

STATES-RIGHTS IN MARYLAND 1789-1832

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Thesis of Jesse A. Remington, Jr. approved

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## Introduction

The object of this thesis is to show Maryland's attitude toward the National Government in the period of our nation's history between 1789 and 1832. The new Government, under the Constitution, went into operation in 1789. The states were apprehensive that they would be submerged by a strong Central Government, and resented encroachments on their rights as they conceived these rights to be. Did Maryland display a States-Rights attitude toward the Government on National problems which affected the balance of power between the Federal Government and the States? The purpose of this study is to show the relationships which existed between the state and the General Government. It will show the influences of sectionalism, economic interests, and party politics in shaping Maryland's stand.

To ascertain the underlying motives of the state on these problems, the Congressional debates and votes will be noted, the resolutions and laws of the State Legislature searched, and the newspapers of the period carefully read.

The task is to find if Maryland, as a state, subordinated her supposed rights to those of the Federal Government or did she place her own interests first. This study will reveal if

States-Rights, as a political theory, shaped Maryland's attitude toward the Central Government in the early part of the State's history, or is the current supposition that Maryland is a States-Rights state, of more recent origin? Did Maryland at any time during this period resist a Congressional law or policy? Lastly, this study will reveal Maryland's attitude toward the Union and her attitude toward the various states who threatened to disrupt it.

## States-Rights in Maryland 1789-1832

### CHAPTER I

#### The Federalist Period

In the spring of 1788, Maryland by State Convention ratified the Constitution of the United States by a vote of sixty three to eleven, thus indicating a strong dissatisfaction with the existing government under the Articles of Confederation. In common with the other states, Maryland regarded the new Constitution as imperfect, but believed that its adoption would promote a stable government without destroying the rights of the states. Among the eleven dissenters to the adoption of the Constitution were such able men as Luther Martin, William Pinkney, and Samuel Chase. These men opposed centralization of authority in the national government. William Paca of Harford County, a signer of the Declaration of Independence, presented to this Convention twenty seven amendments designed to protect the states from Federal encroachment. The delegates to this convention had been instructed to vote only on the adoption of the Constitution and to ratify it "as speedily as possible" therefore, there was no action taken on Paca's amendments.<sup>1</sup> Later on some of Paca's amendments were embodied in the first ten amendments to the Constitution.

In 1787-1788 there were two political parties in the United States, the Federalists and Anti-Federalists. The former had favored the adoption of the Constitution, the latter had opposed it. After the Constitution

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<sup>1</sup>J. Elliot, (ed.), The Debates in the Several State Conventions on the Adoption of the Federal Constitution in 1787 (Philadelphia, 1937), II, 548.



was established, there were two conflicting opinions as to its powers and limitations. One opinion advocated a strong central government with a liberal interpretation of the Constitution; it believed in the doctrine of implied powers - that the general welfare clause in the Constitution gave to Congress powers not expressly granted. The adherents of this school of political thought retained the old name of Federalists. The other opinion contended for the safeguarding of the rights of the states; it believed in a strict interpretation of the Constitution and denied to the General Government all power not expressly delegated by the Constitution. This party became known as the Republican or Democratic party.

The first election for members of Congress in 1789 resulted in a sweeping Federalist victory in Maryland, which indicated a desire of the people for a "more perfect union" than that which had been attained under the Articles of Confederation, a union controlled by a central government strong enough to bring order out of the chaos into which the new country had fallen under the Articles. The six representatives elected were of this party: Joshua Seney, Daniel Carroll, Benjamin Contee, George Gale, William Smith, and Michael Jenifer Stone. In December, the State legislature met in joint session and balloted for the two senators with the result that John Henry from the Eastern Shore and Charles Carroll of Carrollton were duly elected. Both were Federalists.<sup>2</sup>

Congress convened in April, 1789, and the electoral votes were counted. The state cast her entire vote for George Washington for President and Robert Hanson Harrison, a native son, for Vice President. The first problem of the new Congress was that of organization. The next problem

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<sup>2</sup>T. J. Scharf, History of Maryland (Baltimore, 1879), II, 548.

was raising revenue for the current expenses of the government. The first tariff bill was passed July 4th, 1789. Merchants of the large cities including Baltimore opposed the tariff as it directly effected the price of goods. The tariff bill did not solve the financial problems of the government, which was burdened with a heavy foreign and domestic debt. Congress requested Alexander Hamilton, Secretary of the Treasury, to make a report on the finances of the country. Hamilton conceived a plan to establish the nation's credit and he presented this plan to Congress in a series of reports. After analyzing the obligations of the country, he proposed the funding of the entire national debt, the assumption of all state war debts, a slight raising of the tariff, the levying of an excise tax on distilled liquors, and the establishment of a National Bank.

The funding of the national debt was a reasonable measure as the Constitution provided that the United States must pay the debts of the Confederation, but there was a difference of opinion as to the manner of settling the domestic debt. Purchasers had secured the depreciated certificates for much less than face value. Hamilton proposed to pay the holders par value for their certificates. There was considerable opposition to this plan as the original holders were mostly soldiers and farmers who out of necessity had sold their certificates. The speculators would now reap a harvest.

The Legislature of Maryland favored the Funding Act and recommended ✓ to creditors that they subscribe to the loan authorized by Congress to raise a fund for the same.<sup>3</sup>

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<sup>3</sup>W. Kilty, Laws of Maryland, Nov. sess. 1790, p. 29.

There was a divergence of opinion in Congress as to the method of funding the domestic debt of the country. Mr. Hamilton proposed to redeem the Government securities of present possessors. A compromise on the basis of discrimination between original holders and assignees was favored by Madison and a group of followers. There was earnest debate in the House over the Constitutional powers of the National Government's assuming the debt but the funding bill passed and Government securities were to be redeemed and funded at par. Stone and Seney made able speeches in support of part payment to original holders. In debating the bill Stone denounced the funding system, holding to the view that a funding system gave to a nation a "capacity to run into debt with the utmost facility."<sup>4</sup> The funding of the national debt established the credit of the country but it was also the first step toward a strong national government and there was no opposition from Maryland. Congressman Ames of Massachusetts denounced the Funding Act by saying that it was an arbitrary act of power on the part of the Government and that it would destroy the essential rights of the people, and finally terminate in a dissolution of the social compact.<sup>5</sup> The Federalists had won in the first struggle and the way was open for increasing the power of the Central Government. In the Maryland Journal of Baltimore February 16, 1790, a writer signing himself Public Credit defended the Funding Act. He argued that the merchants should be pleased because the funding of the debt would add millions to the capital of the nation, stimulating industry and commerce. He further believed that landholders and manufacturers of every description ought to favor the

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<sup>4</sup>Annals of Congress, 1st. Cong., 1st. sess., p. 1216.

<sup>5</sup>Ibid., p. 1195.

act because when money is plentiful more money can be made and that funding the national debt will instantly "convert forty millions of dollars into circulating medium."<sup>6</sup>

The next feature of Hamilton's financial policy was the assumption by the Federal government of the Revolutionary War debts of the States. This plan was opposed by those who believed in state sovereignty. The states, jealous of their power, thought the taking over of the war debts would subordinate them to the General Government. The plan was also opposed by the states, which had reduced their debt or had made provision for its payment. Maryland had made provision for her war debt and had based her securities on a fund acquired from the sale of confiscated loyalists' property, amounting to two hundred thousand pounds.<sup>7</sup> In the State Legislature there was a sharp division of opinion concerning the assumption. On December 16, 1790, the following resolution was introduced into the House of Delegates: "Resolved, That it is the opinion of the House that the Assumption of State debts by the United States is a measure dangerous in its consequences to the governments of the several States. Resolved, That the said Assumption is particularly injurious to this State. Resolved, That the said Assumption is Unconstitutional."<sup>8</sup> The first of these resolutions passed the House by a vote of 32-26, the second passed by a vote of 30-28. The third resolution was rejected.<sup>9</sup>

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<sup>6</sup>Maryland Journal. (Baltimore), Feb. 16, 1790.

<sup>7</sup>Annals of Congress, 1st. Cong., 1st sess., p. 1379.

<sup>8</sup>Proceedings of the House of Delegates of Maryland, Nov. sess. 1790, pp. 86-87. Referred to hereafter as House Journal.

<sup>9</sup>Ibid.

A week later another resolution was introduced in the House, "Resolved, ✓ That the resolutions on the Assumption of State debts and the subsequent proceeding thereon, be and they are hereby recinded and annulled."<sup>10</sup> The first vote on this resolution resulted in a tie 26-26. Then the Speaker of the House, George Dent of Charles County, cast his vote in favor of recinding and annulling the resolution.<sup>11</sup> This change of vote is difficult to explain as no debate is recorded in the proceedings of the Legislature. The newspapers throw no light on the change of vote. In the Maryland Journal an individual signing himself Inquisitive discusses in a letter this change of vote. He asserted that men who change their opinion on important questions should give satisfactory reasons for their conduct; he questioned the validity of the entire procedure on constitutional grounds. He expressed doubt that an act or resolution passed at any one session of the Legislature could be recinded in the same sessions. His letter provoked a legal controversy but there was no explanation of the change in the vote.<sup>12</sup> A writer of another letter was apprehensive that the Federal government might hereafter forbid individual states from contracting debts without the consent of Congress thus reducing a state to servile dependency. He further stated that Maryland had established a fund for the payment of her debt, which would support her faith without the drawback of interest.<sup>13</sup> Letters of approval and and disapproval appeared in the newspapers all over the state, indicating a sharp division of opinion over this national question.

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<sup>10</sup>Ibid., pp. 184-185.

<sup>11</sup>Ibid.

<sup>12</sup>Maryland Journal, Jan. 8, 1791.

<sup>13</sup>Ibid.

In Congress Michael Jenifer Stone of Maryland was an active opponent of the Assumption Act, which he considered gave too much power to the Federal Government with a consequent weakening of the states. He voiced his fear of an autocratic government in a speech in which he argued that if the General Government paid all the debts, it would of course have all the revenue or in other words the whole power and the states would be reduced to a puppet. As to the effects of the bill, he predicted "if adopted by us and carried into execution will prove to the Federal Government, walls adamant, impregnable to any attempt upon its fabric or operation." He further argued that the state would dwindle in usefulness and would not attract men of ability to the Legislature which would become a debating society on trivial matters; as the state decreased the national government would steadily increase until there would be a doubt" whether a confederated government remains, when the General Government possesses the power of the purse."<sup>14</sup> On another occasion Representative Stone continued his attack on the Bill by questioning its Constitutional validity; the constitution did not authorize the National government to assume debts of the states and he objected to implied powers. He reasoned that by giving so much power to the central government the balance of power which the Constitution distributed between the National and State governments would be destroyed; it might be possible that in line with this same idea, Congress might eventually pay a certain sum for the support of the states making them wholly dependent. He admitted the convenience of the United States collecting all the duties but was

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<sup>14</sup>Annals of Congress, 1st Cong., 1st sess., p. 1365.

apprehensive that a universal judiciary might be attempted for the sake of uniformity and economy because "for a people who have parted with their liberty the most convenient government is an arbitrary one."<sup>15</sup> His final objection to the bill was set forth in a speech made on February 26, in which he said that Maryland, who had paid her quota of the Continental debt, would have to contribute "in imposts and excise toward the payment of all the debts of the several states,"<sup>16</sup> which would be exceedingly discouraging to a small state. On April 12, the opponents of the measure succeeded in having it rejected by the House. In the Senate Charles Carroll, an administration leader, defended the bill while John Henry opposed it.<sup>17</sup>

After its rejection by the House the Assumption Act was thought to be dead. At this time there was another struggle in Congress concerning the permanent residence of the National Capital. New York, Pennsylvania, and Maryland contended for this important city. The Southern States in general favored Maryland. Thomas Jefferson, the Secretary of State, and Alexander Hamilton, Secretary of the Treasury, arranged a trade in which Jefferson agreed to give Hamilton the necessary Southern votes for the passage of the assumption in return for the permanent location of the seat of government on the Potomac. William MacClay, a senator from Pennsylvania, revealed this bargain in his journal: "The whole business was pre-arranged nor can any person be now at a loss to discover that all three subjects - residences,

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<sup>15</sup>Ibid., p. 1375.

<sup>16</sup>Ibid., pp. 1415-1416.

<sup>17</sup>Ibid., 1st Cong., 2nd. sess., p. 1055.

assumption, and the funds equivalent to six percent - were all bargained and contracted for on the principle of mutual accommodation of private interests."<sup>18</sup> Mr. Stone favored the location of the capital in Maryland but was not ready to sacrifice his opinion to secure it. In a private letter he stated, "I always have found that I am a poor hand at bargains and therefore avoid them in private life - in public affairs there are few cases in which they are justifiable and yet with respect to residence, I am . . . . to believe some have been wise and necessary and the event has induced me to approve of those steps in which my feelings prevented me from uniting."<sup>19</sup> The Assumption passed the House July 26, 1790. Contee, Seney, Smith and Stone cast their votes in the negative while Carroll and Gale voted in the affirmative.<sup>20</sup> Daniel Carroll had opposed the assumption until the bargain was made. He was one of four men who owned the property to be used for the capital and he was appointed by President Washington as one of the commissioners to lay off "The Territory of Columbia."<sup>21</sup> George Gale was a Federalist and a strong supporter of administration measures, and for this loyalty he was later on rewarded with the lucrative government job of Collector of Internal Revenue for the State of Maryland. Of Charles Carroll's support of the Bill in the Senate, MacClay wrote "Carroll of Carrollton seemed to be the

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<sup>18</sup>E. MacClay, (ed.), Journal of William MacClay (New York, 1890), p. 328.

<sup>19</sup>Letter of June 24, 1790, Stone Papers, Library of Congress.  
2 Letter Boxes.

<sup>20</sup>Annals of Congress, 1st Cong., 2nd sess., p. 1755.

<sup>21</sup>C. A. Beard, Economic Origins of Jeffersonian Democracy (New York, 1936), p. 178.



leading spirit to get the residence of the capital to Baltimore and when he could not do this he turned and joined Jefferson, Madison, Hamilton, and Washington."<sup>22</sup> Maryland's attitude toward the assumption was shaped by economic and political considerations, as shown by the speeches of Stone on the floor of Congress, by the vote in Congress and by the press. The abstract theory of States' Rights was of secondary importance.

Secretary Hamilton's report also recommended increasing the tariff duties and the levying of an excise tax on distilled spirits. This last tax would add to the government officials who would be appointed to collect and supervise it and by collecting directly from individuals, increase the power and prestige of the Federal government. This tax was particularly obnoxious to the frontier people from Pennsylvania to Georgia, who made and sold large quantities of liquor.

In western Pennsylvania resentment against the Excise flared into open rebellion against the government; this revolt was known as the "Whiskey Rebellion". The revolt spread into the western part of Maryland. Republican politicians sympathized with the insurgents but deplored acts of violence. Washington called for fifteen thousand men from the states of Virginia, Maryland, New Jersey, and Pennsylvania to put down the rioters. Volunteer companies from all over the State of Maryland responded in large numbers. State-wide sentiment prevailed that laws once passed must be obeyed. In November, 1794, the Legislature passed the following resolution unanimously: "Resolved, That the prompt and decisive conduct of the Executive, in compliance with the requisitions of the General government in calling out the militia and

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<sup>22</sup>W. MacClay, Journal, p. 309.

in suppressing of the violent and alarming proceedings and disturbances in the state, merits the approbation of the General Assembly, and that the advance of arms made by them to meet the exigencies of the General government and secure the tranquility of the state, although not strictly within the Constitutional limits of their authority, was highly expedient and necessary, therefore their conduct is hereby approved and ratified.<sup>23</sup> This resolution is conclusive evidence that Maryland did not consider the President's calling out her troops an invasion of her sovereignty. The necessities of the situation outweighed all legal distinctions as to balance of rights. The state cooperated fully with the General Government, notwithstanding the resolution passed by the Legislature which questioned the Constitutional power of the President to call on the state to arm and equip the militia when it was called out for Federal service. The Maryland press supported the calling out of the troops and was loud in its denunciation of the rebellion. This was so, even in the western counties, where contrary to expectation, the Government was loyally supported. A letter from Frederick County appeared in the Baltimore Daily Intelligencer, deploring the propaganda spread among the frontier people. The mountain people were told that not only spirits, but wheat, rye, etc. were excised at four pence a bushel and at Fort Pitt the birth of a male child was excised at fifteen shillings and a female at ten shillings; the writer concluded his letter by saying "By such art many have been induced to oppose the draft."<sup>24</sup> In Washington County where the disorder occurred the officials supported the

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<sup>23</sup>W. Kilty, (ed.) Laws of Maryland, Nov. sess., 1794, p. 87.

<sup>24</sup>Baltimore Daily Intelligencer, Sept. 24, 1794.

law and endeavored to maintain order. The Washington Spy confirmed this attitude by saying "some volunteers of our cavalry and infantry, mounted guard, patrolled the streets, sent detachments into the country, apprehended some of the leaders and brought them to justice."<sup>25</sup> This paper highly praised the vigilance and alacrity of the citizens in their efforts to preserve law and order. The Republican Society of Baltimore, accused of sympathizing with the insurrectionists, sent resolutions to a local newspaper condemning opposition to constitutional laws by force and commending the President of the United States in calling forth the militia to suppress the rebellion.<sup>26</sup> The people of Maryland realized the danger to the Union of such a lawless movement as that taken by Pennsylvania insurgents. This feeling was expressed in a letter to the Maryland Journal which declared "every man of good sense and virtue perceives in such conduct a crime which leads to the subversion of the Union."<sup>27</sup>

Even the sending of her militia outside her borders elicited no protest from the state as is revealed in a communication to the Maryland Legislature by the President of the United States: "The Commander-in-Chief feels peculiar satisfaction in according his testimony to the militia of this state, great numbers of whom both officers and private men, have manifested their patriotism and attachment to the laws and to public order by making a voluntary tender of their service, in the detachment required by the President of the United States."<sup>28</sup>

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<sup>25</sup>Washington Spy, Oct. 20, 1794.

<sup>26</sup>Maryland Journal, Sept. 5, 1794.

<sup>27</sup>Ibid., Oct. 13, 1794.

<sup>28</sup>Notes and Proceedings of the Senate of Maryland, Nov. sess., 1794, p. 25. Referred to hereafter as Senate Journal.

In addition to funding, assumption, and excise, Hamilton's fiscal report recommended the establishment of a National Bank. This bank would facilitate government business, establish a national note currency and become a depository for all government funds. The constitutionality of the Bank Bill was questioned by the Republicans who claimed there was no explicit power to establish such an institution; the Federalists contended for an implied power. The agrarian interests opposed a liberal interpretation of the Constitution while the mercantile interests looked with favor upon the Bank Bill. In Congress Stone, who guarded the rights of the state, denounced the Bill from the floor. He maintained that "the manufacturing interests were endeavoring to strengthen the hand of the Government by which they are peculiarly benefited."<sup>29</sup> In a second attack on the Bill he insisted that there was no necessity of the National Bank, that the states would institute banks and that the National Bank would "swallow up the state banks and raise up a moneyed interest devoted to the Government."<sup>30</sup> The Bill passed the House with the approving vote of two representatives from Maryland; four voted in the negative and two did not vote.<sup>31</sup> In the Senate, Charles Carroll as usual sustained the administration with his vote while John Henry, who came from a farming section, voted in the negative.<sup>32</sup>

The State Legislature took no action on the measure and there was little discussion in the press. The State as a whole was divided

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<sup>29</sup>Annals of Congress, 1st Cong., 3rd. sess., p. 1981.

<sup>30</sup>Ibid., p. 1987.

<sup>31</sup>Ibid., p. 2012.

<sup>32</sup>Ibid., p. 1813.

on all the fiscal policies of Alexander Hamilton and revealed no apprehension of any encroachment against her rights as a state, nor was she unduly alarmed over the bestowal of additional powers on the Central Government.

While occupied with problems of finance and organization, Congress paused to adopt the Eleventh Amendment to the Constitution. The feeling for the need of such an amendment grew out of the case of Chisholm, a citizen of South Carolina, who brought suit against the State of Georgia for non-payment of a debt. Georgia refused to stand trial in a Federal Court, claiming that this Court had no jurisdiction over a sovereign state. The Supreme Court decided that an individual from another state could sue a state without its consent in a Federal Court. This interpretation of the Constitution alarmed the states so both parties in Congress united to pass the Eleventh Amendment which provides that a state may not be sued in a Federal Court. The Maryland Legislature passed an act instructing its representatives in Congress to work for an amendment to the Constitution which would "forbid the suing of a state by an individual in any Court of the United States."<sup>33</sup>

Washington, having declined to be a candidate for election to a third term, the Federalists in 1796 supported John Adams for President and Thomas Pinkney for Vice President. The Republicans or Democrats supported Thomas Jefferson and Aaron Burr. Adams was elected President, and by a peculiar law Jefferson, having the next highest vote, became Vice President. In this election seven of Maryland's votes were cast for Adams while four went to Jefferson, showing that Maryland continued to favor a strong national government and endorsed the Federal policies sponsored by the Washington administration.

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<sup>33</sup>W. Kilty, Laws of Maryland, Dec. sess., 1796, p. 45.

## CHAPTER II

## The Federalist Period under John Adams

The first problem confronting the Adams administration was the aggressively unfriendly attitude adopted by France toward the United States because of the Jay Treaty. France contended that by surrendering certain neutral rights on the sea to England the United States had become the enemy of the French republic. The publishing of the X. Y. Z. papers containing the unofficial diplomatic proceedings with France, aroused great indignation throughout the country and the United States government prepared for war. In the discussion of the foreign policy and other public questions, many of the writings that appeared in the newspapers and pamphlets were vituperative, coarse, and violent. Officials were scurrilously denounced, much of this abuse coming from foreigners who belonged to the Republican party. The Federalist majority in Congress undertook a punitive program to stop these seditious libels and check alien influence in the country. This program crystallized in the Alien and Sedition Acts, passed in the summer of 1798. The Alien Act gave the President the power to deport all foreigners whom he considered dangerous to the country. The Sedition Act condemned to fine and imprisonment any person convicted of having written or published a false, scandalous, or malicious statement against the Government, Congress, or the President. These acts were denounced by the Republicans as unconstitutional and subversive of the rights of the States. The Maryland Legislature was not in session when these Acts were passed and took no official action on them at any time. In Congress Maryland was

represented in the House by five Federalists and three Republicans and in the Senate both men were Federalists.<sup>1</sup> Samuel Smith, an outstanding Republican from Baltimore, attacked the constitutionality of the Alien Act; he asserted that the State governments reserved to themselves the power of regulating immigrants. In proof of this, he stated that Maryland had her own naturalization law - one year's residence and an oath of allegiance to the state; many Germans had become naturalized in Maryland but had not become citizens of the United States, and they would fall, under the operation of the Alien law.<sup>2</sup> Representative Smith voiced the only objection of the Maryland delegation which stood on the final vote, four in the affirmative, three in the negative, and one not voting.<sup>3</sup> This vote was along party lines and the Maryland delegates divided according to party. Both of the Senators supported the Bill,<sup>4</sup> being Federalists.

