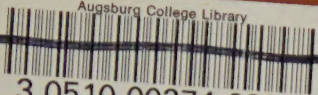


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TREASON

NATHANIEL WEYL

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TREASON

TREASON

The Story of Disloyalty and
Betrayal in American History

By NATHANIEL WEYL



Public Affairs Press

WASHINGTON, D.C.

TO SYLVIA AND TO MY MOTHER

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FOREWORD

There has never been a period in American history in which the public has been so concerned with treason as the present. In the major crises of the past, treason has tended to take the form of domestic movements of dissension. Today, by contrast, treason has become a projection of the conspirative and revolutionary activities of totalitarian states bent on world domination. Power is polarized between two world systems—each armed with weapons of almost absolute destructive potential. Within this matrix, fifth columns wage constant war for men's minds and allegiance.

This unprecedented situation breeds fears which sometimes degenerate into hysteria. Nonetheless, the dangers are real. They are a logical and inescapable result of America's decision to abandon isolationism and assume moral responsibility for the health of a disordered world.

This book deals with the historic record of treason and other forms of disloyalty against the United States. It is concerned with the present as much as with the past. In fact, the chief significance of the latter is the light it sheds on contemporary problems. The central theme is the role treason and sedition have played in American affairs since the beginning of the Republic and the measures taken to guard national security in time of danger.

A few cases of treason have been deliberately omitted because little interest attaches to them. Other cases—although not involving treason as defined in the Constitution—are included because they cast light on the techniques, organization and motivating forces at work in contemporary movements of disloyalty. The Hiss and Coplon trials belong in the second category.

Research in this field has been most difficult. Oddly enough, no one has heretofore written a history of American treason. Although each episode has its own documentary sources, no attempt has previously been made to discover its unifying threads and to bind the story together.

The fact that basic Confederate records are still under seal has

been a stumbling block to research. In the contemporary scene, I have been aided by discussion with many informed persons in Washington—including Department of Justice officials—but I have used only information which is verifiable and quotable.

The book is not an exposé. Its field of interest is historic processes, rather than the denunciation of individuals. To understand why and how treason arises seems more important than to pass moral judgments.

Surveying the record of treason and disloyalty against the United States, one is impressed with the obvious fact that, throughout a series of major national ordeals, American institutions have proved viable and strong. Significantly, the United States is the only nation which defines the crime of treason in its Constitution in order to protect political dissenters from persecution because of their ideas. Over the long run, we have weathered internal and external crises without destroying individual freedom. In the process we have consolidated a democratic nation of unprecedented cohesion, stability and power.

* * *

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NATHANIEL WEYL
Washington, D.C.

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TREASON UNDER DEMOCRACY

"Treason against the United States shall consist only in levying War against them, or, in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

"The Congress shall have power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted."—Constitution of the United States of America, Article III, Section 3.

Every great national crisis in American history has tended to breed its own form of treason.

Throughout the hundred and seventy-five years during which the United States has existed as a nation, mercenaries and psychopaths, zealots and misguided idealists, enemy agents and servants of anti-democratic faiths have betrayed their allegiance and struck at the foundations of the Republic. The treason of Generals Arnold and Lee jeopardized the American Revolution. Had they succeeded, the conspiracies of Aaron Burr might have blocked the path of American westward expansion. The Federalists of New England came within a hair's breadth of encompassing American defeat in the War of 1812, disintegrating the Union and balkanizing the Continent.

There have been other types of treason. In the half century between the peaces of Amiens and Appomatox, two men, technically traitors, gave their lives to secure a broader freedom for their fellows: Thomas Wilson Dorr, who died for the principle of universal manhood suffrage, and John Brown, martyr to the cause of Negro emancipation. It is not always true that the traitor is, as Blackstone wrote in his *Commentaries on the Laws of England*, "a monster and a bane to human society."

During the Civil War, Lincoln thought the disloyal Copperhead movement in the North a greater threat to the life of the Republic than Confederate victories. This treasonable force was a preview of the modern fifth column.

In the present century, the dimensions of treason have changed. It is no longer an individual activity. The traitor of our time tends to be a gear in an international machine dedicated ultimately to the conquest of world power and hence to the overthrow of all governments inimical to its totalitarian plans.

In a sense, the stature of traitors has been shrinking in recent years. They are no longer principals, but mere agents. Their personalities, their ambitions, their hopes and fears as men and women are increasingly irrelevant to the course and complexion of their crime. They serve as units in a world-wide totalitarian organization directed from abroad. In short, they are servants, not masters.

The dwindling of the personality of the traitor is an inescapable consequence of the rapid centralization of communications and the increasing complexity of society and government which modern technology has brought in its train. A century and a half ago, a daring adventurer such as Aaron Burr could seriously contemplate overturning the Government of the United States by conspiracy and carving for himself an empire in the Mississippi Basin. Today this is impossible.

From World War I to the present day, treason against the United States has been a projection of the war effort of an enemy power. In essence, it has been the fruit of an alliance between a foreign enemy and a domestic fifth column. In this partnership, the former is the dominating and directing element.

The new forms of treason reflect the disintegration of the nation-state as the primary focus of allegiance. Both the fascist and communist challenges imply a type of loyalty which cuts across national frontiers. The ultimate goal is to establish the power of some form of totalitarian society on a global scale. As a reaction to this threat, the United States has become the leading force in an international democratic coalition and, in this conflict, the frontiers of American interest inevitably extend over all continents.

The new totalitarian movements radiate outward from geographical matrices of power. These matrices are nation-states, ruled by dictatorships which serve simultaneously as the general staffs of world revolutionary movements. They exact unquestioning obedi-

ence from their adherents and teach them to regard the power interests of the dictatorships as primary. Thus the modern American traitors serve an international ideology and are, at the same time, agents of foreign powers.

The story of disloyalty in America crosses the frontiers of actual treason as defined in the Constitution and includes those movements which are significant as potential treason, which stand on the verge of outright betrayal of national allegiance.

A dictatorship unhesitatingly blasts every outcrop of disloyalty when detected. But a democracy cannot afford to repeat Esau's error of selling his birthright. It must consider treason within the special reference frame of balancing the two great social values of national security and individual freedom. To maintain security at the cost of destroying those free institutions which give the nation its moral purpose would be a Pyrrhic victory indeed.

During those rare periods of American history in which a sort of dancing mania of persecution flourished, men were accused of treason and convicted of sedition for speeches and writings which later generations considered wholly legitimate. Recent cases of alleged Soviet espionage and the sedition trial of the leaders of the American Communist Party are characterized by some as a recrudescence of this type of bigotry. The basic factors are not analogous. These defendants were charged, not with advocating unpopular beliefs, but with serving the interests of a foreign state against those of their own country.

It is plain that the American Communist Party has not organized a military force for the foolhardy venture of attempting insurrection against the United States Government. Nor has it adhered to a military enemy of the United States, giving it aid and comfort. We are not at war with the U.S.S.R. But the fact that the meshes of the treason clause in the Constitution are broad does not justify ignoring movements which are traitorous in their purposes. This consideration was decisive for the inclusion within this book of Communist espionage and sabotage.

Wherever movements either short of treason or not disloyal in character are discussed, this is made plain. A loose and colloquial use of the word "treason" seems thoroughly undesirable since it both detracts from the enormity of the crime and stains the reputation of persons guilty of only lesser offenses.

Treason and Tyranny

With their prophetic historic vision, the framers of the Constitution perceived that the main causeway toward tyranny in the past had been the virulent prosecution of political dissenters under the treason laws.

Treason is, therefore, the only crime defined in the American Constitution. No Congress, no President and no court can modify that definition in any respect. The man on trial for treason is surrounded by a rampart of procedural protection which applies to no other offense. This too is part of the Constitution and can only be changed by the cumbersome process of amendment.

The immense amount of attention which the Founding Fathers gave to treason seems strange from our present vantage point. This concern, however, reflected their deep fear that some dictatorial faction might take power in the United States by lawful means and then use treason prosecutions to stifle opposition and destroy the state governments. They wanted to guard the nascent republic against treason and, at the same time, break with a long and bloody European tradition.

Throughout most of the world's history the crime of high treason was broadly defined and savagely punished. The charge of treason was like an otter trawl, which remorselessly swept the ocean floors of political intrigue and scooped up all potential enemies of the state in its meshes. These men were haled before the bar of justice and generally executed on mere suspicion. The punishment reserved for traitors was invariably savage and awe-inspiring. Nor was this merely the rule in dark and brutish periods of history. In the golden age of Elizabethan England, treason prosecutions were more sweeping and virulent than during the Middle Ages.

At that time, the British courts of justice were, as Henry Hallam put it in his *Constitutional History of England*, "little better than caverns of murderers." A man accused of treason was not allowed to testify under oath in his own defense. Unless special issues of law arose, his counsel could not plead for him. With the jury packed and the judge "scarcely distinguishable from the prosecutor except by his ermine," conviction of the accused was virtually certain. Until 1794, no English trial for treason lasted more than a day.

The logic behind this peremptory procedure was that the successful traitor overthrew his government. Once he escaped

punishment, he became strong enough to inflict it. A rebellion that failed was punished as treason; a treason that succeeded was honored as revolution. As Sir John Harrington put it:

"Treason doth never prosper—what's the reason?"

"If it doth prosper none dare call it treason."

