, nor so bad as "to make any amelioration impossible." Crime was the effect principally of intemperance, idleness, ignorance, vicious associations and poverty—not of any defective natural organization. The laws that permitted the continual exercise of these conditions were themselves the sources of those excesses which "legislators falsely ascribe to the Supreme Being." Every plan hitherto offered to remedy existing conditions was manifestly defective, because none had contemplated a complete system, and partial remedies never succeed. While disclaiming a perfect system, Livingston maintained that the principles upon which his plan was founded were not discordant, that it had unity of design, and "embraces a greater combination of provisions, all tending to produce the same result,

48 Ibid., 526-58; ibid., II, 565-77.
49 Ibid. II, 562.
50 Ibid., 563.
than any that has yet been practiced."\(^51\)

To avoid the relapse into evil courses arising from the inability to find a sympathetic society and lawful work following an honorable discharge from prison, the House of Refuge and Industry was to be established. Here the discharged convict holding a certificate of good conduct would be able to find work. This establishment would have two departments, one for voluntary and one for forced labor. In the former, those individuals physically able and desirous of earning their livelihood, but unable to secure employment would find an occupation and receive compensation for their work. In the latter, the able bodied beggars and the willful beggars would be placed the moment they were detected practicing their vocations. Both classes, however, would receive the hospitable care of the establishment and on leaving it would receive credentials attesting to their good conduct provided they deserved it.\(^52\)

The last part of the proposed plan of a penitentiary system was the School of Reform. It was the designated place of punishment of all convicts under eighteen years of age sentenced to any term of imprisonment for less than life and for the confinement of all vagrants committed under the same age. Provisions were made for a complete separation of the sexes and the assignment of each prisoner to a separate dormitory. Inmates were to be employed in open courts within the enclosure or shops, and for each division there was to be a school and

\(^51\) Ibid.
\(^52\) Ibid., 564-66.
an infirmary. Each inmate would receive instruction in one of the mechanical arts and, if necessary, would be required to apply it, with only certain intermissions set aside for meals, instruction, relaxation, and sleep. A competent teacher would be placed in charge of the instruction and the discipline would be persuasive so long as it would serve, but coercive when the conduct required. 53

The inmates of the School of Reform were to be discharged either at the expiration of their terms of service or by apprenticeship. Except by apprenticeship, no male under twenty-one or female under nineteen years of age was to be discharged notwithstanding the term of service prescribed in the sentence. In the instance of discharge by apprenticeship, it was to be made only after two years of residence in the institution and after having attained a certain proficiency in elementary education. Before the inmate could be discharged he must have merited a written recommendation from the warden and in addition the recommendation must have been approved by the inspectors. 54

The work of Livingston as completed is called a system of Penal Law, and is divided into a Code of Crimes and Punishments, a Code of Procedure, a Code of Evidence, a Code of Reform and Prison Discipline and a book of Definitions. To each of the four Codes, an elaborate report is prefixed in which

53 Ibid., 573.
54 Ibid., II, 577-97.
its principles, purposes, and provisions are fully explained. Preceding this are the two elaborate preliminary reports to the Louisiana Legislature, one on the plan of a Penal Code and one on the system of Penal Law. In every part of the work, careful attention has been given to preserving a complete unity of design, to avoiding ambiguity and mystery, and to preventing rather than avenging crime.

While only the Civil Code received official sanction, Livingston's work on the three Codes proved profitable in the dividends returned. His contributions to the Civil Code greatly enhanced his reputation as a leader in the field of jurisprudence, and the publication of the Penal Code made him an international celebrity. From philosophers, prominent writers upon jurisprudence, statesmen, and publicists of America and Europe came expressions of appreciation of the work of the law giver. The rulers of Russia, Sweden and the Netherlands commended his work and the leaders everywhere in the field of social reform praised the Code. Kent, Marshall, Story, Duponceau, and even Jefferson expressed keen interest in many of the details of the work. "I am pleased," wrote Jefferson, "with the style and diction of your laws." Continuing, he says, "One single object, if your provision attains it, will entitle

55 Charles Francis Adams (ed.), Memoirs of John Quincy Adams, 16 vols. (Philadelphia, 1874-1877), VI (1875), 55. "I was much pleased with [Criminal Code] it. I told him [Livingston] there were many of its opinions with which I fully concurred, and some upon which my mind was perhaps not so clearly made up."
The name of Livingston was illustrious. His work on penal reform was printed in France, England, and other countries. The Government of Guatemala had the Codes translated into Spanish and adopted the Code of Reform and Prison Discipline; the penal legislation of several other Spanish American countries was influenced by the work; and Macaulay gave serious consideration to Livingston's penal laws as a basis for the laws of India. Victor Hugo classed Livingston "among the men of this age who have deserved most and best of mankind." Villenain declared the penal law a "work without example from the hand of any one man." Sir Henry C. Maine described him as "the first legal genius of modern times." Jeremy Bentham, the great English social reformer, urged that Parliament "print Livingston's Louisiana Codification" for the guidance and use.

58 Edward Livingston, Project of a New Penal Code for the State of Louisiana, (London, 1824). In the preface of this English edition it is stated that the publication by the distinguished author. "contains the statement and development of principles, which can but be read in England with interest. . . America owes much to England, may she . . . pay back by exciting her benefactress to emulate her example! It is in the hope that the publication of this pamphlet in England may contribute in some degree to produce an effect so much to be desired, because so much needed, that it is given to the British Public."
of the English nation. 59 Dr. Southworth Smith, the legal au-
thority, published an article in The Jurist praising Living-
ston's treatment of penal reform. 60

In 1831, Livingston received from the King of the Nether-
lands an exquisite gold medal. On one side of the medal was
an impress of the bust of the King and on the reverse side the
following inscription: "To Edward Livingston for the presenta-
tion by him of a Copy of the Criminal Code of Proceedings Com-
posed by him for the State of Louisiana." 61 While failing to
enact into law the Penal Code, the Louisiana Legislature fol-
lowed the example of the Netherlands King. On January 16, 1832,
by legislative action, the Governor of Louisiana was authorized
to purchase a gold medal, and
tender the same to the honorable Edward Livingston as a token
of acknowledgment on the part of the State of Louisiana, for
the Code of Civil and Criminal Law, presented to the State by
that distinguished gentleman." 62

The eminent lawyer and politician had come to be ranked
with the world-wide outstanding philosophers, social reformers,
and legal geniuses of his age. This public recognition did not
serve as a barrier to his political advancement, but rather
made possible the broader opportunities for service that stamp-
ed him a statesman.

59 Jeremy Bentham to O'Connell, March 15, 1830, in John
Bowring (ed.), Works of Jeremy Bentham, 11 vols. (Lon-
don, 1843), XI, 37.
60 Bentham to Livingston, February 23, 1830, in Ibid., 35.
62 Louisiana Courier, January 17, 1832.
CHAPTER XII

A LOUISIANA CONGRESSMAN

The 1820 federal census gave Louisiana an additional Representative in Congress. In creating the new congressional district, the Louisiana General Assembly of 1822 transferred from the New Orleans district the West Florida area and the territory to the right of Bayou Lafourche from the point of its confluence with the Mississippi River to the Gulf of Mexico.¹ This resulted in removing a considerable group of the foreign element from the New Orleans district and in leaving the French party the dominant element therein. Livingston's chances of success in national politics were increased by this shift of the large American vote which had contributed largely to his defeat for Congress in 1812, in 1818, and again in 1820.

It was fortunate for Livingston that Josiah H. Johnston defeated him for United States Representative in 1820,² as it

¹ Louisiana Acts, 5 Leg., 2 Sess. (1822), 58.
² New Orleans Louisiana Courier, July 9, 1820. In Orleans, Plaquemines and the German Coast parishes, Livingston led Johnston 603 to 274 but Johnston's vote in the interior parishes overcame this lead.
resulted in Livingston's candidacy and election to the state legislature later in the same year, where his work on the codes brought him into national and international prominence. After the new congressional district was created and prior to the adjournment of the legislature in 1822, he was laying his plans for the congressional fight of that year. The state administration headed by Governor Robertson was favorable to his candidacy, and he was able to secure the support of Lislet, Grymes and other politically strong members of the General Assembly. He induced Lislet, Grymes, S. Mazureau, former attorney-general under Claiborne, and his own brother-in-law, Davezac, to run for state offices on his ticket. As there was no disposition on the part of the national government to give him any trouble, he had been able to create a situation in which he was so strong that no one dared announce against him. Moreau Lislet was elected to the Senate and three of his six candidates for the House, Grymes, Mazureau, and Davezac were victorious.

During the interval between the time of his election and that of his departure for Washington in December 1823, Livingston continued the practice of law, and also devoted considerable time and energy to fostering Jackson's candidacy for president. He was one of the original Jackson-for-President men of the nation and was zealous in furthering the political advance-

3 Ibid., June 24, 1822.
4 Ibid., July 3, 1822.
ment of his friend. The Livingston forces became the Jackson party in Louisiana, and these forces conducted an intensive campaign to secure the electoral vote of the state.

When Livingston took his seat in the House December 18, 1825, more than twenty-two years had elapsed since he last sat as a member of that body. Twenty-two years is a long period in the life span of a man, and, during Livingston's absence from Washington, many changes had taken place in the life of the nation. The entire Mississippi Valley region west of the River had been added to the federal domain and the number of states in the Union had been increased from sixteen to twenty-four. Washington had grown from a straggling village to a city of twenty thousand inhabitants. Not only had the scene changed, but the drama was being enacted upon a new stage, thanks to an act of British vandalism in 1814, which had necessitated the erection of a new capitol, president's house, and executive offices. Most of the leading actors with their supporting casts had made their exits, and a galaxy of new stars with their understudies crowded the stage, each attempting to secure the leading rôle. Now, apparently, the scenes shifted more quickly, the movements of the actors were less hesitating, and their lines were spoken with greater assurance. Their poise and self-possession bespoke a confidence of a more firmly established

government and a conviction of their ability to solve the existing problems without delay.

These new leaders appearing shortly before and during the War of 1812 had an abiding faith in the future and were not afraid that a strong central government would destroy liberty. They were deeply conscious of the evils of a weak government as revealed by the experiences of the recent war and with firm hand set about the task of rectifying the conditions. They were determined that no longer were foreign affairs to direct, but rather to be directed by internal politics. The assumption of state debts, the freedom of the press, and the impressment of seamen, so vital at the turn of the century, were no longer important problems, but those relating to banking, state rights, and nationalism continued to challenge public interest.

Whitney's cotton gin had resulted in an increased production of cotton and this, in turn, had stimulated the spread of slavery in the interior parts of the South. Hargreave's spinning jenny had led to the introduction of the English manufacturing system and this already was relegating commerce to an economic position of secondary importance along the Atlantic seaboard area and more especially in New England. Just as the slave-operated plantations in the South led to the development of an agricultural aristocracy, so, in the North, the rise of the manufacturing interests created an aristocracy of wealth that supplanted the old one of commerce. The fears that had
existed in the South from the beginning of the national government that the North some day would use her position in the Union to restrict slavery were being increased by the heated debates in Congress over the institution of slavery. The admission of Missouri as a state in 1821 had forcibly centered national attention on this question, but, temporarily, it has been shelved by the Compromise effected by the moderate men of the Middle States and of the border states of the South. In general, the leaders of the period agreed that provision should be made for national defense and that a United States bank should be incorporated to aid the government in its financial operations. On the questions of internal improvements and the tariff, however, there were decided differences of opinion.

The war had aroused much interest in the rich lands of the Northwest and there was a great movement from the East and Europe to that region. The most direct routes were overland either from the Potomac or from Philadelphia, or through western New York to the lakes. The construction of roads and canals was desirable for a quicker and easier westward movement, and the champions of the policy of internal improvements maintained that the federal government should aid in the construction of these land and water highways for they were national enterprises and
were too expensive for individual effort. The opponents of
the plan declared that they were local improvements and the
Constitution did not grant to Congress the power to raise mon-
ey for such purposes.

The division over the tariff question was on an occupation-
al rather than on a sectional basis. The manufacturers demanded
an increase of the duties as a protection from foreign competi-
tion. The commercial leaders, who thrive on free importation,
 clamored for a lower tariff rate. But this group had received
little consideration as they had opposed the war and, at heart,
were Federalists. During the patriotic fervor immediately fol-
lowing the war, the agricultural sections of the nation unself-
fishly had made sacrifices in order to be independent of Euro-
pean manufacturers, but, later they came to the conclusion that
protection had gone too far and opposed it vigorously. In this
change of attitude the South as the great agricultural section,
was most prominent. Such were the conditions in 1823, when Liv-
ingston returned to Washington.

In congratulating Livingston upon his return "to the coun-
cil of the country," Jefferson, in retirement at Monticello, ac-
curately portrayed conditions in Washington when with prideful
yearning for "our old school in Congress in which your early
labors were so useful," he warned him that "you will find new
names, but still opposing views." 6 Madison, at Montpelier, was

6 Jefferson to Livingston, April 4, 1824, in Charles A. Lips-
comb (ed.), Writings of Thomas Jefferson, 19 vols. (Washington,
1904), XVI, 23-26.
also in retirement; and John Adams was spending his last years in his New England home. Fisher Ames, Bayard, Elbridge Gerry, Gouverneur Morris, and Hamilton had answered the last roll call. The presses through whose columns the "opposing views" had appeared had been replaced by others to give expression to the statements of the "new names." In the place of Philip Freneau's National Gazette, John Ward Fenno's Gazette of the United States, and Benjamin Franklin Bache's Aurora and General Advertiser were the partisan publications, Duff Green's United States Telegraph and Gales and Seaton's National Intelligencer. A little later, when the intra-party fight became so bitter, the administrative organ, the Globe, under the editorship of Francis P. Blair, was launched to give the Jacksonites a medium for their acrimonious statements.

Burr's actions had removed him from the field of politics and Albert Gallatin had just returned from a seven-year stay in France at the court of Louis XVIII. Unable to sense the drift of political currents from the distance, he became engulfed in the seething factional politics which brought to a close the "Era of Good Feeling." Following Gallatin's nomination for vice-president on the William H. Crawford ticket by the rump Congressional Caucus in 1824, his illustrious public career came to an end with the mission of 1826-27 to England. Only five of Livingston's former colleagues in the House con-

7 Daily National Intelligencer, February 14, 1824.
continued as members of Congress. Four of these, David Holmes of Mississippi, Nathaniel Macon of North Carolina, Littleton W. Tazewell of Virginia, and Samuel Smith of Maryland, recently appointed to the William Pinckney vacancy, were in the Senate. In the House, erratic John Randolph of Virginia alone remained. His old adversary John Marshall, by his decisions as Chief Justice of the United States Supreme Court, was giving direction to the current of constitutional history of the national government and bringing to himself credit and distinction. James Monroe, lacking the qualities for constructive leadership and barely escaping failure on numerous occasions, was nevertheless successfully satisfying the demands of the time as president.

Of the dozen of the most outstanding statesmen of the time, four were in Monroe's cabinet: Attorney-General William Wirt, Secretary of the Treasury William H. Crawford, Secretary of State John Quincy Adams, and Secretary of War John C. Calhoun. Wirt was interested primarily in law, but later was the Anti-Mason candidate for president. The other three possessed immediate ambitions to succeed Monroe and each planned his course of action to attain this objective in the 1824 contest. Crawford had come near defeating Monroe in 1816 and, although in chronic ill health, had considerable influence as a result of the patronage of his office and the support of a large part of the administration press. As his ideas on the question of state rights and internal improvements were more nearly in accord with those of
Jefferson, he was favored by the former President and the Virginia political organization. Adams occupied the most important position in the official family as the office of secretary of state had come to be considered a stepping stone to the presidency. His appointment came as a result of Monroe's effort to keep the support of both Crawford and Henry Clay. Both of these men were aspirants for the position and the appointment of either would have alienated the support of the unsuccessful candidate. When the appointment went to the son of a former chief executive, Monroe estranged neither of the two men for every one felt at the time of the selection that the appointee could never be President. Upon his recall from the Court of St. James in 1817, where he had been for the past five years, this vigorous nationalist, Adams, applied himself to the job and earned an enviable reputation. Over-ambitious and highly intellectual, Calhoun was one of the most extraordinary men of that period. He was endowed with a remarkable power of clear analysis, logical reasoning, and profundity of expression. During the wave of nationalism that followed the war of 1812, he was an advocate of a national bank, internal improvements, and high protective tariff.

The most prominent men outside of Monroe's cabinet were Clay and Jackson. The scheming, selfishly-persuasive Henry Clay was a Virginian by birth but had moved to Kentucky when a young man. As a representative in congress from that state, he was one of the foremost "War Hawks" in bringing on the war of
1812. During his long political life, he had served as Commissioner to Ghent, but most of his time had been spent in the House over which he had presided with brief interruption for thirteen years. He was the leading advocate of internal improvements and favored a high protective tariff. Jackson, who had resigned his seat in the United States Senate in 1798, was again returned to that body by the Tennessee legislature in 1823. When he took his seat, December 5, his views on the questions relating to the tariff and internal improvements were not known; his chief asset was his personal popularity which rested upon his military record.

Few, if any, other congressional rosters contain the names of as many men who have influenced the course of American history as has the one for the eighteenth Congress. Among the new members who soon attained fame and influence was Robert Y. Hayne of South Carolina. Martin Van Buren, whose sobriquet "Red Fox" was later changed to "Little Magician," and Rufus King ably represented New York. As champion of the interests of the western region, Thomas H. Benton, of Missouri, had attained national prominence and possessed considerable influence and power. The rise to prominence of Tennessee's senior Senator, John H. Eaton, came as a result of his friendship with Jackson. John Branch of North Carolina was a close friend of Calhoun and later became a member of Jackson's cabinet.

Livingston's colleagues in the House equaled those of the Senate in ability, influence and power. In addition to Clay and
Randolph, the leonine Daniel Webster of Massachusetts had come to be considered one of the outstanding men in public life. Even before he became senator, his reputation as an orator had been established and his nationalist principles were well known.

James Buchanan of Pennsylvania and John Forsyth of Georgia later were to rise to prominence in national politics as was Sam Houston of Tennessee as president of the Republic of Texas. Jackson's election in 1828 resulted in the promotion of Samuel D. Ingham of Pennsylvania to a cabinet position and the assignment of Louis McLane of Delaware to the diplomatic post in London. McLane's successful negotiations with regard to our trade relations with the West Indies earned for him a cabinet appointment following the "Eaton imbroglio."

In 1823, when Livingston arrived in Washington, there was little apparent tendency of a cleavage in the body politic into two general opposing groups over the question of a national, as opposed to state rights, policy concerning internal improvements. Crawford and Jackson with their followings, were inclined, but not positively committed, to the policy of strict construction. On the other hand, Adams, Clay, and Calhoun held to the loose construction view of the powers of the national government.

With the changing economic conditions and the divergent interests of the various sections, it was inevitable that the intra-party contests in which all of the candidates, broadly speaking, professed the same principles would change from a campaign of opposing persons to one of principles and issues.
Livingston need not have feared, as he wrote his friend Peter S. Du Ponceau, that he would "be of little use in Congress" since he had been "so long retired from public affairs" and "was an utter stranger to the politics of the day," for he soon became one of the best known national characters and most influential members of the House. This tall, slender, slightly stoop-shouldered, clear-cut featured man of fifty-nine years had returned to Washington at the time of a second, though fundamentally different, transitional period in American political history. Though dignified in manner, he possessed so genial a disposition that he was a delightful companion when with intimate friends. His social charm enabled him to make friendships without regard to political affiliation or social status which were never strained by professional jealousies or political differences. He was ably supported in his public life by his charming wife who made his adjustments less difficult.

"Among all the women of the period," says Towers, none approached Mrs. Livingston in brilliance, charm, and elegance, nor "in the lavishness and taste of her dinners and parties" which were conceded to be "the best in the city." This leader "in the fashionable world" was "wonderfully vivacious, eloquent in conversation, intelligent in politics, steeped in the literature of the ages, witty, and spirited," and "her home in Lafayette

8 Hunt, Life of Livingston, 283.
9 Ibid., 122-23; Cayuré, "The New Orleans Bench and Bar in 1825," in The Louisiana Book; Selections from the Literature of the State (New Orleans, 1894), 88.
Square more nearly resembled a salon than anything the capital has ever known. Everyone was delighted to attend one of her dinners which were described as being unequaled by anything seen in Washington "except at some of the foreign ministers', and always were served "exclusively in French style." In her drawing room, one might meet "John Marshall, Joseph Story and Bushrod Washington of the Supreme Court, Webster, Clay, Calhoun, Wirt, or Randolph." Here the various political leaders met, "glad to lay aside their partisanship at her threshold" and smile amicably upon each other. "She was equally as popular with the cultured women of the city as with the political leaders" and Mrs. John Quincy Adams and Mrs. Andrew Stevenson came and went in the house on the square with as little ceremony as members of the household. 10

While Livingston enjoyed the social life of the capital, he did not allow it to interfere with the discharge of his official duties. He was regular in attendance at the sessions and actively participated in the deliberations of the House during the six years he was a member of that body. He was a practical politician; yet, he refused to sacrifice principle for temporary political expediency. Although his political philosophy may have been influenced by that of his constituents, he was consistent in the expression of his convictions.

No young politician could have been more attentive to the re-

 quests, more zealous to promote the welfare, and more active
to guard the interests of the people of his district than he. 11
Certainly none took more pains to inform them of his efforts
and accomplishments than did Livingston. 12

He was too good a publicist not to keep the people of Louis-
iana fully informed of his activities. His political partisans
were loud in their praise of him, vigorously resented any effort
to disparage his endeavors, and alert to forestall any attempt
to give precedence to another. They sought to promote his in-
terests on every occasion, and during the 1828 campaign, his
friends in the New Orleans City Council moved for a dispensa-
tion of the rules and the adoption of "an address of thanks and
gratitude to Livingston for his conduct in Congress." 13 When
an opponent attempted to defeat the positive effect of such ac-
tion by offering an amendment to include the names of the other
members of Congress to prevent itz being "a direct insult to
the rest of our delegation," Livingston's friend sharply retort-
ed "that he was indignant" that any one would dare "compare our
other representatives in Congress to Mr. Livingston." 14 In 1826,
the State Gazette blandly asserted "that it is mainly to Mr. Liv-
ingston's talents that Louisiana owes the elevation she holds

11 New Orleans Louisiana State Gazette, June 9, 1826.
12 New Orleans Louisiana Courier, May 15, 1824, carried an
"Extract of a Letter of Edward Livingston, Esq. to a Gent-
leman in this City" in which are recited Livingston's
efforts "during the current session of Congress which are
extremely important to our state."
13 New Orleans Bee, June 23, 1828.
14 Ibid., June 26, 1828.
among her sister states." While it may have been debatable that "In the discussions of every great and important question on the floor of Congress," his influence was "sought after by its advocates as almost decisive of its fate," their Representative certainly was a man of influence to whose accomplishments they could point with justifiable pride.

During the debates on internal improvements and the Panama mission, Livingston easily measured up to the standard set by his friends. His treatment of the involved constitutional questions of these controversial issues fully demonstrated that his mental vision was as clear and his analytical mind as orderly as it had been almost a quarter of a century earlier when, speaking in this same chamber, he established his reputation as an authority on constitutional law.

By his first action, Livingston committed himself to the policy of internal improvements. Four days after taking his seat, he called upon Congress to erect lighthouses along the Florida coast, and to acquire land on the Island of Abaco and in other places on the Bahama banks for erecting lighthouses and beacons. He introduced a resolution providing for the construction of a direct road from Washington to New Orleans and urged the President to sponsor the proposition. He strongly

15 *Louisiana State Gazette*, July 3, 1826.
16 *Annals of Congress*, 18 Cong., 1 Sess., 869 (December 22, 1823).
17 Edward Livingston to the President of the United States, June 17, 1824, in *Louisiana Courier*, October 23, 1824.
advocated the adoption of judicial reforms that would insure Louisiana an equal status with the older states of the Union and would make the practice of the courts of the United States conformable to that of the state courts. In response to a petition "of sundry aliens residing in the State of Louisiana," he moved "that the naturalization laws be amended in order that greater facilities may be afforded foreigners intending to become citizens of the United States."

Livingston's activities were varied and were not restricted to questions of a local nature. He proposed a constitutional amendment providing for the election of the president by direct vote of the people. He presented resolutions calling for the enlargement of the Military Academy and the appointment of "a commission to investigate the necessity of establishing an Academy for instruction in those sciences necessary for service in Military Marine." He introduced a bill to construct a canal to connect the Mississippi River and Lake Pontchartrain, and voted for the Cumberland Road appropriation. He requested an appropriation of fifty thousand dollars for the relief of the

18 Annals of Congress, 18 Cong., 1 Sess., 1528 (February 16, 1824).
19 Register of Debates, 19 Cong., 1 Sess., 1464 (February 24, 1826).
20 Annals of Congress, 18 Cong., 1 Sess., 877 (December 24, 1823).
21 Register of Debates, 18 Cong., 2 Sess., 111 (January 3, 1825).
22 Ibid., 19 Cong., 1 Sess., 264 (May 18, 1826); Ibid., 2 Sess. 1418 (February 26, 1827).
and handled his constituents' claims for damages against the government.24

When it became known, from Lafayette's letters to Livingston25 and his other friends in America, that he contemplated a visit to this country, the House took official cognizance of the fact. Livingston's committee framed the resolution requesting the President to convey the sentiments of the government and the people of the United States to the distinguished Frenchman and to inform him that "a ship-of-the-line" was being held in readiness for his passage "therein whenever his disposition to visit this country be signified."26 While speaking to the resolution, Livingston took occasion to eulogize the Marquis and alluded to him as "the only surviving General officer of the Revolutionary War."27 He was anxious that his old friend should be duly honored officially while in America and notified the Mayor of New Orleans that he would furnish him with Lafayette's itinerary so that the city would have sufficient time to plan a suitable reception.28 He actively supported the bill providing for the appropriation of two hundred thousand dollars and the grant of

23 Ibid., 19 Cong., 2 Sess., 577 (January 2, 1827).
24 New Orleans Bee, February 9, June 23, 1828; Register of Debates, 20 Cong., 1 Sess., 893, 902-905, 987-89, 1298-300.
25 Louisiana Courier, February 14, 1824.
27 Ibid., 1103 (January 20, 1824).
28 Livingston to J. Roffignac, September 24, 1824, in Louisiana Courier, October 26, 1824.
a "township of land" to the General and his heirs as a slight token of appreciation of the United States for the services he had rendered the colonies during their struggle for independence.

Livingston's efforts in behalf of the officers and soldiers of the Revolution were not confined to Lafayette. He was one of the most zealous advocates of their rights and favored the appropriation of one million dollars for the soldiers and the "surviving widows and orphans of those officers who had died in service or since." As an expression of the veterans' appreciation, he was unanimously elected an honorary member of the Society of the Cincinnati July 4, 1827. In referring to the election, the United States Telegraph stated, "It is an honor, even to Edward Livingston, talented and distinguished as is he, to be made an associate of such an order of men" which had only ten living honorary members, among whom was Jackson.

The New Orleans Representative opposed the tariff measures of 1824, 1827, and 1828, as they were detrimental to the people of his district. While protesting in 1828 that the whole system was "false and vicious in principle because it want to tax one part of the country for the benefit of the other," he was able to secure a reduction of the duty on French wines and an advance of the duty on molasses. In order that his constit-

29 Register of Debates, 18 Cong., 2 Sess., 1, 83.
30 United States Telegraph, July 9, 1827.
31 Register of Debates, 20 Cong., 1 Sess., 2327 (April 24, 1828).
32 Ibid., 2745-46 (May 21, 1828); United States Telegraph, May 27, 1828.
ments might have "some share in it, if any was to grow out of it."\(^{33}\) Livingston definitely stated his policy when, speaking against the 1824 Tariff Bill, he requested a formal report so that "he might have something to show his constituents and quiet their apprehensions."\(^{34}\)

Except for the tariff, the most important question before the eighteenth Congress was that of internal improvements. The rapidly developing country needed roads and canals for communication and transportation and it was inevitable that the sections most interested in such improvements should demand that the construction of these roads and canals be undertaken by the national government. In response to this demand a bill was introduced in the House, December 9, 1823, which provided for the survey of roads and canals that the President "may deem of national importance in a commercial or military point of view or necessary for the transportation of the mail."

Opposition to the bill was not on the basis of need but on the question of the constitutionality of the undertaking by the national government of such improvements. The state righters immediately saw a new threat to state sovereignty. The national government, they argued, would have jurisdiction over the roads and canals when constructed; it would, of necessity, acquire ownership of property upon which the improvements were made;

\(^{33}\) Register of Debates, 20 Cong., 1 Sess., 2745-46 (May 21, 1823).