There is no record of the state protesting the Sedition law in Legislature or in Congress, where on the final passage of the Bill the Maryland delegation voted according to party affiliation, the Federalist supporting and the Republicans opposing the measure.<sup>5</sup>

The Maryland press expressed approval or disapproval of these acts according to the party who controlled the papers. The Maryland Herald of Elizabethtown in Washington County carried a strong

<sup>1</sup>Federal Gazette, Oct. 6, 1798.

<sup>2</sup>Annals of Congress, 5th. Cong., 1st. sess., p. 2022.

<sup>3</sup>Ibid., pp. 2028-2029.

<sup>4</sup>Ibid., p. 2171

<sup>5</sup>Annals of Congress, 5th. Cong., 1st. sess., p. 2171.

editorial against these measures. The editor denounced the laws as unconstitutional and "therefore should not be carried out by the state, which was just as much a judge of the Constitution as the Federal Government;" he asserted that the Constitution was a compact between the different states and that the states could judge when the compact had been violated or broken.<sup>6</sup> This paper expressed the Republican sentiment of Western Maryland. The Federal Gazette, the Federal organ in Baltimore strongly supported all Federalist measures, including these two Acts. The Alien and Sedition Acts became party measures in the state and candidates for election to Congress had to declare their sentiments toward these controversial issues. The Maryland Legislature took no action on the Act.

In Baltimore, the militant Republican, Samuel Smith, defeated his Federalist opponent for a seat in the House of Representatives. His opposition to the Alien and Sedition Acts was voiced in the Republican papers of the state and for his stand he was arraigned by the Federalist press. Smith preserved a copy of the Federal Gazette which contained a particularly bitter attack on his attitude on these issues.<sup>7</sup> James Winchester, who ran in opposition to Samuel Smith expressed his opinion of his opponent in a letter which appeared in the Telegraphy and Daily Advertiser of Baltimore, by saying "it is well known that he [Smith] had attached himself to the party in opposition to the administration, at the head of which was Gallatin,

<sup>6</sup>Maryland Herald (Elizabeth Town), June 31, 1799.

<sup>7</sup>Federal Gazette, Sept. 27, 1798. In the Smith Papers in the Library of Congress. 1777-1799.



Jefferson, Livingston, and Tazwell." The letter related that Smith had voted against many laws essential to the country's preservation and that he was a strong supporter of the French and French principles.<sup>8</sup> The Smith faction in Baltimore was very powerful and Smith was returned to the House notwithstanding the doubt that existed by Baltimore citizens as to the constitutionality of the Acts. One of these doubters appealed to Luther Martin, an eminent lawyer of the state and a one-time powerful defender of the rights of the states, but now due to personal reasons turned Federalist. Martin's answer, published in the Federal Gazette declared that in according to his best knowledge and abilities both the laws in question were not only consistent with the Constitution but warranted thereby for the safety and preservation of the country.<sup>9</sup> Martin's opinions on government had changed considerably since the days of the Constitutional Convention and his espousal of a strong central government is a complete reversal of his former political philosophy.

Citizens all over the state wrote letters either denouncing or commending the Acts.<sup>10</sup> One of these letters in Bartgis's Federal Gazette, of Frederick contained the writer's reasons for denouncing the Alien law: it did not give trial by jury, which was contrary to the Constitution; by giving the President power to banish aliens, the functions of the legislative, executive and the judiciary were united when they should be kept apart; that giving the President so

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<sup>8</sup>Telegraph and Daily Advertiser, Sept. 5, 1798.

<sup>9</sup>Baltimore Federal Gazette, Jan. 9, 1799.

<sup>10</sup>Rights of Man (Frederick Town), August 1, 1798. Reprinted from Bartgis' Federal Gazette

much power was contrary to the Constitution.<sup>11</sup> A citizen of Washington County urged the people of that county to assemble at Hagerstown and protest against the encroachment of their "blood-bought liberties,"<sup>12</sup> which he thought were endangered by the Alien and Sedition Act. In one District on the Eastern Shore there was a sharp contest for a seat in Congress between William Hindman, the Federalist, and Joshua Seney, the Republican candidate. A writer in the Maryland Herald of Easton, explained the position of these two aspirants for Congressional honors by saying "that there are two parties in the country - the one for supporting the wise measures of the administration, the other opposed to them, cannot now be denied." Mr. Hindman by his vote in Congress has shown himself to be in the former class while Mr. Seney and his friends oppose him.<sup>13</sup> Mr. Seney was elected, which indicated that the people of his District did not favor the Alien and Sedition Acts.

In the Congress of 1798 the Federalists were still in the majority. Maryland continued to have a Federalist majority. There were five Federalist and four Republicans in the House.<sup>14</sup>

Some of the states now became alarmed at the steadily-increasing power of the National Government under the Federalist regime. The legislatures of Virginia and Kentucky in 1798 and 1799, respectively

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<sup>11</sup>Bartgis's Federal Gazette (Frederick Town), Sept. 13, 1798.

<sup>12</sup>Maryland Herald (Elizabeth Town), January 31, 1799.

<sup>13</sup>Maryland Herald (Easton), Sept. 4, 1798.

<sup>14</sup>Federal Gazette. Oct. 7, 1798.

passed resolutions protesting the course of the Federalists. Each set of resolutions proclaimed the Union to be only a compact between the states. The Virginia resolutions declared the Alien and Sedition laws unconstitutional and expressed confidence that the other states would concur in maintaining "the authorities, rights, and liberties reserved to the states respectively, or to the people."<sup>15</sup> The Kentucky resolution expressed the opinion that a state had a right to judge the constitutionality of the acts of the General Government and to nullify those considered to be unconstitutional.<sup>16</sup> These resolutions were sent to the states for their approval. The Kentucky resolutions reached the Maryland Legislature in November, 1798, and were referred to a committee. On December 26, the committee reported that they had taken the resolutions under their consideration and "are of the opinion that the said resolutions contain sentiments and opinions unwarranted by the Constitution of the United States and the several acts of Congress to which they refer;" that the said resolutions "are highly improper and ought not be acceded to by the Legislature of this State."<sup>17</sup> This report was passed Dec. 28, 1798.<sup>18</sup> The Senate concurred in the resolution.<sup>19</sup> In the House there was a proposed amendment to this resolution which stated that the "Legislature has a right to express its opinions on all acts of the General Government

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<sup>15</sup>W. MacDonald (ed.), Select Documents Illustrative of the History of the United States 1776-1861 (New York, 1930), p.157.

<sup>16</sup>Ibid., p. 149.

<sup>17</sup>House Journal, Nov. sess., 1798, p. 82.

<sup>18</sup>Ibid., pp. 48-49.

<sup>19</sup>Senate Journal, Nov. sess., 1798, p. 5.

and request an appeal thereof if they deem the same unconstitutional or impolitic." This amendment was defeated by a vote of 27 to 18.<sup>20</sup> The defeat of these resolutions shows that Maryland would not subscribe to the belief that a state had the right to judge a law of the United States unconstitutional, and also did not deem it the state's business to express its opinion on acts of the general government.

The Virginia resolutions reached the legislature in January, 1799. The committee to which they were referred reported on January 16, that after given the resolutions serious consideration they declare "as their decided opinion that no state government, by Legislative act is competent to declare an act of the Federal Government void, it being an improper interference with that jurisdiction which is decisively vested in the Courts of the United States; independently of the above consideration, your Committee viewing the present crisis of affairs believe it incumbent on them to express their opinion, that a recommendation to repeal the Alien and Sedition Acts would be unwise and impolitic." The House adopted this report in the form of a resolution by a vote of 42 to 25.<sup>21</sup> On January 19, the Senate unanimously assented to the resolutions of the House condemning the overture of the Virginia Legislature.<sup>22</sup> The failure of Maryland to support Virginia and Kentucky in their battle for States Rights can be accounted for by the fact that the Federalists controlled the

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<sup>20</sup>House Journal, Nov. sess., 1798, p. 86.

<sup>21</sup>Ibid., p. 25.

<sup>22</sup>Senate Journal, Nov. sess., 1798, p. 60.

Legislature at this time and therefore supported national administrative measures, even those which increased the power of the General Government.

While Maryland was still largely Federalist the rural people in increasing numbers were turning to Republicanism, which stood for greater powers of the states, reduced taxation, economy of government, and freedom of speech and press. Mr. Adam's administration was not popular with the agrarian class and frontier people, who viewed with alarm an expanding National Government with its increasing expenditures. In the election of 1800 these people registered their disapproval of the Federalist policies by greatly increasing the Republican vote.

CHAPTER III  
 THE JEFFERSONIAN PERIOD  
 PART I. Jefferson's Internal Policy

In the National election of 1800 John Adams, the Federalists' candidate, was defeated but the two Democratic candidates tied for the Presidency. This election was sharply contested in Maryland and the electoral votes revealed that sentiment in the state was equally divided between the two parties - five of these were cast for Jefferson and five for Adams.<sup>1</sup> The House of Representatives was called upon to choose the President, each state voting as a unit. The Federalists favored Aaron Burr and the House of Representatives which had been elected in 1798 had a Federalist majority. The Maryland vote was divided. Alexander Hamilton, who detested Burr, threw his influence to Jefferson as the lesser of two evils. On the thirty-six ballot the Maryland and Vermont Federalists voted blanks and on February 17, 1801, Thomas Jefferson was declared President of the United States.<sup>2</sup>

Democracy was on the march in Maryland at this time. The mass of people were taking more interest in the government. In 1801 suffrage was granted to all males twenty years of age, the property qualification being abolished in that year. Party organization was perfected and party political activity became pronounced.

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<sup>1</sup>E. Stanwood, A History of the Presidency from 1788-1897 (Boston, 1892), I, 51.

<sup>2</sup>Ibid., p. 63.

The program of the Jefferson administration included the removal of the obnoxious measures passed by the Federalists. The Alien and Sedition Acts expired by limitation. A bill for the repeal of the Judiciary Act of 1801 was early introduced in Congress. The Judiciary was the only branch of government that remained in the hands of the Federalists. This Act passed at the end of Adam's administration increased the District Courts and provided **for** sixteen judges, thus extending the power of the Federal Courts and increasing expenditures. Mr. Adams had appointed sixteen Federalist judges just before he left office, so the Republicans sought to break the power of the Judiciary in order to make secure their legislation. The new bill reduced the Federal districts and the number of Federal judges and provided for only one meeting of the Supreme Court annually. The Republicans claimed the economy effected could be used in the reduction of taxes.

The Maryland delegates in Congress participated freely in the two months debate on the repeal of the Judiciary Act, but divided according to their party affiliation. At this time Maryland had three Federalists and five Republicans in the House.<sup>3</sup> The newly-elected Senator, Robert Wright of Kent County, was a Republican while John Eager Howard, the Senator from the Western Shore, was a Federalist. Mr. Wright supported the Republican Judiciary Bill in a speech on the floor of the Senate. He asserted that there was no need for so many Federal Courts, that he would feel secure in

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<sup>3</sup>American, Oct. 9, 1800.

decision of the State Judge on National questions with an appeal to the Supreme Court.<sup>4</sup> On the final passage of the bill, Robert Wright voted in the affirmative and John Eager Howard in the negative, each according to his politics.<sup>5</sup>

The Maryland representation in the House also divided along party lines. Mr. Dennis, a Federalist, stated that the people in his district on the lower Eastern Shore did not approve of the repeal. Joseph Nicholson, a Republican, from the upper Eastern Shore, contended just as strongly for the repeal, declaring that the people should control the Courts for "the people are the fountain of all power; they are the source from which every branch of the Government springs, and never shall any act of mine place one branch beyond their control."<sup>6</sup> Samuel Smith declared that the original Judiciary Bill had for its object the abolition of State Courts; he had been told that "State Courts would at first be neglected, and afterwards deserted, and then declared useless."<sup>7</sup> One of the Federalist representatives from Southern Maryland believed the Courts protected the people against the Legislature and he was against their regulation by Congress.<sup>8</sup> The delegation divided on the final passage of the Bill. Four Republicans voted in the affirmative, three Federalists in the negative and one Republican did not vote.<sup>9</sup>

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<sup>4</sup>Annals of Congress, 7th Cong., 1st. sess., p. 116.

<sup>5</sup>Ibid., 183.

<sup>6</sup>Ibid., 830.

<sup>7</sup>Ibid., 851.

<sup>8</sup>Ibid., 935.

<sup>9</sup>Ibid., pp. 1236-1237.



The Republican press of the state was plainly pleased over the Judiciary victory, but not unduly vociferous. A Federalist paper in Baltimore lamented the passing of the "fatal bill" and accused the President of wreaking his vengeance on sixteen judges. The President was also accused of wrecking the Constitution. The gratification of his malice toward the judges was his only triumph but in so doing he had "drawn a tear into the eye of every thoughtful patriot...."<sup>10</sup>

A bill to reduce internal taxes followed the repeal of the Judiciary Act. To meet the increased cost of government, the Federalists had placed a tax on stills, distilled spirits, refined sugar, carriages, parchment, etc. These taxes were not popular with the plain people and the excise tax had been deeply resented in Maryland. Samuel Dennis, who usually supported all Federalists measures declared himself to be in favor of retaining all the internal taxes except the excise, the collection of which was "productive of a system of espionage hateful to a free people."<sup>11</sup> This bill passed the House without a dissenting vote from the Maryland delegation - three Republicans voted for it, while two Republicans and three Federalists failed to vote.<sup>12</sup> Senator Howard voted with the Federalists against the repeal of these odious taxes; the Republican Senator did not vote.<sup>13</sup> It is difficult to analyze this vote. The

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<sup>10</sup>Federal Gazette, Mar. 4, 1802.

<sup>11</sup>Annals of Congress, 7th. Cong., 1st. sess., p. 1015.

<sup>12</sup>Ibid., p. 1045.

<sup>13</sup>Ibid., p. 43.

repeal of the internal taxes was a Republican administration measure and was not generally supported by the Federalists, who had initiated the laws. The three Federalist Congressmen from Maryland probably refrained from voting against the repeal of these taxes because the excise tax was particularly obnoxious to those engaged in distilling in all sections of the state and the Congressmen thought it better not to commit themselves. The Republican Senator who did not vote on the bill was Samuel Smith who was engaged in the sugar industry.

The Republican newspapers expressed satisfaction over the repeal of the internal taxes. The Maryland Herald of Elizabeth Town in Washington County described a meeting of the Republicans of that county where the following toasts were drunk: "May the internal, infernal taxes called Stamps, Excise, etc. sleep quietly in the grave of aristocracy through all eternity," and another said, "may we never again be tormented with Alien Sedition laws, excise, stamps, and a raft of public officers, too proud to beg and too lazy to work; from such kind of vermin good Lord deliver us."<sup>14</sup> The Hornet in Frederick County rejoiced at the repeal of these taxes and claimed there had been removed five hundred from office who lived and rioted upon the earnings of the industrious.<sup>15</sup>

Washington County especially appreciated the repeal of the internal taxes as this county had suffered heavily from the Excise tax. The Maryland Herald of Elizabeth Town in that county rejoiced over this repeal in an editorial: "Let every eye view the proceedings of our present administration with gratitude, for the Repeal of the Internal Taxes. Let the first day of July next, be a day of rejoicing, to all

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<sup>14</sup>Maryland Herald, June 20, 1802.

<sup>15</sup>Hornet (Frederick), Oct. 16, 1802.

who were under the galling yoke of the odious Taxes, which were laid on to support the luxuries of the former administration. May Federalist ashamed, hide its face, never to appear again, and the sunshine of Republican enlighten the Union. Let all who follow the distilling business show this honor to the friend of the people, Thomas Jefferson."<sup>16</sup>

Jefferson's next step was the purchase of Louisiana in 1803. The acquisition of this large tract of land was made without any explicit authority of the Constitution, but the Republicans who were in the majority said nothing about implied powers when it was Thomas Jefferson who was interpreting the Constitution. There was little opposition in Maryland to the purchase. The Federalists as a party did not attack the validity of the territorial acquisition, but were apprehensive of admitting this new territory as states into the Union, lest the balance of power be disturbed. A Republican majority in the Senate voted for the treaty.

Jefferson now departed from a strict interpretation of the Constitution and used implied powers in his internal policy. His popularity increased and he was re-elected President in 1804 by a large majority, the Federalists carrying only Connecticut, Delaware, and two districts of Maryland.<sup>17</sup> These two districts, one on the lower Eastern Shore and one on the lower Western Shore were strongholds of Federalism. During the Revolutionary War the planters in these sections were Loyalists. They did not favor a rule by the

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<sup>16</sup>Maryland Herald, June 23, 1802.

<sup>17</sup>E. Stanwood, History of the Presidency, I, 154.

masses in the Jeffersonian sense, so they naturally became Federalists.

The paramount problem of Jefferson's second administration was the Nation's foreign policy toward England and France. These countries had resumed hostilities in 1803. Our neutral rights on the seas were disregarded by both countries. Cargoes were seized and confiscated, bringing enormous loss to American commerce. Impressment of sailors by the British navy aroused deep resentment in the United States. A Non-Intercourse Act forbidding any trade with England or France was passed, but proved ineffective. In December, 1807, the President decided to hold American ships at home and at his request, Congress passed the Embargo Act, which forbade American ships to leave port for foreign countries; all foreign ships from taking out cargoes; and by a supplement passed the following year, all coasting vessels must insure for double the value.

## CHAPTER III

## PART II. State Rights and the Embargo

The embargo seriously injured the mercantile and agricultural interests of the country, but its advocates thought it preferable to war. The administration desired to avoid war at almost any cost. As an administration measure the embargo was at first supported by the Republicans in Maryland. Senator Smith reported the bill on the floor of the Senate,<sup>1</sup> and was instrumental in its final passage. Philip Reed, the other Maryland Senator was not present when the vote was taken. In the House there was the usual divided vote. Four Republicans voting in the affirmative and one in the negative, while the three Federalists did not vote.<sup>2</sup>

The Legislature of Maryland was strongly Republican at this time in both Branches. On January 12, 1808, the Senate passed a resolution declaring the embargo to be "a measure strongly characteristic of the judgment and wisdom of our national councils, and well calculated to inspire confidence in the individuals they represent."<sup>3</sup> On the following day, the House concurred in this resolution by a vote of 43 to 19.<sup>4</sup> The newspapers were instruments of party propaganda and were for or against the embargo according to their political leanings. The Baltimore Evening Post referred to the Act as

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<sup>1</sup>Annals of Congress, 10th. Cong., 1st. sess., p. 50.

<sup>2</sup>Ibid., pp. 1221-1222.

<sup>3</sup>Senate Journal, Nov. sess., 1808, p. 41.

<sup>4</sup>Ibid., p. 105.

seize 120 American vessels and exacted "disgraceful tribute" from many more. Without the embargo many more would have been picked up and perhaps all our ships and seamen would be in Britain's power. This paper then accused the Federal Gazette of preferring to see our ships in British docks than in our own ports. The editor concluded his remarks by saying that in a few months "the honest Americans of every party will bless and admire the effects of the embargo."<sup>9</sup> The Baltimore American after discussing the aggressions of France and England arrived at the conclusion that "in laying an embargo the United States had done no more than its duty...."<sup>10</sup> The Republican Star of Easton on the Eastern Shore, favored the embargo and printed favorable comments from leading Republican national papers.<sup>11</sup>

The Federal Gazette printed articles from the National Intel-  
ligencer which favored the Embargo. The Gazette assumed a neutral tone at first but later on, it opposed the restriction and advocated its repeal.<sup>12</sup>

Notwithstanding the favorable attitude of the Republican party, toward the embargo, Maryland's large export trade suffered. Tobacco, one of her chief products, had no foreign market. Many Republicans became dissatisfied and the election of 1808 showed an increasing sentiment toward Federalism in all sections of the state.<sup>13</sup> The Legislature which met in November, 1809, had a Federalist majority in the

<sup>9</sup>Whig, Oct. 3, 1808.

<sup>10</sup>American, Dec. 25, 1808.

<sup>11</sup>Republican Star, Dec. 27, 1808.

<sup>12</sup>Federal Gazette, Dec. 24, 1807.

<sup>13</sup>J. T. Scharf, History of Maryland, II, p. 632.

"a nauseous but wholesome measure giving temporary pain to promote permanent good."<sup>5</sup> The editors of this paper asserted that rather than submit to England "may the embargo be eternal."<sup>6</sup> The Tammany Society of Maryland celebrated its anniversary at Myers Hotel on May 12, 1808 and expressed its approval of the embargo by the following toast "The Embargo - May it continue until the ocean is acknowledged a free highway and its influence reach Passamaquoddy."<sup>7</sup> The Federalists of Maryland used the embargo to discredit the Jefferson administration. False and misleading stories were published in the Federal press discrediting the embargo. One of these will illustrate the type of story used for propaganda - "a few days ago a farmer from a neighboring town came into this city for the purpose of disposing of the produce of his farm. Finding the market low, he inquired into the cause, and was informed that the Government had laid an embargo, and of course our trade was at an end. He wished to know for what reason the embargo was laid and was told that it was a state secret."<sup>8</sup> The Baltimore Whig denounced the Federal Gazette for the publicity that paper gave the French capture of American ships. The Whig had acknowledged the capture of these ships long ago, but asserted that had there been no embargo, many more ships would have been condemned; England, notwithstanding the embargo had been able to

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<sup>5</sup>Baltimore Evening Post, May 16, 1808.

<sup>6</sup>Ibid.

<sup>7</sup>Ibid., May 14, 1808.

<sup>8</sup>Ibid., Feb. 1, 1808.