From the Roman Empire to the triumph of democracy in Western Europe, treason was considered the most heinous of all crimes. The state protected itself by snuffing out conspiracies before they reached the flash-point. The traitor's property was confiscated; his children were turned into paupers; he himself was made to suffer an excruciating death. Actuated by the powerful drive toward survival, governments were seldom squeamish about putting men to death on mere conjecture.

The alternative to treason was often acquiescence in injustice. The ranks of England's traitors included such great names as Saint Thomas More, Sir Philip Sydney and Sir Walter Raleigh. Men who fought for religious freedom, for the privileges of Parliament or for a broader franchise all ran afoul of the treason laws. "The unsuccessful strugglers against tyranny," Thomas Jefferson said, "have been the chief martyrs of treason laws in all countries."

Creating a Free Society

A European observer at the Federal Convention of 1787 which drafted the Constitution of the United States might have witnessed the proceedings with a mixture of amazement and contempt. Here was a new nation being forged out of jealous and bickering states, torn by sectional rivalries, divided between aristocratic and democratic contenders for power, barely emerged from the disruptive debtors' uprising known as Shays Rebellion. This nation had been born out of revolution. Its citizens had no established tradition of allegiance or obedience. It was a weak country, though potentially strong. Its undefined frontiers were menaced by two grasping and predacious European powers—England and Spain. And yet this new republic was devoting its attention to defining treason in such an unprecedented way as to apparently lay itself open to seditious European and domestic intrigue. It seemed to have drawn its teeth before growing them and to have emasculated itself before reaching manhood.

The deep concern of the Founding Fathers with defining the frontiers of treason was by no means accidental. The men at the Constitutional Convention could not forget that they had joined

in spirit with Patrick Henry's memorable challenge to the British Crown: "If this be treason make the most of it!" Many of them had heard Benjamin Franklin warn his fellow signers of the Declaration of Independence that they would have to hang together or else all hang separately. Neither these memories nor their implications were forgotten.

All "who had advocated American independence . . . could have been prosecuted and might have been convicted as 'traitors' under the British law of constructive treason," Albert J. Beveridge wrote in his classic *Life of John Marshall*. The signers of the Constitution, Henry Adams commented somewhat caustically, "had been traitors themselves and having risked their necks under the law they feared despotism and arbitrary power more than they feared treason."

But this was only part of the explanation. There was a deeper and more positive side. The men of the American Revolution were engaged in creating a republic dedicated to the defense of free institutions. They believed that such a nation would gain unprecedented strength from the people at large whom it served. If the American democracy was potentially the strongest government on earth, it could be tolerant of seditious attacks, for repression was the weapon of the weak and fearful, rather than of the strong. All these were hypotheses hitherto untested by history.

Yet there was no intention whatsoever to allow betrayal of the nation to be encompassed with impunity. "Our forefathers," the majority of the Supreme Court said in the Cramer Case (325 U.S. 1) "were far more awake to powerful enemies with designs on this continent than some of the intervening generations have been." If we "have managed to do without treason prosecutions to a degree that probably would be impossible" elsewhere, the reason is not condonement of betrayal, but confidence in the nation's "external security and internal stability."

The decision to impose constitutional safeguards on treason prosecutions formed part of a broad emerging American tradition of liberalism. Throughout most of the nation's existence, the attitude of the American people toward disloyalty has followed the pattern first articulated in the Constitution and the Bill of Rights. No American has ever been executed for treason against his country and only a handful have died as traitors to the states. Until the Second World War, every convicted traitor received a presidential pardon. Whether for good or evil, this is a record which no European nation can match.

The fate of convicted traitors again reveals the striking contrast between Europe and the United States. In 1790, Congress fixed the punishment for treason as death by hanging. The English record was in stark and gruesome contrast. Until 1814, the punishment for treason in Great Britain was to drag the culprit to the place of execution on a hurdle; hang him by the neck, but cut him down while still alive; disembowel him and burn his entrails before his eyes; then cut off his head and carve his body in four quarters. Between 1814 and 1870, this grisly mutilation was carried out posthumously. By 1867, when a British court for the last time passed a sentence of drawing and quartering, the minimum penalty for treason in the United States had been reduced to \$10,000 fine and five years imprisonment.

The Constitution confined treason against the United States to two specific types of action: challenging the power of the nation by armed insurrection and aiding its enemies during wartime. As the Republic advanced toward greater democracy, it became increasingly hard to justify either of these types of treason as a legitimate means of political action.

The right of revolution had been proclaimed by Thomas Jefferson during the formative period of the nation. Revolution or secession—both of which constitute treason—was perhaps justifiable during the brief spasm of judicial tyranny under President John Adams. Again, in the 1850's, when the power of the federal government was consistently applied to the consolidation of chattel slavery, the moral right to insurrection might plausibly have been asserted.

But in the roster of American traitors, champions of freedom such as John Brown and Thomas Wilson Dorr are the exception. Except in rare periods of intolerance and crisis, men are free under our democracy to advocate those social, economic and political changes they believe in. As distinct from eighteenth century England, where even advocacy of universal manhood suffrage was interpreted by the Crown as treason, America, from the outset, limited the crime to attempted insurrection and abetting the military effort of a foreign enemy.

As American democracy came of age, treason against it became the weapon of those who sought, not its fulfillment, but its destruction. This was not strange. Men who accepted the rules of democracy could work within its framework for their beliefs. The clear and vitally important definition of treason in the Constitution shielded the acknowledged right of the citizen to political

opposition. In fact the law was weighted heavily toward civil rights and the accused traitor was girdled with the armor of an exacting requirement of legal proof.

Thomas Jefferson consistently urged the theory that an almost unlimited freedom to speak and write against democratic government could safely be tolerated. In his First Inaugural Address, he observed that the United States, having banished political persecution, would nevertheless have "gained little if we countenance a political intolerance as despotic, as wicked, and capable of as bitter and bloody persecutions. . ." When told that the American government was dangerously weak, he answered that, on the contrary, it was "the world's best hope" and "the strongest government on earth." Only in America would every man "at the call of the law . . . fly to the standard of the law." Then in one majestic sentence, he voiced his confidence in democracy: "If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments to the safety with which error of opinion may be tolerated where reason is left free to combat it."

Jefferson's successors have not always shared this serene faith in the ultimate power of the truth. And yet, on the whole, it has been vindicated. No nation has been more reluctant to extend the crime of treason or punish traitors than the United States. Despite serious traitorous movements, which at times menaced the very life of the Republic, the nation has endured and grown in both strength and freedom.

Truancy from the Jeffersonian faith has taken the form, not of wanton prosecutions for treason, but of creating crimes similar to treason and then imprisoning men for speeches and writings deemed disloyal at the time. This occurred during the Administration of President John Adams and in the Civil War. There has been a tendency in this direction since World War I. It is a symptom of crisis and each crisis spawns its own fears.

The new forms which treason assumes during the present era are not entirely unprecedented in American history. The American conception of treason was forged, not in quiet times, but in years of violent strife. When Thomas Jefferson wrestled with the great problems of disloyalty and freedom, the fledgling American republic was being drawn toward the vortex of a European power struggle which was to end only at Waterloo.

This era of conflict has a surprisingly modern ring. The two main European contestants marched under the rival banners of

Order and Freedom. Each had powerful factions on American soil and these factions, on occasion, skirted the edge of treason. Short-sighted protagonists of the French Revolution hailed it exuberantly as a more perfect democracy than their own. Then as now, some Americans were eager to jettison their own heritage and hail one or the other of the contending European despotisms as the eighteenth century equivalent of "the wave of the future."

A rabid fear of the French Revolution drove the conservative faction to an abandonment of those American freedoms fought for in the Revolutionary War and proclaimed in the Bill of Rights. There was a miniature reign of terror—eventually extinguished by the complete electoral victory of the Jeffersonians.

Although traitorous activities occurred then on a far broader scale than during our own time, the danger to the United States did not stem principally from treason, but rather from a pervasive fear of treason. And in that epoch of fear, American democracy was almost destroyed.

In the crisis of the Napoleonic Wars, the Jeffersonian faith in the capacity of a free society to protect its very existence without surrendering its freedom was vindicated. We can both hope and believe that our generation will succeed in meeting a similar test.

THE EUROPEAN PATTERN

"For treason is like a tree whose root is full of poison, and lieth secret and hid within the earth, resembling the heart of man, which is so secret as God only knows it."—
Sir Edward Coke in the Gunpowder Plot Trial.

"And after this kind of reasoning, they will not be guilty, till they have success; and if they have success enough, it will be too late to question them."—Lord Chief Justice Treby in Vaughn's Case.

In 1800, Thomas Jefferson took up his quill and wrote to the great British physicist, Joseph Priestley:

"We can no longer say that there is nothing new under the sun. For this whole chapter in the history of man is new."

There was triumph and deep personal satisfaction behind the note. For Jefferson stood on the threshold of power. Soon he was to occupy the unfinished White House which stood in the midst of the wilderness and mud of the as yet largely imaginary city of Washington. His greatest battles were behind him and years of quiet, constructive accomplishment seemed to lie ahead.

The American experiment was firmly launched. Here for the first time in history, democracy would prove its fitness to govern and its capacity to maintain freedom.

The recipient of Jefferson's letter was the first scientist to isolate oxygen, sulphur dioxide and gaseous ammonia. Because he sympathized with democracy, Priestley's laboratory was burned down; he was shunned by his fellow members of the Royal Society; he was hounded out of England. He found refuge and freedom in America.