\(^{34}\) Annals of Congress, 18 Cong., 1 Sess., 1590 (February 19, 1824).
it could, under the proposed bill, create corporations, possessing exclusive privileges and powers; all of which was an unconstitutional invasion of powers reserved to the states.

While vigorously protesting his advocacy of state rights, Livingston, February 9, contended that the general government possessed the requisite power under the Constitution to effect the provisions of the bill. In answering the constitutional objections, he gave a full exposition of his concept of the national union, a concept to which he consistently adhered in all of the later controversies. The present government, he maintained, was both a consolidated and federated one. Its consolidated features were shown by: the adoption of the Constitution by the people; equal representation of the people in the lower house of Congress; and the fact that each citizen was a citizen of the whole nation, holding in common with others certain possessions as citizens of the United States, independent of state authority, protected by the national judiciary and executive power. The federative features, he pointed out, were shown: in the assent of the states to the submission of the Constitution to the people; in the representation of the states in the Senate; and, in the retention by the states of all powers not vested in the general government or retained by the people.

As a consolidated government, it acted in the interest of all the people and the authority for and limitation to such action were found in the Constitution. As a federated government it acted immediately on individuals to protect their civil
rights—their persons, lives and property. The actions of the
government in its consolidated sphere could not be performed by
the states, for it would involve one state judging and deter-
mining what was beneficial to the whole. The bill in question,
Livingston concluded, was for the benefit of the entire nation,
a legitimate field for the action of the national government.
Constitutional authority for the exercise of the powers by Con-
gress was not only strongly implied from the form of the nation-
al government but specifically granted in several articles of
the Constitution, which he cited. 35

This was the first speech by Livingston on the interpreta-
tion of the Constitution since his famous address in the same
Chamber almost a quarter of a century previously, on the Alien
and Sedition Acts of the Adams administration. Then he was
championing the right of individual liberty against encroach-
ment by the national government, holding up the specter of des-
potic, consolidated government. Now he was pleading for a con-
cept of union that would admit the existence of a nation, able
to act unitedly on national questions and not restricted by
sectional jealousies. His views had matured but the consolida-
tion he now advocated was not a reversal of his former position
but an attempt to delineate state and national powers. In the
erlier speech, it is true, he had been driven by the extreme
harshness of the laws under discussion to place the determina-

35 Annals of Congress, 18 Cong., 1 Sess., 1430-59 (February
9, 1824).
tion of constitutionality of acts of Congress in the first instance in the people, a position from which he had now certainly retreated.

The knotty problem of the determination of constitutionality was not specifically resolved in Livingston's internal improvement address, but a logical inference from the argument was that such determination, in the first instance, was a matter for the judiciary. While he may not have contributed to the majority vote of the House on the bill, he again directed public attention to himself as a polished speaker and a constitutional authority.

Keen political rivalry existed among the presidential aspirants and the three-cornered fight of Adams, Calhoun and Crawford began in earnest as early as 1821. No love was lost among them, and, in their efforts to eliminate one another, their actions at times were reprehensible. Crawford knew that Calhoun had attempted to alienate his supporters at the time of Monroe's election; and as the 1824 election approached, there appeared in the Washington Republican a series of letters attacking Crawford which were signed "A.D." The editor of the journal was Calhoun's friend, and the author of the letters, Senator Ninian Edwards of Illinois, was appointed Minister to Mexico, upon Adams' recommendation, shortly after the publication of the letters. Edwards resigned his seat in the Senate, and, while on

35 Ibid., 1467-68 (February 10, 1824).
37 Lynch, Fifty Years of Party Warfare, 288.
his way home prior to his departure to Mexico City, forwarded
to Clay formal charges of irregularities and misconduct in of-
ifice against Crawford. While his Mexican appointment was pend-
ing, he had denied authorship of the letters; but, in his com-
munication to the Speaker of the House, from Wheeling, Virginia,
April 6, 1824, he admitted having written them.38

Immediately following Clay’s referral of the communica-
tion to the House April 19, Crawford’s friends obtained the
appointment of a committee to investigate the charges, on
which were named Livingston, Webster, Randolph, John Floyd,
George W. Owen, John W. Taylor, and Duncan McArthur.39 A
majority of the members were not supporters of Crawford,40
but an impartial investigation was made despite the accusa-
tions of bias and unfairness. The work of the committee prov-
ed to be a disagreeable and arduous task; large numbers of
depositions were received and numerous witnesses were sub-
poenaed; and the committee was kept in session from April 20
until far into the summer. Jackson, now a publicly avowed
presidential candidate, wrote Livingston, July 5, to the effect
that he was ‘happy to learn’ his friend was “nearly closing the
disagreeable duty assigned to you as one of the committee.”41
The investigation disclosed that the charges were untrue and
when the report of the committee was made, its members were

38 Annals of Congress, 18 Cong., 1 Sess., 2431-50 (April 19,
1824).
39 Ibid., 2455.
40 Lynch, Fifty Years of Party Warfare, 288.
41 Jackson to Livingston, July 5, 1824, in Hassett (ed.), Cor-
respondence of Andrew Jackson, III, 261.
unanimous in stating "that nothing, affecting the Secretary, and depending upon the oath of Mr. Edwards, can be taken as proved."\(^{42}\)

Following Adams's election to the presidency by the House in 1825,\(^{43}\) the Jackson party found little to oppose in the policies of the Adams administration. In 1826, they determined to use the President's proposed plan for the United States to participate in the Panama Congress as a rallying point for their attack on the administration. While Livingston was loyal to the Jackson cause, he refused to vote against the interest of his people and follow the opposition all the way in its warfare on Adams. He agreed with the President in so far as the executive had declared that the government should seek to improve the conditions of its citizens and inaugurate a program of internal improvements.\(^{44}\) In addition, there was a large Latin element in New Orleans which was kindly disposed toward their kinsmen to the south with whom they had commercial intercourse. Consequently, when the fight was made against the appropriation to defray the expenses of the delegates to the Congress on constitutional grounds, Livingston came to the defense of Adams.

On April 12, during the fight which was waged from the 4th to the 22nd instant, Livingston declared that "when the President was designated by this House, I gave my voice in favor of

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\(^{42}\) *Annals of Congress, 18 Cong., 1 Sess.,* 2715.

\(^{43}\) *Register of Debates, 18 Cong., 1 Sess.,* 527 (February 3, 1824).

\(^{44}\) *Adams, Memoirs of John Quincy Adams*, VII, 77. Adams reported Livingston as saying "that he approved my message to Congress in every part."
the candidate who had the greatest number of electoral votes"; but this "has not influenced my conduct or opinions in relation to the present Chief Magistrate" after he was elected. The President and the Senate had the right to appoint foreign ministers, he continued, and the House could refuse to appropriate but such power should be reserved for dangerous cases. The House could not annex conditions to an appropriation, for the power to grant or refuse did not include the right to modify the grant. The right of instruction and the mode of conducting the negotiations were as essentially executive powers as was the appointment of the minister who was to conduct it. Consequently, for the House to take one of those powers into its hands would be as flagrant a breach of the Constitution as to take the other. "This is not an Utopian project," it "is the great American System." It was neither a combination for exclusive privileges nor "a confederacy for aggression or even for defense." It was not a crusade of republicanism against monarchy, but rather "a mutual understanding to promote the principles of freedom in commerce, frankness in negotiation, humanity in war, free intercourse and the exchange of good offices in peace." While regretting that he differed "from the representation of the other Southern States, with whose opinions, on other points of policy, I generally concur" Livingston's best judgment would not permit him to yield to their arguments for the course he had indicated was "the only one that can be pursued with due regard to the distri-
Monroe's second administration terminated the rule of the so-called "Virginia dynasty" which had furnished the presidents for the past twenty-four consecutive years. This domination of national politics by the Virginia line of presidents had been due to the Virginia-New York alliance which gave to Virginia the presidential and to New York the vice-presidential selection. The main forces of this alliance were the two organizations known as the Richmond Junto and the Albany Regency. The official organ of the Junto was the Richmond Enquirer, whose editor, Thomas Ritchie, was one of its members. The Albany Argus, edited by one of the members of the Regency, Edwin Crosswell, was the publication of the New York organization. The Regency had come into existence during the factional struggles between the followers of DeWitt Clinton and Van Buren, and by 1822 the latter faction under Van Buren's able leadership was victorious and its leader the political boss of the State.

The presidential campaign of 1824 was an intra-party contest of personalities rather than of principles, that divided the party into several factions. Crawford was favored by the Virginia-

45 Register of Debates, 19 Cong., 1 Sess., 2195-2215 (April 12, 1825).
New York combination and its leaders placed the stamp of "regular" candidate upon him in the unpopular congressional caucus at which only sixty-six Senators and Representatives out of a total membership of two hundred sixty-one were in attendance. All other factions joined in a revolt against the caucus. The first evidences of the revolt were in the West in 1822 when Clay and Jackson were nominated by their respective legislatures and these nominations were endorsed by other state legislatures. In the East, the supporters of Adams and Calhoun adopted the same policy.

When Jackson's candidacy was first announced, it was not regarded seriously, but this view changed decidedly in 1823 when Jackson sentiment in Pennsylvania became so strong. When that state legislature endorsed the Tennessean it made him the leading candidate, eliminated Calhoun, and paved the way for the future alliance of the South and the West. The hero of New Orleans was a popular and discreet candidate and it appeared that every event contrived to increase his popularity. He was summoned to the executive mansion to receive the congressional medal "for his gallant defense of New Orleans" and took with him his former aide-de-camp Livingston.

48 *Niles' Weekly Register*, XXV (1823-1824), 258 (December 27, 1823).
49 *Daily National Intelligencer*, February 14, 1824.
50 *Richmond Enquirer*, July 30, 1822.
51 *Niles' Weekly Register*, XXV (1823-1824), 167, 194, 242, 258.
52 *Daily National Intelligencer*, March 17, 1824.
supported several of the internal improvement bills which passed and while declaring himself in accord with the policy of protection, he asserted that he was in favor of a "judicious" tariff.

Long before the voting began, it was quite evident that there was to be no choice of president by the electors and that the election would be thrown into the House of Representatives where the selection would be made from the three high ranking candidates. Not until the news from Louisiana reached Washington was it known that Clay would be fourth on the list. Jackson secured the entire vote of New Jersey, Pennsylvania, North Carolina, Tennessee, Indiana, and Alabama. Of their electoral votes Illinois gave two, Louisiana three, Maryland seven and New York one, or a total of ninety-nine. Adams was second with eighty-four, Crawford next with forty-one, and Clay last with thirty-seven votes.53

Only twice has the House been called upon to elect the president and only two men, Livingston and Randolph, have had the distinction of casting a vote in the two elections. In the former election, Livingston was a powerful influence and had much to do with the final outcome of the long-drawn out contest, but in the present situation he had little or no weight. His fight, which had resulted in charges of bargain

and compromise, had been made in the Louisiana Legislature and he knew that his state delegation would outvote him two to one, yet he remained loyal to Jackson. Clay and Adams had been political enemies for many years, but there was a rapprochement and the former agreed to support Adams over Jackson or Crawford.

The House decided the contest February ninth; Livingston was chosen teller by his colleagues, and contrary to all expectations, Adams received the requisite thirteen votes on the first ballot.

The 1828 presidential election opened in October 1825 when the Tennessee legislature nominated Jackson and an effort was made to secure the support of Crawford and Van Buren. Livingston became quite friendly with Van Buren and attempted to secure from him a commitment to support Jackson in 1828. Writing from Albany, under the guise of requesting Van Buren's assistance in securing a naval appointment for his brother, Livingston informed him of Clinton's determination "to be a candidate for President at the next election," that the New Yorker wished Van Buren to succeed him as governor, and that if elected president "you might have under the General Government what you wished."
Van Buren replied from Washington, "There is not the remotest probability of my committing myself in the matter at this session. The reasons are obvious and conclusive." Continuing, Van Buren stated that he was certain that Clinton's emissary "was unconscious of the impropriety of his suggestion" and Livingston was requested "not to speak of it to anyone. You know what a band of political gossips are apt to make of such things. Whether or not Livingston influenced Van Buren's decision to support the General, which was publicly announced at the close of the session of Congress, it was a most valuable acquisition to the Jackson cause.

In Congress the opposition to the administration was solidified and by the time that body adjourned in May 1826, the lines upon which the next campaign was to be fought were clearly drawn. Jackson's plan of battle was carefully organized and ably conducted. His campaign managers realized that success depended upon the electoral votes of Pennsylvania, New York, and Virginia in addition to those of the South and West. They could count upon the Pennsylvania vote, but those of New York and Virginia were another matter. In Virginia the prejudice against Jackson was almost as strong as the dislike for Adams and in New York the General had received very little support in 1824. It was apparent that Van Buren's control of the Regency would be re-established and that the renewal of the entente between it and the Junto were essential to the success of the issue. In

Van Buren to Livingston (draft in Van Buren's handwriting) in ibid., 1458-59.
regaining control of the Regency and renewing the New York-Virginia alliance under his control, Van Buren rendered his most effective service to the Jackson party. Furthermore, he sought to harmonize the Crawford and Calhoun factions in the East from New York to Georgia. To this end, he made an extensive trip from his home to Georgia through Virginia and the Carolinas.

From the close of the 1826 congressional elections until the selection of the president, the campaign raged with unprecedented fury. In this fight, Livingston gave his time and energies unreservedly to promoting the cause of his friend. He neglected his own campaign and, instead of returning to Louisiana in the interest of his 1827 election, he made trips through New York and Pennsylvania to gain first hand information of the situation and deliver campaign speeches in support of the candidacy of the old hero. In analyzing the situation, this practical politician did not allow preference to influence his judgment. His reports revealed clear analyses of conditions with due regard being given to all the factors affecting the final outcome.

From New York, he wrote Jackson, "Since my last everything confirms the opinion I then expressed as to the Disposition of the State in relation to the approaching election" and "I should

63 Livingston to Jackson, May 21, 1827, in Jackson Papers, 3 Series, III, 279.
not be surprised to find nine-tenths of the Districts would be in your favor." In referring to the "political party" divisions he stated that the "old republicans or buck-tails" were the most important and "are with us to a man." The hostility between them and the "Clintonians has softened somewhat of its asperity" and many of the most influential "in that party are already arrayed upon our side." The rest must follow because they cannot go with the Federalists as they "are now themselves completely divided." The great body of them retain "the name from a pride of opinion that is perhaps excusable," and call themselves "Washington Federalists." They will never vote for Adams "whom they hate for his Defection." The smaller or "ultra Federalists" belonged to the "Essex and Hartford Schools" and "are your bitter enemies," but "with them no other party in this state dare openly to combine." He had no doubt that three of the four parties would be in Jackson's favor and "for the fourth, I do not think they can command a single electoral vote in the State."

When approached to learn "what would be the course of your appointments" Livingston took the occasion to inform the inquirers that Jackson's course "would satisfy every friend of the constitution, the wealth of the country and happiness of the country" and that "you yourself had formed no determinations on this subject much less have communicated them." With regard to the Louisiana situation, while he would "not go to New Or-
leaves until September," the reports indicated that "I am, again not to be put to shame by the vote of my state," for "the vote of gratitude will be given by a majority of two-thirds."64

In New York, one elector was chosen from each of the representative districts and these thus elected chose two additional electors. The selection of the electors was made at different times in the several districts. The election in New York City was held in November 1827. The results gave Livingston an opportunity to write the General, "I hope you will not attribute the pleasure that I feel at the election in this city to the pride of seeing my predictions fulfilled." While he had promised Jackson "from one-half to two-thirds of the votes of the state in the spring," he thought he could count "upon thirty of the thirty-six of the Districts." Although he had long been absent from the State, "I was persuaded I knew the republican stuff it was made of well enough to be sure of the course it would pursue between you and Adams."65

On August 13, 1828, Livingston made a speech in favor of Jackson's candidacy at Harrisburg, Pennsylvania, which was enthusiastically received. In his closing remarks, he asserted that the election of the military hero would "establish our honor abroad, insure union and tranquility at home and rescue

64 Ibid.
65 Livingston to Jackson, November 11, 1827, in Jackson Papers, Series II, 382-83.
the principles from defamation."

Jackson's campaign managers considered him a political novice and were constantly worried lest his temper would cause him to say something which would ruin his chances. As soon as it came to Livingston's attention that a pamphlet criticizing the General's wife had "been reprinted here" and was being distributed in great numbers in "franked packages throughout the United States, "he notified his friend. Adroitly, he suggested that the contemptible action of his enemies was for the purpose "of exciting your friends or perhaps yourself" to some overt act of violence "which in the desperate state of affairs they would hope to turn to their advantage." Cleverly and subtly he suggested that "as it would be highly imprudent to give way" to righteous "indignation," he, like his friends in Washington who were on their guard, should "treat it with contempt." Assuming that the General naturally would adopt the same policy, Livingston informed him the purpose of the communication was to forestall his being "taken by surprise on seeing it again in circulation under the auspices of members of this body." 67

Important and successful individuals must pay the price of attaining prominence by becoming a target of attack. It was not surprising that attempt was made to weaken Livingston's influence in the Jackson councils, in Louisiana, and in the country at large by accusing him of being the personal enemy of

66 United States Telegraph, October 11, 1828.
Jefferson. He realized the harm this would do him and in order "to refute what I consider as an injurious calumny," he wrote Nicholas P. Trist for a copy of one of Jefferson's letters to him which he had misplaced. "I find," he said, in some of the party papers of the day "that I am assailed as the personal enemy of Mr. Jefferson," and as proof of this charge "is printed" the concluding paragraph of his batten controversy pamphlet. Fortunately, he knew that Jefferson "kept copies of all of his letters" and thus he was able to refute the charges.

Livingston, although not returning to New Orleans prior to the 1825 presidential election, kept in touch with the political situation and continued his active support of Jackson without regard to his own interest. There were the usual shifts in political alignments, but the ones most expensive to the Jackson cause were the defections of Lislet and Mazureau. This loss was largely instrumental in defeating Davezac's attempt to forestall Clay's nomination by the legislature. The Adams group was encouraged when it was reported later that "several of the

68 Livingston to Nicholas P. Trist, April 13, 1828, in Nicholas P. Trist Papers (Manuscripts Division, Library of Congress), V, 56,165.
69 Livingston to Trist, May 17, 1828, in ibid., 56,182. Livingston thanks Trist "for having complied with his requests and tells him that "The injury to me [in the Batture case] was greater than he [Jefferson] foresaw and excited a warmth upon my part which was natural." However, it had been a source of consolation to him that their misunderstandings had been cleared up before Jefferson's death. In 1824 Jefferson wrote Monroe that "Mr. Livingston would now be received at Monticello with as hearty a welcome as he would have been in 1800," Jefferson to Monroe, March 24, 1824, in Ford (ed.), The Writings of Thomas Jefferson.
70 Louisiana Asylum and Feliciana Advertiser, March 20, 1823.
most influential members of the Clay party have expressed their
determination to vote for Adams in consequence of the fârlnorm
hope (nationally) of their favorite." This, according to the
Asylum "will, we think, be likely to induce the other French
members [of the Legislature] to adopt the same determination,
and we should not be surprised were the vote of the State given
Mr. Adams entire." 71

The national election was practically the sole issue in
the 1824 state campaign and the gubernatorial candidates were
Marigny, Villéré and Henry Johnson. Marigny and Villéré divided
the French vote; the former had the larger following in the
city; the latter was the stronger in the rural sections of the
State. The Jackson forces made the mistake of dividing their
support between the two, which gave Johnson the advantage. The
campaign was a bitter one and canards were circulated with telling effect. According to the Courier, messengers were sent out
all over the state "with saddle-bags full of ready made tickets
to swing the election "to Johnson" and to spread the report
that Villéré had withdrawn from the race. 72

James Brown's resignation from the United States Senate
added fuel to the political fires in Louisiana. Immediately
several candidates announced for the position and the Jackson
forces supported Livingston for the place. When the two Houses

71 Louisiana Asylum, November 2, 1824.
72 Louisiana Courier, June 24, 1824.
of the Assembly convened in January, 1824, to elect Brown's successor, the only candidates remaining in the race were Livingston and his former successful congressional opponent, Josiah S. Johnston. The contest was very close, but Johnston was returned the winner by the vote of twenty-nine to twenty-seven.75

Davezac became the leader of his brother-in-law's political forces during his absence in Washington and devoted his time and energies to promoting Jackson's candidacy. He neglected his own campaign for re-election to the State legislature to effect plans and arrangements for Jackson precinct, ward, and city-wide meetings, and to keep in close touch with the party leaders throughout the state.74 For a time it appeared that Livingston would have opposition, but on January 15, the remaining serious contender, J. Peychand, City Recorder, announced through the press that he would 'not be a candidate.'75

At the election, the spoils did not go to any single faction. Two anti-Jackson congressmen, H. H. Gurley and W. L. Brent were returned, Moreau Lislet was re-elected to the State Senate, and Johnson was elected governor. On the other hand, the Jacksonites returned Livingston, elected four of their six candidates76 as Representatives to the legislature from New Orleans.

73 Ibid., January 16, 1824; Louisiana Senate Journal, 6 Leg., 2 Sess., 12 (French edition).
74 Louisiana Courier, June 2, 1824, at. seq.
75 Ibid., January 15, 1824.
76 Ibid., July 2, July 8, 1824.
and made such a creditable showing in the state that the results
of the election were in doubt until the vote was cast. The In-
telligencer reported that it had been informed that there was no
probability of Jackson's carrying Louisiana and as late as Nov-
ember 20, the Asylum predicted that "all five votes will go for
Adams." Nevertheless, the legislature, after six ballots,
cast its vote, three for Jackson and two for Adams.

The bitterness engendered during one political campaign
hardly subsided before another began. With Henry Johnson's
resignation from the Senate at the opening of the gubernatorial
campaign, it became necessary to elect his successor, and the
New Orleans papers mentioned several probable candidates, among
whom was Livingston. He refused, however, to allow his name
to be presented to the Assembly and D. Bouligny was elected.

Two candidates announced against Livingston in the 1826
campaign, but only one of them remained in the race; and as
early as May 3, both Livingston and P. E. Foucher carried an-
nouncements of their candidacies in the press. While there

77 Daily National Intelligencer, July 13, 1824.
78 Asylum, November 20, 1824.
79 Daily National Intelligencer, December 17, 1824.
80 Asylum, July 24, 1824. "Edward Livingston and Samuel H.
Harper Esquires, are spoken of in the New Orleans papers
for the Senate of the United States. One of the
French papers recommends Mr. Bouligny, or some other Creole
of standing, for the office."
81 Louisiana Senate Journal, 7 Leg., 1 Sess., (1825), 11. The
vote was H. Bouligny 33; C. E. Harper 14; P. Thomas 11.
82 Louisiana State Gazette, June 1, 1826.
83 Ibid., May 3, 1826, et seq.
was considerable excitement in the city over the approaching
election, the editor of the Gazette was pleased in that "none
of the ceremony too often manifested... is now known among
us." 84 On July 3, however, he took the publisher of the Adver-
tiser to task for printing an article in which Livingston was
maliciously charged with being a public defaulter. In refuta-
tion of the charges, the editor carried in the columns of the
Gazette a copy of George Clinton's complimentary letter to Liv-
ingston accepting his resignation as Mayor of New York. He
contended that although the defamer "affects to believe" that
Livingston had "no influence in Congress" yet every one inter-
ested in Louisiana experienced "joy and honest pride" in his
representative. "The public eye" he continued, "has been turn-
ed upon this campaign of the nation's rights" which Livingston
was "waging and their expectations have not been deceived." 85
The editor denied that there could be any comparison of the
two candidates and the correctness of the Gazette's forecast
was proved by the results of the election in which Livingston
received a majority of 903 votes and lost only one parish in
the district.86

During the hectic days of the campaign early in 1828,
Jackson found an occasion to write Livingston that he was
pleased to find "from the public expression of citizens almost

84 Ibid., June 17, 1826.
85 Ibid., July 3, 1826.
86 Ibid., July 11, 1826; Louisiana Courier, July 14, 1826.
everywhere" that his popularity had greatly increased in Louisiana "whilst your colleague's has sunk." Livingston realized that his former chief was not accurately informed as to conditions in Louisiana, for he was too astute to be blinded to the situation by complimentary remarks of personal and political friends. He was aware that his prolonged absence from the state made it doubtful as to his return to Washington and had remarked to friends in Philadelphia that his defeat was not to be "at all unexpected." He knew that the Adams faction was strong in New Orleans and "the whole strength of the [Adams] party was in my district, and I was well aware that it would be exercised to the utmost against me."

The Jackson-Adams fight was the main issue of the Louisiana congressional and state campaigns in 1828. Both factions placed complete tickets in the field and the contest became a straight line fight. The Adams people in New Orleans brought out the most popular man in the district, A. D. White, against Livingston; and the Jackson forces retaliated by running W. H. Overton and Lafayette Saunders against the other two congressmen, Brent and Gurley. In the effort to gain control of the legislature, each faction placed on its ticket a Creole and an American candidate for governor. The Adams vote was divided

67 Jackson to Livingston, January 12, 1828, in Bassett (ed.), Correspondence of Andrew Jackson, III, 389.
68 Philadelphia Sentinel, July 30, 1828, quoted in the United States Telegraph, July 31, 1828; Livingston to Jackson, August 12, 1828, in Jackson Papers, LXX, 13,011-13,012.
69 Livingston to Jackson, ibid.
70 New Orleans Argus, June 4, 1828.
between Peter Derbigny and General Philemon Thomas, while the Jacksonites had the choice of either Bernard Marigny or Thomas Butler.

While the election was not concluded until July 7, the campaign was in full swing prior to June 1. Cognizance was taken of the heated Louisiana campaign by the United States Telegraph as early as May 27, in predicting the defeat of Gurley and Brent. With regard to the success of the New Orleans congressman, "we are sanguine. Not that we have heard anything from that section which enables us to speak with confidence, but because of the high respect we feel for Mr. Livingston's character, his talents and public services, and his able and successful prosecution of the immediate interests of his constituents." By June 11, however, this Jackson organ carried a communication from a Louisiana subscriber who predicted, "though Jackson will prevail by a handsome majority" and Gurley and Brent probably will be "turned out of Congress... Mr. Livingston will be hard run—not on the Jackson question, but the extraordinary popularity of the individual who opposes him."

As a political forecaster, the final results showed that this correspondent was not far wrong in his prognostications. The first returns indicated a complete Adams victory and it was freely and boastfully claimed that Louisiana's five votes would

91 United States Telegraph, May 27, 1828.
92 Ibid., June 11, 1828.
he cast against the hero of New Orleans. In the city, Der-
bigny received a majority in the four-cornered governor's race 
and the entire Adams ticket for the state legislature was elect-
ed. Early reports indicated a complete sweep of the Adams  
ticket both for the state and national legislatures.

Final election returns improved the situation for the 
Jackson party materially. While they failed to elect the gov-
ernor and lost the New Orleans congressman, they secured a 
majority vote of the General Assembly on a joint ballot, 
thereby insuring the "Old Hero" the vote of the state, and de-
feated Brent for Congress. White led Livingston 581 to 557 
votes in the city and in the district 1780 to 1173 votes. He 
carried eleven of the twelve parishes with majorities ranging 
from three votes in St. Bernard to 281 in Lafourche Parish.

93 New Orleans Argus, July 12, 1828; Daily National Intelligencer, August 11, 1832, stated "The overwhelming majority 
for the Administration in Louisiana is the herald of uni-
versal success." United States Telegraph, August 22, 1828, 
remarked, "As usual, the Adams men began to crow before they 
were out of the woods... It is laughable to think how the 
opponents will rejoice should Mr. Livingston be sent to the 
Senate of the United States instead of the House of Repre-
sentatives."

94 Louisiana Gazette, July 10, 1828; Peter Derbigny 636, Ber-
nard Marigny 288, Thomas Butler 195, P. Thomas 16. The 
lowest vote received by a candidate for State Legislature 
on the Adams ticket was 634, the lowest 576; on Jackson 
ticket, the largest vote was 532, the lowest 502.

95 Ibid., July 21, 1828. Number Senate members 17, returns 
from 16 districts give Adams 10, Jackson 6. Number members 
of House 50, returns from 29 of the 43 parishes with 43 
members give Adams 26, Jackson 21, doubtful, 1.

96 New Orleans Argus, July 19, 1828. Returns from all but 
three voting districts give: Derbigny 3372, Butler 1562, 
Marigny 1196, Thomas 1151. The total Adams vote for Gov-
ernor 4523; Jackson total 2758.

97 Louisiana Gazette, July 26, 1828.
Livingston's majority of eighty-eight in Plaquemines Parish had little effect on White's total majority of 607 votes in the district. 98

In contrast to a usual campaign, the extreme bitterness engendered by the presidential contest continued after the election. The violently active partisanship of the New Orleans press contributed much to the existing deplorable conditions. While the attempt to continue the relentless warfare was not restricted to any one particular publication, this policy was shown clearly by the election résumé of the Argus.