House, which by a strict party vote was able to pass a resolution denouncing the embargo. This resolution stressed the permanency of the Act, the unprecedented restraint upon foreign trade and domestic intercourse of the United States, the disturbed condition of coast-wise trade, the interruption of traffic between one state and another and the corruption of the licensing system; a year's trial had proved its inadequacy to justify its existence, therefore they proposed the following resolution: "Resolved, That the Senators and Representatives from this state in Congress of the United States, be, and they are hereby earnestly requested to exert themselves with all convenient diligence in endeavors to procure a speedy relief from the operation of the aforesaid act passed at the last session of Congress imposing an embargo."<sup>14</sup> This was passed by a vote of 41 to 36.<sup>15</sup> The Senate which continued Republican (the members being elected for five years) negatived this resolution by a vote of 13 to 0.<sup>16</sup> On December 2, 1808, the Senate formally replied to the House resolutions setting forth reasons for their non-concurrence. The reply stated that in the last election the people of the state returned six Republicans and three Federalists to Congress, thus endorsing the policy of the embargo; that the popular vote given to those candidates favoring the embargo exceeded by more than five thousand the number given to their opponents; that the recent election of electors for President

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<sup>14</sup>House Journal, Nov. sess. 1808, p. 8.

<sup>15</sup>Ibid., p. 30.

<sup>16</sup>Senate Journal, Nov. sess. 1808, p. 14.



resulted in nine for Madison and three for Pinkney; and that furthermore they viewed the embargo as an efficient and dignified policy which had kept the country from the hardships of a disastrous war without the sacrifice of national honor.<sup>17</sup> On December 15, the House replied to the Senate with the statement that the late election was not a true gauge of the will of the people, that the embargo was injurious to the interests of the state and should be condemned by its patriotic citizens.<sup>18</sup> So a Republican Senate upheld the foreign policy of a national Republican administration while a Federalist House opposed it. The rights of the state was not mentioned by either body and the division of opinion was along party lines. The continuing of the embargo wrought much dissatisfaction in the state, even among the Republicans. There was a nation-wide protest against the Act, which brought about the repeal of the measure on March 1, 1809. Maryland's representation in Congress was divided in regard to the expediency of repealing or not repealing the embargo. Here also the division was mainly political, but the welfare of the state was considered, with the result that the six Republicans voted for repeal; two Federalists did likewise, leaving one of the latter party to make the one dissenting vote.<sup>19</sup> John Campbell, who represented the lower counties of Southern Maryland, was not in favor of repeal. In the Senate, Republican Samuel Smith, voted for embargo repeal, probably

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<sup>17</sup>Ibid.

<sup>18</sup>House Journal, Nov. sess. 1808, p. 57.

<sup>19</sup>Annals of Congress, 10th. Cong., 2nd. sess., p. 1541.

because his mercantile interests in Baltimore had been injured because of the restriction.<sup>20</sup> Republican Philip Reed from the Eastern Shore opposed the repeal by his vote.<sup>21</sup> Mr. Reed also opposed war, as a later vote on the Declaration of War showed.<sup>22</sup>

In 1809 a new election changed the political complexion of the Maryland House of Delegates with the result that a Republican majority condemned the embargo resolution of the preceding Federalist House saying that these resolutions were "totally in error and contrary to fact."<sup>23</sup> This House passed resolutions commending the national administration in all its acts and policies.<sup>24</sup> These resolutions were approved by a party vote of 42 to 35.<sup>25</sup> The Federalists under the leadership of Mr. Thomas of Frederick County endeavored to have inserted in these resolutions a clause petitioning that the embargo would not again be imposed cutting off trade with all foreign countries for an unlimited time, but this clause was defeated by the vote of 43-31.<sup>26</sup> Thus we see that the Legislature's attitude toward the embargo repeal was largely political. The Senate took no action.

<sup>20</sup>Ibid., p. 1019.

<sup>21</sup>Ibid., p. 436.

<sup>22</sup>Ibid., 12th. Cong., 1st. sess., p. 297.

<sup>23</sup>House Journal, Nov. sess. 1809, p. 10-11.

<sup>24</sup>Ibid.

<sup>25</sup>Ibid., p. 46.

<sup>26</sup>Ibid., pp. 45-46.

The press of the state reflected this political division in letters and editorials. The Baltimore Evening Post opposed the repeal in its editorials.<sup>27</sup> The Whig deeply lamented the repeal and charged that the result would be immediate war; the editor reviewed the past and came to the conclusion that "no impartial Judge will deny that the embargo alone had hitherto saved us from the calamities of a contest with one or both of the present belligerents."<sup>28</sup> The Federalist's papers, on the other hand, approved and supported the repeal of the Act which the Federal Gazette styled "the unhappy and self-destroying embargo system."<sup>29</sup> The North American strongly condemned a series of Republican meetings held in the different cities of the state. The Republican Governor, Robert Wright, presided over the one held at Annapolis, in February, 1809. This meeting was attended by the Governor's official family, including William Kilty, Chancellor, John Johnson, Attorney General, John Kilty, Register of the Land Office, and several of the Executive Council. Resolutions were passed commending Jefferson's administration and approving the embargo as a "wise, salutary, and indispensable measure."<sup>30</sup> The North American censured Governor Wright for lack of discretion in presiding at this meeting and intimated that it was a maneuver for re-election by State officials.<sup>31</sup>

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<sup>27</sup>Baltimore Evening Post, Feb. 22, 1809.

<sup>28</sup>Whig, Mar. 4, 1809

<sup>29</sup>Federal Gazette, Feb. 10, 1809.

<sup>30</sup>North American, Feb. 10, 1809.

<sup>31</sup>Ibid.

Maryland as a state took no official action against the embargo or its repeal and at no time did she assume the hostile attitude toward the restrictions as did Massachusetts, Rhode Island, the House of Delaware and Delaware, although her commerce was proportionally equal to or greater than Massachusetts.<sup>32</sup> The Legislative body of this state officially protested the embargo by passing the following resolution: "That the act laying an embargo on all Ships and vessels in the Ports and harbors of the United States ... contains provisions not warranted by the Constitution of the United States, and violating the rights of the people of this Commonwealth."<sup>33</sup> Rhode Island passed a similar resolution.<sup>34</sup> Party feeling in Maryland prevented official action from being taken on the measure clearly inimical to her welfare.

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<sup>32</sup>Annals of Congress, 10th. Cong., 2nd sess., p. 146.

<sup>33</sup>Herman Ames, State Documents on Federal Relations (Philadelphia, 1906), p. 35.

<sup>34</sup>Ibid., p. 42.

## CHAPTER III

## PART III. States-Rights in Local Affairs

A firmer but not a unanimous stand for States Rights was manifested when a bill was introduced into Congress to build a bridge over the Potomac at Alexandria. It was thought this bridge would work to the detriment of George Town, a Maryland city farther up the river. The Maryland Legislature, in December 1806, passed a resolution requesting the Senators and Representatives in Congress to work against the passage of this bill as being destructive to the navigation of the river which had been guaranteed by a compact between Virginia and Maryland.<sup>35</sup> In Congress Mr. Nelson from the Fourth District led the Maryland forces against the bridge. He contended that the people above the fall were against the measure as it was advantageous for them to have a market as high up as possible and this they possessed in George Town. The building of the bridge would destroy navigation of the river as far as the bridge itself; the people of the upper sections would have to transport their products to Alexandria at an increased expense. Mr. Nelson further asserted that Congress had no constitutional power to pass this bill and that it had received from the States of Maryland and Virginia no right to pass such a law.<sup>36</sup> Several representatives of the state based their opposition on the government's lack of power to construct an unauthorized bridge.

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<sup>35</sup>House Journal, Nov. sess., 1806, p. 180.

<sup>36</sup>Annals of Congress, 10th. Cong., 1st. sess., pp. 856-857.

However, even on this local bill the Maryland representation in the House did not vote as a unit. Archibald Van Horn voted his approval of building a bridge across the Potomac at Alexandria in disregard of certain sections of the state.<sup>37</sup>

An incident occurred in 1807 in which the right of a state to qualify her Representatives was challenged and disapproved by Congress. The Maryland legislature in November, 1802, had passed a law declaring that Baltimore City and County should constitute the Fifth District and should be entitled to send two representatives to Congress, one of whom must be a resident of the County and the other a resident of the City. William McCreery was elected representative in 1807 and was supposed to be a resident of Baltimore City. Joshua Barney, the defeated candidate, contested the election in Congress. He charged that Mr. McCreery was not a bonafide resident of the City, that his family lived in the County and that Mr. McCreery lived only part of the time in the City. In Congress, the contest was submitted to the Committee on Elections who brought in the report that qualifications of members of Congress were determined by the Constitution and that State Legislatures had no authority "to change, add to, or diminish these qualifications ... Congress is constituted the sole judge of the qualifications proscribed by it."<sup>38</sup> The report further declared that the Legislatures possessed the authority to proscribe

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<sup>37</sup>Ibid., p. 1006.

<sup>38</sup>Ibid., p. 871.

the time, place, and manner of holding elections; therefore the committee brought in a resolution declaring Mr. McCreery entitled to his seat.<sup>39</sup> Roger Nelson was Maryland's lone defender of her rights to proscribe qualifications for her representatives. He declared his firm belief that William McCreery was not entitled to the seat; that the committee's resolution "was insidious as it went to prostrate the law of Maryland"; he believed the State had a right to fix the qualifications for her representatives and would contend for that right as long as he lived.<sup>40</sup> Congress voted to seat Mr. McCreery, aided by five of the Maryland delegation, three refrained from voting, leaving Mr. Nelson to register a lone protest.

In commenting on the disputed election the Baltimore American said it was not a question which of the two gentlemen had a right to the seat but a question of the constitutionality of the law of Maryland which provides for a residence qualification for a seat in the House of Congress. The editor stated that the state has no authority to deprive its citizens of a right secured to them by the Constitution of the United States without the consent of the other states. The Constitution says nothing about a residence qualification, therefore it is "an assumption of power" for the state to prescribe the qualifications not laid down by the Constitution.<sup>41</sup> A few days later this paper again attacked the legislative law in an editorial: "Inasmuch as the

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<sup>39</sup>Ibid.

<sup>40</sup>Ibid., p. 1231.

<sup>41</sup>American, Nov. 2, 1807.

Legislature of the State of Maryland is bound by oath to support the Constitution and laws of the United States they have either misconceived the extent of their legislative powers or they were willing to try them in order to draw a line of demarcation; this line is now drawn by the question before the House of Representatives of Congress and it may behoove them to rescind a law which upon due investigation will be found to operate unconstitutionally."<sup>42</sup>

The Maryland Legislature took no official action on the decision of Congress. As Maryland took no strong stand on States-Rights in her own Legislature, it was to be expected that she would fail to agree with resolutions sent to her by other states who sought to preserve their rights against the National Government. In 1803 Pennsylvania refused to abide by a decision of the Federal Court, in the case of *Olmstead versus Pennsylvania*. The militia of the state was called out to prevent execution of the order of the Court. The writ was served by the Federal marshal. On April 3, 1809, the Pennsylvania Legislature passed resolutions explaining the position of the state; these resolutions stated that Pennsylvania was not motivated by hostility to the Government but was "interested in the preservation of the States-Rights."<sup>43</sup> The resolutions further asserted that the state acknowledged the supremacy of the General Government when it was within its constitutional powers but would not tolerate any infringement on the

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<sup>42</sup>Ibid., Nov. 5, 1807.

<sup>43</sup>H. Ames, (ed.) State Documents, pp. 47-48.



rights of the state; therefore, they proposed an amendment to the Constitution establishing an impartial tribunal to settle disputed jurisdiction of State and National Government.<sup>44</sup> This proposal was sent to the other states for approval. At least eleven of the seventeen states in the Union disapproved of the proposal, Maryland being among the number.<sup>45</sup> The Maryland Legislature rejected the proposal with the explanation that they "deemed the proposed alteration unnecessary and inexpedient."<sup>46</sup> This rejection indicated that Maryland was satisfied with the decisions of the Supreme Court on national issues and did not favor the doctrine of a state's resistance to the Federal Court.

Another resolution came to Maryland from Virginia, which sought to increase the power of the states by a more direct control of the Senators. In April, 1808, Mr. Giles of Virginia asked for an amendment to the Constitution, which would make possible the removal of Senators from office by a majority vote of the whole number of their respective State Legislatures by which the members had been appointed.<sup>47</sup> Luther Martin, a defendant of States-Rights in the Constitutional Convention of 1787, had warned the delegates to that Convention and the citizens of Maryland of

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<sup>44</sup>Ibid.

<sup>45</sup>Ibid., p. 49.

<sup>46</sup>House Journal, Nov. sess., 1810, p. 21.

<sup>47</sup>Annals of Congress, 10th. Cong., 1st. sess., p. 341.

the danger to the states of a law that provided a six-year term for Senator, with no control over their actions by the Legislatures which elected them. Martin had warned the states that the Senators were paid by the Federal Government and that they could work in direct opposition to the state's interests even to the point of voting for the destruction of the state.<sup>48</sup> The Maryland House rejected the Virginia resolutions by a vote of 60 to 10;<sup>49</sup> the Senate concurred in this rejection.<sup>50</sup> By rejecting these Virginia and Pennsylvania resolutions, Maryland refused to align herself with states seeking to protect their rights against a steadily-encroaching National Government.

The same attitude was shown toward the Vermont resolutions whereby the President of the United States could remove from office any of the Judges of the Courts upon address made to him by a majority of the House and two-thirds of the Senate in Congress.<sup>51</sup> The House of Delegates with a Federal majority, was unwilling to bestow this power on the President;<sup>52</sup> the Senate with a Republican majority, supported the resolution.<sup>53</sup> No further action was taken. The division on the Vermont resolution was along party lines; this division prevented the state's concurring in any attack upon the

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<sup>48</sup>Elliot, Debates, III, p. 156.

<sup>49</sup>House Journal, Nov. sess., 1808, p. 44.

<sup>50</sup>Senate Journal, Nov. sess., 1808, p. 36.

<sup>51</sup>House Journal, Nov. sess., 1808, p. 44.

<sup>52</sup>Ibid.

<sup>53</sup>Senate Journal, Nov. sess., 1808, p. 36.

Federal Judiciary, the judges of which were Presidential appointees for life during good behavior.

CHAPTER IV  
STATES RIGHTS DURING MADISON'S ADMINISTRATION

PART I. Internal Problems

While the country was disturbed over its foreign policy and distracted by threatening war, the Presidential election of 1808 occurred. James Madison of Virginia, a Republican and supporter of Jeffersonian policies was elected President by a large majority. George Clinton was re-elected Vice-President on the same ticket. Maryland was now predominately Republican, giving nine electoral votes to Madison and two to the Federalists candidate, Rufus King.<sup>1</sup>

The new administration faced difficult problems at home and abroad. The charter of the National Bank established in 1791, expired in 1811 by limitation. The Federalists, by whose efforts the Bank had been established, desired to recharter and extend the usefulness of this financial institution, while the Republicans opposed it. In December 1810, there was presented in the Senate of Congress a petition of the President and Directors of the Bank of the United States asking for a renewal of their charter.<sup>2</sup> This petition was incorporated in a bill which provoked bitter debate on the floor of Congress. Samuel Smith charged that the bill was strictly a Federalist measure, the Bank a political institution controlled by the Federalists with ~~Federalist~~ Directors and an entire exclusion of

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<sup>1</sup>E. Stanwood, History of the Presidency, I, p. 95.

<sup>2</sup>Annals of Congress, 11th Cong., 3rd sess., p. 21.

Republicans, either in management or accommodation; he further asserted that state banks were adequate to take care of the finances of the Government and he mentioned the superiority of state over national banks.<sup>3</sup> While Mr. Smith doubted the constitutionality of the bill, he was not concerned about the right of the National Government to erect such an institution and confessed he "was not very squeamish on the subject."<sup>4</sup> In fact the senator made the bill a political issue, his chief objection to the bank being its pronounced Federalist character. He went so far as to charge that the petition sent from Baltimore in favor of rechartering the bank contained all Federalists' names and he further charged that the National Bank had intimidated public bodies in Baltimore to petition in favor of the bill.<sup>5</sup> The bill passed the Senate opposed by both Republican senators from Maryland.<sup>6</sup>

In the House, Mr. Key, a Federalist, defended the constitutional right of the Government to incorporate a bank and contended that it was not only a national right but a national duty to so, in order to avoid the disastrous results that would follow the bank's extinction.<sup>7</sup> Mr. Wright, late Republican governor of Maryland, took issue with Mr. Key and presented arguments to prove the unconstitutionality of the measure. From this legal objection, he went to the inexpediency of the bill; state banks were sufficient for all demands provided the United States deposits were made in them so there was no

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<sup>3</sup>Ibid., 11th Cong., 3rd. sess., p. 243-267.

<sup>4</sup>Ibid.

<sup>5</sup>Ibid.

<sup>6</sup>Ibid., p. 346

<sup>7</sup>Ibid., p. 659

necessity of a National Bank; he charged that the original or mother bank was directed exclusively by Federalists and that these directors were elected by stockholders, seven-tenths of whom were foreigners.<sup>8</sup> Mr. McKim of Baltimore protested against the recharter and minimized the disastrous results that were supposed to follow the closing of the Bank.<sup>9</sup> On the final vote to postpone indefinitely the bill, the three Federalists voted in the negative and the six Republicans in the affirmative,<sup>10</sup> a strictly party division. In 1810, the debate on the National Bank was different from the debate of 1791, which centered at that time on the lack by Congress of constitutional authority to create a corporation and the power such an institution would bring to the National Government. In the debates of 1810 the evils of a strong central government were not mentioned, and very little was said about the rights of the states. The Bank had become a party issue and was settled on party lines.

The Maryland Legislature had at this time a Republican majority in both bodies.<sup>11</sup> A resolution was introduced in the House, November 7, 1810, by Theodorick Bland, a delegate from Baltimore, which protested this "dangerous institution"<sup>12</sup> as he termed the National Bank. Mr. Bland explained his opposition by saying, "a

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<sup>8</sup>Ibid., pp. 681-683.

<sup>9</sup>Ibid., pp. 706-712.

<sup>10</sup>Ibid., pp. 826.

<sup>11</sup>Federal Gazette, Oct. 8, 1810.

<sup>12</sup>House Journal, Nov. sess., 1810, p. 7.

National Bank, sooner or later, concentrates the power, and congregates into a distinct body the moneyed interests of the country, which it ever ranges on the side of the administration. Executive partonage and moneyed influence are thus brought to act in concert for their mutual aggrandizement, to the destruction of public virtue, and the ruin of the liberties of the people. Therefore be it resolved: That the representatives and Senators of the state be, and they are, hereby requested and instructed to oppose by all means in their power, the establishment of a National Bank, in whatever manner it may be proposed to organize such an institution."<sup>13</sup> This resolution lost by one vote 36-35.<sup>14</sup> The Republicans had enough members to carry this resolution, but six of their number deserted the party to vote with the Federalists. The Senate took no action on the bill. After the defeat of Mr. Bland's resolution in the House, Mr. Brook introduced a resolution which stated that Congress in establishing a bank of the United States had transcended the powers vested in that body by the Constitution and therefore had "encroached upon the sovereignty and independence of the several state governments."<sup>15</sup> Mr. Brooke conceived it to be the duty of the Legislature to oppose the passing of such a law by Congress, the effect of which would be to extend the power of the General

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<sup>13</sup>Ibid., p. 9.

<sup>14</sup>Ibid., p. 70.

<sup>15</sup>Ibid., p. 70.

Government beyond its constitutional limits. This resolution was defeated by a vote of 45-25.<sup>16</sup> Thus we see that the Legislature could not muster sufficient votes to actually oppose a measure which furthered a strong central government and infringed, upon what was considered by the advocates of States-Rights, the sovereignty of the state. Political and mercantile interests took precedence over an abstract political theory with the lawmakers of the state.

The press reflected party attitude on the bank and was largely responsible for making the issue a political one. The Evening Post charged that the Bank was owned by Englishmen, that it favored Great Britain in its policies, that it used its entire capital to ruin State banks, that it was owned by the Federalists and appointed only Federalists to positions.<sup>17</sup> A Whig editorial excoriated the six Republicans who joined with the Federalists to defeat Mr. Bland's resolution in the Legislature. The names of these "traitors" were printed under the heading of "RECORD OF DISGRACE," and a footnote at the bottom explained that these traitors were elected by the Republicans and their perfidy would be remembered at the next election.<sup>18</sup> The Whig also printed the statement that nine-tenths of the citizens of Maryland were against the renewal of the Bank charter.<sup>19</sup> An Annapolis paper deplored foreign

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<sup>16</sup>Ibid.

<sup>17</sup>Evening Post, Sept. 10, 1810.

<sup>18</sup>Whig, Dec. 19, 1810.

<sup>19</sup>Ibid., Dec. 20, 1810.



influence upon the bank. An editorial stated "they tell us in substance that the whole country will be thrown in convulsions and that the Government itself be shaken to its foundations, should Congress refuse to renew the charter." The editor declared that if this be true, then the charter should not be renewed as it is well known that the management of the bank is in hands of men not friendly to this country; to renew the charter would give these men an "opportunity of extending their power, already so vast and so fearful, would be worse than folly; it would be madness."<sup>20</sup> Republican papers all over the state reflected opposition. The smaller ones reprinting excerpts were the national Republican papers which denounced the rechartering of the bank.<sup>21</sup> The Federalist papers approved and supported the Bank Bill. The Federal Republican called Mr. Bland an "ignorant busybody" and expressed its appreciation of the people of Maryland, who through their lawmaking body had expressed their approval of the rechartering of the bank.<sup>22</sup> The Federal Republican took the stand that the National Bank aided the commerce of the state and particularly denounced Mr. McKim, a merchant of Baltimore, who had cast his vote in Congress against the measure. The editor stated that "Mr. McKim had proved himself to be an enemy of the prosperity of the profession to which he belongs and a bar in the way of increase of a city he represents, which has attained

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<sup>20</sup>Maryland Republican, Dec. 28, 1810.

<sup>21</sup>Republican Star, Jan. 15, 1811; Hornet, Mar. 6, 1811.

<sup>22</sup>Federal Republican, Dec. 19, 1810.

her present wealth and splendor through the channels of commerce alone."<sup>23</sup> Letters in the Federal Gazette deplored the extinction of the Bank and predicted dire results to the commercial interests of the state.<sup>24</sup>

Maryland's sister state, Pennsylvania, passed a resolution in her Legislature which instructed her Senators and Representatives in Congress to use every exertion in their power to prevent the Bank of the United States from being rechartered by Congress or of establishing a branch Bank within any state without first obtaining the consent of the Legislature of that state.<sup>25</sup> The State of Maryland made no official protest against the Bank. The Republicans controlled the Legislature and took no action.

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<sup>23</sup>Ibid., Oct. 4, 1810.

<sup>24</sup>Federal Gazette, Dec. 19, 1810.

<sup>25</sup>H. Ames, State Documents, p. 52.