"This whole chapter in the history of man is new." One of its most signal accomplishments had been to break defiantly with the long and bloody tradition of political persecution which had for so many centuries shackled the human intellect.

The most striking symbols of that breach were the Bill of Rights and the American conception of treason.

And yet this treason doctrine was English in origin. Its labyrinthine roots lay deep in British law and British theories of government. While the framers of the Constitution did not transplant the abuses of the English system to American soil, they nonetheless built on English foundations. They had learned their law from Coke and Blackstone. Their democratic faith traced from Locke and Montesquieu. The phrases which the Constitution used had already been glossed by centuries of British jurists. When the Founding Fathers attacked the tyranny of the treason law, they only repeated what English liberals had already proclaimed. "Before the Revolution we were all good English Whigs," Jefferson recalled, "cordial in their free principles and in their jealousies of their Executive Magistrate."

The story of American treason began in the dark and bloody eras of English history. It was in England that the nature of the crime of treason was first deeply probed in the centuries of violent conflict between Peerage and Crown. And it was also in England that a massive reaction first arose against a process of judicial interpretation which brought great men in every age to a traitor's death. From the web of this history, the framers of the Constitution evolved the American doctrine of treason with its safeguards against political tyranny.

Roman and English history show similar rhythms in prosecutions for crimes against the state. Once the Roman Empire was established and its Caesars began to be regarded as gods on earth, treason prosecutions became virulent and the scope of the crime was expanded to cover every real or fancied slight against the omnipotent ruler. There were times in Roman history when it was held to be high treason to flog a slave before a statue of the Emperor or to enter a bawdy house wearing a ring bearing the imperial likeness. For these small indiscretions men were killed. Pliny described treason as the charge levelled against men who were innocent of any real crime. In both societies, the treason laws were directed chiefly against the cabals of the upper classes. The chief English victims were aristocratic conspirators. In Rome, the laws of treason were aimed in the main at potential leaders of military coups d'état and rebellions.

The rule seems to be that the laws against treason have been effective instruments of dynastic or imperial power during periods of aggrandizement. They have been directed largely

against those near the throne who resist the process of power consolidation. They have been applied most drastically during periods of social turmoil and deep-seated structural change.

The Traitor's Death

In every age, the punishment inflicted on traitors was terrible and awe-inspiring. Thus, Frederick II, German Emperor of the thirteenth century, had traitors wrapped in lead and hurled into a fiery furnace. Despite occasional instances of macabre humor—such as the execution of the Duke of Clarence by “thrusting his head into a butt of Malmesey”—the standard English penalty from the War of the Roses to the nineteenth century was the dreaded form of execution known as Hanging, Drawing and Quartering.

The sentence in the Parkyns Case (1696) is typical: “you shall be severally hanged up by the neck, and cut down alive; your bodies shall be ripped open, your privy members cut off, your bowels taken out and burned before your faces; your heads shall be severed from your bodies, your bodies to be divided respectively in four quarters, and your heads and quarters are to be at the disposal of the king: and the Lord have mercy upon your souls.” Over a period of five hundred years, there were only minor variations.

About 1480, a man called Collingbourne composed the couplet:

*“The Cat, the Rat and Lovel the Dog
“Rule all England under the Hog.”*

Since “the Hog” was evidently King Richard III, the poet was sentenced to die for treason. A contemporary chronicler reports:

“After having been hanged, he was cut down immediately and his entrails were then extracted and thrown into the fire, and all this was so speedily done that when the executioners pulled out his heart, he spoke and said ‘Jesus, Jesus.’”

Blackstone thought that punishment for treason was becoming more humane since, in his day, the culprits were allowed to ride to the place of execution on a hurdle instead of being dragged head down at the tail of a cart. On the other hand, abandonment of the practice of cutting out the traitor’s heart prolonged the victim’s agony.

As a matter of historic record, these cruel punishments were often remitted by the king in the case of men of illustrious rank. The great English lords who betrayed their allegiance to the

Crown were generally beheaded. In deference, as Blackstone smugly puts it, "to the decency due to their sex," women traitors, after being dragged to the gallows, were merely burned at the stake. The heads of traitors were displayed on London Bridge and their quarters at each of the four gates of the city. The head of Sir Thomas More, the author of *Utopia*, was left on the bridge for several months. Then, as it was "about to be thrown into the Thames to make room for others, his daughter Margaret bought it."

Men convicted of treason in England were attainted—stained or blackened—after sentence of death. "For when it is now clear beyond all dispute that the criminal is no longer fit to live upon the earth, but is to be exterminated as a monster and a bane to human society," Blackstone remarks, "the law sets a note of infamy upon him, puts him out of its protection, and takes no further care of him than barely to see him executed. . ."

In more earthy, economic terms, the importance of attainder was that it carried with it forfeiture of all the traitor's property to the king and, if the criminal had deeded it away subsequent to his treason, his action became null and void at law. "Corruption of blood", which was part of attainder, prevented the traitor from inheriting or any third person from inheriting through his line.

In theory, the innocent wives and children of English traitors were pauperized to dissuade men from committing treason. But the stronger motive in this connection was to enrich the royal domain through treason prosecutions.

In Germany, the famous Golden Bull of 1355 spared the lives of the children of men who conspired to kill an Elector "by the emperor's *particular bounty*." However, the law also provided that they were to be stripped of all rights of inheritance and debarred from any civil or ecclesiastical position "to the end that, being always poor and necessitous, they may forever be accompanied by the infamy of their father; may languish in continual indigence; and may find their punishment in living and their relief in dying."

Dark and Sanguinary Centuries

During five centuries of English history, an intermittent social struggle raged—sometimes violent and open, in other periods latent and smouldering—over the law of treason. This was only one phase of a larger process in English political history: the

erection of an all-powerful dynastic monarchy on the ashes of feudalism under the Tudors and Stuarts, followed by the constriction of the monarchy into an iron framework of parliamentary government with the rise of capitalism and industrialism.

Prosecutions for treason during most of English history were weapons in the battle to establish the paramount power of the Crown. The roster of executions for treason up to the Glorious Revolution of 1689 was a roll call of distinguished names among the peerage and the king's counsellors. Only the lords were in a sufficiently powerful position to resort to treason effectively. The mere commoners were generally too ignorant to express traitorous ideas and too impotent to carry out treasonable conspiracies. The great plebeian rebellions, such as that of Watt Tyler in 1381, usually ended with wholesale hangings; the ceremony of treason trials was dispensed with.

Until the middle of the fourteenth century, the crime of treason was vague and indeterminate and men were convicted or acquitted in accordance with the whims of the king's justices. Then, in 1351, Parliament took advantage of the fact that King Edward III, having squandered his income on harlots, foreign wars and an attempt to re-establish the pageantry of the Round Table, was broke. It pressed for a law defining treason and the King yielded. The statute enacted the following year has stood more or less intact for five centuries. Our own Constitution uses its principal ideas and quaint phrases. "Except it be Magna Charta," the great Elizabethan jurist, Sir Edward Coke said, "no other Act of Parliament hath had more honour given unto it." But it was honored principally in the breach. When its teeth proved too blunt for the needs of the British Crown, new laws were passed or the basic statute reinterpreted.

The law conceived of treason as a betrayal by an inferior of the loyalty due his master. A wife who killed her husband or a vassal who murdered his lord was guilty of "petit treason." The culminating betrayal, or high treason, was a blow against the monarch—"when a man doth compass or imagine the death of our lord the king, of my lady the queen, or of their eldest son and heir."

The portions of this law which we have borrowed in the Constitution read as follows in the statute of 1352: "if a man do levy war against our lord the king in his realm, or be adherent to his enemies in his realm, giving them aid and comfort in the realm or elsewhere, and thereof be provably attainted of open deed. . ."

There were miscellaneous treasons, such as bringing false coin called Lusheburg into England. To seduce the queen or her eldest daughter was high treason, the point being, as Blackstone put it, "to guard the royal blood from any suspicion of bastardy." If the queen consented, she too became a traitor.

Betrayal of the king was very different from betrayal of a mere lord. It was petit treason for a vassal to murder his lord; it was high treason for him even to plot the king's death. In the Middle Ages, fealty (or faith) subsisted between servant and master. The indissoluble bond of allegiance (or ligamen) linked subject to monarch.

All this, however, can be exaggerated. The whole social pyramid was based on land tenure and the kings did not yet pretend to be viceroys of God. Barons and other lords did their utmost to restrain royal pretensions. The pinnacle of sovereignty in the Middle Ages, in Sir Henry Maine's view, was probably vested in the shadow empire of the Caesars. The English kings were at first scarcely more than great lords. Since the spiritual world was deemed infinitely more important to man's destiny and welfare than the material realm in which he lived, heresy was a more flagrant crime than treason. Finally, the Canon Law brought the Roman and Christian conception of a moral natural law to Europe. In secular affairs, this was a tempering influence.

"The king hath also a superior, namely God, and also the law, by which he was made a king." This was the way Henry de Bracton put the matter in the thirteenth century. By the time of the Tudors no self-respecting king would admit that any law tied his hands in any degree.