The success of the Administration party in the recent election in this parish, will correct the overbearing arrogance of the Jackson party and inform the people of our sister states that, on the theatre of the Hero's glory a majority of the independent citizens have declared that he is unfit for the office to which he aspires. . . To effect a different result, however, our opponents (self-dubbed "The People") stopped at nothing—the judges of the election were first coaxed, and then browbeaten—peaceable citizens were alarmed and threatened both by inflammatory speeches at the polls, and by their mouth Piece [Gazette]; but all to no purpose. . . Such a triumph in the very hotbed of Jacksonism speaks volumes for the moral integrity of the People and gives a sure pledge to our country that the Administration has nothing to fear in this quarter. 99

On the east bank of the Hudson River, near Red Hook, Dutchess County, was located the three hundred acre estate of Livingston's eldest sister, Janet Montgomery, that shortly was to pass into his possession. It was here at Montgomery Place, while visiting his sister during her last illness, Livingston received the news of his defeat and the reputed Adams victory

98 Ibid.
99 New Orleans Argus, July 12, 1828.
in Louisiana. While prepared for his defeat, he was depressed greatly by the ingratitude expressed by the vote of his adopted state. Jackson's kind letter tactfully suggesting that his defeat was due to his continued absence from the state and the promise to support him for the United States Senate the following year, failed to revive his spirits or reconcile him to the loss of the Louisiana electoral vote. 100

The tone of his reply revealed clearly the temporary dejection of the sixty-four year old man who, again, experienced the ingratitude of a democracy for its public servants. While assuring Jackson, "In this State [New York] I think we may safely count upon twenty-four votes," he expressed mortification that the citizens of Louisiana "more than any others in the Union" had refused to pay the debt they "owed to their deliverer." Though maintaining he had no regret as to his defeat, he was unable to conceal it, when he stated that "it deprived him of the satisfaction" he would have had in giving his "support to the wise measures" he was sure Jackson would "propose to the Legislature." Having refused flattering political offers in New York, for he had decided to eschew politics in the future, he would depart for New Orleans at the close of his congressional term and "return again to that obscurity which it would" have been better "perhaps if I had never emerged." 101

100 Jackson to Livingston, August 2, 1828, in Bassett (ed.), Correspondence of Andrew Jackson, V, 500.
101 Livingston to Jackson, August 12, 1828, in Jackson Papers, LXX, 1311-12.
Livingston had forgotten, however, that the man who has played the game of politics, like the man addicted to opiates, finds it impossible to forego the excitement that it gives him. The fascination of the game lures him to return just as the craving leads the addict to indulge, for neither is able to break himself of the habit. Within a short time, his outlook became brighter and before the close of Congress, he had decided to accept Jackson's proffered assistance to gain the senatorial seat.
CHAPTER XIII

UNITED STATES SENATOR

The 1828 campaign slogan of "barter and corruption," the rise of the masses, the blunders of the Adams administration, and the skillful political manipulation of the practical Van Buren had ended the Virginia-Massachusetts presidential monopoly. For the first time in the history of the nation, a man from beyond the Appalachians had been elected the chief executive of the nation. In the broader sense, the election had been a bitter battle between democracy and aristocracy and a keen struggle between the particularism of the South and West and the centralism of the New England president. While Livingston subscribed to many of Adams's political tenets, none of the Jackson followers was more pleased than he with the results of the election. Even though New York had upset his calculations by giving sixteen of its thirty-six electoral votes to Adams, he was highly gratified when Louisiana contributed her five to the Jackson victory of 178 to 83.

Livingston's defeat was "more exulted in by the administration party than any other victory they obtained during the whole
controversy,"¹ and, when "the Adams men began to crow"² the Jackson leaders determined to find a suitable position for Livingston. His services to the party in New York and in Pennsylvania during the campaign had been too valuable for them to ignore. It was decided that Livingston should become their candidate for the Senate at the following January election, for with the Jackson forces in control in the Louisiana legislature, he should have little difficulty in being elected. The decision having been reached, Livingston notified his friends in New Orleans of his intentions and departed for home during the first days of November immediately following the election.

Livingston knew that his political future was at stake and directed his full energy to a successful conclusion of the issue. In "his anxiety to reach New Orleans as early as possible" he declined an invitation to a public dinner to be given in his honor at Harrisburg.³ He realized his presence at home was imperative. The campaign plan was an almost perfect "build-up" culminating in a testimonial dinner just prior to the election. The publicity was admirable and effective. Interestingly written and well-timed accounts of the honors bestowed upon him at the various stops en route home, prepared to impress the people of New

1 Pennsylvania (Harrisburg) Reporter, November 7, 1828, quoted in Louisiana Courier, December 5, 1828.
2 United States Telegraph, August 27, 1828.
3 Pennsylvania Reporter, November 7, 1828, quoted in Louisiana Courier, December 5, 1828.
Orleans of the high regard with which he was held elsewhere by the Jackson people, appeared in the Courier.

Apparently by design, the account of his reception in Nashvile appeared in the paper on the day of his arrival home. The editor of the Courier gave considerable prominence to the detailed account of the Tennessee "correspondent's" story of the keen disappointment of Felix Grundy and numerous "other friends of Jackson" when Livingston found it necessary to decline their invitation to attend a public dinner to be given in his honor. They particularly regretted being unable to pay him their "tribute of esteem and respect" as the "zeal and ability with which on all proper occasions" he had "stood forth as the able and eloquent defender of our much slandered fellow citizen" had endeared him "to the citizens of Tennessee." Especially were they disappointed that their fellow citizens would be denied the privilege of meeting this "firm, undeviating, talented and distinguished member of the Republican party" who possessed "deep and extensive learning" and whose reputation had few equals "in the whole Union." 4

On December 9, the Courier announced "with pleasure the arrival here last evening of the Honorable Edward Livingston" and that his friends were planning to have a public dinner for him as a testimonial of gratitude. 5 The numerous press notices

4 Louisiana Courier, December 8, 1828. The article carried a Nashville lead dated November 24, 1828.
5 Ibid., December 9, 1828.
gave fullest publicity to the contemplated affair,\textsuperscript{6} and James Workman, D. Prieur, mayor of the city, and John Slidell,\textsuperscript{7} working untiringly for the success of the occasion, furnished a fitting climax to the publicity program by inserting in the \textit{Courier} copies of the invitation and of the acceptance.\textsuperscript{8}

The "highly respectable company," which attended the honor dinner at Davis's ball room provided Livingston a means of advancing his candidacy. His political sagacity was shown in his speech by the scrupulous avoidance of any direct reference to the campaign. Following the usual complimentary remarks paid a successful opponent, Livingston subtly appealed to the pride and patriotism of his audience in justifying his vote to add to the burden of taxation by the raid on the treasury for the Revolutionary War veterans by assuring them that he knew he would "not be disavowed when I preferred your reputation and honor to your pecuniary interest."

In rendering an account of his stewardship, he declared that he did not affect to undervalue the honor he had derived from their confidence or "to conceal the regret" at its being withdrawn. "I bow with respect to the decision of the majority," he continued, and "shall return to private life with the consciousness of having performed" my duties "to the best of my ability." If he were inclined to "utter a word of complaint

\textsuperscript{6} \textit{Ibid.}, December 10, 1828, \textit{et. seq.}
\textsuperscript{7} \textit{Ibid.}, December 11, 1828.
\textsuperscript{8} \textit{Ibid.}, December 18, 1828.
or show any surprise at its result" it would have been a dis-
avowal of those principles which he had asserted and practiced
during his "whole political life." Adroitly, he announced his
platform during his discussion of the national issues. His analy-
tical, comprehensive résumé of the national problems was, in
effect, a statement of his position on the various controversial
questions and a bid for support. In a tribute to democracy, he
closed his address with a toast to "The will of the People— generally directed to their best interests—always to be submitted
to with respect—never to be contravened with impunity." 10

The tide was flowing strongly in his favor, as was clearly
indicated by the result of an election January 2, 1829, when
by a majority of sixty-five votes, a Jackson candidate was
elected to a vacancy in the Legislature. 11

When the Legislature met to elect the senator, January 12,
1829, five candidates were in the race, but after the first bal-

9 As proof of this assertion he quoted from a report which he
had made to the General Assembly when a member of that body.
"The representatives of a free people, although they may do
nothing to forfeit the confidence of their constituents, cannot always expect to retain the power of serving them. A
spirit of change is inherent in our government. It gives it
energy and is necessary to its existence. We appear in pub-
life, perform or neglect the duties assigned to us, and
then pushed off the stage by younger, more active, or more
popular candidates, we return to the mass of our fellow citi-
zans; in common with them to suffer the evils or enjoy the
benefits of the measures we have adopted." Ibid.
10 Ibid., December 28, 1828.
11 New Orleans Bee, January 3, 1829. "II. A. Laveragne defeated
J. J. Mercier by 65 votes."
lot, it became a three-cornered contest. Henry Johnson, who had resigned the senatorship to serve as governor, desired to return to Washington. Bouligny, who had been selected to serve the remainder of Johnson's unexpired term, contended that he was due a full six-year term of office. Butler and James Bowie each felt that he was best fitted to represent the state, and Livingston strenuously opposed the effort to remove his name from the federal payroll. On the first ballot, Livingston took the lead, and increased this lead on each successive ballot until the fifth when he secured the necessary majority for election.\(^\text{12}\)

The Jackson men in Louisiana now boasted that Livingston "has proved too strong for the Adams men" and that Louisiana again had "frustrated the designs of the coalition by electing a firm republican to the United States Senate."\(^\text{13}\) An intense partisan triumphantly informed the Telegraph, "I am just from the House and hasten to inform you of another triumph: Livingston has carried the day." With pride he related, "I have just shaken hands with the old fellow—he is in fine health, and I need not add, in excellent spirits."\(^\text{14}\) The opposition press refrained from any comment and the Bee carried without remarks the

\(^{12}\text{Louisiana Courier, January 12, 1829; Louisiana Senate Journal (French edition), 9 Leg., 1 Sess. (New Orleans, 1829), 51-52. The vote stood: Livingston 32; Bouligny 12; Johnson 15; Blank 3.}\n
\(^{13}\text{"Extract of a letter from a citizen of New Orleans to a gentleman in this city," in United States Telegraph, February 3, 1829.}\n
\(^{14}\text{Ibid.}\)
official proceedings of the General Assembly. To the editor of the Bee, Livingston's election was a galling climax of the Jackson campaign, as this editor had lost to the editor of the Courier a $5,500 wager on the outcome of the presidential election in the state. For Livingston, there remained hardly any political ambition to be satisfied. He became Senator on the same day that Jackson took the oath of office as President; and from the standpoint of tenure, prestige, and importance, he held one of the most desirable of political offices.

Even before Jackson's inauguration there had begun a struggle for supremacy in the party between the Calhoun partisans and the Western group over the cabinet personnel that later divided the party and contributed to the rise of the Whig party. In the formation of his cabinet, Jackson was guided by the two principles of barring all adherents of Clay and of surrounding himself with men who would not oppose him. However, he did exercise the wisdom of selecting his cabinet members from the leaders of the principal factions which had supported him. The Crawford element was recognized by the appointment of its former leader, Van Buren, as secretary of state. From the West he drew two personal friends; John H. Eaton of Tennessee was assigned the position of Secretary of War; and a little later William

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15 New Orleans Bee, January 13, 1829.
16 Ibid., October 8, 1828. The Bee stated, "The bet of $5,500 on the presidential question, proposed by the Courier, was immediately accepted and the money staked on both sides."
T. Barry of Kentucky became the postmaster-general. To the Calhoun contingent went the remaining three department heads with S. D. Ingham of Pennsylvania, secretary of the treasury; John Branch of North Carolina, secretary of the navy; and John M. Berrien of Georgia, attorney-general.

Probably feeling that Livingston resented not having been included in the cabinet selections, and recognizing his peculiar fitness for the French mission, Jackson offered this position to him shortly after Congress adjourned. Nothing more desirable could have been offered Livingston than this opportunity of realizing his cherished ambition of becoming acquainted with the world's savants in the fields of art and science at Paris. The distinction of occupying the same position once held by his distinguished brother not only appealed to him, but he was gratified with "the mark of high confidence which you reposed in me by the offer."¹⁷

Livingston had to consider several factors before his final answer could be given Jackson. It was not, as Van Buren thought after his "long and gloomy interview with the Livings-toms," a question of the crudeness of Washington official so-ciety which might expose them "to annoyances at a foreign court,"¹⁸ but rather a question of finances which caused

¹⁷ Livingston to Jackson, May 3, 1829, in Van Buren Papers, II, 2102.
Livingston's delay in reaching a decision. His living expenses were heavy, and, to supplement his small salary, he had continued his practice of law; and, at that particular time, he had a case before the Supreme Court that was "of great consequence to others as well as me." It had been his policy to invest heavily in real estate and with the payment of his indebtedness to the government and the failure to secure clear title to the remainder of the batture property, he had available very little or no ready cash. The social requirements of the French court made it necessary that the small salary allowed by the government be supplemented by private funds if, indeed, the minister were to remain out of debt and to retain "that independence which every man in such a station ought to feel." 

In an effort to make the necessary financial arrangements, Livingston delayed so long informing Jackson of his decision that on April 6, Van Buren notified him that he had been "directed by the President to inform you that he is very desirous that you come to an early decision upon the offer." Being loathe to decline the post, he requested Jackson personally for

19 Jackson to Van Buren, April 20, 1829, in Van Buren Papers, IX, 2046.
20 United States Telegraph, January 24, 1824.
21 Livingston to Jackson, May 3, 1829, in Van Buren Papers, IX, 2,102.
22 Ibid.
23 Van Buren to Livingston, April 6, 1829, in Ibid., VIII, 2,003.
an additional three weeks to arrange his affairs if possible in
order that he might accept. Realizing Jackson's impatience and
his inability to conclude his negotiations, he notified the Pres-
ident May 3 that "I am forced with great reluctance... to de-
cline the appointment."24 Then, with his wife and daughter, he
remained at Montgomery Place until Congress convened in December.

Livingston's studies and agricultural experiments failed to
occupy his time completely, as politics could not be forgotten
for very long. The Jackson policy of removing federal officers
had greatly disturbed the Albany postmaster, a certain Van Ren-
sselaer, who was a distant relative of Livingston's. He appeal-
ed to his kinsman for aid, and within a short time Livingston
was able to assure him that the President had stated that "he
would not be disturbed."25 As the dispenser of federal patron-
age in Louisiana, Livingston recommended for appointment "strong
all-time supporters of Jackson" "for the important federal po-
sitions"26 and made a recommendation to Van Buren with regard to
the award of the contract for the "public printing at New Or-
leans." Failing to receive prompt compliance with his request,
he inquired of the Secretary whether attention had been given
"to that affair," and assured him that although it might seem

24 Livingston to Jackson, May 3, 1829, in ibid., IX, 2,102.
25 Bonney, Historical Cleanings, I, 425-86.
26 United States Telegraph, April 28, 1829. Presidential
appointments in Louisiana are listed.
of little importance it would "have a beneficial effect to
make that appointment without delay." 27

Livingston's political interest was not confined to the
patronage problems of New York and Louisiana. He kept fully
informed concerning the important events in the political
world and watched with keen interest the attempt of Clay to
consolidate the various elements of the opposition in his ef-
forts to form a permanent political party. He thoroughly en-
joyed Clay's speeches as one "preaching over bottles, sometimes
lets the hearers into secrets." He was delighted with the mis-
takes which this ambitious leader made and relished the fact
that he had placed himself in an untenable position during his
"Mount Sterling Speech" which had left him in "the Dilemma be-
tween the American System, and the breach of the Union." He
was thoroughly convinced that the former Secretary of State
was "speaking away every chance he had of success." 28

In 1826 there had been organized a crusade against the
Masonic Order and the leaders had made a political issue of
their fight against the society which resulted in the formation
of the Anti-Masonic party. 29 In New York, it had been instru-
mental in the selection of the sixteen electoral votes in 1828. 30

27 Livingston to Van Buren, September 16, 1829, in Van Buren
Papers, I, 2,356.
28 Ibid.
29 Hammond, The History of the Political Parties in the State
of New York, II, 373-85.
30 Ibid., 386-89.
and its strength lay in the East where Jackson was weakest. It was difficult to calculate how widespread the movement would become and what dangerous proportions it would reach. Jackson was a Mason, as was his outstanding opponent Clay, but the latter refused to discuss the question. Jackson, on the other hand, with his usual directness, later denounced the Anti-Masons and turned the fight to his advantage. In the fall of 1829, Livingston, who had long been a member of the order, was "offered the Presiding office over the Royal Arch Masons throughout the Union."

In view of the political complications, he was careful to consider fully what effect his acceptance would have upon the new administration. Not wishing to be guilty of the fault he ascribed to Clay, he requested Van Buren to "let me know what you think of it," as he was anxious to accept the position if "it may increase my means of being useful." The reply, evidently, was favorable, for on April 3, 1830, he was installed "General Grand High Priest of the General Masonic Chapter of the United States" during the organization's national convention in Washington. Following his installation, he delivered an effective address to the "large assembly of the Brotherhood from different parts of the Union." The Jackson press took its

31 Livingston to Van Buren, September 16, 1829, in Van Buren Papers, I, 2,356.
32 Washington Daily National Intelligencer, April 5, 22, 1830.
from this incident and waged such unrelenting warfare against the Anti-Masonic party that Clay finally abandoned his neutral position in an effort to secure the support of its members in the 1832 election.

Clay began to denounce the Administration as soon as he recovered from the shock of Adams's defeat. Before leaving Washington, he had begun to organize and solidify a bitter and unrelenting opposition to Jackson. The first objective was to secure a majority in the Senate and thereby control the President. The Cabinet selections had been greeted with derision, and the President's policy of political proscription served as a rallying point for the opposition. Practically every political aspirant claimed the honor of electing Jackson and each claimant demanded a reward. From the exigencies of this situation developed the spoils system which proved to be the sector on which occurred the first real skirmish of the eight-year conflict. Office seekers importuned the assistance of every individual who was supposed to possess any political influence. To the pleas, threats, and curses of the applicants were added the wails of those who had been displaced. Jackson was accused of duplicity and the Cabinet members were called liars. So great was this din and fury that there could not be heard the statements that many of those who had lost their positions were criminals and that fewer persons had been discharged than

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33 Bowers, The Party Battles of the Jackson Period, 75.
was currently reported.

During the summer, Jackson made many recess appointments, among which were a number of newspaper editors who had actively supported him during the campaign. His enemies were anxiously waiting for the first opportunity to denounce the wholesale dismissals and to humiliate him by rejecting his nominations. When Congress convened in December, the earlier part of the short session was given over to denunciations of the removals in the House, and to hostile scrutiny of the list of nominations requiring confirmation in the Senate.

With Clay absent, the leader of the first onslaught in the Senate was John Tyler who had been a close friend of the Kentuckian from the time they had served together in the House. Tyler's hostility to Jackson was first manifested by his support of the resolution censuring the General for his actions in Florida. The spoils system served as a pretext for Tyler's opposition to the Administration, and he was delighted with the opportunity to affront and humiliate Jackson by defeating the confirmation of the editors.

Livingston supported Jackson actively and vigorously on most matters, but he refused to follow his leadership where the question of principle or of conduct was involved. He was not opposed to the policy of proscription, and in one of his last official acts as Senator, he defended the President for removal of certain postmasters. In their attempt to center
public attention on the evils of the spoils system, the opposition had planned a thorough investigation of the Post Office Department. Livingston led the fight to restrict the Committee's authority by prohibiting it to "make inquiry into the reasons which have induced the Post Master General to make any removals of his deputies." He had voted with the minority to confirm the appointment of all of the editors recommended by Jackson, with the exception of that of Henry Lee. Lee's reputation was so unsavory that Livingston refused to approve his appointment, even though Lee was a personal friend of the President.

Livingston's "failing" memory did not save him from embarrassment arising from an event in his life which he had hoped was a closed chapter. Jefferson's Memoirs which had just been published, quoted him as having informed the former President during the Jefferson-Burr contest that Bayard, by the offer of "the Secretaryship of the Navy," had attempted to win the support of Samuel Smith for Burr. In an effort to clear Bayard's reputation, John M. Clayton of Delaware requested both Smith and Livingston "to disprove the statement." Smith vigorously denied the accusation but Livingston begged the question by replying that "he must say, that having taxed his recollection as far as he could go, on so remote a transaction,

34 Register of Debates, 21 Cong., 2 Sess., (February 12, 1831).
35 Parton, Life of Andrew Jackson, III, 274.
he had no remembrance of it."

During Livingston's two years in the Senate, his participation in the debates was restricted largely to subjects in which questions of constitutionality were involved. His remarks with regard to the bill to appropriate public lands for the support of "Deaf and Dumb Institutions" were typical of his position. He opposed the bill on the constitutional grounds that public lands were "intended for the benefit of all—for the common benefit." No provision had been made for this particular purpose he argued, and should the principle be adopted it would serve as a precedent which would result in the acceptance of the "doctrines of general construction." This act would lead to the consolidation of the powers "of the State Governments" in the national government, and the next step would be to monarchy; for consolidation and monarchy are inseparable."

Livingston was quick to challenge any implication which reflected upon the ability or the reputation of members of his family. On March 2, 1831, during the consideration of a bill for the relief of Monroe, he repeated substantially what he had said during the debate on the same bill while a member of the House. Monroe's friends claimed that the payment of the French "debts due our citizens" and the purchase of Louisiana were the result of Monroe's "exertions and diplomatic skill." Livingston,

36 Register of Debates, 21 Cong., 1 Sess., 94 (January 28, 1830).
37 Ibid., 302-04.
though favorable to the bill, promptly refuted the statements. He pointed out that his brother, Robert R., had used his "personal influence with the First Consul" to secure a settlement of the American claims a month prior to Monroe's arrival in France. Furthermore, he asserted that Talleyrand had opened negotiations with his brother for the sale of Louisiana before Monroe reached Paris. On the "authority of the First Consul," Talleyrand had made to Robert R. the definite offer to sell Louisiana before Monroe had presented his credentials. His only participation in the negotiations had been restricted to the discussions relative to the sale price of the territory.

On March 3, 1831, the last session of the Senate he attended, Livingston secured favorable action on his penal code for the national government. The code was substantially the same as the one he had prepared for Louisiana with such modifications as were necessary for the peculiar structure of the general government. The Senate ordered it printed for further consideration; but as was the case in regard to the Louisiana Code, Livingston was no longer a member of the legislative body when it next convened; and with him absent, no one attempted to secure its enactment into law.

"The numerous and heavy calls upon the government for aid in internal improvements," alarmed Livingston; and "as one of the most devoted friends of the system," he sought to prevent it from "falling into disrepute." He recognized that should the government attempt to participate in the financing of all
projects the system would be destroyed as the treasury would be unable to meet all the demands. His motion to restrict the payment of stock subscribed by the national government in the Baltimore and Ohio Railroad project to funds derived from "a transfer of sales of other stock invested in similar projects," obtained the desired results. The discussion that followed Livingston's motion resulted in tabling the original question by a vote of twenty-one to nineteen.38

While Livingston had uniformly favored the program of internal improvements, Jackson's position on the question had been no more clearly defined and consistent than it had been with regard to state rights.

It was expected that Jackson, a western man, would favor the program39 but his state rights theories disturbed him and tended to influence him against such a policy. By 1830, when Congress passed the Maysville Road Bill, Jackson was definitely committed against the question. Over the protest of many of his best friends,40 Jackson returned the bill to the House, May 27, with his veto. Despite the President's attitude, Livingston refused to reverse his position on the question, and not only voted favorably on all internal improvement bills, but on several occasions urged the Senate to take favorable action on

38 Ibid., 453, 455 (May 24, 1830).
39 Ibid., 305, 309.
40 Ibid., 313-15, 320, 325.
them. On May 31, he voted to override the President's veto of the Washington Turnpike Road Company bill, but the attempt failed to secure the necessary two-thirds majority.

The Maysville veto caused the Southerners generally to believe that Jackson was committed definitely to strict construction principles. This belief was strengthened by his action in the Georgia-Indian dispute when he ignored the decision of the United States Supreme Court, refused to protect the Indians, and allowed Georgia to subject them to the laws of the state in violation of the terms of the treaty between the Indians and the United States.

This controversy over the respective powers of the central government and the states was an old issue antedating the Revolution itself. One of the most dangerous factors during the colonial period was the determination of the proper demarcation of colonial and Parliamentary authority. Following the independence of the colonies, a similar question arose again and again, in the Kentucky and Virginia Resolutions, and in the actions of the dissatisfied New England Federalists. The jealousy of any power superior to the states had been further aroused by the internal-improvements question and the Georgia-Indian dispute. These, however, were hardly more than skirmishes in the great

41 Register of Debates, 21 Cong., 1 Sess., 30, 247-72, 341-42, 343 (January 19, March 9, 15, April 16, 1830).
42 Ibid., 456 (May 31, 1830). The vote was twenty-one to seventeen in favor of its passage.
conflict over the nature of the Union, in which Livingston gave direction to its course by his masterful interpretation of the rights of the states and the power of the central government as provided by the Constitution.

The genesis of the battle was in the economic situation that existed following the war of 1812. The South, although accepting the theory of protective tariff in 1816, maintained that the situation was due to the inequality of the tariff which had built up the North at the expense of those sections without manufacturers. The Tariff Bill of 1820, providing for a general increase in most duties designed to relieve the economic situation resulting from the panic of 1819, had been defeated in the Senate by one vote. The protectionists, by granting concessions to Kentucky and the Northwest, were successful in securing the compromise bill of 1824. As a result of Vice-President Calhoun's deciding vote in the Senate, the woolens bill of 1827 was defeated.

The 1828 tariff bill was not an attempt to deal with an economic problem, but rather an effort to meet a political situation. When the new Congress met in December 1827, the Jackson party was in control in the House. Jackson's friends prepared in the committee a bill that would be satisfactory to the Middle States, yet so objectionable to New England that it would insure its defeat. To the dismay of its manipulators, a sufficient number of New Englanders voted with the high tariff
men of the North and Northwest to pass the "tariff of abominations."

Business depression, by 1828, had caused the southern planters to oppose the tariff more violently, as they attributed the hard times almost exclusively to high duties. Calhoun was "deeply moved on the subject" and, following the passage of the "tariff of abominations," he discussed the problem with Van Buren on numerous occasions. During these conversations, the New Yorker sensed that the Vice-President was "brooding on some energetic movement by which the then course of action might be arrested." On Calhoun's return home following the adjournment of Congress, this "energetic movement" found expression in a plan to oppose the tariff which he prepared at the request of the state rights party. In this document, that came to be known as the "South Carolina Exposition," was for the first time enunciated the doctrine of nullification in a concrete, systematic form. With Calhoun, nullification became more than a protest; it became a plan of action. The state legislature, which met in December, 1828, considered the "Exposition"; but, at the suggestion of its author whose identity at the time was suspected but not known, action was deferred until Jackson had had the opportunity to act on the question.

Jackson had given little comfort to the anti-tariff people of the South, and, by the spring of 1830, Calhoun was committed

publicly to state rights and his doctrine of nullification was in danger of becoming the slogan of the South. He had concluded that his only practical chance for the succession depended upon the overthrow of the "tariff" power which he had been instrumental in bringing into existence.\textsuperscript{44} It was this conclusion that "perhaps controlled his action at the minute."\textsuperscript{45} Realizing that as Vice-President, he could not assume actual and public leadership of the nullifiers, he assigned this rôle to Robert Y. Hayne.

The Calhoun-Hayne group waged a systematic campaign to gain the support of Virginia, Georgia, Pennsylvania and certain sections of the Northwest. In order to arouse the support and enthusiasm of Virginia, pointed effort was made to pay tribute to the memory and services of Jefferson on every possible occasion.\textsuperscript{46} To gain the aid of Georgia, attempt was made to capitalize the Indian controversy and to laud her public men for their wisdom and eloquence.\textsuperscript{47} In Pennsylvania, Calhoun's friends worked secretly to undermine the President by developing sentiment to limit him to one term.\textsuperscript{48} They sought to form an alliance with the groups in the West opposed to the Naysville veto. Calhoun awaited a propitious occasion to launch the attack, and,

\textsuperscript{44} Ibid., 410.
\textsuperscript{45} Ibid.
\textsuperscript{46} Ibid., 414.
\textsuperscript{48} Samuel Rhea Gammon, "The Presidential Campaign of 1832" in \textit{Johns Hopkins University Studies} (Baltimore) Series XL, No. 1, 78.
in the meanwhile, an unexpected incident, unrelated to the
question, occurred that led to the opening of the momentous
conflict that continued for more than a quarter of a century.