## CHAPTER IV

## PART II. Foreign Policies

Domestic affairs were now temporarily laid aside as foreign problems pressed for solution. Commercial restrictions had failed to bring England and France to terms. England as mistress of the sea was especially severe on American commerce. All efforts to maintain an honorable peace had proved futile. The Congress which convened in 1811 was composed of a new and younger generation, many of whom came from the newly-created frontier states where Indian depredations were thought to be incited by the British. These men were not disposed to continue diplomatic negotiations but demanded territorial expansion, clamoring particularly for Canada and Florida. Largely as a result of the agitation of these "WAR HAWKS", Congress, acting on Mr. Madison's recommendation, declared war on England, June 18, 1812. The Republicans were in favor of war while the Federalists especially in the New England States, condemned and hampered the administration's war policies. The six Republican Representatives from Maryland voted for the declaration of war; the three Federalists voted against it.<sup>1</sup> The same division was seen in the Senate where Samuel Smith supported the war bill and Philip Reed, a Republican who usually voted with the Federalists,<sup>2</sup> voted in the negative.<sup>3</sup> In connection with the preparation for war,

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<sup>1</sup>Annals of Congress, 12th. Cong., 1st. sess., p. 1637.

<sup>2</sup>Federal Gazette, Oct. 16, 1816.

<sup>3</sup>Annals of Congress, 12th Cong., 1st sess., p. 297.

the question arose as to the constitutional authority of the President, when he thought proper, to summon the State militia for duty in or out of the country and to commission its officers. The representatives from the New England States vigorously opposed the bill giving the President this authority. The Maryland delegation in Congress was divided. Mr. Key, a Federalist, from the Fifth District, strongly opposed the bill. He declared that he "reprobated and remonstrated" against giving the President the power to send the militia out of the United States because the Constitution reserved the militia for the defense of the states and while the militia was away an unprincipled President might use the standing army for his ambitious purpose in that state and destroy it.<sup>4</sup> In direct contrast Robert Wright the Republican, expressed the opinion that the President could summon the militia and send them anywhere he chose.<sup>5</sup> On the final passage of the bill three of the state's Republican representatives voted in favor of giving the President this authority, the remaining six did not vote.<sup>6</sup> In the Senate, Mr. Reed did not vote, but Samuel Smith who had previously supported all administrative measures cast his vote.<sup>7</sup> It is commonly thought that the dismissal of Samuel Smith's brother, Robert, Secretary of State, by President Madison was the cause of Smith's vote against the Administration measure.<sup>8</sup>

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<sup>4</sup>Ibid., p. 761-762.

<sup>5</sup>Ibid., p. 797.

<sup>6</sup>Ibid., p. 800-801.

<sup>7</sup>Ibid., p. 318.

<sup>8</sup>Letter of April 3, 1811. Samuel Smith Papers, Library of Congress.  
Henry Adams, History of the United States, New York, 1890. I, 379-380

The country sustained Mr. Madison in his war policy by re-electing him to the Presidency in 1812. Maryland gave Madison the narrow majority of one electoral vote, giving him six and the Federalist candidate five.<sup>9</sup> This vote indicated that the state was again slowly swinging to the Federalists.

After war was declared the President immediately called for 100,000 militiamen, "to be held in readiness, armed and equipped, and ready to take the field at a moments warning."<sup>10</sup> An extra session of the Legislature of Maryland was called to consider the President's request. Both Houses of this body at this time had a Republican majority and therefore considered it their duty to make immediate preparations for the state's quota of six thousand men. The following resolution was passed: "Resolved, That the Governor and Council could be and they are, hereby authorized and directed to furnish out of the public arms and accoutrements belonging to the state, to the noncommissioned officers and privates composing the said quota of such arms and accoutrements as requested by the acts of Congress."<sup>11</sup> In the New England States, the Militia Bill was protested to the point of ~~resistin~~g its enforcement. The Massachusetts Supreme Court decided that the President may exercise the command of the militia when properly and lawfully acting in the service of the United States, but they knew "of no constitutional

<sup>9</sup>E. Stanwood, History of the Presidency, I, p. 104.

<sup>10</sup>Niles Weekly Register, June 10, 1812.

<sup>11</sup>House Journal, June 12, 1812; Senate Journal, June 18, 1812.

provision authorizing any officer of the army of the United States to command the militia or authorizing any officer of the militia to command the army of the United States."<sup>12</sup> A similar attitude was taken by the other states.<sup>13</sup> The Maryland Legislature was motivated by party consideration in its stand on the bill. A Republican state Legislature supported a Republican administration bill.

The Legislature which convened in the fall of 1812 had a Federalist majority in the House, but the Senate with its five year term continued to have a Republican majority. The House immediately passed resolutions condemning the calling out of the militia. These resolutions stated that the Secretary of War on July 31, 1812, had called on the Governor of the state for one company of artillery, and three hundred and fifty militiamen to defend the harbor of Annapolis. The resolutions further declared that the President could only call out the militia for three exigencies, to repel invasion, enforce the law, and to suppress insurrection, and that none of these existed at the present time. Therefore be it resolved "that it was never contemplated by the Constitution and by the law that intrusted to the President the power of calling out the militia in certain emergencies that he should, by perverted and strange interpretations, at his discretion use that power in absence of the emergencies; and that the calling out of the militia as aforesaid ... is an open and dangerous assumption of power, alike

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<sup>12</sup>H. Ames State Documents, pp. 13-15.

<sup>13</sup>Ibid.

inconsistent with the right of the state and the convenience of their immediate constituents."<sup>14</sup> This resolution passed by a vote of 45 to 21.<sup>15</sup> The Senate did not approve of this resolution and on January 2, 1813, passed a resolution upholding the Militia Bill. This resolution declared: "Resolved, That we acknowledge and assert the right of the President of the United States to call out the service of the military thereof under the authority of Congress whenever in his opinion the exigencies enumerated in the Constitution demand such a requisition."<sup>16</sup> The House continued to oppose the war and the administration's war policy. Resolutions were passed from time to time denouncing "the infringements upon our natural rights and liberties."<sup>17</sup> The House referred to the war as a scheme for foreign conquest, an offensive war and a national aggrandizement by an ambitious chief magistrate; The power of the President to control the militia, which would ultimately lead to a military government; it was a dangerous assumption of power and an improper and ambitious use of the military power.<sup>18</sup> Very different was the attitude of the Republican Senate, which passed resolutions declaring that "the war was just, necessary, and politic and ought to be supported by the united efforts and resources of the nation...."<sup>19</sup>

<sup>14</sup>House Journal, Dec. sess., 1812, p. 81.

<sup>15</sup>Ibid., p. 30.

<sup>16</sup>Senate Journal, Dec. sess., 1812, p. 54.

<sup>17</sup>House Journal, Dec. sess., 1812, passim.

<sup>18</sup>Ibid.

<sup>19</sup>Senate Journal, Dec. sess., 1812, p. 107.

The party division of the Legislature prevented any State action being taken on the Militia Bill.

Later on a proposed Conscription bill was bitterly fought by the Representatives and Senators in Congress from the New England States, who attacked the measure as being subversive of the freedom, sovereignty and independence of the states. Robert Goldsborough, a Federalist Senator from Maryland, attacked the bill on the floor of the Senate. He charged that the bill indicated the growth of tyranny in the nation and that if passed, the following year would witness "tyranny stalking abroad through the land, accompanied by its loathesome train of fetters and chains and executioners."<sup>20</sup> While Mr. Goldsborough opposed and voted against the bill, Samuel Smith, the Republican Senator, cast his vote once more in support of the administration's Conscription Bill.<sup>21</sup>

No speeches for or against the Conscription Bill were made by the Maryland delegation in the House and only six of them voted on the final passage of the Bill, five Republicans voting in the affirmative and one Federalist in the negative.<sup>22</sup> Of Maryland's eleven Representatives in the Thirteenth Congress, only one protested by voice and only two voted against a measure which clearly violated States-Rights as this doctrine was understood in the early days of the Republic.

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<sup>20</sup>Annals of Congress, 13th Cong., 3rd sess., p. 108.

<sup>21</sup>Ibid., p. 109.

<sup>22</sup>Ibid., p. 929.



When the news of the Conscription Bill reached the Maryland Legislature, the Federalist House appointed a committee to consider what measures should be instituted "for maintaining the sovereignty of the State and protecting the liberties of its citizens against the operation of arbitrary and unconstitutional acts of the Federal Government."<sup>23</sup> On January 2, 1815, the committee brought in a report which spoke of "a misplaced and abused confidence in the virtue of their rulers and encroachments on the sovereign rights of the States," by the Federal Government. The report charged that the Conscription Bill converted the free militia of the United States into "trained bands and cohorts of an odious despotic force."<sup>24</sup> The House was admonished to resist firmly the enforcement of this law.

The Republican Senate, on the contrary, endorsed the Conscription Bill as it had endorsed all of the administration war policies. By resolution it declared its fidelity and adherence to the Union, its support of its rights and honor and its continued approbation of the Government in all of its acts.<sup>25</sup> These resolutions were sent to the House, which promptly negatived them.<sup>26</sup> So the Maryland Legislature took no positive stand on the Conscription Bill because its Republican Senate and Federalist House could reach no agreement.

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<sup>23</sup>House Journal, Dec. sess., 1814, p. 22.

<sup>24</sup>Ibid., Dec. sess., 1815, p. 34.

<sup>25</sup>Senate Journal, Dec. sess., 1814, p. 151.

<sup>26</sup>House Journal, Dec. sess., 1814, p. 91.

The Federalist party, as elsewhere, was strongly against conscription. The Federalist Governor, William Winder, in his message to the Legislature, December 10, 1814, spoke of the proposed conscription as an "unconstitutional and slavish"<sup>27</sup> measure. The Federalist newspapers loudly denounced this proposed method of raising troops. The Federal Gazette commended the House of Delegates on its firm stand against the bill. An editorial in the same paper declared that the action of the House evidenced real friends of freedom in the state and that misrule and oppression of a National Government will be resisted with "a spirit worthy of the representatives of free men."<sup>28</sup> Denunciatory letters filled the columns of this paper and an especially strong one is worthy of comment. The writer declared that a commonwealth or state has a right to the services of all its citizens, but that the United States was not a commonwealth, because a commonwealth was one and indivisible, whereas the United States consisted of eighteen commonwealths or states. The writer further stated that the United States did not have concurrent right over the citizens of the states, that its power over the states was limited and its power over the militia was confined to three exigencies, leaving to the state or commonwealth in all other instances the unconstrained power over its militia.<sup>29</sup> Another writer was alarmed at the increasing power and growing strength of

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<sup>27</sup>Ibid., pp. 11-12.

<sup>28</sup>Federal Gazette, Dec. 21, 1814.

<sup>29</sup>Ibid., Nov. 10, 1814.

Mr. Madison's corrupt government, which he considered an "ignoble oligarchy." He continued to say "if hitherto, it was easy to alarm the jealousies of the people, of the slightest encroachments on the independence of the state governments, what ought we to think when we see a principle now for the first time admitted in this country - that it is lawful to subject the militia of the states to an officer appointed by the General Government ... if it be said in answer to this, that the fact here alluded to cannot be considered as an invasion of the political rights of the states, because it is well understood that the Executive never meant this invasion or that a single state in the hour of danger may waive a political claim, which it by no means intended finally to surrender to the General Government." The writer regarded the Conscription Bill as a dangerous precedent and was apprehensive of encroachments in the future.<sup>30</sup>

The Republican papers just as strongly supported Conscription. An editorial in the Baltimore Patriot declared that to call the bill unconstitutional was preposterous and that although the militia were not good fighters, if it were the will of the majority in Congress to rely on them for their safety, the country must accept the Bill because the majority must rule.<sup>31</sup> Another editorial takes the Federalists to task for their lack of discernment in the way the country was to be saved; the country cannot be saved except the

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<sup>30</sup>Ibid., Nov. 26, 1814.

<sup>31</sup>Baltimore Patriot, Dec. 15, 1814.

foe is repelled and how is the enemy to be repelled with an ordinary militia; conscription would provide a more efficient and less burdensome army, one capable of saving the country.<sup>32</sup> The letters in this paper defended conscription, one writer going so far as to quote Washington as having said that militia ought to be classed and drafted even to fill and supply the ranks of the regular army.<sup>33</sup>

The Conscription Bill crystallized the opposition of the New England States into action. The Legislature of Massachusetts called a convention to meet at Hartford, Connecticut, on December 15, 1814, to plan a united course of action in protest of the administration's war policies. Twenty-three delegates from this section attended. The conclusions of this convention were embodied in resolutions, some of which proposed amendments to the Constitution, limiting the power of Congress to declare war, lay embargoes, restrict commerce, summon the militia or to construct new states. The resolutions further proposed that the President have one term only, that successive Presidents must come from different states and that a portion of the national taxes raised within the states should be kept for local defense.<sup>34</sup> A copy of these demands was sent to Congress and to the other states. Before the Hartford commissioners reached Washington, Jackson had won the battle of

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<sup>32</sup>Ibid., Dec. 28, 1814.

<sup>33</sup>Ibid., Dec. 1, 1814.

<sup>34</sup>House Journal, Dec. sess., 1815, p. 51.

New Orleans and news had been received of the signing of the peace treaty at Ghent. When the Hartford resolutions reached the Democratic Senate of Maryland they were speedily rejected<sup>35</sup> and on the twentieth of January this body passed resolutions assuring the administration of their devotion and firm determination to support its policies at all times.<sup>36</sup> Their attitude toward the Hartford Convention was summed up in the following resolution: "Resolved, That we view with detestation the machinations of disaffected citizens to weaken the Union, distract the public councils, and embarrass military operations, whereby the enemy is encouraged in his depredations and the evils of war are protracted." This resolution was passed by a large majority. The House took no action on the Hartford resolution, being unwilling to go as far as the New Englanders in opposition to the Federal Government.

The papers of the state viewed the Hartford Convention through political party lenses. The Federal Gazette published the Convention report with its resolutions in full and commended the proceedings "to the candid and liberal of all parties."<sup>37</sup> An editorial in this paper dwelt on the "temperate and correct conduct" of the Hartford body; the editor spoke of the reasonableness of the alterations proposed and comforted the public with the thought that "we have nothing to dread from our Eastern brethren unless we are

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<sup>35</sup>Senate Journal, Dec. sess., 1815, p. 128

<sup>36</sup>Ibid., p. 150

<sup>37</sup>Federal Gazette, Jan. 11, 1815.

determined to be unjust."<sup>38</sup> A letter in the Gazette declared that the object of the Hartford Convention was not to dissolve the Union or to establish a confederacy of the Eastern States, but simply to take measures to arrest the ruinous course pursued by the administration; the New England States had been forced to preserve themselves from utter destruction as free and independent states.<sup>39</sup> In striking contrast to this Federal paper, the powerful Niles Register strongly denounced the New Englanders for their opposition to the war, their unjust complaints, and the exaggerations of their misery and distress. Mr. Niles contended that Massachusetts was well off in money and commerce and intimated that New England had furnished provisions during the war to the British in Upper Canada and by so doing had become wealthy; that the war had been a help instead of a great calamity to that section of the country.<sup>40</sup> On another occasion, Mr. Niles savagely attacked "the nation of New England" for their ambitions which were superior to their avarice. He credited the "nation" with more intelligence than to suppose that they would be benefitted by a revolution which they knew would produce poverty, misery and slavery; however, in their desire for power, for office and emolument that they would go to any length to attain their desires.<sup>41</sup> The Republican Star

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<sup>38</sup>Ibid.

<sup>39</sup>Federal Gazette, Dec. 22, 1814.

<sup>40</sup>Niles Register, Nov. 26, 1814.

<sup>41</sup>Ibid.

on the Eastern Shore voiced the hope that the members of the Hartford Convention would meet their reward "let it be pillory or halter."<sup>42</sup> The Baltimore American explained the dissatisfaction of New England in the following language, "put these men into power and chameleon-like the war would immediately change color; it would become in place of an unjust, odious, guilty war, a most necessary, a just and holy war. Extravagance and conscription in reality and executive energy would become the order of the day; the interests of every part of the country would harmonize and the Union would be a blessing - such would be the miraculous effects of putting the leading oppositionists into power."<sup>43</sup> The Baltimore Patriot spoke of the Hartford resolutions as "All Smoke - No Fire."<sup>44</sup> So while the Democratic papers denounced the New England meeting, the Federalist papers sought to minimize the belligerent attitude of the Convention and to put the best possible interpretation on its proceedings. The Maryland Legislature took no stand on the resolutions because only one branch of that body saw fit to act on them. The closing of the war ended the controversy.

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<sup>42</sup>Republican Star, Dec. 2, 1814.

<sup>43</sup>American, Dec. 24, 1814.

<sup>44</sup>Patriot, Dec. 20, 1814.

## CHAPTER IV

## PART III. Post-War Problems

At the close of the war the country was burdened with a large debt. The financial affairs of the nation were in a deplorable condition. The National Bank had gone out of existence in 1811 and in the following years many of the state banks had been obliged to suspend specie payment. The people could not obtain sufficient currency to transact business. Domestic commerce was hurt by the lack of money while the foreign trade had been destroyed by Great Britain's fleet. In the year after the close of the war, Congress passed a bill to recharter the National Bank. The form of the bill was objectionable to President Madison, who interposed his veto;<sup>1</sup> but in 1816 Congress again passed the bill in an amended form which was approved by the President. The capital was fixed at thirty-five million, one fifth in cash, the remainder in United States securities. The United States was to appoint five of the twenty-five directors. The central banking house was established at Philadelphia and branches were to be established in the several states. The charter was to run for twenty years and the corporation was to pay a bonus of \$1,500,000 to the government.<sup>2</sup> This time the bank was sponsored by the Republican administration and so became a proposed Republican institution and consequently

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<sup>1</sup>J. Richardson, Messages of the Presidents, I, 555-558.

<sup>2</sup>Annals of Congress, 14th. Cong., 1st. sess., pp. 494-514.



opposed by many of the Federalists. This Bank Bill passed the Senate of Congress supported by the Republican Senator and opposed by the Federalist.<sup>3</sup> In the House, the state was represented by five Federalists and four Republicans. They took no part in the debate on the Bank Bill. States-Rights, lack of constitutional authority to establish a corporation or injury wrought on the state banks by a Federal institution were not mentioned. On the bill's final passage three Federalists voted against it; one Federalist and four Democrats voted for it.<sup>4</sup> Maryland was thus divided on the measure, but the division was not due<sup>to</sup> any theory of state sovereignty nor altogether to party politics. There was great need of the bank and men of both parties recognized this need. On this question, the Legislature of Maryland took no action, but the state as a whole was favorable to it.

The Republican press upheld the administration in the re-chartering of the bank. The Patriot scored the opponents of the bill. It said, "do we want money, and propose, as a means of raising it, a National Bank! A National Bank becomes immediately unconstitutional ... thus every vigorous measure to strengthen the government, and save the nation is cried down under the pretense of its being unconstitutional."<sup>5</sup> The Federalist papers of the state also approved the Bank Bill of 1816. The Federal Gazette

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<sup>3</sup>Ibid., p. 281.

<sup>4</sup>Ibid., p. 1219.

<sup>5</sup>Patriot, Jan. 15, 1815.

stated that the recollections of the advantages which the government as well as the people of the country derived from the former Bank of the United States and the great inconvenience which resulted from its extinction, will ensure to the new bank "the approbation and support of the candid and disinterested of all classes."<sup>6</sup> Before the bill passed, this paper commented on the objection which was being made to the President of the United States appointing five of the directors. The editor of the paper considered this less objectionable than the one which imposed a penalty of increased interest for the non-payment of specie as this would be oppressive on some people. The Gazette was against this clause in the bill for it said "the admirable plan of the incomparable financier, Alexander Hamilton, did not contain any such clause."<sup>7</sup> This Federalist paper, strange to say, now advised that Congress should permit the state banks to be regulated by the Legislature of each state and to let them be as free as possible from Congressional interference.<sup>8</sup> The rechartering of this bank was carried out under a Republican administration and while the Federalists in the state approved of it, they wanted to protect the state from the domination of a Republican administration.

Another issue affecting the economic life of the nation was the tariff. The embargo, the non-intercourse, and the war had

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<sup>6</sup>Federal Gazette, April 4, 1816.

<sup>7</sup>Ibid., Mar. 25, 1816.

<sup>8</sup>Ibid., April 27, 1816.

forced sections having good water power to turn to manufacturing to provide articles for their own need. After the war the manufacturers had to meet extensive foreign competition chiefly from Great Britain, so a tariff was agitated both for revenue and protection. Maryland was not especially concerned about the tariff of 1816. The state had some manufacturing interests especially in Baltimore City, but the agricultural and the commercial interests opposed the tax on imported goods because it increased their costs in this country. In the House of Congress, Samuel Smith was in favor of a high protective tariff especially on iron sheets, rods and bolts, on sugar, and on cotton. Mr. Smith was himself interested in sugar refining.<sup>9</sup> Mr. Wright representing the agricultural Eastern Shore vigorously opposed the import tax. The bill passed the House by a vote of 88-54, six Maryland delegates voting against it, two voting for it and one not voting.<sup>10</sup> This vote showed that manufacturing on a large scale had not yet come into Maryland and that the commercial and agricultural interests were stronger than the manufacturing ones. The Federal Gazette expressed the opinion that while it was reasonable to encourage domestic manufactures, they "ought not necessarily to injure the merchants."<sup>11</sup> The press had little to say on the tariff measure. The Legislature took no action on the tariff at this time. Maryland was not especially concerned about the tariff of 1816.

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<sup>9</sup>Annals of Congress, 7th Cong., 1st. sess., p. 1019.

<sup>10</sup>Ibid., 14th Cong., 1st sess., p. 1352.

<sup>11</sup>Federal Gazette, Nov. 23, 1816.

President Madison departed from the pre-war Republican doctrine of a strict interpretation of the Constitution to recommend not only protection for manufactures but the building of roads and canals by the National Government. A bill was introduced in Congress called the Bonus Bill, setting aside the \$1,500,000 bonus of the National Bank and the United States share of its dividends for internal improvements.<sup>12</sup> The Bill directed that this money be used to construct roads and canals and improve the navigation of water courses. A debate arose as to the rights of the states to control the roads and canals within their respective limits. Samuel Smith in the House objected to the bill. He advocated the money to be spent on great National projects of importance, for he said that divided among the states, if in proportion to the number of their representatives in Congress, it would be "frittered away and applied to objects of trifling importance." Mr. Smith contended that no state would receive sufficient funds for any real improvement; Maryland would receive \$32,000 which would not build four miles of good turnpike road. He further objected to apportioning the money among the states because the large states would receive a greater share of the money; Maryland as a small state would not receive enough money to undertake any worthwhile project, such as the Chesapeake and Delaware canal. Mr. Smith finally urged that the bonus be used for paying off the National debt and repealing internal taxes.<sup>13</sup> Robert Wright also voiced his disapproval of the bill,

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<sup>12</sup>Annals of Congress, 14th Cong., 2nd. sess., p. 296.