When the great treason statute of 1352 was enacted, the peers of England hoped that at least they would now know when they crossed the rim of the abyss. But this was an illusion. Within a few decades, Parliament again complained that "no man knew how he ought to behave himself, to do, speak, or say, for doubt of such pains of treason." The law had indeed been stretched to ridiculous lengths. Under Edward IV, an obscure Londoner boasted he would make his son heir to the Crown—which happened to be the name of the house he owned. For this, he was put to death as a traitor. In the same reign, when a party of hunters killed the favorite buck of a nobleman, the latter expressed the wish that the buck's horns would be lodged in the belly of the man who had killed it. Since the king had shot the buck himself, the nobleman was put to death under the law of treason.

There were strong economic reasons for the swift recoil of monarchical power. Four years before the treason statute of Edward III, the Black Death had leaped across the Channel, ravaged England and killed off about a fourth of her people. The plague cut the ganglia of feudalism, creating a massive shortage of labor. Vassals left the land to roam the country at will, insisting on money wages. The economic spinal column of the feudal lords was snapped. They were no longer strong enough to enforce the legal protection they had won against arbitrary execution and confiscation under the treason laws.

Tyranny of the Tudors

Treason became of overshadowing importance in English political history about the time of Henry VIII. The Wars of the Roses had scarcely subsided when the Tudor House began its climb toward supreme monarchical power, sweeping away the independence of the great peers. This struggle soon became inextricably intermingled with a cold religious war—which was a painfully hot one for many heretics and dissenters. For over a century, the country was convulsed. In this period of revolution and social tension, treason prosecutions reached unprecedented lengths. The action of the courts seemed lunacy, but this was only the appearance. Blood had to be spilled to create a dynastic power with undisputed authority over both church and state. While the Thirty Years War depopulated Germany and set that country back at least a century, in England iron judges exterminated all potentially serious heresies and treasons, maintaining peace by terror.

Until the beginning of the eighteenth century, English judges served at the king's pleasure. They had little pretense to independence. Their business was to convict, sentence, exterminate. They held high and responsible command posts in the battle to assert the royal authority and the established creed. Resistance to the encroachments of monarchical power was rife; opposition stubborn and persistent.

Since the violence, sadism and perfidy which characterized English political trials under the Tudors and Stuarts seem incomprehensible to the modern mind, the tendency is to explain them away as vestiges of barbarism. Actually, they were nothing of the sort. The chief instruments of these judicial murders were men of towering intellectual capacity such as Sir Edward Coke, Sir Francis Bacon, and Edward de Vere, Earl of Oxford.

Sir Francis Bacon was not only a genius, but a servile agent of despotism and a dishonest judge who fattened on bribes. "Surely," wrote his contemporary, Weldon, "never so many parts and so base and abject a spirit tenanted together in any one earthen cottage, as in this man." Other jurists of vast learning did not hesitate to rail at their victims. "Traitor, viper, spider of hell" were among the epithets Lord Coke hurled at Sir Walter Raleigh when that unfortunate and gallant explorer stood on the dock to pay the forfeit for conspiracy. Although Raleigh had risked his life to extend English power and Coke most certainly had not, the latter made an accusation at Raleigh's trial which is unparalleled for sheer mendacity: "Thou hast an English face but a Spanish heart!"

Under the lusty Henry VIII, a master "whose commands were crimes," the treason laws blossomed forth. It was treason to clip money, to burn houses for purposes of extortion, to poison people, to execrate the king, to refuse to abjure the Pope, to deflower any of the king's sisters, aunts or nieces, to have sexual intercourse with his children or with those "commonly reputed to be his children." If a queen failed to disclose her prenuptial relations with other men, she became a traitor. At one time, Henry made it treason to believe that his daughters Mary and Elizabeth were legitimate. Later it became treason to assert that they were bastards.

Economic Factors

The property of men convicted of high treason fell forfeit to the Crown. As the heads of the great lords rolled from the axe's edge, rich estates were added to the royal domain. Even in the fourteenth century, "the Parliament's wish to limit the definition of treason seems to have stemmed rather from the urge to limit the occasions on which land would forfeit directly and finally to the King than from any notion of preserving political liberties." (The quotation is from a masterly study of the history of treason law prepared chiefly by Dr. Willard Hurst for a U. S. Department of Justice brief on the Cramer Case.)

When Sir Walter Raleigh was condemned to die as a traitor, his lady begged King James I to leave her in possession of the splendid family estate, Sherborn Castle. The monarch replied: "I mun have the land."

Although witchcraft was a delusion of the poor and treason an avocation of the rich, similar vested interests were involved in the

process of punishing both crimes. In his *Mirror of Magic*, Kurt Seligmann writes: "Witch persecution soon became an *industry*. It employed judges, jailers, torturers, exorcists, wood-choppers, scribes, and experts, and the abolition of the trials would have caused an economic crisis. All those who found their livelihood within the orbit of persecution were interested in its continuation. . . For every burned witch the hangman received an honorarium. He was not allowed to follow any other profession, therefore he had to make the best of his craft. . . Soon the torturers had discovered an infallible method for perpetuating their business. Under torture, the witch was constrained to name her accomplices. Thus one trial gave birth to a hundred. It was a Satanic *perpetuum mobile*."

This was also true of treason prosecutions. Judges, prosecutors, scribes, the armies of secret informers, the hangmen and the disembowellers with their knives and braziers—all had a powerful interest in the extirpation of supposed traitors. In neither case, obviously, was the sole or even primary motivation that of greed. If people had not believed in the existence of witches, they would not have burned them. If they had not feared treason, they would not have drawn and quartered traitors. While the fundamental motive was to stamp out a menace to the social order, this was magnified by the thirst for wealth and power.

The Malignancy of the Heart

At a very early period in the struggle for an omnipotent monarchy, ingenious judges and lawyers set to work to stretch the treason law to fit any neck. They emphasized that the essence of the crime was "the malignancy of the heart", or, in more modern language, the criminal intent. The "open deed" which the law required to convict a traitor was not the treason itself, but any action, however innocent on the surface, which served to carry thought into the realm of practice. Attorney General Sir Edward Coke put the matter pithily in the Trial of the Earls of Essex and Southampton: ". . . the thought of Treason to the Prince by the law is death." Sir Michael Foster, a great eighteenth century jurist, conceded that mere utterance of seditious words was not sufficient to constitute treason. But once seditious words were put on paper, an overt act of treason had been committed.

The law of treason was the armor of the king. And, as Foster

put it, "experience has shown that between the prisons and the graves of princes the distance is very small." Thus every device of law was used to protect royalty by blasting conspiracies while still in the bud. The sombre, arrogant and brilliant Coke expressed this necessity in poetic language at the Gunpowder Plot Trial of 1606:

"For treason is like a tree whose root is full of poison, and lieth secret and hid within the earth, resembling the imagination of the heart of man, which is so secret as God only knoweth it. Now the wisdom of the law provideth for the blasting and nipping of the leaves, blossoms and buds which proceed from this root of Treason; either by words, which are like to leaves, or by some overt act, which may be resembled to buds or blossoms, before it cometh to such fruit and ripeness, as would bring utter destruction and desolation upon the whole state."

A brilliant galaxy of English judges, who were scarcely more independent than the hangmen they kept busy, tightened the meshes of the treason net by nimble judicial interpretations. "I will kill the king if I may come unto him," the Irish priest, Crohagen, remarked while in Lisbon. In 1634, he returned to England and this was held by the courts to be a sufficient overt act for his conviction as a traitor. By this sort of reasoning, all the courts had to do was to prove the treasonable motive and some action which might or might not be preparatory to further acts of a treasonous hue. The traditional English maxim—"the thought of man is not triable"—was subtly circumvented.

New Wine in Old Bottles

With the Revolution of 1689, Britain entered a two hundred and fifty year period of comparative internal peace. The religious conflict had been settled; the ice cap of political persecution which had numbed the critical minds of previous centuries was at last melting. Liberalism and tolerance were strongly urged by men such as John Locke. This had a large and lasting influence on the course of justice and judicial procedure.

One of the first acts of William of Orange was to reform the treason law and curb judicial depravity. Judges were given independent tenure. They ceased to be thistle blown by the whims, prejudices and enmities of the Crown. An overt act of treason had to be proved by two independent witnesses. Prisoners were allowed to testify under oath and be defended by counsel. They

were given copies of the indictments they must answer and lists of the witnesses to appear against them. Men were now tried by due process, not murdered by bill of attainder.

These reforms challenged the ingenuity of Crown attorneys to learn to accomplish by craft what had often previously been done by fiat. Prosecutors plunged into the legal bramble to discover new thorns in the treason law. The main development was to interpret encompassing "the death of our lord, the king" in a strained and unrealistic fashion.

With the growth of constitutional government, political opposition struck increasingly against unpopular laws, institutions and officials rather than at the person of the monarch. The courts asserted that such opposition constituted treason if the purpose was the general one of suppressing a law or usurping the functions of government. Under Charles II, apprentices rioted in London and burned down bawdy houses. These men were convicted of treason for encompassing the death of the king. Royalty alone had the right to wipe out the London red light district. When rioters assumed these powers, they invaded the king's domain of sovereignty and, by indirection, plotted his death. Devious as the reasoning was, it revealed the constant propensity of the courts to uphold the power of the state. As this power shifted from the sovereign to the House of Commons, the law transmuted the individual monarch into a bundle of more or less abstract functions. Thus in 1794, a man called Thomas Hardy (not the novelist) was indicted for treason because he had spoken at mass meetings in favor of universal manhood suffrage. Lord Eldon, the Attorney General, at the time, argued that any action which tended "to put the king in circumstances in which, according to the ordinary experience of mankind, his life would be in danger," was treason.