Late in December, 1829, Senator Samuel A. Foote of Connec-
ticut introduced a resolution in Congress designed to restrict
the sale of public lands. The proposal raised a point at
which the interests of the Northeast and the West were at var-
iance and the western senators objected immediately.

With the impending breach between the Northeast and the
West, the state rights advocates sensed an opportunity to draw
the West to their side by showing that the two sections were
equally suffering at the hands of a common enemy. Much feeling
was aroused in the Senate, and during the period December 29,
1829, to May 21, 1830, twenty-two senators spoke to the resolu-
tion on fifty-eight occasions during the thirty-four days de-
voted to the debates on the question. Within a short time the
debates shifted from the question of public lands and the West
to the proper status of the federal government.

When Hayne first spoke to the resolution, January 19, 1830,
the Jackson people felt that he had championed the Administration
cause in a party battle. At the moment, Jackson was friendly
to Hayne and he viewed the arraignment of Clay's American

49 Register of Debates, 21 Cong., 1 Sess.,
1829.
49 Parton, Life of Andrew Jackson, III, 282 (December 29,
1829).
50 Parton, Life of Andrew Jackson, III, 282.
System and the strong indictment of Webster's manufacturing interests as an attack on New England Federalism designed to capture that section for the Administration. The skill with which Hayne linked with the issue in question his protest against protective tariff and with which he hinted at a constitutional method for a state to undo an unauthorized act of oppression at the hand of the federal congress did not deceive Webster as to his ultimate goal. When he stated "I am one of those who believe that the very life of our system is the independence of the States, and that there is no evil more to be deprecated than the consolidation of this government," Webster boldly challenged the theory for the purpose of forcing Hayne to a more specific declaration of his meaning.

The challenge was accepted. In his speech of January 21, following an attack on Webster's inconsistency on the tariff question and New England Federalism for its stand during the War of 1812, he raised the whole question of nationalism by pointing out the dangers of consolidation and the unfairness of the tariff, basing his arguments on the "Exposition." He showed that it was in line with the Virginia and Kentucky Resolutions of 1798 and it was the traditional American doctrine espoused by New England under the Madison Administration during the War of 1812. He maintained that, as for South Carolina,
she attempted only to protect herself from measures which had prostrated her and which soon would impoverish the whole South; she sought to preserve the union of states as it was founded; and she endeavored to save the states from usurpations which would leave them nothing they could call their own.  

On January 26, Webster replied to Hayne. Following a defense of the war policy of the Federalists, his own inconsistencies, and the attitude of New England toward the West, he directed his attack against the constitutional arguments of the South Carolinian. While accepting the consolidation theory, he denied the ultimate authority of the states to pass judgment upon acts of Congress and decide upon their constitutionality, for there was no middle ground between obedience and open rebellion. Both the federal and state governments, he maintained, were the agents of the people where true sovereignty lay. The federal government, he argued, was the people's government, as from them it derived its authority and was supreme in its sphere. The state legislatures were not the sovereign people, he continued, for the people had chosen to place that sovereignty in the federal power. Consequently, the Constitution had restricted the rights of the states and no state of its own accord could revoke those rights. He pointed out that the Supreme Court was the proper tribunal to settle differences of opinion arising over federal acts, and that if the people disapproved of any constitutional provision they could amend that instrument.

Ibid., 43-58 (January 21, 25, 1830).
Until the Constitution was amended, however, acts of Congress, passed in conformity with the authority delegated to it, remained the supreme law of the land.57

This powerful attack of Hayne's thesis is all the more remarkable in that, prior to 1828, Webster had been an avowed sectionalist. The question as to the source of his recently acquired nationalistic philosophy arises, and it is interesting to note the striking parallelism that exists between the principles he enunciated during the debates and the tenets long held by Livingston. A corollary of every important point advanced by Webster is to be found in the arguments presented by Livingston during the House debates of 1798 and 1824. Webster was a member of the House in 1824 when Livingston clearly, concisely, and logically traced the development of the federal government and reiterated his nationalistic concept. Livingston had maintained a consistent position with regard to the status of the federal government and his clear cut arguments could not have failed to appeal to the logical Webster during his transition from an advocate of state-rights to an intense partisan of nationalism.

Jackson soon began to realize the full purport of Hayne's speech, and measures were taken to counteract its effects. As the personal friend of the President and one of the Administration leaders in the Senate, Livingston's participation in the

57 Ibid., 59-93 (January 26, 27, 1830).
debate at this particular time was significant. It was he, rather than Hayne, who expressed the views of the Administration; and, other than Webster and Hayne, he gave utterance, March 15, to the most forceful and powerful speech delivered during the prolonged discussion. As the official spokesman for the Administration, he vigorously defended the policies of Jackson; and, in the development of his thesis, he differed from every Senator who preceded him. While inclined to Webster, he sustained Hayne in his contention that the Constitution was a "compact of each one with the whole," thereby putting himself at issue with Webster; and in his attack on Federalism, he defended the Union against the insidious doctrine of nullification.

In his exposition, Livingston followed the views expressed in arguments he had advanced during the debates on internal improvements in the House; but now, his position on the determination of the constitutionality of acts of Congress, and the power of a state to veto such acts was made much clearer. A more elaborate attempt was made to explain the question of sovereignty; where final authority did lie, with the people, the states, or the Supreme Court. Ultimate authority, said Livingston, resided in the people and before the formation of the Union this sovereignty was expressed through the agency of the states. But the states in adopting the Constitution had surrendered part of their sovereignty to the national government and this surrender, having constituted a government of general powers, which existed for the common good, was irrevocable. Among the powers thus surrendered
by the states was that of impeding or resisting the execution of
any decree or judgment of the Supreme Court in cases in which
the Constitution gave the Court jurisdiction, even though the
states considered such decree or judgment unconstitutional.

There were, asserted Livingston, five remedies open to a
state, when it believed that a law was palpably unconstitutional
and after the Supreme Court had affirmed it. This situation
might be met, he said, by a remonstrance against the alleged
wrong to Congress; an address to the people in their elective
functions to change or instruct their representatives; a similar
address to the other states, in which they would have a right to
declare that they considered the act unconstitutional and void;
an amendment of the Constitution in the manner provided therein;
and, finally, a resort to "the natural right which every people
have to resist extreme oppression." All of these remedies, he
continued, were constitutional except the last, and that one, as
well as withdrawal from the Union could "be justified only on the
supposition that the Constitution had been broken." Whenever a
state resorted to such action, he warned, it was at the "risk of
all the penalties attached to unsuccessful resistance to estab-
lished authority."

The states also had surrendered their authority to veto an
alleged unconstitutional act of Congress. It would, he pointed
out, have been absolutely destructive of union if such power had
not been surrendered by the states. Furthermore, it was speci-
ifiedly shown by the Constitution itself, by contemporaneous
expression, and by the true construction of the Virginia resolutions of 1798, that the states had surrendered this power. But, he maintained, the surrender of these and other powers on the part of the states had not resulted in a loss of all sovereignty by the states. On the other hand, he held that an acceptance of the Federalist theory of the general government being "found ed in no degree on compact between states" would produce "the most disastrous practical results" of placing three-fourths of the states at the mercy of one-fourth. An admission of this pernicious doctrine, Livingston contended, would lead to a consolidated government finally resulting in a monarchy; and, if partially admitted, it would terminate in civil dissension.

While admitting the right of revolution, Livingston was greatly disturbed by the turmoil between the sections raging under the guise of constitutional construction. He pled for a construction of the Constitution that would preserve both the states and the nation by an adjustment of the conflicting opinions and interests within the framework of that instrument. In concluding his entreaty, he warned the "partisans on either side of the argument" that the people neither will submit to consolidation nor suffer disunion, as their good sense would detect "the fallacy of arguments which lead to either." 58

While the debate failed to settle the question, Livingston's "able and interesting argument" received widespread attention.

58 Register of Debates, 21 Cong., 1 Sess., 247-72 (March 9, 15, 1830).
thoroughly convinced Biddle that a "great struggle" was imminent in which "great caution and vigilance" would be required. He realized that should the state legislatures issue instructions, they would "force the members of Congress to vote against the Bank."

Biddle's plan of campaign marked him an excellent strategist. The selection of able lieutenants revealed a leader of keen judgment; the tactics employed, though some mistakes were made, indicated a man possessing generalship that ordinarily would have sufficed for victory. But the fates had foredoomed him to defeat. While his sincere interest was the welfare of the Bank, he jeopardized its existence when, prior to this period, he had made it a political issue by his activities in congressional and state legislative circles. Having once engaged in politics, Biddle could not now withdraw; and he was no match for the astute and crafty Jackson during this period of lightning-like shifts for political advantage.

Biddle made a check of the congressional members. Judiciously extended favors, though legal, were designed to forestall an attack on the Bank. He made "an appeal to the reason of the Country" through widespread propaganda in an effort to secure the support of state legislatures. He was successful in securing an endorsement from the Pennsylvania Legislature by a

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32 John Norvell to Biddle, December 19, 1830, in R. C. McGrane, *The Correspondence of Nicholas Biddle* (Boston, 1919), 121; Thomas Cadwalder to Biddle, December 21, 1831, in *ibid.*, 147-50.
vote of seven to one in March 1831. But he failed to prevent
the adoption of a resolution opposing the recharter of the Bank
by a strict party vote in the New York Legislature the following
month. 35 Although Webster refused to reply to Benton's speech
against the Bank, the Senate, by a vote of twenty-three to twen-
ty-one, denied the Missourian's request to introduce a resolu-
tion against it. In the House, the move to refer that part of
the President's message to a special committee instead of the
friendly Ways and Means Committee was defeated by a majority of
forty-three votes. When the knowledge of the break between Jack-
son and Calhoun became public, Biddle expected to gain the sup-
port of the Vice President's following. With the reorganization
of the Cabinet, he felt that the Bank situation had improved
materially, since it included three such strong friends of the
institution as Livingston, McLane, and Cass.

It appeared that Livingston and McLane had convinced Jackson
during the summer and fall of 1831 that his plan could not succeed
and that it was the part of wisdom to accept the old Bank with a
modified charter. 34 Although Jackson had been persuaded not to

33 Hammond, History of the Political Parties in the State of
34 "It is now generally admitted, I think, after a considerable
examination of Mr. McLane's views, that he does not express
any opposition to those entertained by myself; . . . Mr.
McLane and myself understand each other, and have not the
slightest disagreement about the principles which will be
a sine qua non to my assent to a bill rechartering a bank,"
Jackson to J. A. Hamilton, December 12, 1831, as quoted in
mention the subject in his next message, Biddle felt that the secretaries had committed him too far. He considered it better for the Bank that the President should speak, as "his silence would not be so useful as his mentioning the subject." In compliance with Biddle's desires, Livingston and McLane prevailed upon Jackson to say that he now left the matter entirely "with the representatives of the people." The President made no protest when McLane informed him of his intention to praise the Bank and to recommend its recharter. He raised no objection even after the Secretary pointed out to him that the House Committee of Ways and Means might act favorably upon his report and bring in a bill to recharter, and, if it did, he, McLane, could not then oppose it. While Jackson "would be sorry if the question were forced upon him in that way," McLane assured Biddle that the Executive would not express "a shade of opinion against the Bank or make any declaration other than that he would leave the matter to Congress." The Secretary did insist that Biddle should not present the petition until after the election, otherwise the President would consider it an act of defiance and act accordingly. But, both he and Livingston were of the opinion that "if given time, the President would probably acquiesce in a recharter" as he "was really disposed to cease war upon the Bank."

35 "Memorandum by Biddle," October 19, 1831, in McGrane, The Correspondence of Nicholas Biddle, 128-35.
36 Parton, Life of Andrew Jackson, III, 395, quoted Livingston to the effect "that, at this time, the President was really disposed to cease the war upon the bank."
At least, Jackson's annual message indicated that he was loath to be forced to act on the Bank question until after the election. The President realized that a majority in Congress favored recharter and that a contest during the session might defeat his ambition to receive a larger vote in 1832 than he had in 1828. Should the bill pass Congress and he approve it, he would lose support in the South and West; should he veto it, he would lose Pennsylvania and probably the election. Until late in November 1831, Biddle had come to no decision with regard to applying for a recharter. No sooner was Clay's election to the Senate certain, than he urged Biddle to make application for the recharter before the election. He assured Biddle that he believed Jackson would sign a bill for recharter now but probably would veto one after the election and practically stated if action were deferred he would oppose the recharter. Biddle decided to follow Clay's advice. In this manner the Bank irretrievably became an election issue on the side of the National-Republicans who wanted only a veto by Jackson for the Bank to become a campaign issue.

The uncertainty of Jackson's real attitude on the Bank question following his ambiguous statements in the third annual message seemed removed by McLane's report to Congress. Shortly, the rumor was abroad in the South and East that the President had changed his views and would not oppose the recharter of the

37 Richardson (ed.), Messages and Papers of the Presidents, II, 588.
The anti-Bank men became alarmed over the developments and considered the advisability of sending a messenger to London to discuss the situation with Van Buren. Though more pungently expressed than others, Randolph's letter to Jackson criticising Livingston and McLane was typical of the attitude of the enemies of the Bank. Jackson hastened to assure Randolph that McLane had spoken for himself and was "the last man who would desire to commit me on such a subject." Jackson was careful to forestall reports that might reach Van Buren and to allay any fears that might be aroused by his actions. He sent the Minister a copy of his message and assured him that while "McLane differs with me on the Bank" it was an "honest difference of opinion," for in his report "he acts fairly by leaving me free and uncommitted."

McLane, however, became discouraged when the Bank's memorial was presented to Congress and informed Biddle that if his advice to defer action were not taken, he could do nothing further for that institution. Livingston, on the other hand, while not openly opposing the President continued to champion the Bank's cause and strove to win the support of Jackson. He

38 *Niles' Weekly Register*, XLI (1832), 325 (December 31, 1831).
39 John Randolph to Jackson, January 3, 1832, in Bassett (ed.), *Correspondence of Andrew Jackson*, V, 395. "I cannot help thinking that in having for leaders in your ministry two persons who differ so essentially from you on this great and vital question [Bank] as do Messrs. L. [Livingston] and McL. [McLane] you must find yourself in a false position."
40 Jackson to Randolph, December 22, 1831, in *ibid.*., 387.
41 Jackson to Van Buren, December 6, 1831, in *ibid.*., 379.
42 Charles Jared Ingersoll to Biddle, February 21, 1832, in McGrane (ed.), *The Correspondence of Nicholas Biddle*, 183-84.
conscientiously believed it was a wise political move and that the institution met a financial need of the nation in an admirable manner. As the President knew that Livingston sought nothing, not even to be where he was, that he could "have no motive but the honor of the administration," he could afford to brook Jackson's ill will by his persistence. The Bank officials held him to be "the predominating influence" in the Cabinet and were gratified when he continued in the trying position of intermediary between them and the Executive.

In the early days of February, Biddle received an intimation that a charter might not be vetoed. As he cared nothing about the election, he decided to abandon Clay and the National Republicans and work with the President. Dallas was urged to take the resolutions of the Pennsylvania Legislature to Jackson, warn him not to antagonize the State, and, in the name of the directors, to accept reasonable modifications in the bill. At the same time Biddle approached the President through Livingston. The Secretary was to inform Jackson that the Bank could not withdraw the bill, but it was willing for it to become an administration measure and accept whatever modifications the President might desire. Livingston was in accord with the plan and informed Ingersoll that the President would not oppose the bill.

43 Ingersoll to Nicholas Biddle, March 1, 1832, in ibid., 187.
44 Ibid.
45 Ingersoll to Biddle, February 6, 1832, in ibid., 171-72.
46 Biddle to Ingersoll, February 6, 1832, in Ibid., 174; Ingersoll to Biddle, February 9, 1832, in Ibid., 174-78.
47 Ibid.
as constitutional grounds "but had certain notions of his own on the frame of the charter which ought to be complied with."

Following Ingersoll's suggestion that the President frame the bill to suit himself, Livingston, February 12, accompanied by McLane, called upon Jackson to secure his assent. At this conference the President stated what modifications he desired and the idea that it would be his work and would disarm his adversaries seemed to appeal to him. On February 21, Biddle was informed that Livingston had succeeded in winning over most of the President's advisers and "is confident of it [the plan] succeeding."

In Livingston's home on February 22, Ingersoll and the Secretary drew up the plan that, according to Livingston, "outlined the modifications which the President had finally decided upon." The plan as agreed to by Jackson provided that the government was to own no stock, but was to appoint directors on the parent board and one on each of the branch directorates; the states were to tax the Bank property on the same basis as other property within their borders; a certain portion of the capital was to be thrown open for new subscriptions; the directors were to nominate two or three of their number and the President would select one of them as President of the Bank.

As Biddle agreed to the provisions of the plan, it appeared that Livingston's negotiations would be successful. But since
Congress had taken no decisive step on the subject and Jackson had made no public declaration of his agreement, he did not consider his promise binding. The anti-bank people were quite concerned over developments and were in the dark as to what would be the action of the President in the final analysis. Irrespective of whether Benton had determined to force Jackson's hand, or whether, all along, Jackson had worked with Benton to force a congressional investigation of the Bank, the action of the President was reprehensible. If it were Benton's uninspired action, then Jackson broke his word to Livingston and Biddle. On the other hand, if Jackson and Benton had worked in cooperation, then the President had "double-crossed" Livingston in attempting to ruin Biddle with the Clay forces and to leave him without support in Congress. That Jackson had not scorned to employ questionable tactics in the furtherance of his political interests was shown during the Calhoun controversy when he made use of John Rhea in his effort to indict Calhoun of duplicity in regard to the Seminole affair.51

Unquestionably, the opponents of the Bank had determined upon an investigation of that institution for campaign purposes. They knew that an investigation would end the Bank's chances of securing a new charter52 for Jackson would do nothing until Con-

52 "Its [Bank's] millions will be lavished on MEMBERS OF CONGRESS and their constituents to purchase a recharter," Niles' Weekly Register, XXXVII, (1829), 275 (December 26, 1829), quoting United States Telegraph.
53 Benton, Thirty Years' View, I, 235-38.
gress had concluded its work. They knew that even should the
Bank be given a "clean slate that the President would veto
it." The turn of affairs disappointed Livingston, who inform-
ed Biddle that the President "must needs await the issue" of the
inquiry, for there could be no shirking of an investigation if
Jackson was to do anything for the Bank. while Livingston con-
tinued to hope that he might be able to influence Jackson and
felt sincerely that the President would have signed the bill but
for the inquiry, he did not know what his Chief would do under
the present circumstances.

Early in March, the Jackson leaders, directed by Benton,
had secured the appointment of a special committee in the House
to investigate the affairs and management of the Bank. This
committee submitted three reports. The majority report charged
the Bank with subsidizing the press and securing the support of
certain members of Congress with loans and other abuses of its
position. The minority report, and that of Adams, who reported
separately, were exactly the opposite to that of the majority,
but campaign material had been furnished.

The majority report made a presidential veto inevitable,
as Biddle realized, but he feared to withdraw the request for

54 Ingersoll to Biddle, March 1, 1832, in McCraney (ed.), The
Correspondence of Nicholas Biddle, 167.
55 Ingersoll to Biddle, March 3, 1832, in ibid., 168.
56 Ingersoll to Biddle, March 6, 1832, in ibid., 168-69.
57 Benton, Thirty Years' View, I, 225-30.
58 Register of Debates, 22 Cong., 1 Sess., House Report No.
460; Benton, Thirty Years' View, I, 241.
Quite naturally, Clay was opposed to such a move. All through June the fight continued in the Senate, and it was not until July 3 that a victory for the Bank was gained by a vote of twenty-eight to twenty. In the House, McDuffie was able to muster a vote of 106 to 64 in favor of the bill. Jackson and his friends had no doubt that Biddle, in disregarding Livingston's and McLean's warnings, had decided with Clay to make the Bank an issue of the campaign. With Clay assuming leadership of the Bank forces and Van Buren returning from England at this time, Livingston's attempts at influencing Jackson to leave the question with "the representatives" of the people were defeated.

Just as Clay's maneuver was a campaign move, so was Jackson's veto of July 10 a campaign document, and both leaders were satisfied. The unsuccessful attempt in the Senate to override the President's veto presented an opportunity which was not neglected by the party leaders to sound the keynotes of the approaching campaign. In the convention city of Baltimore, the three parties had selected their standard bearers; in September 1831 the Anti-Masons had designated Williamirt as their leader, only to be followed in December by the National Republicans who chose Clay as their candidate. It was not until May, 1832, that the dutiful Democratic delegates trekked to Baltimore to "draft" the Old Hero and, though grudgingly, to accept Van Buren as his running mate. With the adjournment, July 13, of one of the most

59 Register of Debates, 22 Cong., 1 Sess., 1073 (June 11, 1832).
60 Ibid., 2852 (July 3, 1832).
sessions Congress had known, the presidential campaign began in earnest. The Anti-Mason's failed to develop into a real national party and Clay, to his sorrow, learned the mistake he had made in carrying the battle to Jackson.

In this campaign of demagoguery, vituperation, and intimidation, the press played a conspicuous and important part. The editors were more active than ever before, with those in the capital taking the lead. The Intelligencer, while supporting Clay, was not so violently partisan in the support of the National Republicans as was Green's Telegraph, yet, in the use of vitriolic statements, it was forced to yield the laurel to Blair's Globe which vigorously supported the Jackson Democrats. The rival editors not only fought each other with a ferocity unparalleled, but they did not hesitate to charge the political leaders of the opposition with every conceivable personal and official impropriety. Their publications were placed at the disposal of the political leaders who utilized this medium of publicity effectively in their appeal to class prejudice and class hatred.

Blair had no more than begun the publication of an extra weekly issue of the Globe, before Green adopted the same plan for the Telegraph in an effort to reach the masses with party propaganda. The fiery Blair did not hesitate to accuse the

61 Benton, Thirty Years' View, I, 281.
62 Ibid.
63 Smith, The Francis Preston Blair Family in Politics, 72-76; 111-23.
64 Bowers, The Party Battles of the Jackson Period, 230.
Telegraph of being subsidized by the Bank and friendly to the Nullifiers. Green charged that the Administration long since had proscribed his publication. As a "means used to destroy this paper" he charged that the Secretary of State had issued orders to his friends in New Orleans who were aided "by the brother-in-law of Mr. Livingston (Mr. Carleton)" in calling "on each subscriber" for the purpose of having "them erase their names from your list and add it to the Globe." The Globe took keen delight in exposing Clay's intrigues with the nullifiers and the Anti-Masons and constantly kept before its readers the Calhoun heresy and the coalition with the Clay forces. The Democratic opponents made effective use of the cartoon in their warfare on Jackson. They harped on the unfortunate sentence of the veto message which asserted that "Each officer who takes an oath to support the Constitution swears he will support it as he understands it, and not as it is understood by others."

Early in the campaign it was evident that there was but one issue, which was the Bank, and Livingston realized that the Bank veto had not injured Jackson. Clay had forced it, and the Jackson leaders took this issue to the masses who always had...

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65 John Smith to Gen. [Duff] Green, April 13, 1831, in United States Telegraph, June 2, 1831.
66 Washington Globe, October 8, 1832.
67 Ibid., August 28, 1832, et. seq.
68 Farten, Life of Andrew Jackson, III, 423.
69 Livingston to John R. Livingston, July 24, 1832, in Livingston Miscellany (Manuscript Division, New York Public Library).
looked with suspicion and distrust upon the powerful financial institution. The Jackson campaign managers did not hesitate to commandeer the services of the cabinet members themselves in executing the plan of solidifying their forces. The clerks as well as the secretaries were sent on specific missions to those sections of the country where their influence was most effective. The neglect of official duty and the constant movement from place to place by these officials, caused the Telegraph to refer to them as "The Traveling Cabinet." Immediately following the adjournment of Congress, Livingston made a tour through Pennsylvania and New York, and, during the later days of the hectic campaign, he was in Virginia "to contribute his share in manufacturing public opinion." The effectiveness these missions had was shown by Buff Green indignantly exclaiming, "And yet, this is the fulfillment of those promises which placed Andrew Jackson in power." Since Wirt was friendly to Clay, the anti-Masons centered their attack on the Democrats, who ignored and refused to conciliate them. Livingston, being the highest ranking member of the Masonic order in America, was made the target, as he was at the head of Jackson's Cabinet. In the effort to align the Administration definitely with the Masons, John Quincy Adams gave full

71 United States Telegraph, July 27, 1828.
72 Ibid., October 9, 1828.
73 Ibid.
publicity to this fact by addressing his attack on the order to Livingston. The series of six open letters from Adams, which were ignored by Livingston, tended to rally the Masons to the Jackson cause. A short time before the election, at the psychological moment, Blair made Livingston's answer to Adams by publishing in the Globe without comment. Clay's letter to certain Indiana Anti-Masons. Should the President, Clay had written, use the power of his office to sustain, abolish or advance the interest of either Masonry or Anti-Masonry, "it would be an act of usurpation and tyranny." Throughout the country the Jackson papers followed the Globe's lead and the widespread publication of the letter defeated the plan of the coalition leaders to deliver the Anti-Mason vote to Clay.

From the Hermitage, where he had gone in August in compliance with his physician's orders, Jackson followed the last stages of the campaign. He never doubted the final outcome of the election, which was a notable victory for him and his policies. Wirt carried only Vermont and Clay was successful in Massachusetts, Rhode Island, Connecticut, Delaware, Kentucky, and in five of the eight electoral districts of Maryland. Jackson received the electoral votes of all the other states with the exception of those of South Carolina. Having kept informed as to the trend of events in that state during the summer,

75 Daily National Intelligencer, April 10, 1832, at. sec.
76 Washington Globe, October 8, 1832.
77 Stanwood, A History of the Presidency, I, 164.
Jackson fully understood the import of this threat and began his preparations for a struggle with Calhoun and Nullification.

From its earlier intensely nationalistic spirit, South Carolina had drifted far by 1828 then, following the passage of the tariff bill of that year, the threat of sedition was heard. Realizing that he had failed to destroy Van Buren's influence with Jackson and that little or no chance remained for him to occupy the White House after his break with the President in 1831, Calhoun openly became the leader of the Nullifiers. On July 26, he issued his famous "Address to the People of South Carolina" in which were restated the arguments advanced in his "Exposition" of 1828. This avowed platform of his followers was widely read throughout the country and during the following months it was discussed freely in South Carolina. The minority union party in the Palmetto state attacked the Calhoun doctrine, and the Nullifiers called upon their leader for a simpler statement of the theory in order to refute the charges of the unionists. Calhoun timed his reply to serve the purposes of the state campaign and on August 23, appeared his famous "Fort Hill Letter." As a result of this agitation, the Nullifiers carried the legislature by a large majority.

Determined to defy the central government, the South Carolina legislature in response to the Governor's recommendation, called a state convention which met on November 19, 1832. Five

days later, by a vote of 136 to 26, the convention passed the South Carolina Ordinance of Nullification declaring the tariff acts of 1828 and 1832 "null, void, and no law, nor binding upon this state, its officers or citizens." It instructed the legislature to resist the enforcement of the tariff in the state after February 1, 1833, and declared that if the United States attempted to exact further payment of duties "the people of this state will forthwith proceed to organize a separate government." When the legislature reassembled November 27, it authorized the governor to call out the militia to enforce the laws of the state. In the excitement that followed, both Unionists and Nullifiers held nightly meetings and threats of war and secession were heard in all sections of the state. For many weeks the situation was tense and the leaders of both parties strove to delay the shedding of blood until all efforts for a peaceful solution had been exhausted. Jackson, nevertheless, took the necessary precautions to meet the emergency should it arise. In the meanwhile, after being assured of Hayne's seat in the Senate, Calhoun tendered Livingston his resignation as vice-president.

When Congress convened, December 4, every one awaited Jackson's message with keen anxiety, but he disarmed the Nullifiers by his temperate statements and conciliatory manner toward South Carolina. Some of the National Republicans maintained that the message was a state rights document, but six days later, they, as well as the Nullifiers, were to be surprised by the Presi-
dent's ringing answer to the bold South Carolina challenge. In this answer, no doubt remained of the President's plan to meet force with force and vigorously to assert the authority of the government. That Jackson had not formerly held such constitutional doctrines as the message contained was well known. He had previously practically approved nullification. That it was Livingston who made him understand what nullification really meant, there can be no doubt, as he was the only influential member of Jackson's entourage who subscribed to such constitutional doctrines. While Livingston may have gone further in the development of the theory of government than Jackson approved when he finally came to realize the full purport of the document, yet the fact that he selected his Secretary of State for the task was no accident. Livingston's nationalistic views were well known to the President, as he had enunciated them clearly during the debates both in the House and the Senate. The fact that the President had instructed the Secretary to begin the preparation of the Proclamation prior to the opening of Congress, indicated that he recognized both the necessity for prompt executive action and the selection of the best available person for the commission.