<sup>13</sup>Ibid., pp. 880-882.

asserting that the country should first redeem its pledge to discontinue taxes; his speech further disclosed that even if the money could be spared he would oppose Congress's financing roads and canals "at their will and pleasure"; the right to cut roads belongs to the states; the small states would receive little benefit; the old states like Maryland had expended millions for roads and now would be taxed to cut roads in the new states where there were scarcely any roads. He went on to say that Maryland, Delaware, and Pennsylvania were now interested in the completion of the Chesapeake and Delaware Canal, a project which was of national benefit, but the money from the Bonus Bill would be a mere pittance toward this end.<sup>14</sup> The Bonus Bill passed the House by a vote of 86-84, opposed by six of Maryland's representatives, favored by two and one not voting.<sup>15</sup> The two Federalist Senators, Robert Goldsborough and Alexander Contee Hanson, had no scruples about the authority of Congress to vote money for internal improvements for both of them voted for the Bill.<sup>16</sup> On March 3, 1817, President Madison sustained the Republican philosophy of a strict interpretation of the Constitution by vetoing the measure. Mr. Madison said that "the permanent success of the Constitution depends on a definite partition of powers between the General and the state governments."<sup>17</sup>

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<sup>14</sup>Annals of Congress, 14th Cong., 2nd sess., pp. 918-922.

<sup>15</sup>Ibid., p. 934.

<sup>16</sup>Ibid., p. 191.

<sup>17</sup>J. D. Richardson, Messages, I, 585.

## CHAPTER V

## McCULLOCH VS. MARYLAND

In the fall of 1816 James Monroe of Virginia was elected President of the United States. The new administration was democratic in its political principles. In the electoral college, Maryland cast eight votes for Monroe; the three Federalist electors did not attend.<sup>1</sup> In this fall election the Federalists carried a large number of the counties and elected a Federalist State Senate of fifteen members for five years.<sup>2</sup> In Congress, the representation consisted of five Democrats and four Federalists. The latter party had lost power after the war all over the country, but in Maryland they made a decisive gain.

In the early part of Mr. Monroe's administration, the opening of new lands in the West and the starting of many new enterprises brought on an era of speculation. Money was in great demand especially by the speculators. There was not enough gold and silver to meet the demands so state banks were chartered with power to issue notes and this they did lavishly. The National Bank, chartered in 1816, had at first encouraged this expansion of credit by recklessly lending money to the state banks. Later on from necessity, the bank reversed this attitude and put pressure on the state banks

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<sup>1</sup>E. Stanwood, History of the Presidency, I, p. 113.

<sup>2</sup>J. F. Scharf, History of Maryland, III, p. 142.

for the return of the money. The state banks in turn pressed the people to whom the loans were made. These conditions brought on the panic of 1818 during which there were many business and bank failures, with distress everywhere. The people blamed the Bank of the United States which had never been a popular institution. Later on, a Congressional investigation was instituted to determine if the Bank had violated its charter. The inquiry revealed that the Bank had been badly managed, reckless in extending credit and unfortunate in many of its policies.<sup>3</sup> A motion to repeal its charter was considered by Congress, but it failed to pass. The facts brought out during an investigation further increased the rage of the people against the Bank. Many of the states sought to protect themselves against "the monster" by passing laws which either levied taxes on the branches of the National Bank or which prohibited their establishment within their territory.

In Maryland where "by defalcation and other frauds there had been a loss of \$1,700,000",<sup>4</sup> there was an especially hostile attitude toward this Federal institution and the state proceeded to levy a tax against the Baltimore branch. In February, 1818, the General Assembly passed a law which stated that all banks chartered without authority from the state must print their notes on stamped paper: "that is to say, every five dollar note shall be upon a stamp of

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<sup>3</sup>Annals of Congress, 15th Cong., 2nd. sess., p. 1041.

<sup>4</sup>C. Warren, The Supreme Court in United States History, (Boston, 1937), I, p. 506.

ten cents; every ten dollar note, upon a stamp of twenty cents; every twenty dollar note, upon a stamp of thirty cents; every fifty dollar note, upon a stamp of fifty cents; every one hundred dollar note upon a stamp of one dollar; every five hundred dollar note, upon a stamp of ten dollars; and every thousand dollar note upon a stamp of twenty dollars." The bank could avoid this stamped paper by paying an annual tax of \$15,000.<sup>5</sup> This bill passed the House by a vote of 36-17 on February 7, 1818, and on February 11,<sup>6</sup> it passed the Senate by the narrow margin of one, the vote being five to four.<sup>7</sup> The branch bank in Baltimore refused to comply with the Maryland law. McCulloch, the cashier, was sued for circulating an unstamped bank note, by John James, who sued in behalf of himself and the state to recover a penalty of one hundred dollars. The state law was declared constitutional in the county court of Baltimore where the case was first brought and later on, the Maryland Court of Appeals also decided in favor of the constitutionality of the law. Luther Martin, Attorney-General of Maryland, and the United States officials cooperated to make it a test case and it was carried to the Supreme Court of the United States on a writ of error. Maryland retained Luther Martin, Joseph Hopkinson of Philadelphia, and Walter Jones of Washington for the State's defense. The bank retained Daniel Webster, William Pinkney, and Attorney-General William Wirt, the

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<sup>5</sup>Jonas Green,<sup>(ed.)</sup> Laws of Maryland, Dec. sess., 1817, p. 174.

<sup>6</sup>House Journal, Dec. sess., 1817, p. 105.

<sup>7</sup>Senate Journal, Dec. sess., 1817, p. 40.



last two being able Maryland lawyers. The debate continued nine days. Luther Martin contended that "the respective states have a right to tax the property of that corporation within their territory; that the United States cannot by an act of incorporation withdraw any part of the property within the state from the grasp of taxation."<sup>8</sup> Joseph Hopkinson argued that the states and the United States possessed equal powers to establish corporations and it follows that they have equal powers of taxation over property which is neither imports, exports or tonnage; "the Federal Government had assumed the right of taxing the state banks precisely in the manner in which the State of Maryland has proceeded against the Bank of the United States; and as this right has never been resisted or questioned, it may be taken to be admitted by both parties that the right to tax must be equal and common to both parties or the fundamental principles of our confederation have been strangely mistaken, or are to be violently overthrown."<sup>9</sup>

William Pinkney presented an able argument for the bank. He contended that there was an antagonism between the power of Maryland to tax and the power of Congress to preserve this financial institution; "a power to build up what another may pull down at pleasure is a power which may provoke a smile but can do nothing else." Mr. Pinkney asserted that the law of Maryland might destroy the bank as the limit of the tax was in the discretion of the

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<sup>8</sup>United States Reports, 4 Wheaton, . 374-375.

<sup>9</sup>Ibid., pp., 350-351.

State Legislature; that whenever the local Councils of Maryland willed it, the bank could be expelled from that state. He clinched this argument by saying "a right to tax without limit or control, is essentially a power to destroy. If one National institution may be destroyed in this manner, all may be destroyed in the same manner."<sup>10</sup> In his concluding remarks, this able lawyer said "if Congress has power to do a particular act, no state can impede, retard, or burthen it. Can there be a stronger ground, to infer a cessation of state jurisdiction?"<sup>11</sup> A Washington spectator, who listened to the debate, wrote to a friend in Baltimore praising Mr. Pinkney as an orator. He said that this distinguished man proved conclusively that the sovereign powers of the Union are supreme, and that whenever they come into conflict with those of the state governments, the latter must give way, and he convinced his hearers that to secure the permanent safety and happiness of the country, a fair and liberal interpretation of its powers must be made.<sup>12</sup>

On March 6, 1819, Marshall handed down the unanimous decision of the Court. He began with a discussion of the Union and the origin of the Constitution and then proceeded to build up the doctrine of implied powers; Congress had power to pass laws to carry out its purposes; it had power to borrow money and lay taxes. He then gave

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<sup>10</sup>Ibid., pp., 391-392.

<sup>11</sup>Ibid., pp. 395-396.

<sup>12</sup>Patriot, Mar. 9, 1819.

a definition of implied power: "let the end legitimate, let it be within the scope of the Constitution and all means which are appropriate, which are plainly adapted toward that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional." Marshall then answered the question: Could a state tax the bank? He stated that the state did not possess that right, and using Pinkney's argument, he said "the power to create implies the power to preserve, while the power to tax is the power to destroy." He finally stated that the sovereignty of the state does not extend into the sphere of the Central Government; if a state law comes in conflict with a Federal institution the state must yield. A state cannot tax any agency of the Federal Government, therefore the law of Maryland was declared unconstitutional.<sup>13</sup>

The Maryland newspapers followed the case closely while it was being debated in the Court, but most of them took the decision very calmly and throughout the state it aroused little excitement. The Niles Register was the only paper to violently denounce the adverse decision, which it called "a total prostration of the States-Rights and a loss of the liberties of the Nation."; it asserted that "a deadly blow had been struck at the sovereignty of the states, and from a quarter so far removed from the people as to be hardly accessible to public opinion ... nothing but the tongue of an angel can convince us of its compatibility with the Constitution."<sup>14</sup>

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<sup>13</sup>J. P. Cotton (ed.), The Constitutional Decisions of John Marshall (New York, 1905), I, 344-345.

<sup>14</sup>Niles Register, Mar. 13, 1819.

A little later he said, "we are awfully impressed with the conviction that the welfare of the Union has received a more dangerous wound than fifty Hartford Conventions, hateful as that assembly was, would inflict, reaching to the vitals as seemingly to draw the heart blood of liberty and safety, and so may be wielded to destroy the whole revenues and so do away with the sovereignties of the states."<sup>15</sup> The Niles Register protested the decision in a series of articles which were published in newspapers throughout the country under the heading "**Sovereignty of the States.**" In these series of articles Mr. Niles declared that the incorporation of the bank was wrong in its origin, incorrectly managed and should justly forfeit the rights it possessed; he admitted that the bank should be preserved but that its immense power to do mischief should be restrained and that the best restraining power was "an acknowledged right of the states to tax it." In the same article he argued that if the states do not possess the right to tax the bank, their sovereignty is nothing, but no state should have a right to tax it unless the local banks therein were compelled to pay their own debts on demand or forfeit their charters by statute. Mr. Niles suggested in these articles an amendment to the Constitution: "Congress shall not have power to grant acts of incorporation or vested monopolies, in any person or persons, for any purpose whatsoever, except within the District of Columbia." He was of the opinion that the principles established by the decision were more

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<sup>15</sup>Ibid.

dangerous to the people of the United States than a foreign invasion would be; he referred to the Court as a wise and learned body but still composed of "only men."<sup>16</sup> The Baltimore Patriot announced the decision as did the other Republican papers. It printed a letter which highly commended Pinkney's speech but carried no editorial condemning the decision or praising the ability of the lawyers for the defense.<sup>17</sup> The American was neutral in its attitude. Its only comment was made in an editorial: "The opinion of the Supreme Court of the United States on the right of the state to tax the United States bank, is concluded in today's paper. This portion of the opinion our readers will find possesses an increased interest, as it embraces the discussions of the question whether the State of Maryland may, without violating the Constitution, tax the branch of the United States Bank located within its limits."<sup>18</sup> The editor offered no opinion on the question, but merely stated the conclusions of the Court.

The Federalist paper of Baltimore was concerned only with the economic aspect of the decision, and plainly showed its approval in the following editorial: "it was believed that if the states possessed the right to tax the Bank of the United States, the very circumstances of foreigners owning a large proportion of the stock would have induced them to exercise it to an extent which would have rendered the stock unproductive. The doubts being now removed, and the

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<sup>16</sup>Ibid.

<sup>17</sup>Patriot, Mar. 9, 1819; Republican Star, Mar. 9, 1819; Maryland Republican, Mar. 9, 1819.

<sup>18</sup>American, Mar. 16, 1819.

question put at rest forever, the security and value of the stock will be rendered permanent in public estimation."<sup>19</sup> This paper made no mention of the right of the state to tax the bank and expressed no indignation on the act of the Court in declaring the state law unconstitutional.

On the otherhand, the press of the states in the southern and western parts of the country, violently assailed the McCulloch vs. Maryland decision. The Richmond Inquirer of Virginia believed the opinion to be "fraught with alarming consequences" and intimated that Virginia was not obliged to accept the Courts' decision.<sup>20</sup> The Virginia House of Delegates passed resolutions protesting the decision and recommended a tribunal to settle questions involving State and Federal powers.<sup>21</sup> The majority of the papers of the South supported Virginia in her sentiments; all expressed the deepest concern over an opinion that struck at the roots of States-Rights and State-Sovereignty. Quite a few papers in the northern and eastern sections of the country joined in the denunciations. The Pennsylvania Legislature asked for an amendment to the Constitution prohibiting Congress from establishing National Banks anywhere except within the District of Columbia. These resolutions were approved by four states, opposed by at least nine and considered by the others.

When the Pennsylvania resolutions reached the Maryland Legislature they were referred to a committee which reported on February 2, 1820 by bringing in the following resolution: "Resolved, by the

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<sup>19</sup>Federal Gazette, Mar. 8, 1819.

<sup>20</sup>Richmond Inquirer, Mar. 26, 1819.

<sup>21</sup>C. Warren, History of the Supreme Court, I, p. 552.

General Assembly of Maryland, that they do concur in the amendment of the Constitution of the United States proposed for the consideration of the several states by the State of Pennsylvania ...." This resolution further instructed Maryland's Senators and Representatives in Congress to use their exertions to procure the adoption of this amendment.<sup>22</sup> No action was taken on this resolution and on February 11, the report of the committee was referred to the next General Assembly, which assembled in the fall of 1821. The House appointed a new committee to consider the Pennsylvania resolution. In January they reported that they had carefully considered the subject and were decidedly of the opinion that the interests of the Union would be materially jeopardized should the proposed amendment be adopted, Therefore resolved, "That it is inexpedient to concur in the amendment to the Constitution of the United States proposed to the consideration of the several states by the State of Pennsylvania."<sup>23</sup> This resolution was read once and ordered to a second reading which never materialized.<sup>24</sup> The issue in Maryland was now practically dead. The first feeble resentment was gone and a lack of interest prevented any action being taken on the Pennsylvania resolution. In contrast to this attitude Ohio, who had supported the resolution, sought to enforce her tax law, regardless of the Court's decision in the Maryland case. The Legislature of Ohio passed a resolution outlawing the bank by depriving it of all rights

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<sup>22</sup>House Journal, Dec. sess., 1819, p. 98.

<sup>23</sup>Ibid., Dec. sess., 1820, p. 76.

<sup>24</sup>J. Green, Laws of Maryland, Dec. sess., 1820.

in the state courts and of all protection by state officers. The newspapers of Ohio were almost unanimous in upholding the action of the state authorities.<sup>25</sup> Maryland's attitude toward this important decision was, on the whole, an indifferent one. The Legislature took no official action on it at any time and the press with the exception of the Niles Register was not concerned about any violation of States-Rights or encroachment against State Sovereignty by the National Government. Maryland displayed little evidence of being a sovereign state in this important decision but yielded readily to the Government of the United States.

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<sup>25</sup>C. Warren, History of the Supreme Court. I, p. 512.



CHAPTER VI  
INTERNAL IMPROVEMENTS

The rapid development of the West led to the desire for better communication between the Atlantic States and the states beyond the Alleghanies. States and private corporations built roads and bridges but the question arose as to whether the General Government should aid in the construction of these projects. Had Congress the right to vote money to make these necessary improvements? Mr. Madison answered the question in the negative by vetoing the Bonus Bill and in 1822 Monroe took a similar stand by his veto of a bill which provided for the preservation and repair of the Cumberland road, an internal improvement which had been undertaken by the General Government. Mr. Monroe objected to the Bill because he believed that the United States did not possess "the right of jurisdiction and sovereignty for all the purposes of internal improvements";<sup>1</sup> he realized the importance of these undertakings and suggested to Congress that they pass an amendment to the Constitution, vesting this power in the General Government.

The Cumberland Road Bill passed the House by a vote of 87 to 68, all of Maryland's delegates with the exception of Mr. Reed voting for it. Mr. Reed objected to giving the President the power to lessen or increase the rates of the tolls.<sup>2</sup> In the Senate

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<sup>1</sup>J. D. Richardson, Messages, I, 142-143.

<sup>2</sup>Annals of Congress, 17th Cong., 1st sess., p. 1734.

Samuel Smith urged that the General Government should make repairs to the Cumberland Road because it would be a breach of faith with Maryland to allow it to fall into decay; the state had given her consent to construct the road through her territory and had subsequently taxed her citizens to make connecting road. Mr. Smith also contended for the constitutionality and the expediency of internal improvements by the General Government.<sup>3</sup> The bill passed the Senate by a vote of 26 to 9, Samuel Smith voting in the affirmative and William Lloyd in the negative.<sup>4</sup> Mr. Lloyd was from the Eastern Shore and probably saw no benefit to his section to the Cumberland Road. Maryland representation was divided evenly on a bill which materially benefited the state. In the Congressional debates on the question of internal improvements in 1818, the Maryland representatives were accused of opposing internal improvements because some of these undertakings conflicted with the state's economic interests. Mercer of Virginia charged that "Maryland has refused to authorize a toll for the repairs of the Cumberland road (which Pennsylvania would cheerfully have conceded) in order that Baltimore may more advantageously contend with Philadelphia for the Western trade over the Alleghanies."<sup>5</sup> Again Tucker of Virginia, a strong advocate of national internal improvements, asserted that the work should not be prevented "by the

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<sup>3</sup>Ibid., 17th Cong., 2nd sess., p. 92.

<sup>4</sup>Ibid.

<sup>5</sup>Ibid., 15th Cong., 1st sess., pp. 1817-1818.

jealousy of a particular city [Baltimore] within the State of Maryland, lest her rapid growth should be impeded by the facilities which it will afford to the back country farmer and merchant in reaching the Philadelphia market."<sup>6</sup> The state's opposition, at that time, to giving the Federal Government power to undertake great national improvements was not based on a political theory but on the economic principle of self preservation.

The accusations of the Virginia senators were true. The Senate of Maryland on January 27, 1816, passed a resolution authorizing the United States to erect toll gates on the Cumberland Road and collect sufficient revenue to keep this "very excellent and very costly" turnpike in repair.<sup>7</sup> This resolution was sent to the House which promptly negatived it by a vote of 27-22 because they were "of the opinion as the said road is still unfinished through this state it is inexpedient at this time to pass a law upon the subject." The House also maintained that it would be time to consider the question when the road is completed; that it was a great national project and should be kept in repair at the expense of the nation; that this was the first and would probably be the last for years to come, that the people of Allegany County would receive any local advantage from an expenditure of public money; other more favored sections of the country are in daily enjoyment of money from the coffers circulated among them.<sup>8</sup>

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<sup>6</sup>Ibid., 15th. Cong., 1st. sess., p. 1118.

<sup>7</sup>Senate Journal, Dec. sess., 1815, p. 147.

<sup>8</sup>House Journal, Dec. sess., 1815, p. 101.

By 1818 Maryland began to realize that she must do something to secure her share of the Western trade. Efforts were made to facilitate and improve the means of transportation to the West. The attitude toward government help in financing these undertakings underwent a change and the House of Delegates responded to the resolution of Congress which was passed March 30, 1818: "Resolved, That the Secretary of the Treasury be requested to prepare and report to the House, at their next session, a plan for the application of such means as are within the power of Congress, to the purpose of opening and improving roads, and making canals...."<sup>9</sup> On January 8, 1819 the House passed another resolution, "Resolved, that the Executive of the state be requested to furnish immediately to the Secretary of the Treasury a statement of such roads and canals within the State of Maryland which may be considered worthy of assistance and encouragement of the General Government, in a National point of view; particularly designating the Potomac river, and roads leading from Washington and Baltimore cities to the western country and the road leading from Baltimore to Elkton, as particularly deserving national aid and to report ... what aid and encouragement may be made by the General Government in furtherance of these or any other internal improvements in the State of Maryland."<sup>10</sup> On January 9 the word Susquehanna was inserted after the word Potomac and the following

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<sup>9</sup>Ibid., Dec. sess., 1818, p. 37.

<sup>10</sup>Ibid., p. 38.

words were inserted "and the proposed canal from the Chesapeake to the Delaware Bay."<sup>11</sup> The resolution passed the House and on January 13, 1819 the Senate concurred with these resolutions.<sup>12</sup>

Due to economic pressure, Maryland in 1821 became willing for toll gates to be erected on that part of the Cumberland Road which lay in Allegany County. A commission had reported that the turnpike in that county was not as substantially constructed as was required by the law, that the said road was in need of repairs which the National Government did not take care of at that time. The House of Delegates then passed the following resolutions: "Resolved, By the General Assembly of Maryland, That the Senators and Representatives of this state in Congress be instructed to use their best exertions to procure the passage of a law appropriating a sum sufficient in amount to place the said road in proper repair." If Congress refused to make the appropriation the President of the United States "is hereby authorized to cause a gate or gates to be erected on the said road for the collection of tolls, Provided that toll to be collected would not exceed in amount a sum sufficient to keep the road in proper repair."<sup>13</sup>

Early in 1823 the General Assembly passed another Internal Improvement Bill. This Bill indicated that Maryland in her great

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<sup>11</sup>Ibid.

<sup>12</sup>Senate Journal, Dec. sess., 1818, p. 16.

<sup>13</sup>J. Green, Laws of Maryland, Dec. sess., 1821, p. 155.

desire for western trade was satisfied to have the National Government take over her waterways for public improvements, toward that end. The Bill stated that Maryland was willing to "surrender to Congress the right of using the waters of the Susquehanna and Potomac rivers and tributary streams thereof for the purpose of making a canal designed to connect the said waters with the Ohio." The Bill further stated that Maryland was ready to give Congress any needed soil for these public works and also was willing to surrender to Congress the right of exacting tolls from the canals or roads thus made within the territory of the state.<sup>14</sup> The toll must be requisite to maintain the road or canal in proper repair. A provision at the end of this bill is illuminating; "and provided that the surrender to be made shall not be construed to give the Congress of the United States any other control over the said waters or territory than shall be necessary for the accomplishment of the objects herein set forth."<sup>15</sup> Maryland was willing to yield rights to the Federal Government for economic purposes only. The Erie canal had been completed in 1817. From that time on, Maryland evidenced great interests in internal improvements in order to compete with New York for the western trade. Maryland was so eager to secure this trade that she did not question the power of the General Government to provide the physical means by which this commerce could be diverted to her. In fact, the

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<sup>14</sup>Ibid., Dec. sess., 1822, p. 52.