This was the dying gasp of an autocratic doctrine. When the jury acquitted Hardy, Whigs throughout England celebrated the verdict as a signal victory for English liberty.

Very slowly, the nation was emerging from the long night of tyranny toward a more democratic outlook. Meanwhile, in the United States giant strides had been taken toward "a new birth of freedom" and by this measuring rod everything heretofore accomplished in the Old World was to appear puny and insignificant.

AMERICAN PERSPECTIVE

"The unsuccessful strugglers against tyranny have been the chief martyrs of treason laws in all countries."—Thomas Jefferson.

Arising from successful rebellion and led by men who were technically traitors to the British Crown, the new American Republic sought for a definition of treason applicable to a democratic society. This search was not difficult. The great gale of freedom known as the Enlightenment had swept across Europe for fully half a century. Franklin, Jefferson and many lesser lights of the American Revolution took the novel doctrines of liberty and political equality from the library shelves and used them as the building blocks of a nation.

There was little in the history of treason prosecutions in the American Colonies to foreshadow the tremendous forward leap toward freedom. They had slumbered for generations under the Common Law. In 1638, Maryland decreed the punishment for treason as hanging, drawing and quartering for a man; burning at the stake for a woman, but merely beheading for the Lord of a manor. To "Perfidiously Attempt the Alteration . . . of our Frame of Government" was treason in Connecticut in 1673. Eleven years later, Virginia declared it was treason to burn all bawdy houses and destroy all dissenting chapels. (The British Crown was thus the protector both of Venus and Jehovah. Under the Stuarts, it had been held not treason to characterize the king as the greatest "drunkard and whoremaster in the realm.")

Toward the end of the seventeenth century, Virginia planters banded together to meet a severe depression in tobacco prices. Each farmer agreed to restrict acreage by a certain amount and the fences and crops of non-conformists were destroyed by irate neighbors. In 1682, two of these precursors of the acreage restric-

tions programs of Franklin D. Roosevelt and Henry A. Wallace were hanged as traitors. "Tumultuously and mutinously" burning crops, warehouses and fences was high treason in the Commonwealth, for the king collected taxes on the tobacco crop.

Nathaniel Bacon's Rebellion burst out in Virginia in 1675. When it was finally quelled, Governor Sir William Berkeley had thirty-seven insurgent leaders hanged as traitors. "The old fool has hanged more men in that naked country than I have done for the murder of my father," Charles II commented acidly.

During the Revolutionary War, patriot legislatures defined treason in sweeping terms. Doubting the right of the Colonies to independence and refusing to swear allegiance to the new nation were deemed acts of high treason. But the punishment, generally speaking, was not death, but merely fine, banishment and forfeiture of estates. Confiscated Tory property was turned over to good revolutionary Americans. While the perennial issue of loaves and fishes was certainly involved, this wholesale punishment of Loyalists reflected the stimulus which the heavy wine of nationalism gave to the struggle.

Prior to the American Revolution, nationalism had been comparatively unimportant as a mainspring of history. Predestined to remain underdogs regardless of who governed them, the masses of Europe were unmoved by wars which touched neither their bellies nor their creeds. War was the sport of gentlemen and the trade of professional soldiers, conducted according to gentlemanly rules and waged for tangible advantages. Neither the lower nor the upper classes were swept by patriotic fervor.

Thus, in his *Sentimental Journey* published in 1768, Laurence Sterne described his annoyance at receiving a visit from the Parisian police:

"The deuce take it!" said I: 'I know the reason'. . . I had left London with so much precipitation that it never enter'd my mind that we were at war with France; and had reached Dover, and looked through my glass at the hills beyond Boulogne, before the idea presented itself; and, with this in train, that there was no getting there without a passport. . ." The unpleasantness of a Continental war forced this urbane English traveller to waste a few hours in search of a passport. When he explained to the police that he was in France as a tourist and not a spy, he was allowed to wander unmolested through the length and breadth of enemy territory!

This pleasant state of affairs was rudely changed by the demo-

cratic upheaval of which the American Revolution was a principal harbinger. The gathering forces of nationalism began to shape the concept of treason toward its contemporary pattern.

In a sense, the fawning, crooked Sir Francis Bacon was a herald of the revolution in the concept of treason. He wrote that the king should cure seditions, not by the rope, but by removing discontents. It made little difference, Bacon thought, whether the subjects' grievances were real or imaginary since "suffering has its limits, but fears are endless." Seditions were of varying importance. "If poverty and broken estate be joined with a want and necessity in the mean people, the danger is imminent and great. For the rebellions of the belly are the worst."

The man who made the strongest case for reforms in the law of treason was Montesquieu. His *Spirit of the Laws* published in 1748 had enormous influence on American thought in the era of the Revolution. Practically everything that Montesquieu proposed was embodied in the Constitution.

"If the crime of high-treason be indeterminate," Montesquieu wrote, "this alone is sufficient to make the government degenerate into arbitrary power." Four centuries of English state trials had shown that a loose definition of treason invariably paved the road toward despotism. Following Montesquieu, the framers of the Constitution prevented Congress from inventing "new-fangled treasons."

Treason, the French philosopher insisted, must involve action, not merely disloyal talk. "Nothing renders the crime of high-treason more arbitrary than declaring people guilty of it for indiscreet speeches. . . Words do not constitute an overt act; they remain only in idea." However, he conceded: "Words carried into action assume the nature of that action. Thus a man who goes into a public market-place to incite the subject to revolt, incurs the guilt of high-treason because the words are joined to the action, and partake of its nature." This was an interesting foreshadowing of Mr. Justice Holmes' yardstick of "clear and present danger."

Montesquieu was deeply disturbed about the tendency of the courts to execute satirical writers as traitors. A satirist himself, he habitually trampled on many corns. In a democracy, he thought, satire was generally encouraged. Being "levelled against men of power," it flattered "the malignity of the people." In a monarchy, it might be tolerated because the prince was on "such an eminence" that the barbs could not reach him. By contrast,

oligarchies were intolerant of satire and fearful of those verbal arrows with which "an aristocratic lord is pierced to the very heart."

His main argumentative weapon was to draw on history for instances of judicial irrationality. Some of these examples were probably invented to serve his purposes. Most are amusing:

In China, Montesquieu claimed, a prince of the blood committed treason unwittingly by making a mark on a memorial signed with the red pencil of the Emperor.

"There was a law passed in England under the reign of Henry VIII by which whosoever predicted the King's death was declared guilty of high treason. . . In this king's last illness, the physicians would not venture to say he was in danger; and surely they acted every right." With great satisfaction, Montesquieu draws the moral: "The terrour of despotic power is so great that it turns even against those who exercise it."

Turning to Japan, where he tells us, "the laws subvert every idea of human reason . . . two young ladies, were shut up for life in a box with pointed nails, one for having had a love-intrigue and the other for not disclosing it." (As a Frenchman, this naturally disturbs him. As a lawyer, he points out that failing to report a crime is a very different thing from committing it.)

Montesquieu then chooses an example from ancient Syracuse: "Marsyas dreamed that he had cut Dionysius' throat. Dionysius put him to death, pretending that he would never have dreamed of such a thing by night, if he had not thought of it by day." (Freudians will consider Dionysius' attitude a distinct forward step as compared with the then prevalent interpretation of dreams as omens of the future.)

Locke and Jefferson

Montesquieu attacked the law of treason; John Locke dynamited its foundations. Treason in England was a betrayal of allegiance to king or nation. Under the Divine Rights theory of monarchy, the loyalty due to the Crown was unconditional and God-given. When royalty misbehaved, Sir Francis Bacon thought, "it is a sign the orbs are out of frame. For reverence is that wherewith Princes are girt from God. . ." His contemporary and bitter enemy, Lord Coke, added: "All subjects are equally bounden to their allegiance as if they had taken the oath; because it is written by the finger of the law in their hearts. . ."

According to the conservative Sir William Blackstone, subjects

"immediately upon their birth . . . are under the king's protection; at a time, too, when they are incapable of protecting themselves. Natural allegiance is therefore a debt of gratitude, which cannot be forfeited, cancelled, or altered by any change of time, place or circumstances. . ."

John Locke smashed this theory into fragments. In his essay, *Of Civil Government*, published in 1690, he retorted: "It is plain mankind never owed nor considered any such natural subjection . . . that tied them without their own consents, to a subjection of them and their heirs." Kingships arose from a primordial social contract in which the ruler offered order and justice in return for the subject's allegiance. A king who unlawfully attacked the private property of his subjects breached the social contract, placed himself in rebellion against them and might justly be killed. There is "a power in the people of providing for their safety anew by a new legislative when their legislators have acted contrary to their trust by invading their property."

This doctrine was meat for the American Revolution. Jefferson embodied Locke's theory of sovereignty in the Declaration of Independence when he wrote: "Whenever any government becomes destructive of these ends, it is the right of the people to alter or abolish it."

In the American system, the people owed faith and loyalty only to a government which rested on their consent and protected their interests. Allegiance was due to lawful regimes existing under the Constitution and not, as in England, to mere arbitrary state power. By the American theory, only treason against a democratic nation was morally culpable. Where governments were imposed upon the people, it was their right and duty to overthrow them.