The temper of the Proclamation was foreign to Jackson's nature. The logical development of the constitutional thesis, and the penetrating intellectual searchlight displayed in detect-
ing the weakest point of the opposing argument, revealed the work of an analytical and legally trained mind, the mind of a man of sound judgment and of ripe experience. While Livingston was preparing the document, Jackson was in constant touch with him as, naturally enough, he could think of little else at this moment. A check of Congress assured the President that he would be sustained, but if necessary, if driven to it, he was prepared to strike with the military of the government. The communication must be made immediately upon receipt of the acts of the South Carolina Legislature and Livingston was urged to furnish him at once "sealed, by the bearer" such sheets as had been completed. Meanwhile, the Secretary was furnished with suggestions for an appeal to the patriotism of "the descendants of the Rutledges, the Pinckneys... with the descendants of thousands more of the Patriots of the Revolution." He was to amend and revise the suggestions, as Jackson instructed him to "let it receive your best flight of eloquence to strike the heart and speake to the feelings of my deluded countrymen of South Carolina."

While Livingston accepted the task with zest and was pardonably proud of the document, there was little now expressed in the Proclamation, as in its preparation he had drawn largely from his speeches in Congress. By the use of direct quotations,

80 Jackson to Livingston, December 4, 1832, in Bassett (ed.), Correspondence of Andrew Jackson, V, 494-95.
paraphrases and those arguments which he had advanced in 1824 and 1830 while engaged in the development of his constitutional concept of government, Livingston gave forceful expression to its great, its controlling principle when he contrived for Jackson to proclaim.

I consider, then, the power to annul a law of the United States, assumed by one State, incompatible with the existence of the Union, contradicted expressly by the letter of the Constitution, unauthorized by its spirit, inconsistent with every principle on which it was founded, and destructive of the great object for which it was formed.82

The proclamation was a complete statement of Livingston's constitutional doctrines and a climax to his years of study and arguments as to the nature of the Union. Here again, in this document, as forceful and eloquent a treatise as he had ever written, he argued and pled for a national entity, over and above the states, embracing all of the people in one bond. The questions to be met were not new; neither were his answers. But the crisis precipitated by the imminent secession of South Carolina lent particular earnestness to his words.

A state had the right to veto a palpably unconstitutional act of Congress and resist its execution, and in the event of coercion, to secede from the Union. So argued the South Carolina ordinance, basing these rights on the fact that the Union was a simple compact between sovereign states and that the states were the judge of the violation of their sovereignty and capable

82 Richardson (ed.), Messages and Papers of the Presidents, II, 640-50.
of constitutionally defending it even to the point of withdrawal from the compact. To this contention, Livingston replied: first, that a "palpable unconstitutional act" as here used really meant any unconstitutional act, since the state alone was judge and any act objected to would be deemed "palpably unconstitutional"; and, secondly, the veto power of a state was not only expressly forbidden by the constitution but contradicted by the history of its development. The Articles of Confederation gave supremacy to Acts of Congress, but union under the articles failed because no provision had been made for a judiciary to interpret and enforce these acts. The constitution was adopted to create "a more perfect union" and it was inconceivable that this absolutely necessary provision for orderly government should have been eliminated. The judiciary and not the states, was the judge of the constitutionality of acts of Congress.

The right to secede, Livingston continued, was deduced from an erroneous idea of the sovereignty of the states. It was true the Constitution had been submitted to the states as sovereign units, but its adoption had been by the people and not by the states; and from the moment of its adoption, a nation had been created composed of all the people in all of the states. To this nation, each state had surrendered such of its sovereign rights as the constitution specified, retaining those not expressly surrendered. Thus the states were now sovereign only to the extent of the reserved rights. The Union then was not a compact between sovereign states, in the sense that the states
were still sovereign, but a compact involving a certain specified loss of sovereignty by each state. That this was true and that a nation had been formed by the constitution was evidenced: by all the people acting collectively in the choice of a president; and by the representatives, though chosen by the people of each state, being representatives of the nation and having as their first and highest duty the promotion of the national good.

A nation having been created, it inevitably followed, Livingston argued, that no state could withdraw, for that would admit the impossible thesis that a government would destroy itself, for secession by any state would destroy the nation. Even the principle of estoppel, alone, would deny the right to secede, the mutual benefits and sacrifices exchanged during the national life by the people of all the states being beyond recall. Secession, he concluded, could only be a revolutionary right, not a constitutional one.

"Probably no document," according to Charles W. March, "ever issued from the Executive Department which gave rise to a more profound sensation. It confounded alike friend and foe of the administration." 83 While Webster had criticised the Administration for having done "nothing to arrest the revolutionary doctrines of nullification," 84 he expressed gratification over the belated action of the Administration, and departed for Washington.

84 Ibid.
determined to give his support to Jackson in this fight.\textsuperscript{85} John Marshall, who had feared that Jackson would destroy the Constitution, rejoiced at the issuance of the Proclamation\textsuperscript{86} and Adams referred to it as a "blister plaster."\textsuperscript{87} Clay joined with the state rights supporters in condemning the President's statement by commenting that it was "too ultra for me." Taney objected to some of its doctrines\textsuperscript{88} and Tyler stated that the Proclamation had "swept away all barriers of the Constitution" and had established "a consolidated military despotism."\textsuperscript{89} Van Buren, embarrassed by its doctrinal features, prepared a resolution together with a report, in which he took issue with "the history given by the President of the formation of our Government," a resolution and a report calculated to satisfy the state rights men of Virginia.\textsuperscript{90} Hayne, now Governor of South Carolina, answered Jackson in an able, defiant document which Preston contended refuted "all the show of argument of the President's Proclamation."\textsuperscript{91} McDuffie declared that "if Congress should approve the principles of that proclamation, the liberties of the country were gone forever."\textsuperscript{92}


\textsuperscript{86} Beveridge, \textit{Life of John Marshall}, IV, 570-73.

\textsuperscript{87} Adams (ed.), \textit{Memoirs of John Quincy Adams}, December 25, 1832, VIII, 511.

\textsuperscript{88} Tyler (ed.), \textit{Memoir of Roger Brooke Taney}, 188.

\textsuperscript{89} Tyler (ed.), \textit{Letters and Times of the Tylers}, I, 448.


\textsuperscript{92} Adams (ed.), \textit{Memoirs of John Quincy Adams}, December 14, 1832, VIII, 505.
The dignity of the document had disappointed Calhoun who had hoped for "an intemperate, ranting denunciation of the Carolinians that would heat their blood and put them on the march." 93

The charge of Calhoun's enemies that his failure to "make his appearance at Washington" at the opening of Congress was occasioned by his fear of Jackson was refuted by his friends with the explanation "that he remained to prevent an outbreak in South Carolina." On January 4, 1833, Calhoun took the oath and was seated for the first time as Senator of the United States. "It was an impressive occasion. The Senate was crowded," according to March, to witness the ceremony "of the leader of Nullification taking "the oath of office" as a member of the body over whose deliberations he, as Vice-President, had presided" for nearly eight years. 94 Before Calhoun's departure for Washington, an effort had been made in Congress to solve the problem by enacting a bill for a lower tariff which automatically would end nullification as a practical measure.

Van Buren was one of the most active leaders in this attempt to effect a peaceful solution of the problem. He could not expect Democratic support in 1836 if the northern and southern portions of the party became involved in a conflict over the state rights question. In accordance with the plan, the Verplank Bill, which proposed to lower duties to a basis of twenty

93 Bowers, The Party Battles of the Jackson Period, 265.
percent in two years, was introduced in the House. Having se-
sured the Administration's sanction of the bill, Van Buren hoped
that with the support of the South he could secure sufficient
support among his friends in the North to ensure its passage.
He was unsuccessful, however, as the forces for protection ral-
lied at once for its defeat.

Jackson's special message of January 16 dealing with the
general situation, served as his answer to Calhoun's request for
copies of the President's Proclamation of December 10 and Hayne's
"Counter-proclamation." The message was used by Calhoun as the
basis for his vigorous attack on the Proclamation in which he
maintained that the Union's only danger was from "that of mili-
tary despotism" which was "the greatest danger with which the
Union is menaced." Five days later, the reply to the Senator
came in the form of the "Force Bill." This bill, which Calhoun
denounced as a tyrannical measure invading the rights of the
states, precipitated one of the most violent debates in the his-
tory of Congress. In the futile effort to direct the debates to
the constitutional question involved, Calhoun, on the following
day, January 22, submitted resolutions which contained his views
on the subject, but the Senate promptly tabled them. Tyler,
in one of the most forceful attacks against the measure, made an

95 Richardson (ed.), Messages and Papers of the Presidents, II, 610-32.
96 Register of Debates, 22 Cong., 2 Sess., 187-92 (January 22, 1833).
ineffectual bid for Clay's support; and, during an argument regarding senatorial courtesy, W. R. King of Alabama made an effort to draw Webster into the debate. The great nationalist indicated that he would reserve himself for Calhoun by replying that "the gentleman from Massachusetts fully understands the gentleman from Alabama; but he has no disposition to address the Senate at present, nor, under existing circumstances, at any other time, on the subject of this bill." 38

The Administration was not at all pleased with the situation and the apprehension of Jackson and his supporters increased as they realized that Calhoun was preparing to deliver a powerful argument against the bill. With Livingston no longer in the Senate, they had no one capable of coping with the Nullifier in debate. They recognized the necessity that Calhoun be answered and began the search for someone to do it effectively. Even though they might desire it, they knew that Clay would never espouse any Jackson measure. Their only hope was that Webster might be prevailed upon to come to the support of the principles he had made his own. 99 When Grundy reported that he had "what he considered sufficient reason to believe that arrangements could be made with Mr. Webster and his friends," Van Buren objected strenuously to such a rapprochement on the grounds that it would furnish Clay "with materials to spring" upon them. 100

97 Id., 359-77 (February 6, 1833).
98 Ibid.
99 March, Reminiscences of Congress, 199.
As Van Buren was associating with the state rights people of Virginia, the desperte Jackson held his counsel; Living- 
ston called to see Webster at his home; and Webster led the 
fight.

Although "accused of subserviency to the President for the 
sake of future favor," Webster, on his own terms, took 
charge of the administration forces and successfully piloted the 
Force Bill through the Senate. Abandoning all hope of inveigling 
Webster to speak first, Calhoun began one of his most powerful 
speeches February 15. The defiant Calhoun, injecting personalities, revealing hate of Jackson, restating his constitutional 
views, concluded his arguments on the second day with the solemn 
warning "that should this bill pass and attempt be made to en-
force it, it will be resisted at every hazard—even that of 
death itself." Maintaining that "there can be no such thing 
as secession without revolution," Webster proceeded to refute 
Calhoun's arguments, one by one, and pointed out the fallacy of 
Nullification in that it would lead to the destruction of the 
Republic and "of constitutional and republican liberty." It 
was, he pointed out, the duty of the general government to pre-
vent these evils and its ability to perform this duty was depend-
ent upon the passage of the Force Bill.

101 Ibid., 553.
102 Ibid., 629.
103 March, Reminiscences of Congress, 199.
104 Benton, Thirty Years' View, 1, 333.
106 Register of Debates, 22 Cong., 2 Sess., 519-53 (February 
18, 1833).
107 Ibid., 553-87 (February 16, 1833).
As January drew to a close, it became evident that Van Buren's plan of pacification had failed, as the Verplank bill could not pass. Calhoun, not nearly so indifferent to war as he pretended, knew that Jackson was ready to use force, place South Carolina under martial law, arrest him for treason, and turn him over to the courts for trial. Some of Calhoun's friends among the National Republican protectionists and Bank men who were making common cause with the Nullifiers against Jackson, began to consider the question of a compromise tariff as a means of extricating the South Carolinian and his followers from their precarious situation, as "it would be a pity to let Jackson hang them." Conflicting versions of the movement credit the initiative to different individuals; but Clay, who first received the suggestion of a compromise plan "coolly and doubtfully," finally agreed to sponsor the bill. Learning that Webster was of the opinion "that the time had come to test the strength of the constitution and the government," he was ignored. The contents of the bill were "entirely concealed from him" until Clay presented it to the Senate three days before Calhoun began his attack on the Force Bill.

Although the Globe announced, "In plain English, we have a new coalition," harmony did not prevail in the ranks of the allies. Calhoun objected to certain features of the bill

109 Ibid., 342.
110 Ibid.
111 Ibid., 316-17.
and they were eliminated in the House Committee. But John M. Clayton announced that these would be introduced as amendments in the Senate and unless every nullifier voted for each one of them, he would kill the bill himself by moving to table it. On February 25, the House passed the amended Clay bill which reached the Senate two days after that body had approved the Force Bill. True to his threat, Clayton offered the amendments and, despite Clay's intercession, he forced Calhoun to vote for all of them. As the stormy short session of Congress drew to a close, both the Compromise Tariff and the Force Bill became law and Nullification was no longer a menace. Jackson-Livingston-Webster-Nationalism prevailed, the Nullifiers' boast to the contrary notwithstanding. "Calhoun began it. Calhoun continued it. Calhoun stopped it," by deporting post-haste for the convention in Columbia, where Hayne was in the chair, to urge the acceptance of the compromise. And Clay, rather than Van Buren, was hailed the great "Pacificator."

The veritable ovation which Webster received following his display of "a patriotism worthy of admiration and imitation" in "relation to South Carolina" was gratifying to his pardonable pride. Graciously, he accepted Jackson's personal expression of thanks for "the debt of gratitude and admiration which he owed him," nor did he repel the friendly advances of the Pres-

113 Register of Debates, 22 Cong., 2 Sess., 808-809 (March 1, 1833).
114 Benton, Thirty Years' View, I, 342-44.
115 Parton, Life of Andrew Jackson, III, 447.
ident and his associates. He was in closer accord with Jackson on vital questions than with Calhoun or Clay. In consequence of Clay's dictatorial manner in the party councils and of his appointment as leader of the Bank forces in Congress, a coolness had developed between the two National Republican Senators. There were many points in common in the political philosophy of Webster and of Livingston. For some time, friendly relations had existed between the two, and the Secretary now felt that the time and the occasion were propitious to gain the orator's adherence to the Administration.

During "frequent and earnest conversations" with Jackson, Livingston convinced him of "the absolute necessity of securing Mr. Webster's continued support of the administration." This "colossal figure on the political stage" was cultivated by the Jackson Senators and he was invited to scratch from the "list of intended nominees for offices in the Eastern States" the names of any personally objectionable to him. Livingston's attempt to effect "a closer official relationship" was interrupted by Webster's departure in May for a tour of the West. On the trip, Webster was entertained by Jackson's friends, and in reciprocating, he frequently complimented the President most highly. He

116 Benton, Thirty Years' View, I, 333-34.
118 March, Reminiscences of Congress, 250.
119 Benton, Thirty Years' View, I, 334.
120 March, Reminiscences of Congress, 251.
also made arrangements with his friends in Boston to accord the
President a cordial welcome there while on his visit in the
East. 121

Upon his return from the West in June, Webster met Livingston
in New York where negotiations were resumed, and, on the
authority of the President, the Senator was proffered a place
in the Cabinet. 122 It appeared that the Boston Gazette, an ad-
ministration paper, had been correct when it stated that "The
Proclamation of the President" was a "very fortunate document"
for Webster, and prophesied "if that gentleman plays his cards
skillfully" he could be "at the head of the administration party
within twelve months." 123 But other forces were at work which
led to the defeat of the alliance. Jackson's determination to
withdraw the public deposits from the Bank and place them with
the leading state banks resulted in a difference of opinion
which was not abridged. Ambitious Jackson leaders made an ef-
fort to discourage the accord and Van Buren, especially, who
feared that Webster might supplant him in 1836, strenuously op-
posed the coalition. All possibility of a closer understanding
came to an end with Livingston's departure for France, for there
was no one else to overcome the efforts of the opposition. Very
soon Webster again was aligned with Clay in the fight over the
removal of the bank deposits.

121 Fitzpatrick (ed.), The Autobiography of Martin Van Buren,
689-94.
122 Compare Van Buren's account of the interview, ibid., 701-
706, with March, Reminiscences of Congress, 249-51.
123 Boston Gazette, as quoted in Fitzpatrick (ed.), The Auto-
biography of Martin Van Buren, 680.
CHAPTER XV

SECRETARY OF STATE, FOREIGN AFFAIRS

Jackson dominated foreign relations in the same manner that characterized his conduct of domestic affairs. The motivating forces of his foreign policy were the expansion of trade and the settlement of the "spoilation claims" growing out of the Napoleonic Wars. The success of McLane's negotiations with Great Britain regarding the West India trade had aroused Jackson to a more aggressive policy of stimulating foreign commerce through commercial treaties and the extension of the consular service. The failure of preceding administrations to secure a settlement of the spoilation claims proved to be a challenge which he accepted. His vigorous method of conducting foreign relations allowed but little opportunity for initiative on the part of any of the four Secretaries of State who served during his presidency. Livingston, nevertheless, conducted the affairs of the office with tact and dispatch, and, under the conditions, was an admirable guardian of foreign relations.

During Livingston's term of service, foreign affairs were somewhat uninteresting. The diplomatic problems were chiefly
the continuation of questions previously raised, and policies
determined before he entered the cabinet. Nevertheless, he was
attentive to business; and, while familiarizing himself with the
details of office routine, he refused to become its servant.
His frequent correspondence with the ministers, chargé d'affaires
and consuls enabled him to supervise their activities intelligent-
ly. His aptitude for leadership was exemplified in his ability
to direct by remote control, the varied activities of his staff
and to offer constructive criticism without giving offense.
Equally tactful and effective were his suggestions regarding
the establishment of a consular post or the warnings respecting
the avoidance of internal political affairs, as were his instruc-
tions to ministers or his judicious praise for a job well done.
That his requests for information were definite and explicit was
revealed by comprehensive reports from the members of the staff
having to do with commercial conditions, internal political sit-
uations in foreign countries, and international relations. The
able manner in which he discharged the duties of his office re-
futed both the criticism attributed to Jackson by Van Buren that
Livingston was "ill-qualified for the performance of executive
duties"¹ and the accusation made by the President that he knew
"nothing of mankind."²

² Jackson to Van Buren, December 17, 1831, in Bassett (ed.),
Correspondence of Andrew Jackson, IV, 385.
Livingston's tact was further exemplified in his instructions to Van Buren as minister to Great Britain. After assuring his predecessor of his "perfect knowledge of the unsettled questions with Great Britain," Livingston ingeniously issued instructions in which he enumerated the questions for negotiation and the position of the administration on each. Due to conditions over which he had no control, none of the more important of the nine points listed as "still open for negotiation" was brought to a conclusion during Livingston's secretaryship. The interruption of the negotiations concerning the British impressment of American seamen occasioned by Van Buren's early recall and the failure to fill the vacancy before Livingston left the cabinet nullified all attempts to reach a solution of this as well as of other problems. Although at a disadvantage in being represented by a chargé, Livingston maintained amicable relations with London during the negotiations of certain delicate questions. He vigorously contended against the principle of freeing slaves shipwrecked on British soil as being "too dangerous to a large section of our country to be tolerated by us."

In the discussions he laid the basis for the settlement in 1836 of American claims arising from such cases. While refusing to sacrifice American interests in his earnest endeavor to solve the troublesome northeast boundary controversy, Livingston ex-

3 Livingston to Van Buren, August 1, 1831, in Van Buren Papers, XIII, 3122-43.
4 Van Buren to Lord Palmerston, February 25, 1832, in ibid., XIV, 3553-66; Livingston to Vail, February 26, 1833, Department of State, Instructions, Great Britain, XIV, 131.
hibited a spirit of fairness and a depth of understanding that merited success. That his suggestions for an agreement later were incorporated in the Webster-Ashburton Treaty of 1842 showed this.

The northeast boundary question which Van Buren bequeathed to Livingston5 was purely a geographical one which arose from a lack of clarity in the treaty of 1783. The convention of 1827, providing for a reference of the points of difference to an arbiter, had been ratified, and the King of the Netherlands had been selected as the arbitrator. Fearing that the controversy might result in a general war, Jackson was agreeable to the King's report suggesting a fair line upon which England and the United States might agree. However, he directed Van Buren to ascertain from the British government its position before revealing his decision.6 When reporting Great Britain's willingness to abide by the decision of The Hague, Van Buren, as an aid to the solution of the problem, suggested the acceptance of an indemnity for the loss of property under the terms of the King's report.

Although Van Buren's suggestion appealed to Jackson, he questioned its constitutionality and doubted that the Senate would approve such procedure.7 The attitude of Maine and Massachusetts

6 Livingston to Van Buren, August 1, 1831, in Van Buren Papers, XIII, 3122-43.
7 Jackson to Livingston, November 10, 1831, in Bassett (ed.), Correspondence of Andrew Jackson, IV, 370-71.
presented an additional obstacle. Political consideration had to be taken into account. The acceptance of The Hague report became more doubtful with the outbreak of frontier difficulties in the fall of 1831. During an election at Madawaska, four Americans were arrested by the New Brunswick authorities, and a border war seemed imminent. Livingston carried on an active correspondence with Governor Samuel E. Smith of Maine in an effort to prevent an outbreak of actual hostilities. He also conducted quasi-diplomatic negotiations with leaders in that state in an attempt to secure its support of The Hague report. In 1832, a secret agreement was drawn up and signed both by representatives of Maine and by the Department of State. The agreement provided that in return for the surrender of all claims to the territory north of the St. John River and east of the St. Francis River Maine was to be awarded adjoining lands and, also, the proceeds from the sale by the United States of a million acres of lands in Michigan. The fight that developed in the Senate and the violent criticism of the press on the question of constitutionality made it politically inexpedient for Livingston to submit the agreement to the Senate for approval.

Jackson was perplexed as to his course of action, and, in his message of December 6, 1831, he advised Congress of the

8 Senate Documents, 22 Cong., 1 Sess., Doc. No. III.
11 Jackson to Livingston, November 10, 1831, in Bassett (ed.), Correspondence of Andrew Jackson, IV, 370-71.
release of the Madawaska prisoners and of The Hague's suggested solution of the problem. The following day, he notified the Senate of the attitude of the British Government and requested that body to inform him whether it "would advise submission to the opinion delivered by the arbiter and consent to its execution." Immediately following Livingston's report to the Senate, January 2, 1832, the opposition became active and urged that the King's decision be not accepted. It contended that the cession of the territory of any state was unconstitutional and it was successful in having the Senate instruct the President that future negotiations with Great Britain were to be conducted upon a different basis.

During the remainder of his term, Livingston carried on an extensive correspondence with successive representatives of the British Government in an ineffectual effort to reach an agreement. The failure to ascertain a true boundary, he maintained, was not attributable to any insuperable difficulty, but rather to the inefficient methods employed and the lack of attention by the commissioners and the arbiter. He contended that a speedy and satisfactory arrangement could be made provided both parties mutually manifested a conciliatory spirit.12

The relations between the United States and Russia had always been friendly and commercial intercourse had been liberal,

12 Senate Documents, 24 Cong., 1 Sess., Doc. No. CDXIV.
but all attempts to negotiate a commercial treaty with St. Petersburg had been unsuccessful. Jackson's selection of John Randolph for the Russian mission had not been a happy one. The eccentric Virginian had resigned after a ten day's residence at the Russian capital. Buchanan, to whom Jackson offered the position through Eaton at a time when Livingston was ill, accepted the assignment, June 12, but delayed his departure until the following April. In his instructions to Buchanan, Livingston emphasized the importance of securing a commercial treaty and urged the negotiation of a treaty for the protection of the maritime rights of neutrals in time of war.

Buchanan proved to be the outstanding diplomat of the Livingston régime. He was received favorably at the Russian Court; he not only received a friendly reception from the Diplomatic Corps, but he was "a favorite here and especially with the Emperor & Empress." He exhibited a keen interest in European affairs, and the grasp he acquired of the political situation made his reports upon foreign conditions all the more valuable to the Washington government. He placated the Russian government when it became incensed by certain newspaper publications in the United States, and exerted himself to counteract the

14 Ibid., 200.
15 Buchanan to John Steirigere, May 19, 1833, in ibid., 334.
16 Buchanan to Livingston, December 20, 1832, in ibid., 298-305.
effect of the articles by forwarding statements to America designed to give a more favorable interpretation of the Czar's actions. His reports on the French situation proved to be of invaluable assistance to Livingston later when he was minister to France.\textsuperscript{17}

The commercial treaty negotiations moved smoothly and were brought to a speedy and successful issue December 18, 1832.\textsuperscript{18} The dispatch with which this able minister accomplished his major objective earned for him the compliments of both Jackson and Livingston. The Secretary vetoed Buchanan's request to return to the United States, as he was particularly anxious to conclude with Russia a treaty providing for the rights of neutrals in time of war.\textsuperscript{19}

Livingston's concept of neutral rights had found expression in his penal code for the United States. Retaliation, he held, was ineffectual. The remedy was to be found in the inclusion of provisions in treaties between nations which required each nation to punish those of its citizens who violated rights of neutrals. In his instructions to Buchanan, he urged the minister to secure the inclusion of these humane sentiments by inserting them as specific articles in the contemplated treaty. The articles were in case of war between the contracting parties, for: the restric-

\textsuperscript{17} Ibid., 211, 261, et. seq. (passim).
\textsuperscript{19} House Documents, 33 Cong., 1 Sess., Doc. No. CXI, 55.
tion of military operations to those classified as combatants, except to repel invasion or to defend property; the passage of laws designed to punish the subjects of either country guilty of any infraction of the treaty provisions, particularly those covering the breaches of humane rules, the attack on non-combatants, and the seizure of their property; and the continued effort of the contracting parties to secure the mitigation of the horrors of war. To the practical Nesselrode, Livingston's plans were too idealistic and Buchanan failed to secure a sympathetic response. The Minister finally informed Livingston of his doubts as to any advantage accruing to the United States and of his fears that it would become an entangling alliance should any such treaty with Russia be concluded.20

America's interest in the trade of the Orient resulted in the attempt to conclude commercial treaties with the Asiatic countries.21 In 1832, Edmund Roberts was issued a roving commission as special envoy to observe the conditions of commerce in the Far East. He was instructed to conclude such "treaties or other arrangements" as would be conducive to the increase of our "foreign commerce and its security." To facilitate his work and to aid him in gaining audiences with the eastern rulers, Roberts was furnished with gifts to be distributed at his discretion.22 He was supplied also with letters of credence suf-

21 Tyler Dennett, Americans in Eastern Asia (New York, 1922), 128-34.
22 Livingston to Edmund Roberts, October 21, 1832, in Edmund Roberts Papers (Manuscripts Division, Library of Congress), I, 64,834.
ficiently elaborate in form to be acceptable to the powers "with whom you are to negotiate." Livingston specifically instructed him to observe the trade of foreign nations with the Asiatic countries and "last but not least" attempt should be made to open communications with Japan and "to gain this trade for our commerce." 23

The results of the diplomatic mission in Cochin China, where Roberts first called, were not satisfactory. Questions of etiquette were raised and the American envoy refused to yield. 24 He transferred his field of activity to Bangkok and here his efforts were more successful. On March 30, 1833, he concluded a "Treaty of Amity and Commerce" with the Siamese government. 25 At Batavia, Roberts again received instructions from Livingston to visit Japan, but he decided that a visit at the time was impracticable, and proceeded to Muscat. 26 There he was successful and, in September 1833, he concluded a treaty with that government. 27 While Roberts negotiated treaties with only two Asiatic countries, the information as to the commercial opportunities in the Orient later proved valuable to those engaged in the expansion of American trade in the Far East.

23 Livingston to Roberts, July 23, 1832, in ibid., I, 64804-06.
24 Roberts to Livingston, May 10, 1833, in ibid., II, 65046.
26 Livingston to Roberts, June 6, 1832, in Edmund Roberts Papers, I, 64808.
Although Anthony Butler had concluded two important treaties with Mexico just prior to Livingston's acceptance of the Cabinet position, the Secretary soon realized that this appointment of Jackson's was unwise. For some years Jackson had wanted to acquire Texas, and, as early as 1829, Van Buren had instructed Butler's predecessor, Joel Poinsett, to make Mexico an offer for the territory. Four possible boundaries were suggested, and the offer varied in proportion to the extent of the territory to be included in the sale, but the total was not to exceed $5,000,000. During the negotiations, Poinsett wounded the Mexican sensibilities and was recalled in 1829, at which time Butler was appointed to the position. The new minister was in hearty accord with Jackson's plan to acquire Texas, but found it impossible to prosecute the Texas project until after Van Buren's resignation.