<sup>15</sup>Ibid.

General Assembly of Maryland on January 16, 1823, went so far as to legislate that if the National Government did not possess this power it should be given it by an amendment to the Constitution. The Assembly resolved: "Whereas, a system of internal improvements confined to great national purposes, with proper limitations, would be productive of eminent advantage to the people of the United States, would promote the general welfare and tend to secure a more perfect Union; and whereas, doubts may and do exist whether the Congress of the United States have power to adopt a system: Therefore Resolved, ... that the Senators and Representatives of this state in Congress of the United States be requested to use their best exertions to procure such an amendment to the Constitution of the United States as will give Congress power to adopt and execute a system of internal improvements to be confined to great national purposes with proper limitations."<sup>16</sup> Thus for economic reasons Maryland was willing to augment the power of the Federal Government by giving Congress power to appropriate money for internal improvements. Jefferson, Madison, and Monroe had been of the opinion that Congress did not possess this authority. Maryland when hard pressed economically advocated giving Congress this power so as to make sure that even by a strict interpretation of the Constitution the oppositions to such improvements would be nullified.

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<sup>16</sup>Ibid., p. 140.

Attention by the citizens of Maryland, Virginia, and the District of Columbia was now centered on the possibilities of the Potomac river as a means of communication with the West. A canal to be called The Chesapeake and Ohio Canal was proposed which would unite the navigable waters of the Potomac with the Ohio. The estimated cost of the work, \$1,500,000, was to be borne equally by Maryland, Virginia, and the District of Columbia. It was thought that the proposed canal would make Cumberland the "entrepot" of western trade. Baltimore city, at first objected to the construction of the canal, being apprehensive that Georgetown, the proposed eastern terminal, would secure most of the trade. Owing to this opposition, the Assembly of Maryland refused to sanction the project until it was agreed to connect the City of Baltimore with the Chesapeake and Ohio Canal.<sup>17</sup>

By 1834 the Canal Company was in need of additional money to complete the work. The citizens of Western Maryland convened at Cumberland February 1, 1834, for the purpose of devising "immediate and effective measures for the early completion of the Chesapeake and Ohio Canal." This body passed resolutions which cited that the completion of the Pennsylvania canal from Philadelphia to Pittsburg, made it necessary for Maryland to have a similar communication with the West if her metropolis was

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<sup>17</sup>J. T. Scharf, History of Maryland, III, 156-157.



to retain her share of the trade and commerce of the Mississippi valley; that a sum less than three million dollars would finish the canal and enable Baltimore to successfully compete for this trade; without this improvement, Baltimore and the State of Maryland would be reduced to "perpetual inferiority". To this end the meeting memorialized Congress, the States of Maryland, Virginia, and Pennsylvania and Baltimore City for financial aid to finish the Canal.<sup>18</sup>

In January, 1835, the Governor of Maryland in his message to the Assembly called attention to the pecuniary difficulties of the Canal Company and asserted that "the hope has long been cherished that the powerful arm and the abundant resources of the Federal Government would be extended to the enterprise; than which there is certainly none more national in its character or more interesting to the District over which Congress exercised exclusive jurisdiction."<sup>19</sup> Congress appropriated no more money for the enterprise. Early in 1835, the General Assembly of Maryland granted \$2,000,000 in aid of the Canal, but this fund was insufficient to complete the undertaking as far as Cumberland. Money was appropriated from time to time by the Maryland Legislature, but the work lagged on and in March 28, 1838 the General Assembly passed the following resolution: "Resolved,

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<sup>18</sup>House Journal, Dec. sess., 1833, p. 226.

<sup>19</sup>Senate Journal, Dec. sess., 1834, p. 14.

"That our Senators and Representatives in Congress, be requested to procure from the Government of the United States further aid toward the construction and completion of the Chesapeake and Ohio Canal, or a transfer to the State of Maryland the interest held by the United States in the stock of the Chesapeake and Ohio Canal."<sup>20</sup>

Thus the state over a long period of years exerted pressure on the Government for financial aid for projects which would aid her economic prosperity.

Internal improvements received the unanimous approval of the press in both Baltimore City and the counties. The Baltimore American urged Maryland not to be slow in cutting roads and canals; that all parties and all professions must see the necessity of forwarding the general prosperity of this section of the Union; that all sections of the state would benefit from the improvements and therefore all should support it. This paper urged national aid and was also in favor of a toll which the Senate of Maryland passed, but the House refused, "because it was Federalist", and the toll was favored by the Republicans.<sup>21</sup> Baltimore opposed the Chesapeake and Ohio Canal until it was decided to extend the canal to the city. The National Intelligencer criticized Baltimore for her lack of interest in the state at large. This paper commented, "the completion of the undertaking will probably double the value of nearly all the property in the State of Maryland and particularly all the property in Baltimore;

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<sup>20</sup>W. Thompson, Laws of Maryland, Dec. sess., 1837, p. 73.

<sup>21</sup>American, Jan. 16, 1816; Feb. 17, 1816.

and yet to our extreme astonishment, we perceive that there is an opposition from Baltimore to the great work." The Patriot answered the Intelligencer by saying that the canal was to commence at Cumberland, the eastern extremity of the National Road; Cumberland would receive all the produce arriving at that point from the West, and to convey "not to any port of the State of Maryland, but to the District of Columbia, the very products which now reach Baltimore by the turnpikes; which have already been a subject of complaint expressed in memorials to the Pennsylvania by the merchants of Philadelphia." The Patriot would approve the canal provided it was constructed from Cumberland to Baltimore; it should be so extended before the state contributed money toward it.<sup>22</sup>

The county papers favored ~~all~~ internal improvements at state and national expense and were not especially concerned with the terminus of the Chesapeake and Ohio Canal. The Maryland Republican printed letters, editorials and articles from other papers which favored transportation facilities to the West.<sup>23</sup> The Banner from Western Maryland printed several editorials which set forth eagerness of the people of that section for internal improvements and for National aid for their construction.<sup>24</sup> The Eastern Shore favored internal improvements but were especially interested in the Chesapeake and Delaware Canal, which would be located in that section and which would give them a shorter route to the

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<sup>22</sup>Patriot, Feb. 10, 1823.

<sup>23</sup>Maryland Republican, Feb. 23, 1833.

<sup>24</sup>Republican Banner (Williamsport), Feb. 1, 1833.

Atlantic Coast.

The Maryland press conceded the constitutional right of Congress to appropriate money for state improvements; they not only conceded this power, but urged it for economic reasons.

CHAPTER VII  
MISSOURI COMPROMISE

In December, 1818, Missouri petitioned Congress to be allowed to form a state government. An enabling bill was introduced into Congress on February 13, 1819. In the course of the consideration of this bill, Mr. Tallmadge of New York, moved an amendment to limit the existence of slavery in the state, by declaring all free who should be born in the territory after its admission into the Union and it also provided for the gradual emancipation of those held in bondage.<sup>1</sup> This amended bill passed the House February 17, 1819; the vote was not recorded in the Annals of Congress.<sup>2</sup> The senate struck out this amendment. Robert Goldsborough, senator from the Eastern Shore where slaves were numerous, voted to strike out the restriction on slavery in the new state. Alexander Contee Hanson did not vote.<sup>3</sup> The House insisted in retaining the Tallmadge amendment; six of Maryland's representatives voted for this adherence; Culbreth, Reed, and Steward did not vote.<sup>4</sup> The deadlock between the two Houses precluded any compromise on the subject so the bill was lost. During the interval before the meeting of the 16th. Congress, the debate in regard to the slave issue raged all over the country. When the Constitution was adopted the population of

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<sup>1</sup>Annals of Congress, 15th. Cong., 2nd. sess., p. 1166.

<sup>2</sup>Ibid., p. 1216.

<sup>3</sup>Ibid., p. 273.

<sup>4</sup>Ibid., p. 1437.

the states north of the Mason-Dixon line was about the same as the southern states. The northern population grew more rapidly and as only three-fifths of the slaves were counted for apportioning representation in the House of Representatives, that body was soon in the hands of the free states. The admission of Alabama in 1819 evenly divided the Senate, eleven free and eleven slave states, of which Maryland was one. The admission of Missouri would disturb this balance so the South sought to protect its voice in the Senate as well as its rights in regard to slavery. The North did not want the vast Louisiana purchase open to slavery, for the making of new slave states would give the South control of the Senate. Southerners considered it their right to carry their property (slaves) with them when they sought homes in new lands and they, too, wished to preserve the power of their section in the Senate.

Legislatures petitioned or memorialized Congress for or against the slavery restriction in Missouri. On December 20, 1819, a resolution was introduced in Maryland's House of Delegates, which urged that the state's Senators and Representatives in Congress use their best efforts to secure for new states seeking admission into the Union, all rights and privileges accorded to the earlier admitted states.<sup>5</sup> On the second reading the resolution was made more specific by adding that the states should be admitted "without requiring, as a condition of their admission, the inhibition of involuntary servitude or any other condition limiting the sovereign powers in

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<sup>5</sup>House Journal, Dec. sess., 1819, p. 26.

a greater degree than the sovereign powers of the original states forming the Union, are limited and restrained by the Constitution of the United States."<sup>6</sup> Mr. Jenifer proposed another addition to this resolution: "that the restriction was an expression of the opinion of the Legislature of Maryland and did not recognize or determine the right of the Legislature to instruct the representatives in Congress."<sup>7</sup> This resolution with the additional proposals was passed by a vote of 60 to 9,<sup>8</sup> and sent to the Senate.

In the Senate on the motion of Robert Goodloe Harper, the resolution was amended by making it apply specifically to Missouri and to the restriction of slavery.<sup>9</sup> In an able speech, Mr. Harper contended that the resolution was too broad; that it related to all new states that might be admitted; and that the words "any other conditions" was too broad; the Legislature should deal only with the immediate issue. He recognized that Congress had power to impose conditions for statehood, but felt that in this case it would be inexpedient. He doubted the constitutionality and the expediency of the Legislature advising Congress, but it was in accordance with custom. He then discussed the doctrine that restriction of slavery in Missouri would be a restriction of sovereignty; he cited cases where minor restrictions had been imposed on other states seeking

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<sup>6</sup>Ibid., p. 45.

<sup>7</sup>Ibid., pp. 45-46.

<sup>8</sup>Ibid., p. 46.

<sup>9</sup>Senate Journal, Dec. sess., 1819, p. 21.

admission; he recalled that the Treaty of 1803 provided that territories were to be admitted as states "according to the terms of the Federal Constitution" so the question was a constitutional one. General Harper considered the restriction on slavery in Missouri unnecessary as Missouri soil was not suitable to the cultivation of large farms and that Missouri could not continue as a slave state; there was no need for the North to fear a Southern dominated Senate because it was a question of geography and in only a few years the North must exceed the South in the number of states. He furthermore thought the restriction was unwise; the slave states would become alarmed at the action of Congress in freeing the slaves in Missouri; Congress by its silence had sanctioned the growth of slavery in the territory and was now morally bound not to destroy it.<sup>10</sup> Therefore he offered his restrictive amendment which was adopted.<sup>11</sup>

Senator Carmichael besought the Senate to refuse assent to the resolution because the Legislature did not have the right to pledge the opinion of the people of the state.<sup>12</sup> The resolution, with the restrictive amendment was then passed by a vote of 9 to 5<sup>13</sup> and returned to the House of Delegates, where it was passed as amended.<sup>14</sup>

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<sup>10</sup>Federal Gazette, Feb. 7, 8, 9, 10, 1820.

<sup>11</sup>Senate Journal, Dec. sess., 1819, p. 31.

<sup>12</sup>Ibid.

<sup>13</sup>Ibid.

<sup>14</sup>House Journal, Dec. sess., 1819, p. 67.



Thus we see that the Maryland Legislature was divided on the Missouri question. The House was more nearly unanimous than the Senate. Harper's speech favored both sides. His chief argument against restriction was one of expediency and not of constitutionality. So while the Legislature urged on Congress the unrestricted admission of Missouri, it did not do so unanimously. In fact, there was considerable objection and the right of Congress to impose conditions upon the admission of a state was admitted by many of the lawmakers and the States-Rights doctrine played a very unimportant part in the discussion.

When Congress met in December, 1819, Maine applied for admission into the Union. In the Senate, Missouri's petition for statehood was referred to the judiciary committee, of which William Pinkney of Maryland was a member.<sup>15</sup>

In the House a bill was introduced for the admission of Maine as a state; this bill authorized Missouri to form a state constitution without any restriction or mention of slavery.<sup>16</sup> When the bill came up, Roberts of Pennsylvania moved to separate the two parts. Lloyd of Maryland objected to this motion; he held the two parts to be related, as in his opinion Congress had the power to admit but not to impose conditions, so both cases rested on the same principle.<sup>17</sup> Another amendment was offered prohibiting the further

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<sup>15</sup>Annals of Congress, 16th. Cong., 1st. sess., p. 42.

<sup>16</sup>Ibid., p. 57.

<sup>17</sup>Ibid., p. 93.

introduction of slavery into Missouri.<sup>18</sup> Mr. Pinkney of Maryland took the floor and ably attacked the proposed restriction. He regretted that when Missouri had applied for admission, she had been repelled with harshness and forbidden to come in at all, unless with the "iron collar of servitude around her neck". He declared the Union to be a confederation of states, equal in sovereignty, possessing all powers which the Constitution does not forbid or authorize Congress to forbid; he declared it to be an equal Union between parties equally sovereign. The object of the Union was common protection for the exercise of the already existing sovereignty; the parties gave up a portion of their sovereignty to insure the remainder, which is to be defended by the Union. A new state should come in on the same footing as the original states since the new state accedes for the same purpose - the protection of its unsundered sovereignty. If a state comes in "shorn of its beams, crippled and disparaged" it will come into a Union which has shrunk and shriveled from its true dimensions. If Missouri is restricted, it will come into the Union bound by a degrading contract, which will diminish its sovereignty; it will be stripped of rights which the original parties to the Union did not consent to abandon. If Massachusetts came into the Union with a right to hold slaves, so should Missouri come in else she would come in under a different compact and be under the Union in a different character, having part of her sovereignty shorn away.

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<sup>18</sup>Ibid.

He refuted the argument that if Congress had the right to refuse admission to a new state it might also prescribe the terms.

Mr. Pinkney declared that according to the Constitution, no conditions could be prescribed which would make the state less sovereign or make the compact of Union between it and the original states essentially different from the compact among the original states. The Constitution takes the states as it finds them, free and sovereign and alike by nature and what it gives to one, it must give to all.<sup>19</sup>

Later on Mr. Pinkney again took the floor. He again denied the power of Congress to place any restriction as a condition for the admission of a state for, he said, "no man can contradict me when I say that if you have this power you may squeeze down a new-born sovereign state to the size of a pigmy, and then taking it between finger and thumb, stick it into some nitch of the Union, and still continue, by way of mockery, to call it a state in the sense of the Constitution." This restrictive amendment was negatived by a vote of 27-16, both Marylanders voting against it.<sup>20</sup>

Senator Thomas of Illinois offered an amendment to the Missouri Bill, which provided that in the territory acquired from France west of the Mississippi river and north of latitude 36° 30', there should be no slavery or involuntary servitude except within the boundaries of the proposed state of Missouri.<sup>21</sup> Lloyd of Maryland spoke against

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<sup>19</sup>Ibid., pp. 390-418.

<sup>20</sup>Ibid., p. 359.

<sup>21</sup>Ibid., p. 260.

this amendment and refuted the ardent anti-slavery advocate, Rufus King of New York, who spoke in its favor. Pinkney also spoke against the Thomas amendment, defending in an all-day speech the position of the South in its constitutional arguments against restriction of slavery. Pinkney concluded this speech by urging compromise which would prohibit slavery in the territory to the north and west of Missouri.<sup>22</sup>

The Senate Judiciary Committee reported an amendment to unite the Maine and Missouri bills in one measure. This amendment was concurred with by the Senate.<sup>23</sup> The Thomas amendment was the amendment added to the Missouri part of the bill and was adopted by a vote of 34 to 10, both Maryland Senators in the affirmative.<sup>24</sup> The Maine and Missouri Bill was then passed as a whole and sent to the House of Representatives for concurrence.<sup>25</sup>

The House had been considering a bill of its own, which authorized the people of the territory of Missouri to form a Constitution and state government and to be admitted on equal footing with the other states. Prolonged discussion followed. Samuel Smith of Maryland said that the proposed restriction was not objectionable in itself but that it did not belong in the bill; Congress had power over the territories and might impose what conditions it thought

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<sup>22</sup>Ibid., p. 417.

<sup>23</sup>Ibid., p. 424.

<sup>24</sup>Ibid., p. 428.

<sup>25</sup>Ibid.

proper. When taken into statehood, however, Congress can lay no other restriction than those imposed by the Constitution upon all other states of the Union. The migration of slaves could not be prohibited unless Congress had power to prohibit the transportation of all other property.

The Senate bill now came up for consideration in the House, which after a lengthy discussion, disagreed with the Compromise amendment (restriction of slavery in the territories) by a vote of 159 to 18. Five of Maryland's representatives voted to disagree with the Compromise, but four did not vote.<sup>26</sup> A deadlock was reached between the two bodies. A conference was finally arranged which brought in a report which was referred to both bodies. The report was adopted in the House in two sections. The first section proposed that the House drop the slavery restriction from this Missouri Bill. This was passed by a vote of 90 to 87, the Maryland delegation voting aye.<sup>27</sup> The second part which inserted the Thomas amendment was passed by a vote of 134-42, with all the Marylanders, excepting Neale, voting for this amendment.<sup>28</sup> The Senate passed the Maine Bill as agreed to by the House, so the bill became a law.

Maryland did not take as strong a stand on slavery restriction in a new state as would have been expected from a slave state. On many of the amendments restricting slavery many of the Marylanders failed to vote. It has been claimed "in six votes by which the

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<sup>26</sup>Ibid., p. 1455-1457.

<sup>27</sup>Ibid., II, p. 1588.

<sup>28</sup>Ibid.

position of slavery was seriously affected, ten Marylanders did not allow their votes to be recorded ... if Marylanders were united on the subject, why should four of the state's members have absented themselves or refused to vote on one or more of six different decisions, on three of which their votes might have changed the result ... All told on the twenty-six questions in the House of Representatives there were twenty-six failures to cast a vote. Smith voted twice for the restrictive admission of Missouri; both Senators supported the Thomas amendment prohibiting slavery in the territories in question."<sup>29</sup>

Maryland did not evidence as much antagonism to the Missouri Compromise as did the other states south of the Mason-Dixon Line. That the Congressmen were not united on the subject was evidenced by the Samuel Smith of Baltimore who voted once to free the slaves born in Missouri, after she became a state upon their reaching the age of twenty five; he voted to advance the bill with both restrictions; in both cases where the question came up of agreeing with the Senate changes he favored accepting the Thomas amendment even without the compromise.<sup>30</sup> The consistent failure to vote and at times the division of vote indicated that Maryland was not as actively concerned about States-Rights as she has been purported to be.

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<sup>29</sup>G. E. Fosbroke, "An Investigation of the Attitude of Maryland toward the Missouri Compromise," 1938, pp. 22-27. Unpublished Masters Thesis, University of Maryland.

<sup>30</sup>Ibid., p. 30.

During the debates on the Missouri Bill, Maryland newspapers gave full reports of the proceedings in Congress, copied from the National Intelligencer. The Bartgis's Federal Gazette printed resolutions of St. Louis citizens which denounced in strong terms the action of Congress in attempting to impose restriction.<sup>31</sup> On another occasion this paper published the toasts drunk at a Fourth of July celebration dinner in Marthersville, Montgomery County, Missouri. These toasts severely condemned Tallmadge and all who were against the state on the slavery question; the editor commented on the sentiment and expressed these toasts that he greatly regretted that Missouri had so early evinced "an avaricious determination in demanding the aid of slave labor to till its fields."<sup>32</sup> The third mention of the Missouri question in this paper was the report of the beating of an antislavery man by a mob, in Missouri.<sup>33</sup> Western Maryland was not a slavery section which probably accounts for the lack of interest displayed by the Frederick paper.

The Easton newspapers printed the debates in Congress on the Bill, but made few comments and took no stand either one way or the other. The Easton Gazette, Federalist in policy, made the only comment, "there is yet hope of its [Missouri Bill] being ultimately adjusted in such a manner that each party will obtain part of its object and it is hoped will serve to tranquilize the present ferment

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<sup>31</sup>Bartgis' Republican Gazette, June 26, 1819.

<sup>32</sup>Ibid., August 21, 1819.

<sup>33</sup>Ibid., Oct. 2, 1819.

of the public mind."<sup>34</sup> The Annapolis paper offered no comments on this controversial national issue. The paper printed reports of the proceedings of the Legislature on the Missouri question but offered no comments on Maryland's attitude on the measure. As a whole, the county papers were silent on the Missouri Bill. Few letters on the subject were published, which indicated a general lack of interest in the rural areas of the state.

The Baltimore City papers contained comments, editorials, and letters but most of these were mild in tone and some of them even neutral in expression. The Morning Chronicle, edited by Paul Allen who had formerly edited Alexander Contee Hanson's Federal Republican was very outspoken in its views. In May, 1819, Mr. Allen in a series of editorials, strongly supported the powers of the central government. He deplored the fact that the State Legislatures fought the Government in national crises, that in none of these crises had the state sovereignties been in danger nor was it the desire of Congress to endanger them; the real danger was to the General Government from the attacks of the states; Mr. Allen declared the Supreme Court to be the sole judge of the constitutionality of Congressional acts; that in distress and danger it was necessary for the states to cling to the Federal Government instead of threatening armed violence. A Government that had survived foreign wars would collapse of itself from the opposition of state sovereignties.<sup>35</sup>

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<sup>34</sup>Easton Gazette, Mar. 6, 1820.

<sup>35</sup>Morning Chronicle, May 18, 19, 21, 1819.