No man in America was more fearful of state oppression than Jefferson. Although he was in Paris as American Minister at the time the Constitution was framed, his intellectual influence was pervasive. In August 1774, he had protested a British proclamation which made it treason for Massachusetts citizens to assemble peacefully and voice their grievances. He spoke then of the vital need "to take out of the hands of tyrannical Kings, and of weak and wicked Ministers, that deadly weapon, which constructive treason had furnished them, and which had drawn the blood of the best and honestest men of the kingdom. . ."

Thirty years later, when Secretary of State under President Washington, Jefferson instructed American treaty negotiators in

Spain not to sign any extradition agreement. "Treason," he wrote, "when real merits the highest punishment. But most codes extend their definition of treason to acts not really against one's country. They do not distinguish between acts against the *government*, and acts against the *oppression of the government*; the latter are virtues; yet they have furnished more victims to the executioner than the former; real treasons are rare; oppressions frequent."

The Constitutional Debates

When the Federal Convention met in Philadelphia in 1787 to frame a Constitution for the young Republic, there was a vast area of agreement on the subject of treason. Most of the delegates had risked death as traitors when they took up arms against the English Crown. All of them feared tyrannical treason laws. Whether they believed in aristocracy or democracy, they had in common a love of individual liberty and a confidence in government by law. Most of them were lawyers and almost all had been influenced by the theories of the Enlightenment.

On the most basic matters, there was no recorded disagreement. All concurred that treason—alone among the myriad crimes which man can commit—should be defined once and for all in the Constitution. In part, the motive was to protect the states against a Leviathan central government; in part, it proceeded from deep concern with the civil rights of the citizens.

The barnacles which had adhered to the English Common Law since medieval times were scraped off. Since all Americans were "created equal", there was no room for the feudal notion that treason consisted of a betrayal of superiors by their inferiors. In the United States, poisoners and forgers were not to die for the crime of "petit treason" nor was sexual intercourse to be numbered among the treasonable offenses.*

More important was the decision to jettison the treason of "encompassing or contriving the death of the king." While there was no monarch in America, this provision might have been applied, had the Convention so desired, to the President. The Constitutional Convention remembered, however, that for four centuries treason by "encompassing"—which emphasized intent and nebulous conspiracy—had been used to hustle English reform-

*The British Treason Felony Act of 1848, which was made "perpetual", included as high treason "violating, whether with her consent or not, a queen consort, or the wife of the eldest son and heir apparent. . ."

ers and rebels to the scaffold. Without a dissenting murmur, the delegates to the Convention jettisoned it.

Nor was there any disagreement as to how *not* to punish traitors. The Constitution forbade "cruel and unusual punishments" which meant, in the case of treason, that there would be no drawing and quartering in America. It outlawed the old English process of judicial murder known as the bill of attainder. With equal firmness, it limited the penalties of forfeiture and corruption of blood to the life of the traitor.

The Convention debate on treason—as reported by James Madison—was on much more limited issues. A strong nationalist at the time, Madison wanted a treason clause with sharper talons, but the venerable Benjamin Franklin urged that "prosecutions for treason were generally virulent; and perjury too easily made use of against innocence." James Wilson, a conservative Philadelphia lawyer who was the main author of the treason clause, tended to agree with Madison. Treason, he conceded, "may sometimes be practiced in such a manner, as to render proof extremely difficult—as in a traitorous correspondence with an Enemy."*

There was heated argument on whether treason could be committed against the states as well as against the federal government. This was a crucial issue. For the most part, the Northern delegates stood firm for a single type of treason—betrayal of what Dr. Johnson called "the Supreme Sovereign, the United States." Gouverneur Morris urged that the states be stripped of their power to punish treason. Otherwise, in the event of a rebellion by several states against the federal government, their citizens would be compelled to be traitors to one or the other.

The point was unassailable, but his motion lost by a single vote. A southern bloc, led by the brilliant and seldom sober Luther Martin of Maryland, fought against giving the new nation the musculature of a Goliath. The matter was left in limbo. It would finally be settled at Gettysburg and Appomatox.

Although amazingly prescient, these statesmen sometimes worried over hobgoblins. There was heated talk about whether the President should be empowered to punish traitors. "The President may himself be guilty," Edmund Randolph of Virginia warned. "The Traytors may be his own instruments." Madison was impressed, but James Wilson interjected tartly that if the President betrayed his country he could be impeached.

*All quotations are from James Madison's notes.

The Finished Edifice

The accomplishments of the Constitutional Convention were immense. They had defined treason against the United States as a crime against a constitutional democracy, rather than against an individual ruler or a usurping clique. They had insisted that treason was a matter of disloyal *action*. No American was to be dragged to the scaffold for subversive thoughts, dangerous writings or vague and inchoate plots.

An American could commit treason in only one of two ways:

He could levy war against his country. This meant recruiting or joining an armed assemblage designed to strike an insurrectionary blow against the federal government.

Or he could adhere to the enemies of the United States. This meant actually allying himself with a nation at war with his own country and aiding its military operations.

Under the Constitution, Americans could go abroad to plot with a foreign government for the invasion of the homeland. This was treason only if the foreign state was at war with the United States. Foster, the great eighteenth century expert on British treason law, put the matter sharply and justly:

"The offence of inciting foreigners to invade the kingdom is a treason of signal enormity. In the lowest estimation of things and in all possible events, it is an attempt, on the part of the offender, to render his country the seat of blood and desolation; and yet, unless the powers so incited happen to be actually at war with us at the time of such incitement, the offence will not fall within any branch of the statute of treason, except that of compassing the King's death. . ."

At the Convention, the cynical Rufus King had suggested that the long debate might turn out to be a tempest in a teapot, since "the legislators might punish capitally under other names than Treason."

In defending the Constitution, James Wilson made the point that treason was the only political crime which Congress could punish. "Whenever the general government can be a party against a citizen," he said, "the trial is guarded and secured in the Constitution itself, and therefore it is not in its power to oppress the citizen."

Again, in 1798, Jefferson declared that the Sedition Act of the Adams Administration was unconstitutional: first, because it infringed on free speech, and, second, because Congress had no power to punish any political offense other than treason.

The framers of the Constitution were interested in substance, not in words. When they took the trouble to place high barriers around the power of the nation to suppress treason, it cannot be supposed that they intended these barriers to be circumvented by verbal sleight of hand, by using such words as sedition where treason was actually meant.

The commonsense view is that they intended to close the gates finally against prosecutions for the political doctrines men taught and for the maverick theories they espoused. In 1787, it seemed that they had accomplished this.

The Constitution appeared to be a coat of mail, but there was a growing, rapidly evolving nation inside it. When the iron carapace held back the living tissue, means would be found to press through the interstices. What could not be done directly would be done by circumvention.

The nation was to pass through rending domestic crises and hard foreign wars. In some of these conflicts, the treason clause of the Constitution would seem to the vast majority of Americans to provide inadequate protection. The dominant reaction would be to create new crimes, comparable to treason, but bearing different names.

Over most of the nation's history, these measures have been merely wartime legislation—repealed, suspended and sometimes regretted once the crisis passed. "When a nation is at war," Mr. Justice Holmes wisely remarked in the Schenck Case, "many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured as long as men fight. . ."

No man could have foreseen in 1787 either the way in which the nation would grow or the problems it would face. No plan devised at that time could have been rigidly adhered to without risking stagnation or suicide. Therefore, the Constitution has been subtly changed, the changes being continuous and at times almost imperceptible.

The question is not whether we have been faithful to the letter of the paramount law, but whether, in facing novel problems, we have been faithful to its spirit. The record of American treason and disloyalty sheds light on this question. It is a record of both wisdom and folly, of both serene strength and nightmare fears. Seen as a whole, it is the story of a democracy's effort to guard itself against treason without destroying its free institutions in the process.

REDCOATS AND TURNCOATS

"Arnold is a perfect madman in the excitement of battle, and is ready for any deeds of valor; but he has not a particle of moral courage. He is utterly unprincipled and has no love of country or self-respect to guide him. He is not to be trusted anywhere but under the eye of a superior."—Aaron Burr in a letter written when he was 21 years old.

Treason threatened the cause of American independence on a major scale during the American Revolutionary War.

The principal traitors were highly placed Generals in the Continental Army. They formed part of a surprisingly intricate network of espionage and betrayal which radiated outward from British Headquarters. The chief organizer of this network was Major John Andre, the young and debonair artist, poet, satirist and man of fashion who was to die on a gallows as a British spy.

The shocking extent of this underground war has come to light within the past ten years. British Headquarters files in the archives of General Sir Henry Clinton have been dredged to reveal the channels of communication, the couriers, the secret spies, the hidden traitors. The ramifications of this web of disloyalty are described in fascinating detail in Carl Van Doren's classic *Secret History of the American Revolution*.

The situation in the Colonies was extraordinarily propitious for the organization of treason on a vast scale. The American Revolution was simultaneously a foreign war and a civil war. Perhaps a third of the population was Loyalist in its sympathies. Although this substantial element did not ordinarily operate as a combat force, it provided a magnificently swift and secure communications network between British Headquarters and the turncoat generals in the American command.