The boundary treaty which Butler had concluded April 5, 1831, failed to end the friction between the two nations. The "arch-schemer" maintained that Mexican avarice would afford the basis for the settlement of the boundary difficulties between the two countries, and in June requested permission to increase the offer for Texas to $7,000,000, if necessary. In an effort to remove the causes of friction, protocols to the boundary treaty were added September 7 and December 17 of the same year. In February 1832, during the Santa Anna revolution, Butler informed Jackson that several millions would be needed

to "facilitate the negotiation, in which case we shall provide for that portion of the payment by a secret article." He next proposed a loan to Mexico of $5,000,000 to be secured by a mortgage on Texas which would be equivalent to an outright sale, as there was little probability that the loan could ever be repaid.

There still remains a question as to whether Jackson had been informed of the plan of Sam Houston and his associates to secede from Mexico and form an independent state; nevertheless, it was decided to abandon all effort to purchase Texas. On March 20, 1833, Livingston informed Butler that his plan was impracticable for lack of constitutional authority, and that "The situation of affairs in the state of Texas y Coahuila makes it important that your negotiations on that subject be brought to a speedy conclusion. It is at least doubtful whether in a few weeks any stipulation could be carried into effect." Consequently, Livingston passed on to his successor another boundary problem bequeathed to him by his predecessor.

In his relations with Mexico, Livingston showed an admirable respect for the rights of a friendly nation and a desire to assist every legitimate power. In June, 1831, he urged Butler to employ every effort to prevent the use of illegal American naturalization papers claimed by the Spaniards as a means of avoiding the laws of Mexico. On the other hand, vigorously but courteously, he contended for the rights of American citizens in that country and insisted that Butler exercise due diligence to secure and to maintain them.
The political conditions in Central and South America during this period were confused, thus making diplomatic relations with the Hispanic-American nations difficult. Commercial treaties, however, were concluded with Colombia and Chile. Colombia in 1831 had, by decree, undertaken to extend certain reciprocal concessions to the ships of the United States, but the decree had failed to come within the provisions of the United States statutes of 1824-1828. In fairness to Colombia, Livingston suggested to Jackson, February 9, 1832, that Congress be urged to authorize the President to exempt from American duties Colombian vessels and their cargoes coming directly from Colombian to United States ports. After Congress had passed the reciprocal act and during a discussion with the Colombian Government relative to a tariff adjustment, it was learned that the New Granada Government had full reciprocal treaties with Central America. Livingston immediately instructed the Washington minister at Bogota to demand that as the United States had a "most-favored-nation-treaty" with the Colombian Government, her ships should be accorded the same exemptions accorded those of Central America. Colombia receded from her original position and replied that the reciprocal privileges enjoyed by Central America had been granted as an equivalent for advantages received. The United States, therefore, was not entitled

31 House Documents, 22 Cong., 1 Sess., Doc. No. XLVI, 1.
to such privileges as the Washington Government had not accorded
the Bogota Government similar concessions. 32

The distinction between concessions, reciprocal, and those
merely freely given, was viewed by Livingston as one fraught with
the probability of being construed as a violation of the Monroe
Doctrine. As though anticipating an embarrassing situation such
as did arise with Great Britain during the Mexican War, a situa-
tion which resulted in the Clayton-Bulwer Treaty compromise, he
vigorously defended Washington's attitude during its discussions
with Colombia. 33 He was diligent in protecting American rights
which he interpreted the Doctrine to guarantee, and he was alert
in preventing the violation of its provisions by European na-
tions. Becoming concerned over the danger of European interfer-
ence through securing control of a proposed canal route extending
through Central America, in July 1831, he instructed the American
Chargé to the Central American States to ascertain whether a con-
cession had been granted a Dutch company to construct a canal in
Nicaragua. If the concession had been granted, the Chargé was
to demand for the United States the same facilities and particu-
lar privileges accorded other nations. On the other hand, if
the grant had not been completed, the Chargé was to procure the
right of subscribing to the stock by the citizens of the United
States or by the American Government should Congress deem it
desirable and proper so to do. 34

32 Ibid., Doc. No. CLXXIII.
33 Ibid.
34 Francis R. H. Hale, "Edward Livingston" in Bemis (ed.), The
   American Secretaries of State, IV, 248.
Livingston was very cautious of his interpretation of the Monroe Doctrine, especially where questions arose affecting the inter-relations of Latin American nations. During a period when the relations between Argentina and Brazil were strained, Argentina made inquiry concerning the attitude of the United States. In response to this inquiry, Livingston advised the American Chargé at Buenos Aires that the Doctrine provided for the protection of the Hispanic American States in case of European aggression, but did not obligate the United States to intervene in case of a war between the states themselves. Yet, after Livingston's resignation from the cabinet, Jackson refused Argentina's appeal to join in a protest against the British occupation of the Falkland Islands. The issue of a violation of the Monroe Doctrine was avoided by interpreting the British action as merely a reassertion of a previous occupation.

During the controversy between the United States and Argentina over fishing rights, Livingston upheld very firmly, but with perfect courtesy and respect for the sovereignty of Buenos Aires, the right of ships of the United States to participate in the fishing off the Falkland Islands. The controversy became spectacular and for a time gave indication of becoming serious as the President dispatched a war ship to the southern seas to protect American interests.

The Falkland Islands, though claimed by Great Britain, had been without formal government from 1771 to 1820, when they were occupied by an Argentine officer on the basis of a claim
of former Spanish sovereignty. The islands had served as a trading point for whalers, sealers, and fishermen of various nationalities operating offshore. In 1831, Louis Vernet, governor of the islands, determined to assert Argentine authority and seized three American schooners "under the pretense they had infringed some unknown laws of the Republic of Buenos Aires for the protection of fisheries." One of the schooners escaped, one was sent to a prize court at Buenos Aires, and one continued its operations under a license by which Vernet shared in the profits.

The United States was temporarily without a diplomatic representative in Argentina at the time, so its consul at Buenos Aires, George W. Slacum, immediately protested the seizure. Livingston was notified that Vernet had fitted out the captures vessel "with the avowed purpose" of using it "for further capture of American ships." When the Argentine government refused to consider a communication from the American consul as a formal protest of his government, Slacum sought the advice of the United States minister to Brazil. Slacum then turned to Captain Duncan of the U.S.S. Lexington for assistance. In June, the Navy Department had directed Duncan to proceed to South American waters with general orders "to protect the commerce of citizens of the United States," and he had arrived at Montevideo during the controversy. Duncan called upon the Buenos Aires authorities to deliver Vernet to him or to arrest and punish him for piracy. When that government failed to act, Duncan proceeded to the
Falklands, captured practically the entire population, and deported them. The Argentine Confederation retaliated by terminating all official intercourse with Slcnum and protested to the United States against Duncan's act of intrusion and violence.\(^{35}\)

In his message of December 6, 1831, Jackson informed Congress that an armed vessel had been dispatched to the southern seas to protect American interests and that a minister shortly would be sent to Buenos Aires to investigate conditions.\(^{36}\) On January 26, 1832, in the instructions to Francis Baylies, Livingston directed the new Chargé to negotiate with the Buenos Aires government a treaty acknowledging the rights of citizens of the United States to the fisheries in question. Baylies not only was to advance the claim to the right of fisheries on every part of the ocean but also to contend for the scarcely legal right to inshore fisheries "on unsettled coasts where the inlets were incapable of fortification."\(^{37}\)

The negotiations between Baylies and the Argentine government proceeded with scant courtesy on the part of either. The South American nation refused to disavow the acts of Vernet or to make the restitution and reparations demanded. It replied to Baylies' denial of Argentina's claim to the Falkland Islands by demanding reparation for Duncan's act, which terminated dip-

\(^{35}\) American Annual Register of Public Events 1831-32, VII, 16-18.
\(^{36}\) Richardson (ed.), Messages and Papers of the Presidents, II, 553.
diplomatic relations. After requesting his passports, but before his departure for Washington, Baylies, on August 19, wrote Livingston: "We have attempted to soothe and conciliate and coax these wayward and petulant fools long enough. They must be taught a lesson or the United States will be viewed with contempt throughout South America." 38 Neither was carried out the threat of the United States naval forces to break up Verne't's settlement and to transport him to Buenos Aires for trial, nor were the claims of either government ever acknowledged. With the settlement of the question of the sovereignty of the islands by the British reoccupation in 1833, the tension between Buenos Aires and the United States lessened and diplomatic relations were resumed.

Shortly after Livingston entered the cabinet, William Rives, Minister to the Court of Louis Phillippe, announced the conclusion of a treaty in which France stipulated to pay the American spoilation claims and the United States agreed to a reduction of duties on French wines. The negotiation of the French Treaty paved the way for the consummation of treaties with other countries against whom the United States had similar claims. Livingston immediately urged the ministers to Portugal, Naples, and Spain to proceed at once to secure treaties with these countries.

While a treaty with Portugal providing for payment of the

American claims was signed at Lisbon on January 19, 1832, payment was not made until 1837. The delay of the settlement occasioned no unfriendly relations between the two nations, as the United States was familiar with Portugal's political and financial difficulties. The continuous financial stress of the Portuguese government during this period precluded the payment of even the small amounts involved in the American claims.

During the previous negotiations with the Two Sicilies, that government had declined to consider the payment of the American claims, on the grounds that France had refused to acknowledge her obligations to the United States. Naples had maintained that its government was not responsible for the claims as the French dictator, Napoleon, had made his brother-in-law, Joachim Murat, King of the Two Sicilies and had forced him to execute his commands. Certainly, Naples had contended, the United States could not demand payment of them so long as France refused to recognize the legality of similar claims against her government. In October 1831, John Nelson was appointed Chargé to Naples with the express mission of settling the claims.

Livingston instructed Nelson to bring to the attention of the Neapolitan government the advantages accruing from a commer-

cial treaty with the United States, but, in doing so, to make clear that an indispensable preliminary requirement was settlement of the claims. The original amount due the government was augmented by two items: twenty years' interest on the principal; and expenses incurred by the United States in the return to America of its seamen who had been detained in Naples at the time of the confiscation. In addition, Nelson was to inform the government of the Two Sicilies that failure to make settlement would result in prompt retaliation by the American Congress.

The Neapolitan government sought to avoid the main point at issue by attempting to direct the discussions to the old question of the legality of the Murat rule, for whose actions the present government refused responsibility. Tiring of the evasion and procrastination, Livingston, June 11, dispatched a communication to Nelson, by the frigate United States, in which he instructed the Chargé to terminate the negotiations by demanding of the Neapolitan government an explicit answer of its intentions. Not only was Nelson to demand a definite statement of what measures were contemplated for prompt and full payment, but also he was to let it be known that the warship would wait twenty days to receive the reply. In case a satisfactory answer, one to include the assumption of the acts of the Murat government against American commerce, were not received within the twenty days, Nelson was to request his passports. And finally, Naples was to be informed that the failure to receive a
favorable answer would result in the exercise by the President of such measures to collect the claims as his constitutional authority permitted.42

Appearance of the warship and the threat of retaliation had a very salutary effect upon the monarchy, as an offer was made to compromise by the payment of a lump sum. Haggling over the amount continued for several weeks, but, on October 14, 1832, an agreement was reached whereby Nelson accepted as payment in full the sum of 2,119,230 ducats.43 The Senate ratified the treaty December 17 and the exchange of ratifications between the two contracting parties was made in Naples June 8, 1833.44 Negotiations with Spain moved more slowly, no progress being made until agreement was reached for the Madrid government to make remittances to the United States through France. With the signing of the Spanish convention shortly after the close of Livingston's secretarship,45 the treaty chapter of unredressed spoilation claims was closed. However, the signing of the treaties failed in all cases to insure the prompt payment of the indemnity and to prevent, as was the case with France, the development of strained relations between the signatory powers.

42 Senate Documents, 22 Cong., 2 Sess., Doc. No. LXIX gives the history of the settlement of the Neapolitan Claims.
44 Washington Globe, August 15, 1833.
The treaty which Rives had concluded with France July 4, 1831, provided for the payment of American claims in six equal annual installments. It authorized France to deduct from each installment a sum not to exceed one-twentieth of its annual payment to liquidate the French claims against the Washington government. It also provided for a reciprocal reduction of impost duties whereby France lowered the rate on long-staple cotton imported from the United States, a concession for the American reduction on imported French wines.

In his instructions to Rives on September 26, 1831, Livingston raised the questions of the advisability and the constitutionality of the reciprocal agreements in the treaty. He feared the deduction of the French from the American indemnity might jeopardize the interests of the United States claimants and he doubted the constitutionality of the reciprocal tariff arrangements. Rives consulted with Van Buren concerning these points and the two overruled Livingston when the minister at London held that Congress would be required to provide for any amount due American claimants that might arise from the difference between the gross and net indemnity. This was pre-election year and Jackson was too delighted with the situation to quibble over technicalities. He urged the Senate to ratify the treaty as "a source of irritation will be stopped that has for so many years

46 Livingston to Rives, September 26, 1831, in Department of State, Instructions, France, XIV, 99.
in some degree alienated from each other two nations who, from
interest as well as the remembrance of early associations, ought
to cherish the most friendly relations." The Senate complied
with his request, the ratifications were exchanged in Washing-
ton February 2, 1832, and, with reduction of the wine duties
guaranteed by Congress July 13, the treaty became law.

In accordance with his desire, Rives departed for the United
States September 27, 1832, and the secretary, N. Niles, who acted
as chargé until the following April, was in charge of the legation.
On February 8, 1833, Livingston informed Niles that the Secretary
of the Treasury "in conformity with the provisions of a law of
the last session of Congress" had drawn a draft against the
French Minister of Finance for the first installment of the in-
demnity "and the interest thereupon" in accordance with the pro-
visions "of the late convention." On March 21, when Niles,
in compliance with Livingston's instructions to "take an early
opportunity" to "apprise the French government of this arrange-
ment," informed Duc de Broglie of the transaction, he expressed
"astonishment" at such precipitate action. The Minister of For-

47 Livingston to Niles, February 8, 1833, in House Documents,
Broglie, the King would make every effort to carry out the treaty. Nevertheless, the Chambers adjourned without providing the necessary appropriation.48

The refusal of France to meet her treaty obligations precipitated action in Washington which enabled Livingston to realize his one remaining ambition. A foreign mission had long appealed to him, as it did to a majority of his associates, and he keenly regretted that conditions had forced him to decline Jackson's offer in 1829. He was one of the few outstanding leaders that had not represented the United States abroad, yet his desire for such service was well-known to Jackson. With hesitation, he had relinquished his freedom as senator to accept the cabinet position in which he was denied the right to employ or discharge even clerks and menials.49 In his present position he lacked the opportunity for initiative and was well aware of the intrigues to displace him as an advisor of the President.

Meane had resented Livingston's appointment as Secretary of State and had assiduously cultivated Jackson's favor in hope of securing his position as a stepping stone to the presidency. Van Buren, although assuming the responsibility for Livingston's appointment to the cabinet, became jealous of the Secretary and sought to undermine his influence with the President. The former

48 Miles' Weekly Register, XLVII, 305, 326-27.
49 Jackson to Livingston, August 7, 1831, in Bassett (ed.), Correspondence of Andrew Jackson, IV, 327-38.
Secretary, apprehensive that Livingston's efforts to effect a
closer accord between Jackson and Webster would be detrimental
to his own interests, contributed to the defeat of that plan.
He was embarrassed by the doctrinal features of the Proclama-
tion and used against Livingston the situation which develop-
ed with the Jackson state righters following the publication of
that instrument. Livingston knew that Taney also had informed
the President of his objections to certain of the Proclamation doc-
trines.

Livingston realized that concerted action by these forces
might destroy his influence any day, for he had not a time
guarantee of the President's favor. During the bank fight his
prestige had suffered and a more bitter fight with that institu-
tion was imminent. Jackson knew that he was opposed to the re-
moval of the bank deposits and Livingston could not foresee
what effect the coming struggle would have on his own political
fortunes, but prospects for a continuance of his position as an
influential adviser of the President were not bright.

All these contending forces contributed incidentally to the
realization of Livingston's cherished ambition. McLane was op-
posed to the removal of the bank deposits and now was all the
more desirous of getting Livingston's position. Presently he
was one of Jackson's favorites and the President was not averse

50 Fitzpatrick (ed.), The Autobiography of Martin Van Buren,
545-53.
51 Ibid., 603.
to complying with his wishes in order that he might avoid the embarrassment that would arise should he remain Secretary of the Treasury. Van Buren was on friendly terms with McLane and informed Jackson that Livingston "was more at his ease in talking and not infrequently acting upon public questions in the company of Mr. Webster and Mr. Biddle than with us."52 Livingston had antagonized the state rights people and his presence in the secretary's office was a constant irritant to them. Jackson needed their support in the coming bank fight. The French situation demanded attention and no member of the Jackson entourage was as well qualified to handle it as was Livingston.

The explanation for the President's failure to appoint Rives' successor to the French Court was apparent. With the close of the turbulent session of Congress, Jackson accepted Livingston's resignation as Secretary of State and, on the same day, May 29, 1832, he announced the appointment of Edward Livingston as Minister and Envoy Extraordinary to the Court of Louis Philippe.

52 Ibid., 704.
CHAPTER XVI

MINISTER TO THE COURT OF LOUIS PHILIPPE

Livingston's appointment as minister to France was not unexpected; in fact, during the past year, it had been currently rumored that he was to "go to France."¹ Jackson's irritation caused by the dilatory French government, and his decision, following the draft protest, to bring matters to a crisis were well-known. With the adjournment of Congress, the President felt that "the conditions of our domestic concerns" which rendered any change in the Treasury and State Departments inexpedient"² no longer existed and that the time was propitious to force the issue with the French. Livingston's appointment met with universal approval; even among the opposition no question was raised as to his peculiar fitness for the delicate mission. It was with regret that the New York Journal of Commerce "parted with him as Head of the Department of State" for "his enlarged views, great industry, and personal courtesy, have rendered his Administration of that Department highly

¹ Richmond Whig, quoted in Daily National Intelligencer, July 26, 1832.
² Richmond Enquirer, June 7, 1833.
popular with all parties.\textsuperscript{3} Even the Whig editors of the \textit{Intelligencer} felt that "the President could not make a better selection among his friends\textsuperscript{4} and expressed themselves as being "very sorry to part with Mr. Livingston." He had, they believed, "with fidelity, as well as ability, discharged the duties" of his office and they "entirely approved" of his appointment.\textsuperscript{5}

The selection of Livingston appeared to have been a wise one and to have presaged an early and satisfactory solution of the existing difficulties. Seemingly, he possessed all requisites for the position. The new minister was not only well versed in law, but, also had a thorough knowledge of the background of French law. He was intimately acquainted with the French language and his close associations with the Creoles of Louisiana had given him a sympathetic understanding of the habits and customs of the people with whom he would associate. His work in the field of penal reform had gained for him an enviable international reputation, and, in France in particular, he was admired by that group of young liberals of which Victor Hugo was a leader.\textsuperscript{6} While in Congress, he had voted for the French claims and his old friend Lafayette was "cherishing the hope" of seeing him in France.\textsuperscript{7} On May 8, just prior to the announcement of his ap-

\textsuperscript{3} \textit{New York Journal of Commerce}, quoted in \textit{Daily National Intelligencer, June 5, 1833}.
\textsuperscript{4} \textit{Daily National Intelligencer, July 26, 1832}.
\textsuperscript{5} \textit{Ibid.}, May 21, 1833.
\textsuperscript{6} Victor Hugo to Livingston, March 27, 1834, in Hunt, \textit{Life of Edward Livingston}, 405-406.
\textsuperscript{7} Lafayette to Livingston, December 8, 1832, in \textit{Ibid.}, 382-384.
pointment, Louis Philippe had approved his election as "a Fore-

eign Associate of the Academy of Moral and Political Sciences

in France." His son-in-law, Thomas P. Barton of Philadelphia,

was to serve as his secretary and all indications pointed toward

a pleasant and successful mission.

In his general instructions, McLane informed the new min-

ister that France's payment of the first installment would "re-

quire your prompt attention." Livingston was to ascertain the

"causes of the unexpected and unaccountable failure, on the part

of France" to fulfill without delay her financial obligations

under the treaty. The attempt of the French government "to ex-

cuse its own delinquency by complaining of the United States for

the mode adopted for receiving payment" was "an aggravation of

the injury previously inflicted upon the interests" of America.

France was to be informed that the President would "not permit

the right of the United States to draw for the installment by

a bill of exchange, be questioned." The government of Louis

Philippe was to be apprised of Washington's disappointment at

the failure of the executive department to have "applied to the

legislative branch for the necessary appropriations." He was

to point out that "all advantages secured by that convention to

the Government of France, and its citizens," had been "in full

enjoyment ever since the date of the exchange of ratifications." 9

8 Daily National Intelligencer, July 2, 1833.
9 McLane to Livingston, June 3, 1833, in House Documents, 23

Cong., 2 Sess., Doc. No. XL, 86.
In his supplemental instructions of July 25, the Secretary notified Livingston that he was to "repair to your post immediately" and on arrival "you are to enforce the obligations of the French government under the treaty." It was also his "duty to let it be clearly understood that this government will rigorously insist upon the prompt and complete fulfillment of all the stipulations." 10

Jackson was insistent that Livingston depart for France at the earliest possible date. On June 6, Livingston accompanied Jackson on his trip through the East as far as New York where they were met by Van Buren for a conference on the French problem. 11 As the time for his departure approached, Livingston's favorable anticipations of the "honorable mission" assigned him gave "way to sensations by no means so pleasing." He realized that he was no longer in the center of political activities and immediately missed the "political importance" that the station he had filled had given him. 12 Others had sought his advice when matters of policy were to be determined, and he was not only unable to tell what "was going on" in the inner councils but he himself now must apply to others for such information. 13 "These drawbacks," the misgivings of his ability to manage the important national concerns, the apprehensions of his "leaving

10 Louis McLane to Livingston, July 25, 1833, in ibid., 9.
11 United States Telegraph, June 6, 1833.
12 "Livingston's Diary," as quoted in Hunt, Life of Edward Livingston, 392.
13 Livingston to Trist, September 6, 1833, in Trist Papers, X, 57,200.
undone some matters of importance" and the "painful feelings" attending a separation from his native country for an uncertain period, caused him to delay his departure as long as he could. In early July, Jackson "expressed great anxiety" for his "speedy departure" and plans were made for him to sail July 16 on the Delaware. As the date for sailing arrived, Livingston wrote the Secretary of State "that it would be impossible to get ready before the 24th." On July 30, Jackson wrote Van Buren to see that the minister got "off soon" for "he ought to have been at Paris some weeks ago." Finally, on August 14, he sailed from New York and twenty-eight days later, September 12, he arrived at Cherbourg.

Thrown upon his own resources in making critical decisions while in France, Livingston revealed exceptional judgment, keen discernment, and wise initiative. He combined rare imperturbability of temper with a full appreciation of the requirements of his mission in meeting the crisis which taxed his abilities to the fullest extent. His observations were accurate, his analyses were clear, and his decisions were sound. Had not the Whigs decided to make political capital of the French crisis, Livingston's task would have been less difficult and perhaps successful. Under the conditions, none other could have accomplished more and the failure to secure payment due the Washington gov-

14 "Livingston's Diary," as quoted in Hunt, Life of Edward Livingston, 392-93.
15 Jackson to Van Buren, July 30, 1833, in Van Buren Papers, XVIII, 4,180-81.
ernment was in no way to his discredit. In the trying days of
the following months, Jackson's kindly expressed acceptance of
his resignation from the cabinet served as a source of encourage-
ment. It was reassuring to know that the President felt a deep
sense of the very important aid which' he had "rendered in con-
ducting the administration." When discouraged and depressed it
was heartening to recall that it had given his old chief pleasure
to recount "throughout our long acquaintance, in military as well
as civil life, I have ever found your eminent talents employed
in advancing the good of your country; and that whenever we have
cooperated in the public service you have left the evidence of
exalted patriotism and unshaken integrity." 16

On presenting his "letter of credence to the king" October
4, Livingston was warmly received by Louis Philippe who expressed
his kindly feelings for the United States to the new minister.
He assured Livingston that the necessary laws for the execution
of the treaty would "be passed at the next meeting of the Cham-
bers." 17 During the interval between his arrival in Paris and
the convening of the Chambers, Livingston was busy familiarizing
himself with the office routine and making personal adjustments
to new surroundings. He contacted the political leaders of
Paris and the provinces and conferred with some of the outstand-
ing men in the industrial, commercial, and agricultural fields.

16 Jackson to Livingston, May 29, 1832, in Bassett (ed.), Cor-
respondence of Andrew Jackson, V, 102.
17 Livingston to McLane, October 4, 1832, in Richardson (ed.),
Messages and Papers of the Presidents, III, 130; House Doc-
He met the representatives at the other legations and visited the theaters, parks, and public gatherings. Being keenly observant and trained to detect the political significance of chance remarks and seemingly unimportant incidents, Livingston soon discovered the real cause of the indifference of the king and his ministers.

The treaty was unpopular and was described by the enemies of the government as a bad bargain. The opposition of the old régime was based upon its hatred for America because of the Revolution. The Republican opposition was a result of their hatred for Louis Philippe who as king was the personification of monarchy. Even the members of the tiers parti, upon whom the government depended for support on certain questions, were divided on the treaty question. The king's throne was shaky and he ruled in continual fear of the Deputies who refused to validate the treaty. He was in constant dread of a coup d'état by the Carlist or the Republicans and was apprehensive even of the tiers parti. Consequently, Louis Philippe refused to prosecute the question actively and hoped for an auspicious moment when the unpleasant duty could be performed without jeopardizing his throne.

In addition to importuning the king, monstrosating with the

19 Séruier to McLane, August 31, 1833, in House Documents, 23 Cong., 2 Sess., Doc. No. XL, 175-77.
ministry, interviewing influential members of the Chambers, and attempting to allay Jackson's irritation over French apathy, Livingston was alert to protect and promote American interests and prestige. In the summer of 1834, the minister visited Savoy for his health and was "surprised at the flourishing conditions." A market, he informed Jackson, was opening "in the German States, particularly those on the Rhine, for some of our most important exports" which "if duly attended to" would have important effects upon our commerce and agriculture.21 A recognition of the advantages that would accrue from a "commercial treaty with some or all of the Italian States" prompted Livingston's offer to negotiate the treaties should his suggestion be received favorably.22 Conditions were "very critical" and Livingston felt that "the occurrence of a general war in Europe" was almost certain. While he advised against "being involved in it," he urged "we must demonstrate to all contending powers" that America possessed the spirit and the means of defending its commerce.23 However, practically all of Livingston's time and energies were devoted to the ineffectual task of securing an amicable settlement of the claims.

On the day following his first interview with the king,

21 Livingston to Jackson, October 12, 1834, in Jackson Papers, LXXXVII, 17,837-38.
22 Livingston to Jackson, October 12, 1834, in ibid., LXXXVII, 17,837-38.
23 Livingston to Jackson, July 14, 1834, in ibid., LXXXVI, 17,589-91.
October 5, 1833, Livingston assumed the offensive when opening negotiations with the French Ministry. Duc de Broglie, Minister of Foreign Affairs, was given to understand the certain effect on American public opinion of France’s contemptuous treatment of its treaty obligations. Livingston refuted the arguments that the demand “for payment by the United States” was “out of line with the treaty requirements.” The faith of the government of France, he continued, was “irrevocably pledged for the performance of the stipulations.” The right of “any branch” of the French government to vitiate the pledge was denied and “the speedy performance of those engagements” was expected. While acknowledging that his expression of “astonishment” at the drawing of the draft “would bring forth the species of arguments employed,” de Broglie assured Livingston that the necessary provisions for the execution of the treaty would be made at the next session of the legislature.24

The results of McLane’s definite and positive assertions of Executive responsibility can be noted in this decision of the Ministry to sponsor actively the appropriation bill. In informing M. Sérurier, the French Minister at Washington, of the reason for the failure of authorization by the French Chambers, McLane pointed out “that the Legislature of France had never been called upon” for the appropriation and the Executive department was therefore responsible.25 With the Ministry promising to sponsor

24 Duc de Broglie to Livingston, October 23, 1833, in ibid., 44–45.
25 McLane to Sérurier, June 3, 1833, in ibid., 60–74.
the appropriation bill and with the Deputies meeting in December, Livingston felt encouraged. Being familiar with the intricacies of legislative procedure, and realizing the hesitation of the Ministry to adopt an aggressive policy, he devoted considerable time to working with the members of the Chamber. In all of his efforts, he had the active co-operation of Lafayette who "wanted the matter settled." 26

He soon sensed the fact that projet de loi would fail of passage unless public opinion in France or positive action in Washington forced the Chamber to a favorable vote. Subsequent events proved the correctness of his diagnosis. He recognized his inability to marshal public opinion in France, and his suggested action by Washington was vetoed. While assuring him that the President was gratified with the manner with which he had proceeded, McLane informed Livingston that "the President cannot adopt your suggestion for suspending the act of Congress executing the convention." 27

From the opening date of the session of the Chambers, December 22, 1833, until January 13, 1834, when the bill was finally introduced, Livingston almost constantly importuned the King and remonstrated with the Ministers to secure action. 28 He made an ineffectual attempt to comply with Jackson's instructions to

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26 "Extracts from Minutes, Chamber of Deputies," quoted in Washington Globe, August 1, 1833.
28 Washington Globe, October 13, 1834.
have incorporated in the bill provisions "for the payment of each installment" as they fell due so that it would not have "to recur again to the Chambers." He kept in touch with the leading legislators and felt relieved when the Committee reported March 10 and recommended the adoption of the bill. He kept informed as to the tactics of the opposition and feared the effect of the propaganda for a "new negotiation [sic] to produce a smaller indemnity." He knew that the vote would be close but, as the opposition failed to advance new arguments during the three days' debate, March 28-April 1, he was hardly prepared for the rejection by the vote of 176 to 168.