In another issue the Chronicle published the protest of the Missouri Grand Jury against the unconstitutional and unwarrentable attempt of Congress to restrict their sovereignty and then made the following comment: "we publish this curious document from a Missouri paper, in corroboration of our opinions ... that the national sovereignty is more in jeopardy than that of the individual states."<sup>36</sup> Later on this paper carried two editorials which protested the union of the Maine and Missouri Bills in one measure; the first editorial was to the effect that the issue was not slavery or freedom in Missouri, but the slavery or freedom of the United States Senate.<sup>37</sup> The second editorial censured the delay of Congress in passing the restriction and critized the Virginia Legislature for memorializing the central government.<sup>38</sup> Before the arrival of the news of the passing of the Compromise Bill, the Chronicle declared: "we sincerely hope that the House of Representatives will not yield a single inch of ground, with dastardly timidity fly the performance of a sacred duty. They cannot retreat from the elevated state they occupy without incurring deep and abiding disgrace ... if Virginia is yielded to a dissolution of the Union may not be the immediate consequence although it will be the infallible consequence. P. S. The above remarks were made before the arrival of the Southern mail, by which

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<sup>36</sup>Ibid., May 24, 1819.

<sup>37</sup>Ibid., Jan. 26, 1820.

<sup>38</sup>Ibid., Feb. 18, 1820.

we are informed, as is apparent in our columns of today, that the House of Representatives do not possess virtue, honor, integrity, or patriotism enough to adhere to the dictates of their own conscience."<sup>39</sup> This paper printed only two letters pertaining to the subject. Neither one was forceful or even partizan.

The Federal Gazette printed from other papers adverse criticisms of the Missouri Compromise. It published in substance the two Senate speeches of Rufus King in which he advocated the exclusion of slavery from Missouri.<sup>40</sup> When the Compromise was passed by Congress, the Gazette commented: "as the question is now settled, that Missouri shall be admitted into the Union on the same terms and with the same rights as the other states, we sincerely wish that one of the first acts of the government of the new state will be to prevent the increase of the evils which must inevitably be consequent on the increase of slavery. To attempt such an interference with the strictly local concerns of the state, was wrong in Congress."<sup>41</sup> This Federalist paper, strange to say, here advocated a distinctly States-Rights doctrine. The paper was against slavery, but denied to Congress the constitutional power to restrict states. This paper carried only a few letters and most of these were against restrictions.

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<sup>39</sup> Ibid., Mar. 4, 1820.

<sup>40</sup> Federal Gazette, Dec. 4, 6, 7, 1819.

<sup>41</sup> Ibid., Mar. 4, 1820.

The Patriot, declared in an editorial that there should be a full discussion of the Missouri question and then a final settlement "in that body which alone is constitutionally competent to settle it forever - The Legislature of the Union."<sup>42</sup> This editorial also referred to "that high constitutional tribunal, the Senate of the Union." The editor thought that too much talk had been wasted on Missouri and he apprehended no danger to the Union.<sup>43</sup> When the Compromise passed, the Patriot thought that it was a fortunate settlement and stated that Congress had no right to restrict.<sup>44</sup> This paper printed several letters praising Pinkney's eloquence,<sup>45</sup> but only printed two that actually dealt with the Missouri question and the writers of these two letters defended the right of restriction.<sup>46</sup>

The American, another Republican paper, published two letters of H. M. Brackenridge. One to the editor favored the prohibition of slavery into new territories; however, the writer denied that Congress had power to regulate the concerns of the states.<sup>47</sup> The second was a reprint from the Franklin Gazette of Missouri. The writer was adverse to slavery, but was of the opinion "that it was right to leave to each state the right to legislate on this important subject of internal policy."<sup>48</sup>

<sup>42</sup>Patriot, Jan. 13, 1820.

<sup>43</sup>Ibid., Feb. 15-17, 1820.

<sup>44</sup>Ibid., Mar. 4, 1820.

<sup>45</sup>Ibid., Jan. 24, 27, 1820.

<sup>46</sup>Ibid., Feb. 22, 25, 1820.

<sup>47</sup>American, Jan. 3, 1820.

<sup>48</sup>Ibid.

As a whole the press of Maryland was not alarmed over the issue. The Morning Chronicle was forceful in its expression favorable to restricting slavery and upholding the power of Congress to impose conditions on statehood. The Federal Gazette, of the same party, was against slavery but denied the power of Congress to impose restrictions. The Patriot took the stand that Congress did not possess the right to interfere with the internal affairs of the state. The American made no comment at all. The County newspapers were not interested to the extent of making comments and they published few letters on the subject. So in the midst of this national dissension the press of Maryland was calm and in a political and social sense not unduly partisan. In fact, it appeared to be lukewarm.

Public opinion, therefore, as reflected by Congress, Legislature, and the press, was a divided but not a decided one. Perhaps a majority of this opinion was opposed to restriction on constitutional grounds. This opposition resulted either from a concern for the rights of the state or from the pro-slavery feeling which existed in certain sections of the state.

Public opinion was also reflected by memorials. In 1819 the citizens of Washington County presented a petition to the Legislature of Maryland. This petition expressed disapprobation of slavery and especially of the slave trade which had become quite a business in the state.<sup>49</sup> This petition expressed the sentiments of the Western

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<sup>49</sup>Federal Gazette, Feb. 23, 1819.

part of the state towards slavery, for in that section there were few slaves, white labor being used almost exclusively.

A meeting was held in Baltimore City Courthouse in December, 1819, "to consider the propriety of addressing a memorial to Congress on the subject of restricting the further admission of slavery into the territory west of the Mississippi." The mayor of the city presided at this meeting. Resolutions were adopted which stated that the further admission of slaves into states formed west of the Mississippi should be prohibited by Congress.<sup>50</sup> A committee was appointed to "prepare a memorial expressive of this sentiment," secure the signatures of citizens of Baltimore and forward it to Congress.<sup>51</sup> This memorial stated that Maryland was a slave-holding state but that the citizens of Baltimore believe that Congress should not adopt a measure which would magnify or perpetuate the evils of slavery, therefore, it petitioned Congress "not to allow the introduction of new slaves into any state west of the Mississippi that might be admitted into the Union."<sup>52</sup> A number of business and public places throughout the city displayed this memorial for a period of a week.<sup>53</sup>

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<sup>50</sup>American, Dec. 28, 1819.

<sup>51</sup>Morning Chronicle, Dec. 30, 1819.

<sup>52</sup>Federal Gazette, Dec. 30, 1819.

<sup>53</sup>Morning Chronicle, Jan. 1, 1820.

CHAPTER VIII  
BROWN VS. MARYLAND

In the December session of 1821 the Maryland Legislature passed a law requiring all importers of foreign goods by the bale or bale etc., to take out a license for which they should pay fifty dollars and in case of neglect or refusal to take out a license they should be subject to certain forfeitures and penalties.<sup>1</sup> This law met with strong opposition from the commercial interests of Baltimore City. These interests expressed doubt of the constitutionality of the bill and it was finally determined to have the question settled in the Courts. The Brown firm, importers of rum from the Barbadoes, refused to obtain a license and the case went to the City Court of Baltimore, where the firm sustained an adverse decision. The case then went to the Court of Appeals where the decision of the lower court was sustained. The Brown firm appealed to the United States Supreme Court. The State of Maryland prepared to defend herself in the trial, and on February 25, 1825, the Legislature empowered the Governor and Council to employ counsel, including Roger B. Taney, if his services could be secured, and as many as might be expedient to assist the attorney of the state to argue in the Supreme Court of the United States, "on the part of this state, the case of Alexander Brown, John H. Brown,

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<sup>1</sup>J. Green, Laws of Maryland, Dec. sess., 1821, p. 168.

George Brown, and James Brown versus the State of Maryland."<sup>2</sup>

The Attorney General Reverdy Johnson and Roger Brooke Taney defended the state. William Wirt, the Attorney General of the United States, and Mr. Meredith acted as counsel for the Brown Company.

Taney and Johnson insisted that the law of Maryland did not lay a duty on imports, and was not repugnant to the Constitution of the United States; neither did the law lay a tax on the importer of foreign goods, nor upon the trade or occupation of an importer. But the tax was imposed upon the trade and occupation of selling foreign goods by wholesale after they had been imported. It was a tax on the profession or trade of the party, when that trade is carried on within the state. It was laid on the principle as the usual taxes on retailers, or innkeepers, or hawkers, or peddlers, or upon any other trade within the state. This tax was on the wholesalers. A duty on imports is a tribute paid to the sovereignty of a country for permission to bring in foreign goods. After the goods have been brought in, the importer becomes the owner. After the property has passed through the custom house, it is no longer under the exclusive protection of the United States, it is guarded by State laws and must be dealt with according to the laws of the state. After the importation is completed, the law is not directly or indirectly a law

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<sup>2</sup>House Journal, Dec. sess., 1824, p. 58.

on imports. In conclusion they said: "the Union cannot be preserved by the mere strength of power of the Federal Government. It is dissolved as soon as it shall forfeit the affections and confidence of the states."<sup>3</sup>

Mr. Meredith, for the plaintiff, discussed the concurrent taxing powers of the states and the Federal Government. He contended that the tenth section of the first article of the Constitution prohibited the states from laying any imposts or duties on exports or imports, without the consent of Congress. So the National Government has exclusive right to the commercial imposts of the country. The Maryland Legislature had no right to pass the law in question. He contended that under the cover of the license law, this statute was an invasion of the restriction placed upon the states in regard to laying duties on imports, and indirect attempt to do what the Constitution had explicitly prohibited. Mr. Meredith then explained the difference between the Federal and state tax; the Federal tax was for the privilege of bringing the foreign article into this country, and the state tax was for the privilege of selling it after it had been admitted, but he argued these privileges were indissolubly connected; the right to sell is a necessary incident to the right of importing. The grant of the privilege to import would be of no value

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<sup>3</sup>United States Reports, 12 Wheaton, . 425.



unless it implied the right to sell. Prohibit sale and importation ceases. He further stated that to give Maryland this taxing power would be to place this branch of the public revenue in her hands as it would enable her, by means of license laws, to annihilate, as regards her own territory, the commercial revenues of the country. She could increase the license fee until the commodity could not bear the burden and importation would cease and with it the revenue. He quoted Pinkney's words in the McCulloch case, "the power to tax is the power to destroy." He further contended that if Maryland possessed the right to pass general license laws, she might pass partial ones; she might select particular commodities and burden their sale with a license duty; she might establish a tariff of discriminating duties for herself which would affect, if not defeat, the commercial policy of the country.<sup>4</sup>

Attorney General Wirt argued that if Maryland had the power to lay such a tax, every other state would have the same power and this condition would interfere with the taxing power of Congress; the principle source from which the revenue of the country was derived, would be dried up or diverted to local purposes.<sup>5</sup>

The Court rendered its decision eleven days after the arguments were concluded. Chief Justice Marshall held that the

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<sup>4</sup>Ibid., pp. 419-424.

<sup>5</sup>Ibid., pp. 431-435.

Maryland law, requiring importers of foreign goods to pay a license fee, was invalid because it was an interference with Federal right to regulate commerce and that it violated the prohibition of laying import duties by a state. "It has been observed," said Marshall, "that the powers remaining with the states may be so exercised as to come in conflict with those vested in Congress. When this happens, that which is not supreme must yield to that which is supreme ... the taxing power of the states must have some limits. It cannot reach and restrain the actions of the National Government within its proper sphere. It cannot reach the administration of justice in the Courts of the Union or the collection of taxes by the United States, or restrain the operation of any law which Congress may constitutionally pass. It cannot interfere with any regulation of commerce. If the states may tax all persons and property found on their territory, what is to prevent them from taxing goods in their transit through the state from one port to another for the purpose of re-exportation?"<sup>6</sup>

The press of Baltimore City, where the state law had been very unpopular, commented favorably on the Federal decision. The Federal Gazette stated, "the impolicy of such a law in its effect upon the commercial interests of Baltimore was obvious, as to induce the strenuous opposition passage, on the part of the merchants of the city. That opposition, however, was fruitless.

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<sup>6</sup>J. Cotton, The Constitutional Decisions of John Marshall, II, pp. 153-176.

Doubt was also contained of its constitutionality, and it was at length determined to have that question finally settled. The result was that the law has been solemnly pronounced by the highest tribunal of our country unconstitutional and void.<sup>7</sup> The American did not mention the case. Several of the county papers quoted the Federal Gazette's opinion without adding further comment. The Maryland Republican of Annapolis reprinted the following comment from the Niles Register: "The law alluded to is one of that class which is perpetually planning to tax Baltimore City, for the benefit of the State of Maryland, and nearly the whole imposition would have been levied upon it. It is well-known that we are not exceedingly anxious for the introduction and sale of foreign merchandise - but to have admitted the constitutionality of the law would have been to commit the regulation of commerce to the individual states, though expressly given up to the United States."

The Legislature did not protest the decision of the Supreme Court. Thus we see that Maryland did not support the States-Right theory in the Brown case, whereby her state authority was restricted. The section especially interested was Baltimore. Baltimore City wholeheartedly supported the Court's decision because its economic interest would be benefited.

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<sup>7</sup>Federal Gazette, Mar. 14, 1827.

<sup>8</sup>Maryland Republican, Mar. 24, 1827.

<sup>9</sup>Niles Register, Mar. 23, 1827.

## CHAPTER IX

## TARIFF AND NULLIFICATION

In 1824 Congress laid the first protective tariff. Up to this time tariffs had been for revenue only. The tariff of 1824 was laid especially to protect manufactured goods and such materials as iron, lead, wool, and hemp. This tariff benefited certain sections of the country. The middle states and the West were in favor of such a tariff. New England at this time, with her large shipping interests, opposed it as did the agricultural South, whose crops were sold in foreign lands.

On the question of the tariff, Maryland was divided. The landholders of the Eastern Shore and of Southern Maryland were in favor of a tariff for revenue only or what has been called free trade. These farmers had to compete in open markets when they sold their grain, tobacco, timber, cotton, etc., and they preferred an open market when they purchased needed manufactured articles. On the other hand Baltimore City was actively engaged in manufacturing and consequently favored a tariff subsidy. The shipping interests of Baltimore, however, were against a high tariff because it tended to destroy their carrying trade. The diversified economic interests throughout the state were responsible for the division of opinion on the tariff.

In Congress Senator Smith from Baltimore City who was, himself, interested in manufacturing, spoke and worked against the proposed tariff. In a speech on the floor of the Senate he endeavored to justify the vote which he intended to give in opposition to the memorial from Baltimore City in favor of the tariff. He declared that nothing would deter him from his duty to Maryland and to the Union. He thought that the manufacturers had been sufficiently subsidized. The memorialists of Baltimore prayed for a further protection that would add a tax of at least \$5,000,000 yearly, to the nation. He could not consent to a bill that would lay on a common laborer who made \$100 per annum, a tax of eight or ten dollars a year. The Senator said that he called the tariff a tax because the new duties would be imposed on articles indispensable to the people, many of which could not be made in this country for many years and some of them could never be made. He contended that the country did not need revenue at this time; and that the tax was an unequal one in that it would be most severely felt by the South and the Southwest.<sup>1</sup> Evidently Senator Smith did not justify his vote to his constituents in Baltimore City for at the next election he was defeated for his seat in the Senate. On the final passage of the bill,

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<sup>1</sup>Annals of Congress, 18th. Cong., 1st. sess., I, 738-740.

Smith voted in the negative while Lloyd from the Eastern Shore did not vote.<sup>2</sup> In the House of Representatives, the Maryland men made no speeches on the tariff. However, when the bill came up for passage, six of them voted against it while Mitchell, McKim, and Little voted in the affirmative.<sup>3</sup> Mr. Little and Mr. McKim were from Baltimore City, and this explains their vote. The Legislature took no action on the tariff of 1824, and there was no debate in either House on the measure.

The newspaper had little to say about the tariff of 1824. The Baltimore City papers approved the passage of the bill. Mr. Niles was a strong supporter of protection and advocated a high tariff. In an editorial he said, "I have jealously supported that system [protection] in an honest belief that its establishment would benefit the whole people of the United States . . . ." <sup>4</sup> The Federal Gazette approved <sup>the</sup> tariff, but did not give much space to it.<sup>5</sup> The Patriot commended the increase of duties and printed articles favorable to it from the National Intelligencer.<sup>6</sup> The county papers had little to say on the issue beyond recording its passage.

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<sup>2</sup>Ibid., pp. 743-744.

<sup>3</sup>Ibid., pp. 2428-2429.

<sup>4</sup>Niles Register, May 1, 1824.

<sup>5</sup>Patriot, May 21, 1824.

<sup>6</sup>Federal Gazette, May 21, 1824.

In 1828 Congress passed another protective tariff, called by Samuel Smith "the bill of abominations",<sup>7</sup> and from this the tariff derived its popular name, "Tariff of Abominations".<sup>8</sup> This bill raised the duties higher than the tariff of 1824 had done. By this time New England had turned to manufacturing and that section supported this high tariff. The South alone opposed it, so the tariff question became a sectional issue.

The Legislatures of North Carolina, South Carolina, Georgia, Alabama, and Virginia, protested the tariff of 1828 and declared protection to be unconstitutional.<sup>9</sup> Opposition was most intense in South Carolina where public meetings, debates and newspaper articles kept the state in a turmoil.

The Maryland Legislature did not protest against this tariff. The Governor, in his message to the Legislature in December, 1828, devoted much space to this controversial issue. He spoke of the differences of opinion in the state on protection and that it was not fair to burden one section of the country for the benefit of another. He declared that there was no antagonism between the interests of agriculture and manufacturing; what benefited one

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<sup>7</sup>Register of Debates, 20th. Cong., 1st. sess., p. 7505.

<sup>8</sup>E. Stanwood, American Tariff Controversies in the Nineteenth Century (New York, 1903), I, . 239.

<sup>9</sup>A. McLaughlin, A Constitutional History of the United States, p. 436.

benefited the other. He was strongly in favor of protecting our labor against foreign labor. "That any doubt should ever have been entertained of the constitutional power of Congress to regulate our foreign commerce with foreign nations as to afford protection to any and every branch of national industry that may be thought proper, against the hostile legislation and regulations of foreign nations, appears to us very surprising, and especially so, after the uniform exercise of the power (and until lately unquestioned) from the meeting of the very first Congress under the Constitution, to the present moment, and the acts of prohibition and total non-intercourse frequently passed."<sup>10</sup> This was not a States-Rights message and the surprise of the Governor that some of the Southern States found protection unconstitutional reveals the Executive of the so-called free State of Maryland had not even entertained a doubt as the constitutionality of a bill that was being opposed by the Southern States as an encroachment on their sovereignty. The Legislature passed no resolutions on the tariff of 1828.<sup>11</sup>

In Congress, Samuel Smith opposed this higher tariff. Senator Smith favored an increase of duties on a few articles, one of

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<sup>10</sup>Senate Journal, Dec. sess., 1828, pp. 8-17.

<sup>11</sup>J. Green, Laws of Maryland, 1827-1828, Dec. sess., 1828. See index to laws and resolutions.



them being sheathing copper as this country could manufacture its own sheathing copper and the industry should be protected from foreign competition. He was also in favor of a higher tax on molasses (probably because he was interested in sugar refining). Daniel Webster had this to say in regard to Smith's stand on the molasses duty: "a gentleman who holds it to be wholly unconstitutional to lay any tax whatever for the purposes intended by this bill, yet he cordially voted for the tax or duty on molasses. The honorable gentleman from Maryland calls the whole bill 'a bill of abominations' yet this tax he agrees is one of its abominations; still he voted for it."<sup>12</sup> Mr. Smith, however, according to his speeches, was not opposed to the bill because he thought it unconstitutional, but because it burdened the people who could least afford it. The bill passed the Senate with Smith and his colleague, Mr. Chambers, voting against it.<sup>13</sup> Ezekial Chambers was from the Eastern Shore of Maryland, an agrarian section which usually opposed a high tariff. In the House, Mr. Barney was opposed to the increase of duties on iron, canvas, hemp, and flax because it would be prejudicial to the commercial and navigation interests of the country and injurious to an important branch of manufactures. On another occasion, Commodore Barney

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<sup>12</sup>Register of Debates, 20th. Cong., 1st. sess., p. 750.

<sup>13</sup>Ibid., p. 786.

asserted that the nation had been burdened enough and that the proposed increase would not benefit the manufacturer or the agriculturist but the iron master alone, especially the iron manufacturers of Pennsylvania, who lived on princely estates in great opulence. He claimed also that the times were unpropitious for a high tariff, that internal improvements would be hindered and consequently national prosperity. He mentioned the railroads particularly and the part they were to play in the history and commerce of the country. In Maryland the Baltimore and Ohio Railroad had just been completed to Ellicott City. The charter of this company called for the completion of this railroad to the Ohio River. Another railroad was proposed to run from Baltimore to the Susquehanna River. The Washington branch of the Baltimore and Ohio was contemplated as was one connecting the Chesapeake and Delaware Bays. The Commodore contended that at least one hundred thousand tons of iron could not be obtained in this country without delaying the completion of these improvements for many years which when obtained would raise the price of every ploughshare, axe, spade, shovel, pick, and hammer required by the planter; therefore the farmer, the mechanic, the manufacturer, and the laborer would help enlarge the already ample possessions of the iron master.<sup>14</sup> This bill passed the House by a vote of 105-94, with a majority of

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<sup>14</sup>Ibid., pp. 2246-2247.

Maryland's representatives voting against it. Baltimore City's delegates supported it.<sup>15</sup>

The Baltimore City press defended the tariff of 1828. The Niles Register in an editorial said that some of the bill's provisions would work hardship on some industries and others would be helped. He said the farmers and navigators manifested hatred of this tariff, especially the shipping interests. Flags flew at half-mast in New York on receipt of the news of the passage of the bill. Mr. Niles went on to say that navigation had been the "petted interest" in this nation, that the Government had yielded to ship owners all that they asked, and that the United States had protected them "to the uttermost parts of the ocean". The late war was purely a commercial war, but when other interests come in for a share of the national protection, many of these same people are not willing to render unto others the benefits "to be derived from a common paternal government."<sup>16</sup> Other city papers approved the tariff and all announced the passage of the bill, but gave little information and expressed no opinion.<sup>17</sup>

The tariff passed by Congress in 1832 reduced the rate in some particulars, but it was still higher than was necessary for revenue. The Legislature of South Carolina called a convention

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<sup>15</sup>Ibid., pp. 2471-2472.

<sup>16</sup>Niles Register, May 24, 1828.

<sup>17</sup>Federal Gazette, May 16, 17, 1828.; American, May 19, 1828.

which met that year and drew up an ordinance of nullification; this ordinance declared the tariff "null, void, and no law, nor binding upon this state, its officers or citizens "and forbade the collection of the tariff duties within the state after February 1, 1833. The ordinance also declared that if the Federal Government used force to execute the nullified act, South Carolina would consider herself separated from the Union. A general convention of other states was suggested. Resolutions were sent to the other states.