This matter of liaison service is of cardinal importance in organized, systematic treason. German experience in espionage and

sabotage during the First World War, for instance, demonstrated again that the point of maximum stress, the area in which breakdown occurs, is the communications system. Radio instructions to destroying agents from Berlin were regularly decoded by the British. Orders emanating from the Austro-Hungarian Embassy were betrayed by Allied counterspies. However, lone wolf German operatives in America, whose connection with the rococo communications apparatus was tenuous and irregular, managed to achieve brilliant successes.

Similarly, in the recent exposes of persons charged with serving as Soviet espionage agents, the most frequent point of betrayal has been the courier network.

During the Revolutionary War, the liaison between the Tories and the British functioned superbly. The proof of its excellence was that most of the spies and traitors remained undiscovered for years, even for generations. General Charles Lee, for example, was buried in state as one of the leading military commanders of the Continental Army. Not until seventy years after his death was it revealed that he had been a traitor to his country. For 150 years, the bones of Samuel Wallis lay undisturbed and his reputation as an honorable American patriot remained untarnished. In 1941, the truth came out. Wallis had been a traitor. Even today, under the blinding revelations of the various British archives about the Revolutionary War, it is an open question whether General Philip Schuyler betrayed his country. The role of General John Sullivan is still obscure. The extent to which Ethan Allen entangled himself in subterranean negotiations with the enemy is unrevealed.

The fact that a civil war was involved automatically protected the communications network. Loyalist couriers were not betrayed by their speech, dress, manners or accent. Moreover, no continuous military line existed. There were border lands through which agents could pass with little risk.

To further simplify espionage and treason, the Revolutionary War was in a sense a gentleman's war. Not infrequently, Tory ladies allowed to join their husbands secreted messages in the folds of their ample dresses. Loyalists were often permitted to cross American lines under a flag of truce to conclude business deals with officers of the Continental Army or to see how their farms were faring under patriot control. To counteract these and similar activities, there existed no American counterespionage organization worthy of the name.

But even such an elaborate organization would have been worth-

less if British Headquarters had not successfully suborned the loyalty of top American commanders. These men supplied varied and accurate information on the military dispositions and operational plans of the Continental Army. They contrived the betrayal of American forts and schemed to lose battles and surrender troops.

Treason can sometimes be purchased. Where prominent military or civilian officials are concerned, the lure of hard coin is generally insufficient by itself to accomplish an outright betrayal of allegiance. Men in high positions are not poor or debt-ridden as a general rule. Regardless of the rottenness at the core of their character, traitors must seem to be otherwise. They have a reputation in the world and a role to play in public life. Wealth alone is an insufficient inducement if it must be bought at the cost of social ostracism and enforced idleness.

Sir Henry Clinton's Headquarters understood the potential importance of an American fifth column and skillfully used the various pressures and inducements which can sway men to treason. Turncoats who took practical steps toward accomplishing a major military object were flattered adroitly and rewarded generously. Thanks to British largesse, the most lavishly paid officer of the Continental Army was not George Washington, but Benedict Arnold.

In addition to cash, the British dangled the example of George Monk before the vacillating officers of the Continental Army. Monk had been Commander-in-Chief of the Commonwealth armies. At the appropriate moment, he had switched sides, joined Charles II, and reinstated the Stuarts on the British throne. For his timely service, he was made Duke of Albemarle. If England won the Revolutionary War, glib British agents suggested, the little George Monks of the Continental Army could expect great estates and high public office from a grateful monarch.

But if England should lose? In that unlikely event, the British responded, the turncoats could retire to Halifax, to Jamaica or to England (as many of them did) and there, in the midst of a congenial and sympathetic community, munch the rich lotus of betrayal. There has seldom been a situation in history in which traitors had so much to gain and so little to lose.

The lines of allegiance, after all, were extremely confused. The British theory uncompromisingly asserted that every subject owed the Crown love, reverence and obedience from birth to death. It made no difference whether his government was good or bad,

honest or corrupt, liberal or tyrannical. No colonist who subscribed to this doctrine could ever doubt his duty.

The American approach, which derived from Locke and had been spelled out by Jefferson in the Declaration of Independence, was much less clear. Governments were organized to protect the "inalienable rights" of the people. When they failed to do this, they became unlawful and continued allegiance to them became a crime. On this theory, each individual had to decide for himself whether or not his government was lawful. There was no court of appeals. There was no acid test of whether or not man's inalienable rights had been violated. The American Revolution set up the individual human conscience as the supreme arbiter of allegiance just as the Reformation had made it paramount in matters of religious belief.

Under such circumstances, traitors had plausible pretexts for their treason. Thus Benedict Arnold tried to explain away his betrayal on the hypocritical grounds that the Franco-American alliance jeopardized the Protestant faith and was an entering wedge of monarchical tyranny. General Charles Lee justified his treason with comparable sophistry. As a good English Whig he alleged that a negotiated peace would advance the cause of liberty throughout the entire Empire.

If Lee's unit of allegiance was geographically vast, Ethan Allen's was minute. The Green Mountain leader saw no disloyalty in discussing a separate peace with the British on condition that they recognize the rights of his beloved Vermont.

In 1789, General James Wilkinson, one of America's most accomplished traitors, expressed his views on the human soul: "Some men are sordid, some vain, some ambitious. To detect the predominant passion, to lay hold of it, is the profound part of political science." Macchiavelli could not have phrased it better.

British Headquarters had an equal appreciation of Machiavillian techniques. Its efforts to corrupt the leaders of the Continental Army were persistent, subtle and unrelenting. Yet, despite the periods of military defeat, of bleakness, of cold, of hunger, of mass desertion and of despair, the overwhelming majority of American officers remained loyal to the cause. "Traitors are the growth of every country," Washington commented after Benedict Arnold's flight from West Point, "and in a revolution of the present nature it is more to be wondered at that the catalogue is so small than that there have been found a few."

Major General Charles Lee

To most Americans, the name Benedict Arnold is synonymous with treason. He appears as the Judas Iscariot of United States history. In the layman's mind the drama of the Arnold-Andre affair, involving the tragic death of a brilliant and courageous young officer and the unmerited escape of an unscrupulous turncoat, far overshadows all other treason cases. This is obviously unfair to Major General Charles Lee, Second in Command of the Continental Army.

It is not at all clear where Lee's treason began or where it ended. His real motives remain hidden. His fickle, wayward character with its strange contradictions is an enigma. At first blush, Lee appears to be a mountebank and a marplot. Like Polonius, he is something of a "rash, intruding fool." As he struts across the pages of American history, he seems to be a military mediocrity without any real substance, one of those men who attain the highest honors and leave posterity wondering how they ever did it. To judge by what we know of Lee, it is difficult to understand how anybody in his right mind could have taken him seriously—yet Washington, Lord Howe, General John Burgoyne and King Stanislaus of Poland listened attentively to his advice. He came within a narrow margin of taking over the command of the Continental Army. Had he done so, the war would undoubtedly have come to a quick and disastrous end. Benedict Arnold attempted no more than the surrender of a fortress; Lee was prepared to strangle a nation.

This grotesque character was born in 1731 in Cheshire, England, the youngest son of a British General. After receiving an army commission at the age of eleven and an education in Switzerland, young Charles was cast on his own. His only tangible assets were a working knowledge of five living and two dead languages and a reasonably comprehensive acquaintance with ancient history. His skills were to serve him well. With his seven tongues, he was to become a master of vituperation. Ancient history was to enable him to compare, seldom favorably, the talents of his commanding officers with those of the military immortals of Macedonia, Carthage, and Rome. It almost seemed as though he had been trained from infancy for his predestined career—that of a military intriguer and ardent self-promoter.

Accompanying his regiment to America in 1755, Lee campaigned in the French and Indian War. When Braddock's army

met disaster on the Monongahela, Lee was at Washington's side. Later he took part in the Montreal campaign, fought at Ticonderoga and was severely wounded.

Thus far, there was nothing particularly odd about Charles Lee except for his violent temper, his scorpion tongue and his love of duelling. The first symptom of unconventionality is the fascination he felt for the American Indians. Apparently, the feeling was mutual. He was adopted into the Seneca Nation under the appropriate name of *Ounewaterika*, or boiling water—in allusion to his rages. He settled down for a while among the tribe, taking the daughter of a Seneca chief as his wife.

Abandoning his squaw, he returned to England where the clouds of peace descended to threaten his military career. His regiment was disbanded and he had to scrimp on half pay. Here he was with a slim salary, no duties and few prospects—an extraordinarily depressing situation for a man of restless energy and boundless ambition.

Then ensued a wild ten years in which Lee bounced across Europe looking for wars. He served brilliantly under Burgoyne as a Lieutenant Colonel in the British expeditionary force in Portugal. In 1766, he cropped up in Poland, where he became an intimate of King Stanislaus. Sent to Turkey on a diplomatic jaunt, he barely escaped freezing to death in the Carpathians only to have a house tumble around his ears during a Constantinople earthquake.

Returning to England to launch a frenzied campaign for promotion, Lee found that King Stanislaus was in trouble again, returned to Poland as a Major General and fought the Turks. Emerging unharmed from the war, his wanderlust carried him to Italy where he lost two fingers in a duel.

This indestructible mercenary again scanned the horizon anxiously for a war. Rash, unsound, irascible and fickle, here he was at forty-two, earning half pay as a Lieutenant Colonel. His friends were influential, but he had more enemies than any man can possibly want.