The Washington government had failed to provide for such contingency and Livingston was without instructions. A less discreet man would have demanded his passports, which would have aggravated the situation further. In discussing the problem with a friend as to "the course which it might be advisable to adopt," he stated that he "would wait for further instructions before he acted." He declined the suggestion to demand his passports provisionally for the effect "of eliciting a request from the French Government" for him to "continue to be accredited for the purpose of forming a new treaty." He refused to adopt

30 Washington Globe, October 3, 1834.
31 Livingston to Jackson, June 23, 1834, in Jackson Papers, LXXXVI, 17,555-57.
32 Washington Globe, October 13, 1834.
such policy even though he was informed of de Broglie's expressed apprehension "of the effect in the provinces which a rupture with America would create." 33

Livingston was tired. The strain of the legislative session and his recurring spells of illness had left him exhausted, but he refused to leave Paris for the moment. He resented "that nothing was done in the last Congress" 34 and the delay of instructions from Washington proved embarrassing. He was desirous of knowing "in what tone" he was to be "authorized to speak to the French government on the subject of their breach of faith." If it were "decided to do nothing," he wrote Jackson, he would "regret it very much" yet, if he knew it, at least "the merit of moderation and forbearance" might be claimed. 35

The elections for the Chamber of deputies were being held. While hopeful as to the election results, he felt that an extended absence from Paris at that time was inadvisable. He maintained that since no decision could be had in time before the end of the next session of Congress, Jackson should urge Congress to pass a law "suspending importations until the treaty had been complied with." 36

The French government also was quite concerned. It feared that the President would request "Congress to decide upon the

34 Jackson to Van Buren, October 27, 1834, in Lassett (ed.), Correspondence of Andrew Jackson, V, 302-303.
35 Livingston to Jackson, July 14, 1834, in Jackson Papers, LXXXVI, 15,589-91.
36 Livingston to Jackson, June 23, 1834, in ibid., 17,555-57.
measures to be pursued." The King assured Livingston of his keen regret at the action of the Deputies and dispatched a corvette to America with instructions to Sérurier to explain the conditions to Jackson. The President was to be informed that, as soon after the elections as the charter would permit, the Chamber would be summoned, the appropriation would be pressed, and he would be informed of the results in time for him to communicate the facts to Congress "before March 4, next." 37

As time passed the situation appeared less critical to Louis Philippe and his Ministry, especially since the American government did not seem inclined to resort to vigorous measures. The President had accepted Sérurier's statement "that everything permitted by the constitution is to be done to hasten the period of presenting the law" to the Chamber of Deputies and had made no report on the situation to Congress. American public opinion regarding the treaty rejection as recorded in the Washington papers did not indicate the necessity of vigorous action by the Ministry. Compte de Rigny, the new Minister of Foreign Affairs, continued the de Broglie policy of evasion and delay. Effort was made to discredit American institutions not only in France but also throughout Europe 38 and the question of a new treaty providing for a smaller indemnity was agitated. 39

37 Washington Globe, October 13, 1834.
38 Livingston to Jackson, June 23, 1834, in Jackson Papers, LXXXVI, 17, 555-57.
39 Ibid.
When Jackson's instructions of June 27 arrived informing Livingston that "on all occasions" he must use candor in his communications with the French government and "that the treaty, on their part, must be fulfilled," the Minister promptly lodged a protest with de Rigny. On July 26, he wrote de Rigny that further delay would be "irritating" and expressed the hope that the question would receive "attention of his Majesty's Government," when the Chambers convened on July 31. Three days later, July 29, he informed de Rigny that since the President expected the King to convokes the Chambers at an early date he was confident that the Ministry would present the question during the "approaching meeting." The "short session" de Rigny explained, had for its "only object" that of giving the "Chambers an opportunity of organizing themselves"; consequently the Legislature would be prorogued immediately as it was impossible to keep it in session out of season.

Livingston was not satisfied with de Rigny's attitude and on August 3, he reminded him of Séruerier's pledge to the President that "everything permitted by the constitution" would be done to accelerate the presentation of the law to the Chambers. It was because of this pledge, said Livingston, that the President had refrained from presenting the matter to Congress. If

40 Jackson to Livingston, June 27, 1834, in Basset (ed.), Correspondence of Andrew Jackson, V, 271-72.
42 Livingston to de Rigny, July 29, 1834, in ibid., 56.
43 De Rigny to Livingston, July 31, 1834, in ibid., 57.
Sérurier's statement reflected the attitude of the Government, then why refuse to present the law to the Chamber for its decision so that the President could report its action to Congress in December. "It might," he concluded, "be expected that the personal conveniences of the members of the Legislature, or even some degree of national interest, ought to give way to the strong exigencies of such a case." But de Rigny refused to admit that Sérurier's remark constituted a pledge and informed Livingston that the "Projét de loi cannot be presented to the Chambers" as they were "to be immediately prorogued." The King, furthermore, could not call a special session merely to consider this subject, but it would be presented "as soon as possible" during the winter session.45

Livingston knew that the Chambers would not meet in regular session until three weeks after Congress had convened. He appealed personally to Louis Philippe and the King promised him "to convene the Chambers in October or the first of November." But upon his return to Paris following his short visit to Savoy for his health, Livingston learned that the King had no intention of complying with his pledge to convene the Chambers before their regular meeting date. He was outraged at the King's conduct and concluded that he and his ministers were acting hypocritically in that they did "not want the treaty carried into

44 Livingston to de Rigny, August 3, 1834, in ibid., 56-59.
45 De Rigny to Livingston, August 7, 1834, in ibid., 60-61.
46 Jackson to Van Buren, October 27, 1834, in Bassett (ed.), Correspondence of Andrew Jackson, V, 302-303.
effect" and were attempting "to throw the responsibilities upon the Chambers."47 Unable to locate the source of the propaganda for a new treaty, Livingston determined to disavow officially the possibilities of such action. On October 14, the Paris Constitutionel stated that it had "been authorized by Mr. Livingston to declare, that he has received no instructions from the Government of the United States to agree to any compromise whatever relative to the claims of France; and further, that Mr. Livingston is sure no such instructions will be transmitted to him."48

Livingston's efforts to effect a satisfactory adjustment of the difficulties were counteracted by conditions in America as well as in France. In spite of the President's avowal that he would "not recommend a war thro' the Custom House,"49 Livingston still was convinced that only a show of force by Washington would conclude the issue. He knew, what others recognized later, that "the real spring to touch is the commerce of the country."50 The question remained as to how he could stir the President to action and overcome the indifference of the American public.

Livingston's move was well timed. Shortly before Congress was to convene he had an interview with the King and was con-

47 Ibid.
49 Jackson to Livingston, June 27, 1834, in Bassett (ed.), Correspondence of Andrew Jackson, V, 271-72.
vinced that he was "sincere." On November 22, he wrote John Forsyth, who had succeeded McLane as Secretary of State on July 1, 1834, that only a manifestation of "a strong national feeling on the subject" in America would force action in Paris.

"This is not a mere conjecture"; he informed Forsyth, "I know the fact." He reiterated that the moderate tone of the President's messages had convinced the French politicians "that he would not be supported in any strong measure by the people."

"You may well imagine", he concluded, "the anxiety I shall feel for the arrival of the President's message. "On its tone will depend to a large extent payment of our claims and our national reputation for energy." 51

Not only did Livingston attempt to arouse Jackson to positive action, but he endeavored to exert pressure on the Ministry. Without specific authority, he informed the Ministry "of the serious consequences that may be expected from another rejection of the law and of the firm determination" of the government of the United States "to admit no reduction or change in the treaty."

On December 6, he informed Forsyth of the good "effect" of the message and that his hopes had "increased." The king and the Ministers assured him that they were in earnest and some of the deputies "seemed convinced that the interest and honor of the nation" required fulfillment. 52

51 Livingston to John Forsyth, November 22, 1834, in House Documents, 23 Cong., 2 Sess., Doc. No. CXXXVI, 2-3.
52 Livingston to Forsyth, December 6, 1834, in ibid., 3.
A little later, Livingston's optimism had given way to fear and he awaited hopefully the arrival of the Presidential Message. The tone of the press and conversations with both Louis Philippe and his Ministers, he informed Forsyth, had convinced him that the ministry was "not willing to put their popularity to the test" on the subject of the claims. "It will not," he said, "be made one on the determination of which the ministers are willing to risk their portfolios." This decision not to make it a cabinet question, however, "will not be without its favorable operation" for the leaders of the opposition will then hesitate "to take the responsibility of a rupture between the two nations." As it was not prudent, he would not "press the decision before next month."53

In the meanwhile Jackson's strong toned Message, which would precipitate a crisis when it arrived in Paris, was sent to Congress December 1, 1834. The greater part of it was an accurate recital of facts, but it closed with the request for authority to make reprisals on French property in the event the Chambers at its next session failed to provide for the required appropriation. "This remedy," he said, "has been repeatedly resorted to, and recently by France" herself, "under circumstances less questionable." France ought not consider "such a measure a menace." Her pride and power, he continued, were "too well known to expect anything from her fears" and it should be un-

53 Livingston to Forsyth, December 22, 1834, in ibid., 4.
necessary for him to declare that "no intimidation is intended by us."54

Livingston interpreted the arrival of Jackson's message in Paris during the early morning of January 8 as a "good omen."55 The excitement that followed, however, was intense and even Livingston was momentarily stunned. Three days later Livingston reported to Forsyth that he feared the "sensation" which it had caused might deter the Ministry from recommending the appropriation. "The feeling," he said, was "fostered by the language of our opposition papers, particularly by the Intelligencer and the New York Courier, extracts from which have been sent on by Americans, declaring them to be the sentiments of the majority of the people." "These, you understand, are translated and republished here, with such comments as they might have been expected and undoubtedly were intended to produce." If "hostilities should take place between the two nations those persons may flatter themselves with having the credit of a large share in producing them." Livingston's opinion, however, was that "the energetic language of the Message" would "have a good effect." He was confident that "as soon as the excitement subsides it will operate favorably on the councils of France." Already some of the journals had begun "to change their tone" and he would be much mistaken "if the opposition here, finding that we are in earnest, will incur

54 Richardson (ed.), Messages and Papers of the Presidents, III, 106-107.
55 Livingston to Jackson, January 15, 1835, in Jackson Papers, LXXIX, 18, 217-18.
the responsibility of a rupture between the two nations" which they recognize would follow should the treaty be rejected.56

The Gallic pride was "deeply wounded" at what was considered an attempt to coerce by threats57 and on every hand protests were heard against making provision for the payments. Livingston was largely responsible for the situation, for he had recommended that the President assume a forceful attitude in his message. He knew that should his recommendation be accepted that Jackson would act in his typical vigorous manner, but he had miscalculated the reaction of the French people. Events moved swiftly. Two days later, a crisis developed which gave evidence of being "the first preliminaries to actual hostilities."58 At the request of de Rigny, Livingston personally delivered to him a copy of the Message. During the conference, Livingston, while expressing his regret at the communication having been misrepresented "as a measure of hostility" pointed out to de Rigny that the Message "was a consultation between different members of our Government," and was not "addressed to the French nation."59 It was most unfortunate, he added, that in view of Sérurier's promise the Chambers had not been convened earlier. De Rigny was noncommittal,

57 Ibid.
59 Livingston to Forsyth, January 14, 1835, in House Documents, 23 Cong., 2 Sess., Doc. No. CLXIV, 4-6.
but seemed to attach serious importance to the intimation of bad faith.

The conference was friendly, and that evening at the "Austrian ambassador's" de Rigny's pleasant manner gave no indication of the serious step that the French government had taken. In fact, he was agreeable to Livingston's request of delaying "the note recapitulating the conversation" of the morning until after the "arrival of the packet of the 16th." Naturally, Livingston "was quite surprised" to receive later the same evening a communication from de Rigny announcing the withdrawal of Sérurier from Washington and that his passports were at his disposition. General Jackson's comments on the failure to convene the Chamber served as the excuse for him to announce that "His Majesty has considered it due to his own dignity no longer to leave his Minister exposed to hear language so offensive to France."^60

De Rigny's unexpected move placed Livingston on the defensive. Without warning, Livingston was confronted with an "embarrassing situation"^61 that required his immediate decision and prompt action. He was ill-prepared to meet this "perplexing" exigency. His own Department of State had neglected to make preparations for such contingency and he was without instructions concerning his actions in the emergency. He had received no letters from Washington "since the meeting of Congress" and

60 De Rigny to Livingston, January 13, 1835, in ibid., 6-8.
61 Livingston to Jackson, January 16, 1835, in Jackson Papers, LXXXIX, 18, 220-21.
his only knowledge of "the course of events, public opinions, and governmental designs" had been gleaned "from the mass of party trash in the gazettes." Livingston had been instructed to secure the execution of the treaty, and, regardless of personal feelings, he realized he could not allow any act of his to jeopardize the success of his mission. Before deciding upon his course of action, the question must be considered carefully from all angles. He immediately disregarded the first impulse to demand his passports and leave, for that "would give France the advantage." He must reverse the situation with de Rigny and place him again on the defensive. In the "cynical terms" of the de Rigny note, he sensed the fine Machiavelian hand "of that wily old diplomat, Talleyrand." He detected its two-fold design; first, to convey the impression both in Europe and America of the great vigor of the Washington government; and second, to interpret his demand of passports as a voluntary act. Both objects must be defeated.

62 Livingston to Van Buren, January 29, 1835, in Van Buren Papers, LXXI, 4,767-68.
63 Livingston to Jackson, January 16, 1835, in Jackson Papers, LXXIX, 18,220-21.
65 Livingston to Jackson, January 15, 1835, in Jackson Papers, LXXIV, 18,217-18.
66 Ibid.
The Message had embarrassed the French greatly and they wanted to hide their faults by "an affected sense of injured dignity." The French government was "not settled on any firm basis" and the Chambers had "neither dignity, energy, nor influence." The King had had to grant concessions to the Deputies for their support which had resulted in an encroachment upon his prerogatives. In the hopes of a restoration, the opposition papers were attempting to "goad the Chambers" into a rejection of the law. Considering the political conditions, the President's strong language might force the Ministry to act provided he could not be accused of "breaking up diplomatic relations" which "might precipitate war."

Following a long and sleepless night, Livingston spent most of the day framing his reply to de Rigny. The French Minister was informed that, unless his letter was intended as a dismissal, he would "not take the responsibility of the consequences" in asking for his passports. He could take no directions, follow no suggestions but those of his own government and he would await those instructions unless directed to leave French territory. However, should he receive his passports, he would leave the responsibility "where it should rest," and that later he would reply in full to the "grave matter" which de Rigny had raised.

67 Ibid.
68 Livingston to Van Buren, January 29, 1835, in Van Buren Papers, XXI, 4, 767-68.
70 Livingston to De Rigny, January 14, 1835, in Ibid., 10.
days afterwards Livingston informed Forsyth that the law had been presented for effecting the payment to the United States.\textsuperscript{71} On the same day he wrote Jackson, and with a slight touch of humor, "My note to Count de Rigny was delivered early yesterday and as it is now five in the afternoon and I have received no answer, I presume it has perplexed them a little—what to say—as I supposed it would."\textsuperscript{72} De Rigny again was on the defensive.

Livingston was no less hampered in his efforts by the political warfare in France than he was by the fight the Whigs were waging against Jackson at home. Not only in Congress but also in their press, the attitude of the Whigs had given encouragement to the enemies of the treaty in France. Especially had the "insidious" articles appearing in the \textit{Intelligencer} and the \textit{New York Courier}\textsuperscript{73} been effective in creating the impression that Jackson would not be supported by "congress or the people of the United States."\textsuperscript{74}

In the Senate, the Whig's first move was to gain control of the Committee on Foreign Affairs in which they were successful when they secured the appointment of Clay, W. P. Mangum, and Peleg Sprague. The \textit{Globe} maintained that there were not three men in the French Chamber more anxious to thwart Jackson than the three men\textsuperscript{75} on this committee to which was referred that

\begin{itemize}
\item \textsuperscript{71} Livingston to Forsyth, January 16, 1835, in \textit{ibid.}, 11.
\item \textsuperscript{72} Livingston to Jackson, January 16, 1835, in \textit{Jackson Papers}, LXXXIX, 18, 220-21.
\item \textsuperscript{73} Livingston to Jackson, January 15, 1835, in \textit{ibid.}, 18, 217-18.
\item \textsuperscript{74} \textit{Daily National Intelligencer}, December 12, 1834.
\item \textsuperscript{75} \textit{Washington Globe}, December 17, 1834.
\end{itemize}
portion of the Message dealing with the French affair. While
the drawing of the draft was not in accordance with diplomatic
usages, and while probably every means had not been exhausted
to secure a peaceful solution of the problem, Clay's actions
were reprehensible. In offering the majority report that "it
is inexpedient at this time" to grant authority for reprisals,
Clay bordered on disloyalty when he suggested that if France
were prudent she would wait to see whether the Message should
be seconded by the Congress. His suggestion that France might
make the appropriation conditional on an "explanation" from the
President was understood by the French government.76 When the
Senate approved his resolution, the Chambers were convinced that
the recommendation of the President "is his own act only."77 The
opposition went so far as to criticise the Administration for
Forsyth's refusal to confer with Sérurier following the arrival
of his notice of recall. It clearly indicated the warlike atti-
tude of Jackson, they contended, when the Secretary, in refusing
the interview, had tersely informed Sérurier he was "ready to
receive in writing any communication the Minister of France
desires to have made to the Government of the United States."78

For sixteen days following the receipt of de Rigny's com-
munication of January 13, Livingston was occupied in writing
the formal reply which he had promised de Rigny in the earlier
answer. With a logic surpassing that employed by Jackson

76 Register of Debates, 23 Cong., 2 Sess., 104-105 (January 6, 1835).
77 Daily National Intelligencer, December 15, 1834.
himself in his own defense, Livingston defended the President's method of addressing France through the medium of messages to Congress. He rebuked de Rigny for referring to the President as "General Jackson" in official communications and firmly reiterated the charge of broken faith in the matter of Sérurier's pledge. He definitely refuted the accusation that Jackson, purposely, had misrepresented the question concerning the calling of the Chamber. "You hide," he said, "behind the veil of fixed principles of the constitutional system" but "there is no regular form of administration." For "neither constitutional impediment nor stern usage" had prevented the issuance of a call "at any time" that His Majesty's Government had deemed advisable. The present session, he pointed out, had convened three weeks earlier than the regular date, even though de Rigny himself had declared such action was impossible. French chauvinism, he warned in conclusion, had been carried too far "when it becomes impatient of just complaint, when it will allow none of its acts arraigned, and when it considers as an offense a simple and correct examination of injuries received."79

On February 13, Forsyth informed Livingston that, if the French Chambers again rejected the appropriation bill, a frigate would be dispatched immediately to convey him home.80 Not until

79 Livingston to de Rigny, January 29, 1835, in Daily National Intelligencer, March 12, 1835 (Official).
the middle of March, however, was Livingston's "anxiety" relieved by the arrival of instructions from Washington carrying with them full approval of his conduct. Jackson's personal letter of commendation expressing his "delight" with the minister's reply to de Rigny did not arrive until April 12. In the meanwhile many events had occurred that had added to Livingston's difficulties. The President's transmittal to Congress of Livingston's official correspondence with his government had proven most embarrassing, as all the Livingston letters were reprinted in the Paris press. Even though he "approved" of the President's action, it had ended his usefulness in Paris. On February 14, the French Ministry had been dissolved and for a month the handling of the important treaty question was assigned to M. Desmoussiaux, an assistant commissioner. The return of Broglie to the department of Foreign Affairs, March 13, was interpreted as favorable to the payment of the indemnity. The opposition press admitted that the new ministry and the treaty

81 Forsyth to Livingston, February 24, 1835, in ibid., 12-13.
82 Livingston to Jackson, April 12, 1835, in Jackson Papers, XC, 18, 496-97.
83 Ibid.
84 Ibid.
85 "By the publication of Mr. Livingston's correspondence, the Government of the United States had excited such a feeling of irritation against him that it would have been out of our power... to avail ourselves of a document bearing his signature," Broglie to M. Pageot, June 17, 1835, in Daily National Intelligencer, January 22, 1835.
86 Ibid., April 9, 1835.
87 Paris Moniteur, March 13, 1835, quoted in ibid., April 14, 1835.
"must stand or fall together" as the temper of the Chamber was unfavorable to any further changes in the ministry. 88

Realizing that the duration of his ministry depended upon a successful disposition of the question, Broglie made an earnest and energetic effort to secure the execution of the treaty. In order to afford a ministerial explanation of the crisis, the bill for the indemnity was made the order of the day in the Chamber of Deputies, March 14. At last, the pressure from the commercial, manufacturing, and agricultural interests in the provinces was being felt. However, the opposition was vigorous and Messrs. Dupin, Chateulon, Berryer, and Vaïsse made every attempt to embarrass Broglie. In replying to Berryer, March 30, Broglie maintained that "General Jackson's" message was not to be regarded in the light of a public act but rather a "mere expression of an Executive officer" since it had been disapproved by the American Government. M. Berryer was in error, he stated, in accusing Livingston of attempting to intimidate France and since the sum of twenty-five million francs "was satisfactorily shown to be due the United States," it was the duty of the Chambers to enable the government to fulfill its engagements. Seizing his advantage and in order that the full purport of his remark might be gained, discussions were postponed immediately following his statement.

88 "If the treaty is not accepted, it will be not M. de Broglie alone, but the whole Ministry that must go out." Journal des Debats, March 12, 1835, quoted in ibid., April 14, 1835.
that the money would not be paid "should the interests or dignity of France be compromised" by the American government. 89

If Louis Philippe had his troubles with the Chamber of Deputies, Jackson had his difficulties with Congress. The militant French newspapers reached the United States and their boasting, 90 sword-rattling articles, coupled with the report that the French squadron was to visit the American coast, were not conducive to calming the friends of the President. Under these ominous conditions, the House of Representatives, where the Jacksonites were in majority, began its discussion of the crisis. The majority report and resolutions declared against further negotiations and favored preparations for war. 91 Surprisingly, Adams, the Whig, was the special champion of the President in the fight against a compromise. 92 Following the acrimonious debates, the resolution which was adopted was a compromise between that which the committee had introduced and the ideas of Adams. The compromise provided for the maintenance of the treaty and for preparations for war as expressed in the Fortifications Bill. 93

On the last day of the session, during the consideration of the Fortifications Bill, an amendment was offered in the

89 Journal des Etats, March 30, 1835, as quoted in ibid., May 7, 1835.
90 Benton, Thirty Years' View, I, 580-93.
91 Register of Debates, 23 Cong., 2 Sess., 1515-17 (February 27, 1835).
92 Ibid., 1517, 1532, 1565, 1571, 1622.
93 Ibid., 1010-15 (January 10, 1935).
House, appropriating three million dollars to be used, at the discretion of the President, in case France should declare war during the recess of Congress. 94 Although it met with no opposition in the House, it was opposed vigorously in the Senate. Webster's proposed disposition of the amendment with a motion to "adhere" to the Senate measure brought protests from Buchanan and King. 95 But the appeals to provide protection against invasion by the enemy and to save the national character from disgrace were futile. By a strict party vote, the motion to adhere was adopted 96 and in the conference between the representatives of the two chambers, the House was forced to accept the Senate's terms. Only $250,000 for arming the fortifications and $500,000 for repairs and equipping of war vessels was provided, "an amount wholly inadequate if it should be required, and more than necessary if it should not."

The failure of the passage of the Fortifications Bill did not weaken Jackson's determination to maintain the rights of the nation. Two days after Congress adjourned, Forsyth instructed Livingston to demand an explanation or a qualification of the insinuation in jurors' note of withdrawal that the president had knowingly made a misrepresentation in his message to Congress. 97

94 Ibid., 644 (March 5, 1835).
96 Ibid., 744. The vote stood 29 to 17.
97 Forsyth to Livingston, March 5, 1835, in Daily National Intelligencer, January 21, 1836.
The action of Congress was reflected in the deliberations of the French Chamber of Deputies. The debates on the indemnity law, which began April 9 "continued with increasing violence and misrepresentation" for more than a week.98 "The insult of President Jackson comes from himself only," said Henri de Chaubaulon. "This is more evident from the refusal of the American Congress to concur with him in it." Had the United States taken part with General Jackson we would "have had to demand satisfaction not from him but from the United States" and would have had to teach the Americans that "France knows the way to Washington as well as England." Boasting of the ease with which France could crush the United States, M. Faucé declared, "When the Americans see this long sword, believe me, gentlemen, they would sooner touch your money than dare to touch your sword."99 Despite the denunciations, the insults and ridicule, Livingston wrote Jackson, April 16, that he had every reason to believe the law would pass.100

Two days later, Saturday, April 18, the Chamber of Deputies by a vote of 289 to 137 passed the appropriation bill with the payment contingent upon an apology or an explanation from President Jackson.101 The provisions of the act again placed Living-

98 Livingston to Jackson, April 12, 1835, in Jackson Papers, XC, 18,496-97.
99 Benton, Thirty Years' View, I, 591-93.
100 Livingston to Jackson, April 12, 1835, in Jackson Papers, XC, 18,496-97.
ston in an "unpleasant predicament." His instructions, which had directed him to return to America should the appropriation be rejected or to retire to England or Belgium should the action be favorable, failed to cover the situation. Relying upon his own judgment, he decided to demand his passports, leave his son-in-law, Barton, as chargé d'affaires and return home.

The same day that the deputies passed the appropriation bill, Livingston called upon Broglio for an explanation of Sérurier's note in which it was insinuated the President had been guilty of knowing misrepresentation. While he failed to receive an answer before his departure, he informed Forsyth that when given, the answer would be satisfactory. The day before his departure, he signed a convention with Broglio by which a life annuity of $120 would be paid by the United States either to the disabled French seamen or the families of those accidentally killed the previous year by the firing of a salute from an American ship. On April 25, once more he addressed Broglio in an attempt to maintain friendly relations between the two nations. He endeavored to convince him that to a large degree the injured feelings of the French had been caused by a failure to understand the nature of the United States Government." After reviewing the form and functions of the Government, he pointed

102 Livingston to Broglio, April 18, 1835, in ibid., January 21, 1836.
103 Livingston to Forsyth, June 29, 1835, in ibid.
out that the President, as chief executive power, had to have free communication with the co-ordinate powers of government. In order to preserve peace and because the President could not be called on for an explanation, he had given one on his own initiative—one which the President had approved. But that approval, Livingston maintained, "was given before he had intimation of intention to attach it as a condition to the payment of indemnity due by the treaty." Any attempt to enforce the proviso, Livingston informed Broglie, would be repelled "by the undivided energy of the nation."105

Four days later,106 he left Paris and on May 5 sailed from Havre for home.107 Before the year had passed, however, Livingston indicated a desire to return to Paris.

105 Livingston to Broglie, April 25, 1835, in ibid., July 3, 1835.
106 Livingston to Forsyth, June 29, 1835, in ibid., January 21, 1836.
CHAPTER XVII

EVENTIDE

The popular ovation accorded Livingston on his arrival in New York, June 23, more than compensated for the "contumelies of insolent Frenchmen" he had experienced in "strenuously asserting the right and honor of his country."¹ As the Constitution docked, an immense crowd greeted him at the wharf, followed him to the home of a relative on Greenwich Street, clamored for a speech, and thronged the City Hall at the public reception.² His apprehension of a none too cordial welcome vanished with the spontaneous applause that greeted his arrival at the dinner with which the city honored him on July 4th.³ At the conclusion of his brief speech the room echoed with the cries of "No explanations!" "No apology!" and shouts of "Hurrah for Jackson!" Not only was he the guest of honor at an equally enthusiastic dinner in Philadelphia and again in New York on July

but the press uniformly voiced its approval of his actions in France. The *Globe* was pleased to quote in full the editorial of the New York *Evening Post* which, in part, stated that "the names of few men are recorded in our history whose lives have been of more real service to the republic than Mr. Livingston. Identified from his youth upward with the party which professes the political principles of Jefferson, the whole tenor of his public conduct has been to illustrate and advance those principles. . . The learning of Mr. Livingston, the force of his eloquence, the comprehensive reach and unanswerable cogency of his writings, did much to accomplish the ultimate triumph of democratic principles, a result so auspicious to the cause of equal freedom."  