Maryland, as a state, had been favorable to the tariff of 1832. In Congress, Mr. Benjamin Howard made a lengthy speech in favor of the protective principle. He contended that the manufacturers and the farmers were both entitled to protection. He considered the State of Maryland as belonging to the group of middle states from the character of its industry and agriculture. Cotton was not raised in Maryland, but grain on the eastern and western sections was raised in large quantities. He was in favor of giving some necessary protection to the middle states notwithstanding the antagonistic attitude of the South on the high tariff.<sup>18</sup> The bill passed the House of Congress with eight of Maryland's representation supporting it; George Mitchell did not vote.<sup>19</sup>

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<sup>18</sup>Register of Debates, 22nd. Cong., 1st. sess., pp. 3723-3727.

<sup>19</sup>Ibid., pp. 3830-3831.

Maryland did not support South Carolina in her nullification ordinance. The Governor of Maryland, Joseph Kent, in his message to the Legislature on January 3, 1833, devoted part of this document to South Carolina's nullification program. He confidently believed that such doctrines should be rejected by the unanimous vote of the people of Maryland. He held nullification to be untenable. As for disunion, a severance of the Union would be sacrilege, "a severance of body and soul and only to be thought of by desperate men or impudent maniacs."<sup>20</sup>

The Legislature appointed a joint committee to consider South Carolina's resolutions. This committee reported on January 11, 1833, in a series of resolutions. The preamble to these resolutions stated that the power of deciding questions between the Federal Government and the states, reposed in the Federal Judiciary and that it was an act of usurpation for any state to arrogate to itself the jurisdiction in such cases. A glance at several of these resolutions reveals Maryland's attitude on nullification. 1st, "That the right to annul a law of the General Government assumed by any state is incompatible with the existence of the Union. If any state, ... should attempt to withdraw from the Union, it is the right of the other states to protect themselves from such an injury." 2nd, "That the ordinance of nullification

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<sup>20</sup>Senate Journal, Dec. sess., 1832, pp. 10-19.

of South Carolina is calculated to mislead her citizens from the true character of the Federal Government and the just allegiance which they owe to that Government." 3rd, "That the tariff laws of 1828 and 1832 are clearly within the legitimate exercise of the constitutional powers of Congress, but we acquiesce with pleasure in any modification which the wisdom of Congress may devise, for allaying the sentiment on that subject in the southern portions of our country, which shall reduce the amount of revenue to the necessary expenditures and at the same time sufficiently guard those great interests which have grown up under the system of protection." 4th, "That this state is ardently attached to the Union; that it does not desire any additional powers conferred on the General Government, but wishes every delegated power to be executed, that has a tendency to strengthen the bonds that unite us and to fortify the hope that the Union will be perpetuated." 5th, "That we deeply deplore the excitement which has prompted our sister state of South Carolina to the attitude of defiance which she now exhibits. That however extravagant her irritation may be deemed, or impatient her proceedings, we will not renounce the hope that a calmer feeling will enable her to see the dreadful consequences of repelling the laws of the Union...."<sup>21</sup>

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<sup>21</sup>House Journal, Dec. sess., 1832, pp. 70-72.

These resolutions were passed in the House on February 11, 1833, by a vote of 59-1, and the Senate, on February 26, unanimously concurred.<sup>22</sup> The one dissenting vote in the House was that of Mr. Isaac Jones of Somerset County, who offered a counter set of resolutions, in which he stated his reasons for not voting for the committee's resolution. First, he did not like the President's message and the proclamation of the President; that the acts which the President of the United States threatens to enforce are unauthorized by the Constitution of the United States. Mr. Jones considered it the duty of the General Assembly to protest against the dangerous errors of the said proclamation and message, to defend the Constitution from perverseness and infraction, and to secure "the reserved powers of the states from usurpation and threatened annihilation, and thereby preserve and perpetuate the blessings of our Union." His resolution further proposed that "the General Government did not have a shadow of right to employ the military or naval power of the Government against the sovereignty of a state ... that the General Government of these United States is preserved, not by fear of military force but by the concurring free will and choice of the people of the several states and that the contrary doctrine would convert the Government into a MILITARY DESPOTISM."<sup>23</sup> Mr. Jones' resolutions were rejected; the vote was

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<sup>22</sup>J. Green, Laws of Maryland, Dec. sess., 1832, Resolution no. 33.

<sup>23</sup>House Journal, Dec. sess., 1832, pp. 227-231.

not recorded.<sup>24</sup> However, Mr. Jones was the only States-Rights advocate in the entire Maryland Legislature. He alone denied the power of the Congress to coerce a sovereign state.

The press of the state supported the Federal Government in the issue in the controversy with South Carolina. The Niles Register said the President's message was a powerful appeal to the good sense of all parties.<sup>25</sup> In another issue, Mr. Niles in an editorial said "we have not lately said much about the protecting system or rather the natural right which belongs to every people to 'regulate trade' - and that without it, it is impossible, utterly impossible, that any people can prosper or maintain their independence." He declared that the protective system benefited all branches of industry, from the establishment and support of a navy to protect navigation down to a law made to protect "gimblets". On nullification he commented "and if there is power to nullify one part of the system in one state, there must exist the same power in each of the states to nullify any other part of the system."<sup>26</sup> Later on, Mr. Niles spoke again in favor of protection. He said "but the right to protect the industry of the people of the United States

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<sup>24</sup>Ibid.

<sup>25</sup>Niles Register, Dec. 15, 1832.

<sup>26</sup>Ibid., Dec. 22, 1832.



cannot be given up without also giving up the Constitution."<sup>27</sup>

The Federal Gazette praised the proclamation of the President and commended it to the attention and consideration of the people. It said that the proclamation placed "the treasonable doctrine of nullification" in the light<sup>in</sup> which it should be viewed by the friends of the country; every true friend of liberty will respond to the sentiments in the President's message.<sup>28</sup>

This paper was reprimanded by the Washington Telegraph for "an insidious attack on the rights of the states." To this reprimand the Gazette replied: "we have no recollection of the insidious attack alluded to. We have, with an overwhelming majority of the people, openly denounced the doctrine of nullification, and have endeavored to encourage the general government in assertion of powers which undoubtedly belong to it, and which are essential to its existence."<sup>29</sup> The Gazette printed the speech that Robert Goodloe Harper made in the State Legislature against nullification. Mr. Harper said that nullification was equivalent to secession; that a state had no right to secede as the "government was established by all for the benefit of all,

<sup>27</sup>Ibid., Jan. 4, 1833.

<sup>28</sup>Federal Gazette, Dec. 11, 1832.

<sup>29</sup>Ibid., Mar. 8, 1833.

it can, therefore, be rightfully dissolved only by the consent of all." As to the Union, Mr. Harper said "the Union cannot be dissolved but by the 'most foul and most unnatural' violence. It is essential to our peace, prosperity and power. Without it we are nothing; with it we may be everything." As to state sovereignty, he said "if my rights and feelings are to be lacerated, let my tyrant be the eagle of the Union, 'towering in his pride of place', let me not be hawked at by the 'mousing owl' of a state sovereignty." He concluded his speech with a strong appeal for an "indissoluble Union."<sup>30</sup> The American gave an account of a town meeting in Baltimore, called by the Mayor to consider the nullification of South Carolina. A large number of people attended this meeting and unanimously adopted three resolutions. The first resolution disapproved of that "extraordinary and unprecedented document" called an "ordinance" that was passed by a state convention of South Carolina advocating nullification. This resolution regarded nullification as a menace to the integrity of the Union, a violation of good faith and a destroyer of general prosperity. The second resolution highly commended the proclamation of <sup>the President of</sup> the United States. It spoke of the "wisdom of the statesman, the firmness and inflexibility of the Patriot and the deep feeling of a Father of his Country," in the existing crisis of difficulty and danger. With him we proclaim "the Union must be preserved."

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<sup>30</sup>Ibid., Feb. 12, 1833.

The third resolution commended a Union meeting in South Carolina.<sup>31</sup> The Baltimore Republican praised the town meeting and expressed its disapprobation of nullification.<sup>32</sup> The Baltimore Saturday Visitor commented: "the Monster Rebellion is up in the South and what with the Union, Dis-Union, Nullification, State Rights, and Slavery, South Carolina may be considered in a miserable plight."<sup>33</sup>

The County papers were aroused over nullification. The Eastern Shore Whig referred to the nullification as a "rash act" and intimated that South Carolina would lose the struggle; it was doubtful if the other southern states would make it a common cause, but Great Britain might lend a hand to promote separation. This paper also praised the President's Proclamation and declared that it was in accordance with popular sentiment.<sup>34</sup> The Maryland Republican of Annapolis asserted that the Executive of the nation in his Proclamation had affectionately admonished South Carolina as to the folly and danger of her course and advised her to retrace her steps or at least to know that she was committing treason.<sup>35</sup>

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<sup>31</sup>American, Dec. 28, 1833.

<sup>32</sup>Baltimore Republican, Dec. 19, 1832.

<sup>33</sup>Saturday Visitor, Dec. 8, 1832.

<sup>34</sup>Eastern Shore Whig (Easton), Dec. 15, 1832.

<sup>35</sup>Maryland Republican, Dec. 22, 1832.

In the western part of the state the press strongly censured nullification. The Republican Banner of Williamsport in Washington County called nullification "the Obnoxious Ordinance" and supported the Federal Government in its method of combating nullification.<sup>36</sup> The Banner printed an account of a Union Meeting held at Hagerstown where a resolution was passed which condemned South Carolina's attitude "as revolutionary, intending to civil war, and that we would yield the President our united and hearty support in the execution of the laws of the United States."<sup>37</sup> The Hagerstown Torchlight in an editorial, declared that the question of sovereignty between the General and state governments must be determined; either one must yield. If the government should yield the Union would be dissolved. The editor wished to preserve the Union at any cost.<sup>38</sup> The Weekly Times upheld the President's proclamation issued to South Carolina and expressed the same Union sentiments as the rest of the Western Maryland papers.<sup>39</sup> Another Union meeting was held in Anne Arundel County in February, 1833, an account of which was printed in the Maryland Republican.

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<sup>36</sup>Republican Banner (Williamsport), Feb. 2, 1833.

<sup>37</sup>Ibid., Feb. 16, 1833.

<sup>38</sup>Torch-Light (Hagerstown), Dec. 6, 1832.

<sup>39</sup>Weekly Times (Frederick), Dec. 20, 1832.

This meeting was attended by farmers and planters of this county, who drew up resolutions commending the Government on the principle of protection, which it termed not only "highly expedient but absolutely necessary to be continued, as well for the interest of agriculture as for those of manufacturers or the mechanics, and other branches of labor...." Another resolution passed at this meeting censured the action of South Carolina in attempting to annul laws of the Federal Government and to dismember the Union.<sup>40</sup>

President Jackson determined to enforce the law in South Carolina. He asked Congress for power to use the army and navy of the United States to sustain the law, and so the Force Bill was introduced in Congress in 1833. The Marylanders took little part in the debates which raged in Congress over this bill. It was strongly resisted by the Southern States, but it passed with the help of Maryland's representation, four voting in the affirmative and five refraining from voting.<sup>41</sup> In the Senate, Ezekial Chambers assisted the force bill in its passage, while Samuel Smith did not vote.<sup>42</sup>

Maryland fully supported the Force Bill, thus admitting the right of the Federal Government to coerce a sovereign state in

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<sup>40</sup>Maryland Republican, Feb. 27, 1833.

<sup>41</sup>Register of Debates, 22nd. Cong., 2nd. sess., p. 1897.

<sup>42</sup>Ibid., p. 688.

the enforcement of a Federal law. The newspapers supported the Force Bill. The Niles Register believed in the expediency of the act to save the Union.<sup>43</sup> The Federal Gazette upheld the measure and violently disagreed with Mr. Calhoun of South Carolina when he spoke against it in Congress.<sup>44</sup> All the papers contained letters favoring the Force Bill. One of these letters declared the Union must be preserved and that "the supremacy of its laws must be maintained and enforced under circumstances."<sup>45</sup> In the western part of the state where Union sentiment ran high, a rebellion in South Carolina against the United States was anticipated by a group of men who formed what was known as the "Union Rifle Company". This company pledged itself to defend the Union against any peril.<sup>46</sup> The Republican Banner was strong for the Force Act. The editor declared "prevention is better than cure and rebellion is more easily nipped in the bud than in the blossom."<sup>47</sup>

Great excitement prevailed all over the country, but serious trouble was averted by Clay's Compromise Bill, which provided for

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<sup>43</sup>Niles Register, Mar. 23, 1833.

<sup>44</sup>Federal Gazette, Mar. 9, 1833.

<sup>45</sup>Maryland Republican, Jan. 1, 1833.

<sup>46</sup>Torch-Light, Jan. 24, 1833.

<sup>47</sup>Republican Banner, Feb. 9, 1833.

a gradual reduction of duties, so that by the end of ten years the tariff would provide only for the expenses of the Government. In the Senate Samuel Smith opposed Clay's Compromise and voted against it. He claimed that the duty on some articles was still too high while the duty on such articles such as sugar, coal, rolled iron, etc. would become so low by the gradual reduction that manufacturers would be ruined. He said that if this bill were passed it would mean the giving up of our whole protective system in order to placate South Carolina.<sup>48</sup> Ezekial Chambers voted for the Compromise Bill.<sup>49</sup> In the House, the Maryland delegation voted unanimously for this bill. This is the first time that the nine representatives from Maryland unanimously concurred on a measure.

The Maryland Legislature having expressed itself on nullification, took no action on the Compromise or Force Bill. The press as all over the state generally supported the Compromise Bill, provided that there should be no surrender of the protective principle.<sup>50</sup> The American thought that the Compromise didn't settle the principle of nullification, which would have

<sup>48</sup>Register of Debates, 22nd. Cong., 2nd. sess., pp. 705-706.

<sup>49</sup>Ibid., 1810-1811.

<sup>50</sup>Weekly Times, Feb. 21, 1833. The Eastern Shore Whig said that the constitutionality of the tariff had never been questioned in the eastern shore, but favored a reduction of them. Mar. 5, 1833.

to be dealt with later on.<sup>51</sup> The Federal Gazette was not entirely pleased with the Bill. It considered the Compromise a surrender of a principle and of the powers of the General Government.<sup>52</sup>

So Maryland along with the various states of the Union did not support South Carolina, did not support the force and Clay's Compromise Bills with the reservation that Federal power was not to be diminished.

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<sup>51</sup>American, Feb. 28, 1833.

<sup>52</sup>Federal Gazette, Mar. 6, 1833.



## CHAPTER X

## CONCLUSION

The facts revealed in this thesis prove conclusively that Maryland, in her attitude toward the Federal Government, from 1789 to 1833, was not a States-Rights state. It does prove that Maryland was a divided state on practically all national issues and that this division was due more to party politics than to sectionalism.

In the beginning of the Republic, the states were apprehensive of a powerful centralized government and so many of them held to strict interpretation of the Constitution. Hamilton's financial program tended to strengthen the National Government. The funding, assumption, excise, and the National Bank, contributed to the stability and strength of the Government and these measures were regarded with forebodings by the states who guarded what they considered their rights. Maryland took no official stand on the assumption; a resolution expressing disapprobation of this act by the State Legislature was rescinded by that same Legislature without any explanation. In Congress, Representative Stone strongly advocated States-Rights and vigorously opposed the assumption, but Charles Carroll of Carrollton

in the Senate just as ably defended it. On the final vote, the Representatives sharply divided and part of this division was due to personal reasons, as evidenced by the votes of Daniel Carroll and Walter Gale.

The excise was a very unpopular tax in the state, but in the Whiskey Rebellion, Maryland took the attitude that a law passed by Congress must be obeyed. The Legislature commended the Governor in his compliance with the General Government in calling out the militia, notwithstanding they doubted the constitutional right of the Government to order out the militia. The press all over the state commended the calling out of the troops and fully supported the President in his efforts to put down the Rebellion.

Party politics motivated Maryland's official stand on later issues. The Alien and Sedition Acts, sponsored by the Federalists, were denounced by the Republicans as subversive of the rights of the states. Maryland's two Federalist Senators voted for these measures, while the Representatives voted strictly according to party. The Legislature made no protest against these acts because it had a Federalist majority at this time. The press also divided along party lines.

Maryland did not concur with resolutions sent to her by other states, which protested the unconstitutionality of certain laws of Congress, laws which encroached on the rights of the states. The Virginia and Kentucky resolutions were termed "highly improper" by the Maryland Legislature. The Pennsylvania resolution which sought to preserve the rights of the states by establishing an impartial tribunal to determine disputed jurisdiction of state and National Government, was disapproved by the Maryland Legislature, which deemed the proposed tribunal "unnecessary and inexpedient." The Virginia resolutions in 1808, seeking to bring the Senators under a more direct state control, was also rejected by a large vote. Again in 1820 the Pennsylvania Legislature passed resolutions protesting the McCulloch vs. Maryland decision of the Supreme Court of the United States. These resolutions proposed an amendment to the Constitution prohibiting Congress from establishing National Banks except the District of Columbia. The Maryland Legislature took no action on these resolutions, but was content to accept the decision of the Supreme Court and abide by its consequences.

The nullification resolutions of South Carolina were speedily rejected by the Maryland Legislature, while at the same time this body stated its conviction that the Federal Judiciary, not the states, possessed the power to settle controversial questions

between the Federal Government and the states. The nullification resolutions were rejected, by a vote of 59 to 1, which is proof that Maryland abhorred the idea of a state "repelling the laws of the Union."

The Maryland Legislature did not initiate any resolutions in the interests of States-Rights to be sent to the other states for concurrence, and it negatived practically all resolutions, protesting Federal encroachment, that were sent to her by the various states.

On Mr. Jefferson's Judiciary Bill, the states Congressional vote was strictly political - the Republicans favoring and the Federalists opposing.

Maryland's attitude on the embargo illustrates most effectively this party division in the state. In 1808, a Republican Legislature passed resolutions strongly approving this act. In 1809, a Federalist House, passed a resolution which strongly condemned the measure and demanded its repeal, but a Republican Senate negatived this resolution. Neither body yielded, so Maryland did not protest the embargo, notwithstanding its injurious effect on its large commerce. Her attitude stands out in strong contrast to that of the New England states who boldly advocated their right to be relieved of a National law which injured their economic well being.

The state lacked unanimity even on a local bill. The Potomac bridge considered to be inimical to the interests of the state and by some unconstitutional, was approved by one of Maryland's representatives, and the bill authorizing it, passed the House with his affirmative vote, but was opposed by the other eight members.

Maryland did not defend her own laws when they came into conflict with National ones. In the contested election, dispute of William McCreery in 1817 and in the McCulloch case in 1819 the state made no effort to protect its own laws. In the McCreery case, five of Maryland's representatives voted in direct opposition to a state law. The Legislature did not protest against the nullification of its law and the press of the state, of both parties supported Congress in its constitutional right to qualify its own members. In the McCulloch case, Maryland relinquished without protest her right to tax the property of a Federal corporation within her borders. The Legislature took no action whatever on the decision. The Legislature of the states in the western and southern parts of the country protested vigorously against the decision, and several of these favored an amendment to the Constitution restricting National Banks to the District of Columbia. Ohio outlawed the Bank. Maryland did nothing, nor did she protest the decision of the Court in the case of Brown vs. Maryland in 1827.

For economic, not constitutional reasons, Maryland at first opposed internal improvements, apprehensive of the benefits that would come to other nearby states by these improvements. Being a small state, she could not compete with the large ones on basis of representation. But when other states made improvements and secured the Western trade, Maryland was willing to bestow unlimited power on the Central Government to construct roads and canals in the hope that some of the benefits thereby would accrue to her. Her interest in the Chesapeake and Ohio Canal and the Cumberland Road, motivated her desire for an amendment to the Constitution expressly bestowing on the Federal Government the power to grant money for internal improvements. Economic pressure "prostrated the political theory of States-Rights" and Maryland was willing to augment the power of Congress that she might receive needed financial assistance in her transportation problems to the West.

The state was not united on the Missouri Compromise. It is true that the Legislature officially urged the unrestricted admission of Missouri, but it accomplished this action by a small majority. All of Maryland's representatives, with the exception of one, voted for the territorial restriction of slavery. Pinkney contended that Congress did not have the constitutional power to restrict states, but he was by no means an advocate of state

sovereignty as is evidenced by his argument in the McCulloch case. Robert Goodloe Harper, in the State Legislature, contended that Congress had power to restrict states, but that in the Missouri case it was not expedient to use that power. The press was equally divided, but assumed a moderate attitude and apparently did not regard the issue as an important one.

Maryland was sectionally divided on the tariff issues of the protective tariff. Baltimore City, for economic reasons, favored this kind of a tariff, but Samuel Smith from that city actively opposed the tariffs of 1824, 1828 and 1832. The Maryland Legislature conceded the constitutional power of Congress to lay a protective tariff and registered no protest against it. A contrast can be drawn between the attitude of Maryland and that of the states farther south, whose economic interests were more deeply affected. The Governor of Maryland admitted the constitutional power of Congress to lay protective tariffs; in fact, he was surprised to find that any state would question this power. On the final passage of the Tariff Bill of 1832, the representatives from Baltimore City voted in the affirmative, while the county members voted in the negative. This same city and county division was reflected in the press.

South Carolina's nullification ordinance was promptly rejected by the Maryland Legislature, the vote in the House being 59-1, and the vote in the Senate being unanimous. On this

occasion the Legislature reiterated its devotion to the Union and expressed concern for South Carolina in the "dreadful consequences" which would result from "repelling the laws of the Union." The press all over the state condemned nullification and wholeheartedly supported the Federal Government in its controversy with South Carolina.

Virginia, in her reply to South Carolina, reaffirmed her resolutions of 1798 as the true interpretation of the Constitution, but denied that these resolutions upheld either the President or South Carolina. Maine approved the President's speech, but upheld States-Rights. Maryland endorsed the Federal Government in its policies concerning South Carolina, without any reservations, and the state declared that above all things, it hoped for the perpetuation of the Union.

This thesis has proved that Maryland was a strong Union state; that it consistently supported the Constitution of the United States as the supreme law of the land; that never at any time or on any question did the state officially take a decided stand on the States-Rights doctrine. Maryland was a divided state on all national issues and this division was largely due to party politics and in a lesser measure to sectional differences in economic interests.



On several occasions the state subordinated her supposed rights to the greater rights of the General Government. The facts brought out by this thesis reveal that Maryland believed in a strong Central Government, that at all times she sought to preserve the Union, and that she was willing to decrease in power in order that the Federal Government might increase.

Her allegiance to the Union was outstanding in this period of the nation's history and Marylanders may be justly proud of their state's affection and loyalty to the Federal Government during this trying period of governmental adjustment.

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