Livingston was guarded in his statements to the press representatives and assured them that his return was "not to be taken as an evil omen." It was prompted by "the desire to put the President in possession of his views more fully "than could be done by letter. There was nothing "to shake" his confidence that the affairs with France would be brought "to a satisfactory and friendly issue."  

4 "Not a faction of a party, not an individual even, venturing a word in favor of further concession; all professing a determined resolution to support the government in any measure that the dignity of the nation may require. I can truly say I have never witnessed such entire unanimity on any public question." Livingston to Jackson, July 11, 1835, in Jackson Papers, XCI, 18,793-94.  
The day before his arrival in New York, Livingston had written Jackson a personal letter explaining the motive of his last note to de Broglie in which he had made the "final appeal to the justice of the French Government." The letter was written, he assured the President, to counteract any use the opposition might "make of the conditions annexed to the law" and to show that the American Executive, without sacrificing "national dignity" had done "everything to avoid a rupture that the moderate counsels could suggest." While the praise of the general public was gratifying to Livingston, he was "very anxious" to receive the approval of the "General" and departed for Washington at the earliest moment possible.

On June 26, three days following his arrival in New York, Livingston was at the White House in conference with Jackson. "The principal business" with which he was charged having been brought to a close, he wrote Forsyth on June 29, that he had concluded his services would no longer be useful "to his country, and therefore requested that the President "accept his resignation of the trust" with which he had been honored. President Jackson, so wrote the Secretary the day following, could not allow him "who have been so long and usefully employed in public service," to resign "without an expression of his regard.

7 Livingston to Jackson, June 22, 1835, in Jackson Papers, XCI, 18, 745.
8 Richardson (ed.), Messages and Papers of the Presidents, III, 193.
9 Livingston to Forsyth, June 29, 1835, in ibid., 164.
and respect, the result of many years of intimate association in peace and war." Although differing on some points of general policy, the President had always known of Livingston's "singleness of purpose, perfect integrity, and devotion" to his country. His conduct "in the embarrassing and delicate position" which he had lately occupied and especially his last official note in closing his "correspondence with the French Government" had met with the President's "entire approbation." The President was persuaded that Livingston would "carry into a retirement which he trusts may be temporary" the consciousness not only of having performed his duty, but of having realized the anticipations of his fellow citizens and secured for himself and his country "the just appreciation of the world." On his return home, Livingston wrote Jackson that his "kind and affectionate reception" would have been without satisfaction had it not been "combined with your approbation of my public conduct." ¹⁰

On the basis of Livingston's report, Forsyth drafted his instructions to Barton, in Paris. The Rothschilds, he said, had been authorized by the Treasury Department to receive the money from France. They would notify the French government of this fact, but would make no demand. Barton was to return home should France reject the bill of indemnity. However, if the legislature of France placed the money at the disposal of the

¹⁰ Livingston to Jackson, July 11, 1835, in Jackson Papers, XCI, 18, 793-94.
King, conditionally, he would await further orders, "but maintain a guarded silence on the subject of indemnity." Finally, in September, Jackson determined to press the issue to a decision. Forsyth sent instructions to Barton. If no steps had been taken to pay the indemnity, the chargé was to call upon de Broglie and ask for a definite answer. If the money was not paid in three days, he was to make a last formal demand for it; if it was not then paid within five days, he was to demand his passports, close the legation, and come home. This was to be done in time to permit the result to be communicated to Jackson before he prepared his Message for the opening of Congress. In the latter part of October, Barton complied with his instructions, but the only reply of the ministry was that they were ready to pay the money as soon as the United States would declare that they "did not intend to call in question the good faith of His Majesty's government." Naturally, Barton could not make such concession and on November 6, he asked for his passports, and three weeks later left Paris.

In September, when A. Pageot, chargé in Washington, offered to communicate to Forsyth the French law disposing of the

11 Forsyth to Thomas P. Barton, June 28, 1835, in Richardson (ed.), Messages and Papers of the Presidents, III, 193-94.
12 Forsyth to Barton, September 14, 1835, in ibid., 194.
13 Barton to de Broglie, October 24, 1835, in ibid., 194-96.
14 De Broglie to Barton, October 26, 1835, in ibid., 196-97.
15 Ibid., 197.
matter, he read, also informally, a letter explaining the case and defending his government. It declared that the ministry sincerely desired to execute the treaty and in regard to Jackson's contention that a foreign government could no more notice a President's message than a committee report in Congress, France did not demand a categorical denial but only assumed that a disclaimer would be made and had suspended action until it came. With the remark that he could make no use of the proffered copy for the information of the President, Forsyth declined to receive it, and thereby still further injured the feelings of the French officials. 16

Jackson's message to Congress in December 1835, showed careful treatment. With restraint he reviewed the history of the French affair and justified his actions. He also made a specific denial of any intention "to menace or insult" France. As France now through all branches of her government had acknowledged "the validity of our claims and obligations of the Treaty of 1831" there existed no adequate cause for further delay of its execution. He hoped that France would soon adopt "the course which the interest of both nations so imperiously desire." The principle involved in the controversy, however, was so vitally important to the independent administration of the government "that it can neither be surrendered nor committed without national degradation." The honor of his country would never

16 Ibid., 199-201.
be stained by an apology from him "for the statement of truth and the performance of duty." 17

Before Congress had convened, Pageot on December 1, 1835, sent a letter to Forsyth enclosing a copy of the de Broglie dispatch which the Secretary had previously declined to receive. 18 Forsyth again returned the dispatch stating that the President did not approve of Pageot's unusual diplomacy. However, he did not wish his silence to be interpreted as admitting the accuracy of the contents of de Broglie's dispatch. 19 Pageot expressed his "astonishment" and intimated that Forsyth was more interested in diplomatic forms than in settling the dispute. 20 The French Chargé requested his passports on January 2, 1836, 21 and thus completely severed diplomatic relations between the two governments.

Livingston was concerned over the warlike attitude of the two nations and attempted to forestall precipitate action by Jackson should Barton's report prove to be particularly provocative. Expecting Barton's arrival in late December, Livingston wrote the President he had no doubt but that there would be "a peremptory refusal to pay unless a direct apology" were made to the French government. Tactfully he pointed out that should

17 Richardson (ed.), Messages and Papers of the Presidents, III, 147-77.
18 A. Pageot to Forsyth, December 1, 1835, in ibid., 198-99.
19 Forsyth to Pageot, December 3, 1835, in ibid., 199-200.
20 Pageot to Forsyth, December 5, 1835, in ibid., 200-201.
21 Pageot to Forsyth, January 2, 1836, in ibid., 201.
his anticipations be well founded it precluded all idea of
Jackson's "late message being satisfactory," but such action
on the part of France would "unite the nation in the support
of such measures as the exigence of the case" required. This
should not be a declaration of war for the state of the navy and
the coast defense at the moment were not such as to justify "the
confidence in them as would be necessary in case of an immediate
collision." He reminded Jackson that more than a year would be
necessary to "enable us to enter into a contest with proper pre-
paration." The proper course to pursue in showing "a just re-
sentment for the ill faith of France" would be the adoption of
the policy of strict non-intercourse which he had recommended
while still in France. This policy pursued for a year or more
would "be preferable to reprisals" until the navy and ordnance
departments had been brought up to full strength. 22

In January 1836, Barton reached New York and hastened to
Washington where Livingston and Webster were representing the
city of New Orleans in a suit against the United States in the
Supreme Court. 23 It was with no little anxiety that Livin-
gston, Forsyth and Van Buren accompanied Barton to the White
House. The three older men, all of whom at some time had had
charge of foreign affairs, were concerned over the effect of
the report on Jackson. Their apprehension did not escape the

22 Livingston to Jackson, December 27, 1835, in Jackson Papers,
XCII, 19, 221-22.
notice of Barton who inquired of them: "Well, Gentlemen, shall it be oil or water?" "Oh, water by all means!" they exclaimed in unison.

Not even to Livingston, had his son-in-law indicated the nature of the report he was to make. Pressing the former minister’s hand as a token of appreciation of his confidence, Barton led the way into "the room of the President." Immediately after the interview, Jackson began the preparation of his Message to Congress, and, upon its completion submitted it to Livingston.24

Livingston’s efforts to induce Jackson to soften the tone of the Message were successful. He prepared a substitute and sent it to the White House with an ingratiating letter, on January 11. "The Message about to be delivered," he told Jackson, "is one of no ordinary importance: it may produce war or secure peace." The draft "you did me the honor to show me would make an admirable manifesto or declaration of war; but we are not yet come to that. The world would give it that character; and it would be considered as precipitate." The "characteristics of the present communication," he advised, "ought in my opinion to be moderation and firmness. Our cause is so good that we need not be violent. Moderation in language, firmness in purpose, will unite all hearts at home, all opinions abroad, in

24 Daily National Intelligencer, January 11, 1836, stated, "It is known that Mr. Livingston, our late Minister to France, is in the city for the purpose of advising with the Executive on this subject."
our favor." Warmth and recriminations, he stated, would "give arguments to false friends and real enemies, which they may use with effect against us. On these principles I have framed the hasty draft which I enclose." Jackson would with his usual discernment determine "whether it suits the present emergency. At any rate, I know that you will do justice to the motive that has induced me to offer it."25

The Jackson Message of January 15, 1836, was not "a declaration of war" nor in any sense "violent" but rather one in which the "moderation in language" was equalled by its "firmness of purpose." A further evidence of Livingston's continued influence with Jackson is noted when the President, while firmly insisting upon his position, suggested to Congress that if the money were not paid that the United States should exclude French ships and goods from American ports.26

The sober judgment of wise counsels in both America and France prevailed; neither nation actually desired war; and France had accepted the pacific utterances in the Message of December 7, 1835, as sufficient disclaimer. This was not known in America and before the January, 1836, Message reached Paris, a settlement was practically arranged. Congress was not required "to vindicate the faith of treaties and to promote the general interest of peace, civilization, and improvement."27 On January

25 Livingston to Jackson, January 11, 1836, in Hunt, Life of Edward Livingston, 428-29.
26 Richardson (ed.), Messages and Papers of the Presidents, III, 188-93.
27 Ibid., 193.
27, 1836, Charles Bankhead, British Chargé in Washington, offered the services of his nation to mediate the dispute and each country accepted. He next announced that France was satisfied with the Message of December, 1835, and would pay the money. All troubles quickly disappeared and May 10th, Jackson informed Congress that four of the six installments had been paid and that cordial relations with France had been re-established.

Livingston found it difficult to realize that his age and growing deafness had closed his active political career. In response to an inquiry from George M. Dallas probably prompted by the political powers in Washington, Livingston had written his close personal and political Pennsylvania friend in November, 1835, that "he could not be entirely idle" while he enjoyed his "present state of health." "Sincerely and very confidentially," Dallas was informed that the position of secretary of state or the mission to England held attractions for him, but he realized there was not "any chance" of obtaining either. He would, therefore, remain where he was "watching the hues of the revolving year— as reasonable occupation and as profitable a one as any that the political life would afford." Very shortly, Livingston tired of "watching the hues of the revolving year." On February 16, he wrote Jackson inclosing a letter from Baron de Rothschild intimating that France would

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28 Ibid., 217-18.
29 Ibid., 221-22.
30 Ibid., 227.
31 Hunt, Life of Edward Livingston, 424-25.
receive a minister and that Livingston's appointment would be agreeable. Rothschild "could not have hazarded this opinion without good authority." As he had received other letters that spoke "the same language" he confessed "they have raised in my mind the Desire of enjoying on the spot the triumph of your firm and energetic measures."32 Since he failed to receive an early reply, he wrote Jackson eight days later to the effect that the many complimentary letters that he had received caused him to "give full credit" to what Rothschild has said respecting his return to France. In closing his letter, Livingston again admitted he felt "the desire growing on me to enjoy on the spot your triumph and partly my own."33 Such flattery was supposed to be most effective with Jackson, but it had lost its power in so far as Livingston was concerned. Age, absence from the scenes of action, the rise to favor of others, all were against him. Ignoring the purport of his statements, no answer was given to Livingston's strongly implied requests thereby definitely retiring him to private life.

He bore no resentment toward any one for his failure to be returned to Paris. In March he wrote Jackson inclosing a letter from France which gave "the tone that the French government" had put "on their determination to yield." In this his last letter

32 Livingston to Jackson, February 16, 1836, in Jackson Papers, XCIII, 19,403.
33 Livingston to Jackson, February 24, 1836, in ibid., 19,425-26.
to Jackson, he discussed the various national problems with as clear a grasp of their political significance as he had a decade earlier. His mind appeared to be as keen and his judgments as sound as ever.  

Livingston spent the winter in New York and in the early spring he returned to his country home at Montgomery Place. Here he continued his studies, attended to his correspondence, directed the activities of the farm, continued his regular long walks, and enjoyed himself in his out-door activities. His social life was pleasant. In May he planned a fishing trip to Long Island in company with a few friends, but during the night before his expected trip, he was taken seriously ill. His suffering was intense. Two days later, May 23, 1836, he died before the physician summoned from New York "for further medical aid" had arrived.

Livingston's remains were laid in the family vault at Clermont, the place of his birth. Later, they were removed and interred beside those of his second wife in Rhinebeck. In the village Dutch Reformed Church is a plain tablet bearing the simple inscription, "Edward Livingston, a man for talents equalled by few, for virtues surpassed by none."

34 Livingston to Jackson, March 9, 1836, in Ibid., 18, 453.
Livingston possessed a pleasing personal appearance which revealed the aristocratic heritage of this thorough democrat who traced his ancestry back to the Scottish peerage. Careful but never fastidious about his dress, Livingston's tall, well-proportioned frame, slightly bent at the shoulders, always appeared to advantage in public. The dark eyes which first attracted attention, the bold forehead, the Grecian nose, the lineaments of his clean-shaven face, and the well-shaped head with its thin black hair scarcely touched with grey even at the close of his life, all bespoke the patrician, the scholar, the philosopher. The firm, square, but not too prominent chin indicated the determination that characterized the man throughout his career. While nature had endowed him with a strong constitution, his faithful participation in outdoor activities, and especially in daily, solitary walks, enabled him to maintain an unusual vigor during his long and eventful life.

Adversity did not embitter him, for he was sustained by an infinite patience, a happy philosophy, and a natural buoyancy of temperament. Prosperity could not spoil him. Love for society, and conversational gifts of an uncommon order, placed him at ease with people, regardless of their station in life. His social intimates were not confined to any poli-
tical party, but were drawn from the best to be found in any group.

Devoid of affectation, austerity, and bigotry, philanthropy formed the basis of his nature. Although "a kinder or more amiable man never lived" than Livingston, his dignified composure, force of will, courage, patriotism, and brilliant mind commanded for him universal respect. De Tocqueville in his work on American democracy described him as "one of those rare men whom one loves in reading what they have written, whom one admires and honors even before knowing them, and to whom one is happy in owning a debt of gratitude." 36

In the letters to his son, Lewis, 37 Livingston revealed much of the philosophy of his life. His political precepts, drawn from his own experiences, were sound and practical. He warned Lewis to avoid "the noisy, intolerant zeal" over politics which disturbed "society with ceaseless disputes." He should not be indifferent to the interest of his country but he should refrain from "all feeling of party spirit" and overcome any desire to be the partisan of any man. Only political measures "tending to ruin the country" should provoke him to "warmth of language" and never should he "accept any public employment that would

directly or indirectly trench" upon his independence. "The pursuit of honest fame, the desire to serve your country," should be his guide.

Moral courage and patriotism should be ranked among the chief elements of Livingston's public character. Separated by a span of thirty years, Livingston enjoyed the unique distinction of exercising positive influence on the course of American political history during two important transitional periods. While a Representative from New York, he distinguished himself by brilliancy in debate and vigor in attack. His militant leadership of the Jeffersonian party in Congress convinced Hamilton that his political destruction was necessary and the great Federalist actively campaigned against him in 1796 in a futile attempt to defeat him. He not only influenced the expression of Jeffersonian republicanism but also gave direction to the course of Jacksonian democracy. During both periods, he was recognized as one of the strongest men of the time and was noted especially for his constitutional interpretations. He was as firm a republican as any of his Jeffersonian associates and was as strong a nationalist as Webster. The Nullification document he prepared for Jackson was as virile and militant as the speech for the Union by the Massachusetts orator. 38

38 United States Telegraph, December 17, 1832. "We yesterday expressed our admiration of it [Nullification Proclamation] as a paper of unusual eloquence. We also said it advanced high-toned Federal doctrines. We might have added, the highest toned Federal doctrines—for in this respect it is certainly not surpassed by the Massachusetts argument for the Alien
Although possessing keen political judgment, Livingston lacked many of the attributes of the politician. He belonged to the period of family politics and party domination by the leaders and never acquired the art of appealing to the populace. He was rather cynical toward the masses and refused to play upon their emotions and prejudices. In the expression of his democratic opinions, there was no mixture of the demagogic view; consequently, he was never considered a "strong" candidate. Never a rabid partisan, his strength lay with the party leaders who appreciated the political value of his ability and of his intellectual honesty, and, naturally, his preferment came from them.

Livingston's success in making personal contacts was his strongest political forte. He had many friends among the opposition and few, if any who knew him personally, failed to respect him. The mutual admiration and regard that existed between men so unlike in nature, culture, and habit as was the case with Jackson and Livingston, was indeed remarkable. Jackson, who was too shrewd to suffer long from imposition, probably was influenced more by Livingston on questions not purely political than by any other man during the period between the war of 1812 and the time of Livingston's departure for France. It was Livingston's lack and Sedition laws, nor by Mr. Webster's speech on Foote's resolutions, nor by any other written or oral emanation from Federal authority, with which we are acquainted."
of the ability to deal with men and to direct political intrigue, an ability possessed to so high a degree by Van Buren, that caused the President to yearn for the return of the Little Magician. Nevertheless, it was Livingston whom Jackson most frequently commissioned to negotiate with individuals of the opposition when rare tact and discretion were required. It was Livingston whom he selected to draft his challenge to Nullification and whom he sent on the delicate French Mission to effect an amicable adjustment of the spoilation claims.

While he lacked the dramatic eloquence of Webster, the captivating leadership of Clay, and, possibly, the scholarly attainments of Calhoun, Livingston was more versatile than any of these statesmen. His writings and speeches, although logical and forceful, convincing and brilliant, contained but few quotable or climactic expressions, qualities of speech so typical of Webster's efforts. His devotion to the principles of Jefferson and Jackson denied him the opportunity for fully developing a leadership such as Clay came to enjoy, but his services to the national government in New Orleans during the War of 1812, showed him to possess this quality in no small measure. Even granted that Calhoun possessed a more powerful or analytical and logical mind than Livingston, the latter's intellect was sufficiently brilliant to refute successfully the South Carolinian's rim spun logic of Nullification. Not influenced by the desire to become president, Livingston gave expression to his personal convictions more fully and clearly than did those political leaders who nursed such an
ambition.

Livingston was a pioneer in the field of social reform. His plan to relieve the unemployment situation has definitely influenced present day social legislation. Early in life, he attained distinction in the field of law and during the batture controversy, he gained national reputation as an outstanding member of the profession. His services as an attorney were much in demand. During the last twenty years of his life, it was reported, his minimum retainer fee was $500.

Livingston's work in the field of codification, alone, justified Beard's estimate of him as "one of the most remarkable figures in American history."39 He was a leader of the codification movement of the 1820's in Louisiana and, during a five-year period, he drafted, or collaborated in the drafting of, seven codes and projects of codes for the state. Although legislative sanction of his work was restricted to the civil code, his plan of penal jurisprudence reform has served as a guide for enlightened legislators not only in the United States but also in South America and in Europe. Because of his dominant role in this field of endeavor, Rufus C. Harris asserted, "Perhaps it might be said that no legal system in modern times has been more subjected to the direct impact of a single personality than that of Louisiana."40

Livingston's faults made him entirely human. He indulged moderately in games of chance and in alcoholic beverages, practices common in his day. His life, however, was entirely free from charges of dissipation or of irregular habits, accusations then so frequently made against men in public life. He was extravagant in his manner of living and maintained a standard often beyond his income. Livingston lacked judgment in business matters. He not only failed to manage his personal affairs judiciously, but, while in New York, neglected the details of his official business, which led to the financial difficulties with the national government resulting in the only serious blot on his reputation. While he merited the criticism he received for his conduct during the Jefferson-Burr contest in 1801, that conduct was no violation of the political ethics of the period.

Livingston received more praise than criticism from contemporary newspapers, and the capital press, irrespective of party alignment, was particularly kind to him. The editors of the *National Intelligencer* admired him greatly and frequently lauded his achievements and praised his character. Outside of Washington, and especially in New Orleans, the opposition press was not so considerate of him. Frequently these newspapers revived the old charge of public defaulter and were very bitter against him. On the whole, Livingston ignored the criticism and appeared to be unaffected by it.

Numerous European as well as American contemporaries were impressed with Livingston's versatility and ability. His repu-
tation abroad rested largely upon his work in the field of penal reform. The French historian, M. Mignet, felt that in the death of Livingston "America has lost her most powerful intellect, the Academy one of its most illustrious members, and Humanity one of her most zealous benefactors."\(^{41}\) The common council of New York declared that he had been "a leader in every enterprise calculated to improve or adorn society." The Society of St. Tammany commemorated his death and that of Madison in the same resolutions. Jackson bore "witness to the purity and devotion of his character,"\(^{42}\) and Charles J. Ingersoll placed him in "a peerage of which there are very few members."\(^{43}\)

America presents few examples of men so versatile as Livingston. He attained eminence and distinction as a scholar, a philanthropist, and a statesman. He gained an enviable reputation as a diplomat and as a leader of social reform. He made contributions to the fields of politics and jurisprudence that entitle him to no small place in American history. The following tribute\(^{44}\) of the Masonic Grand Lodge to the memory of its former Grand Master is a contemporary estimate of his services and attainments:

> In him were united exalted genius, profound acquirements, and untiring energy... His mind was a store-house of varied, enlightened and useful knowledge, and his ready genius directed the proper time for energetic action... In the science of

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42 Jackson to Mrs. Livingston, May 26, 1836, in Bassett (ed.), *Correspondence of Andrew Jackson*, V, 399-400.
44 *Miles' Weekly Register*, L (1835-1836), 343-44 (July 16, 1836).
jurisprudence his eagle eye saw the insufficiency, the misery and barbarity of principles handed down from darker ages, and his pen pointed to the remedy... As a patriot his character stands forth conspicuous... As a civilian he was profound and unrivalled—as a diplomatist, perspicuous and unyielding in his country’s cause.

No less a product of history than a maker of history, Edward Livingston’s theories of jurisprudence, of social reform, and of the nature of the Union continue to this day to influence the course of American life.
BIBLIOGRAPHY

BIOGRAPHIES, MEMOIRS, AND REMINISCENCES


King, Charles R.: *Life and Correspondence of Rufus King.* 8 vols. New York, 1894.


Lodge, Henry Cabot: *Daniel Webster.* Boston, 1898.


**COLLECTIONS OF DOCUMENTS, LETTERS, AND PAPERS**


**HISTORIES**


**LAWS AND PUBLIC DOCUMENTS**


American State Papers, Public Lands, 1809-1815. Washington, D.C.


Congressional Globe, 1833-1837. Washington, D.C.


Department of State, Instructions, England, XIV. Washington, D.C.

Department of State, Instructions, France, XIV. Washington, D.C.

Federal Case Book, Number XV. Circuit Court, District of Virginia. Richmond, 1811.


New York Convention, 17 June, 1788. Fishkill, 1788.

Register of Debates in Congress, 1824-1837. Washington, D.C.

United States House Documents. 21 Cong.-24 Cong. Washington, D.C.

United States Senate Documents. 21 Cong.-24 Cong. Washington, D.C.

United States Senate Journal. 22 Cong., 1 Sess. Washington, D.C.
MONOGRAPHS AND SPECIAL ARTICLES


Rives, George Lockhart: The United States and Mexico. 3 vols. New York, 1913.


**NEWSPAPERS**


Argus, New Orleans, 1824-1828.

Asylum and Feliciana Advertiser, St. Francisville, Louisiana, 1821-1823.

Asylum, St. Francisville, Louisiana, 1823-1825.

Bee, New Orleans, 1827-1829.

City Journal, New Orleans, 1826.

Daily Advertiser, New York, 1792-1795, 1798-1804.


Enquirer, Richmond, 1824-1833.

Evening Post, New York, 1801-1803.


Herald, New York, 1794-1801.


Louisiana Courier, New Orleans, 1807-1836.

Louisiana Gazette, New Orleans, 1804-1827.
Louisiana Gazette and New Orleans Daily Advertiser, New Orleans, 1810-1815.

Louisiana Gazette and New Orleans Mercantile Advertiser, New Orleans, 1815-1818.

Louisiana State Gazette, New Orleans, 1826.

Mercantile Advertiser, New York, 1823-1829.

Moniteur de la Louisiane, New Orleans, 1806-1811, 1813-July 1814.

Morning Chronicle, New York, 1802-1804.


Orleans Gazette, New Orleans, 1806-1812.

Spectator, New York, 1797-1799, 1802-1803.

The Aurora, Philadelphia, 1798-1810.


PAMPHLETS


Livingston, Edward: Address to the People of the United States, on the Measures pursued by the Executive with respect to the Batture at New Orleans. New Orleans, 1808.

Livingston, Edward: An Answer to Mr. Jefferson's Justification of his Conduct in the Case of the New Orleans Batture. Philadelphia, 1813.

Livingston, Edward: Code of Reform and Prison Discipline being the third part of the system of Penal Law prepared for the State of Louisiana. New Orleans, 1826.


Livingston, Edward: Judicial Opinions, delivered in the Mayor's Court of the City of New York, in the year 1802. New York, 1803.


Memorial presented by the Inhabitants of Louisiana, to the Congress of the United States in Senate and House of Representatives convened. New Orleans, 1804. (Rare Book Room, Library of Congress).

Peck, Jedidiah: The Political Wars of Otsego or the Downfall of Jacobinism and Despotism. Being a Collection of Pieces lately published in the Otsego Herald to which is added, An Address to the Citizens of the United States and Extracts from Jack Tar's Journal kept on Board Ship Liberty, Containing a summary account of her Origin, Builder, Materials, Use—and her dangerous voyage from the Lowlands of Cape Monarchy to the Port of Free Republican Government. Otsego, 1796. (Rare Book Room, Library of Congress).


PERIODICALS

American Annual Register of Public Events. 8 vols. New York, 1825-1833.


STATE AND REGIONAL HISTORIES


Biographical and Historical Memoirs of Louisiana. 2 vols. Chicago, 1892.


Foote, Henry J.: The Bench and the Bar of the South and Southwest. St. Louis, 1876.


Whitaker, J. S.: *Sketches of Life and Character in Louisiana. The Portraits Selected Principally from the Bench and Bar.* New Orleans, 1847.

**UNPUBLISHED SOURCES**

Biddle Papers. Manuscripts Division, Library of Congress.

Documents of the City Council of New Orleans, 1807-1810. Translated, arranged, and typed by the Works Progress Administration. Typescript in the New Orleans City Hall Archives.


Jackson Papers. Manuscripts Division, Library of Congress.


Livingston Papers. Manuscripts Division, Library of Congress.

Livingston Papers. Manuscript Division, New York Public Library.


Proceedings of the City Council Meeting of New Orleans, 1803-1806. Translated, arranged, and typed by the Works Progress Administration. Typescript in the New Orleans City Hall Archives.

Edmund Roberts Papers. Manuscripts Division, Library of Congress.


VITA

The author, William Bass Hatcher, was born in Higley, Mississippi, December 12, 1888, and attended public schools of Texas, graduating from the Woodville, Texas, High School May, 1904. During the period between 1904 and 1916, except for the sessions of 1910-1911 and 1913-1914 when in attendance at the Louisiana State University, he taught as principal of grade and of high schools in Texas and Louisiana. During this time, he attended the summer sessions of the Louisiana State University, and in August 1916 completed the prescribed work for the A. B. degree. In June, 1925, he received the degree of Master of Arts from the Louisiana State University. He did advanced work at Yale University in 1920-1921 and completed all course requirements for the doctorate at the Louisiana State University June, 1935.

He was elected Superintendent of Public Education for the Parish of East Baton Rouge, Louisiana, February 28, 1916, and resigned the position in June, 1926. During his service as Parish Superintendent, he was granted a leave of absence in 1918 for the purpose of voluntarily entering the United States Army. He was stationed in Louisville, Kentucky, as a student in the Field Artillery Officers' Training Camp, Camp Zachary Taylor. At the close of the war he resigned from the army and
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