A mercurial career had been stalemated largely because of his violent hatred for Tories and his enthusiasm for "liberty"—a concept which he had never clearly defined. This curious paradox of a man was inevitably drawn into the vortex of the American troubles. As early as 1773, he had foreseen that the next step after the liberty poles and riots would be a war for independence.

He intended to make this war his own. Swift prominence would

be easy to attain in an atmosphere of impending chaos and internecine struggle. Lee managed to land in New England just in time for the Boston Tea Party and proceeded at once to insinuate himself into the circle of men who were to lead the American Revolution. He began to speak and write tirelessly for political liberty. Burning some, but not all, of his bridges, he proclaimed in the spring of 1774 that America was "liberty's last and only asylum." And this required courage. He was still living on his half pay as a British officer and he must have known that an English court might have convicted him of treason. Yet he intransigently wrote Burgoyne that the British Court was "the most corrupt and hostile to the rights of humanity."

While George Washington was gradually and reluctantly driven by circumstances to the final break with England, Charles Lee entered the American services as a radical—a man who flogged events forward to a definitive crisis.

But on financial matters, his refined acquisitive instincts made him snail-like. Before accepting a commission as the third-ranking General in the American revolutionary armies, Lee insisted that Congress agree to indemnify him up to \$30,000 for any losses he might sustain. Only after receiving this promise did he resign his British commission. Thus he was placed by his own parsimony in a position that most men would have found morally uncomfortable. At a time when he was under oath to defend the King with his life and was receiving pay to do so, Lee was furiously working for the secession of one of his Majesty's richest colonial empires and craftily maneuvering for command in an army which would wage war on England. This was dishonorable by any yardstick. In British eyes, Lee was both a deserter and a traitor.

Awarded the third-ranking command in the Continental Army, he was profoundly unhappy about it. Here he was a scientific soldier, who had fought in the greatest campaigns of two continents, serving under George Washington, a political General whose meagre military experience was confined to frontier forays and marches through the wilderness, a man "not fit to command a sergeant's guard." What rankled even more was that Artemus Ward had been made senior Major General over Lee—an unvarnished political deal to strengthen New England patriotism. Ward, in Lee's opinion, was "a fat old gentleman who had been a popular churchwarden, but had no acquaintance with military matters."

In appearance, Lee himself "was tall and extremely thin; his

face ugly, with an aquiline nose of enormous proportions." An incredibly savage caricature by Barham Rushbrooke of a weasel face on spindly legs was "allowed by all who knew General Lee to be the only successful delineation, either of his countenance or person." Gaunt, hollow-cheeked, with a coarse face, remarkably thick lips and malformed features, he created a general impression of natural shrewdness, energy, cynicism and sullen discontent. In his dress, he was slovenly and sometimes dirty. Although he practiced a systematic rudeness in human relationships, Lee was very fond of dogs and was invariably accompanied by at least several of them.

All in all, Lee was an impressive figure. He was loud, bombastic and, at times, overbearing. He impressed everybody he met with his absolute confidence in his own ability. While "in every commanding officer he saw an usurper or a tyrant," he was easy-going and popular with his men. Lee was generous with his companions and he had what amounted to a genius for making friends among powerful leaders.

This man was regarded by Congress and the people as an eccentric genius. When he rode with Washington to Cambridge, he received almost as much acclaim as the Commander in Chief. America had forged a makeshift army out of cobblers, blacksmiths and farmers, commanded by much the same sort of men. Now it was being pitted against one of the greatest military organizations of the time. To many Americans, it must have seemed a godsend to have a professional soldier such as Lee in the American command.

But nothing could have been further from the truth. The difficulty was not that he lacked loyalty to the American cause. He was a Whig and to that extent a liberal. The trouble lay rather in his wistful idolatry for the British Army, the one organization which had never quite accepted him. From the outset, he was a defeatist who believed that raw American forces could not stand up against British troops. The only possible strategy, he thought, was guerrilla warfare and he was gloomy even about this. As early as 1775, he opened unauthorized negotiations for peace with the British.

Charles Lee had two great strokes of luck. Washington gave him command of the war in the South and, flanked by his dogs, the scientific warrior descended on Charlestown where he found the local commander—William Moultrie—engaged in fortifying Sullivan's Island against an imminent British land and sea attack.

Moultrie's ramparts consisted of palmetto logs reinforced with sand. Lee disapproved. He blustered and satirized, then peremptorily ordered Moultrie to abandon his plan. But the stubborn local commander flatly refused.

In June 1776, the British fleet attacked. Its fire passed harmlessly over the blockhouse-type fortifications on the island. The English landing force was pinned down while eleven ships of the line were battered, splintered and smashed by American fire. The crippled fleet sailed away. This humiliating British defeat saved the South from further invasion attempts for two years.

In his despatches, Lee gave full and generous credit to Moultrie. But the public and the Army needed a symbol of triumph. Lee was hailed as the Hero of Charlestown.

A second great stroke of fortune followed hard on the first: the resignation of Artemus Ward made Charles Lee second in command of the Continental Army.

The realization of his searing ambition was now obstructed only by George Washington. And everywhere in the Colonies, Washington's strategic retreats were being unfavorably contrasted with Lee's supposed victory at Charlestown.

At this point Lee began to pursue a course apparently dictated by a desire to isolate Washington's forces and allow the British to destroy him. For centuries, this has been a common gambit in militaristic politics. Napoleon's Marshals needlessly sacrificed thousands of French lives in the Spanish Campaign in order to carry on the more serious war for place and promotion.

A magnificent opportunity was at hand in the winter of 1776. Charles Lee was put in command of the right wing of the Army at Harlem Heights while Washington, with the left wing, crossed the Hudson and fell back into New Jersey to guard Philadelphia. On November 17th, Lord Howe moved swiftly in pursuit of Washington's bedraggled, rapidly evaporating force of 3,000 men. The British General had 5,000 "bloody backs", as the frequently flogged English troops were called by the Americans. Washington's position was critical. He sent Lee peremptory orders to cross the Hudson with his 4,000 reinforcements.

Lee stalled, found excuses, pretended to believe that Washington's orders were merely suggestions. Almost as an afterthought, he proposed that his 4,000 troops be used to harry the British flanks and rear. This may well have been an excellent plan, but it was not in keeping with Lee's reluctance to stir from his strong

defensive position. He wrote more frankly to James Bowdoin of Massachusetts, stating that the two armies should rest "each on its own bottom." In other words, he would stay where he was until Washington's little army was chewed up. He sent a note to Dr. Benjamin Rush, recommending that Congress study Roman history. The lesson to be gleaned was that if Lee were given complete dictatorial powers for a week, he could save the colonies.

Unable to procrastinate any longer, he crossed the Hudson on December 2nd and moved in a leisurely way toward Washington's army. Unfortunately for Lee's machinations, General Philip Schuyler had sent seven regiments from Lake Champlain to reinforce Washington. The opportunist Lee, however, contrived to detach three of them although his own wing was not in danger.

Then, on December 13th, an utterly unexpected blow ruined his plans. He was sitting in bed, dictating a highly disloyal letter to General Horatio Gates which implied that Washington was dangerously incompetent and should be allowed to stew in his own juice. This Gates was, like Lee himself, a former British officer, a scrambler for military power and a directing force behind a cabal to destroy Washington.

"*Entre nous*," the note ran, "a certain great man is most damnably deficient—He has thrown me into a situation where I face my choice of difficulties—If I stay in this Province I risk myself and Army and if I do not stay the Province is lost forever—I have neither guides, cavalry, medicines, shoes or stockings—I must act with the greatest circumspection—Tories are on my front rear and on my flanks . . . We are lost . . . as to what relates to yourself if you think you can be in time to aid the General I wou'd have you by all means go . . ."

This poisonous letter vibrated with an ill-concealed lust for Washington's downfall. While Lee schemed to cut off all possible sources of reinforcements to Washington, he chatted with young Major James Wilkinson—a rising officer in the Continental Army who was eventually to go considerably further than Lee in the business of treason.

Lee finished his letter. Wilkinson glanced out of the window in time to see thirty British dragoons approaching the command post. The scientific general had been negligent about posting his guards!

What followed was most undignified. Wilkinson escaped, but Major General Charles Lee was captured in bed. According to

one account, he was then mounted on a horse, clad only in a flannel nightgown and slippers. It is also reported that the dragoons amused themselves by feeding whiskey to the horse. On this wobbly and uncertain steed, the Second in Command of the Continental Army was taken to British Headquarters.

Lord Howe had the curious idea that, instead of being treated as a high ranking prisoner of war, General Lee should be hanged forthwith as a deserter from the British Army. There was unassailable logic in this position, but Howe nevertheless wrote home for instructions.

Lee's first reaction was a combination of despondency and defiance. Immediately after his capture, he sounded a brave note in a letter to a British officer: "It would seem that Providence had determined that not one freeman should be left upon earth; and the success of your arms more than foretell one universal system of slavery." After this one spurt of courage, he decided to make himself more useful to his host alive than dead.

He explained to Lord Howe that he had always been opposed to American independence. In a sense, this was true. He had been a consistent English Whig, but not an American nationalist. He had put his philosophy rather aptly in a letter to Lord Percy:

"I think, my Lord, an English soldier owes a very great degree of reverence to the King, but, I think he owes a still greater degree of reverence to the rights and liberties of his country. I think his country is every part of the Empire; that, in whatever part of the empire a flagitious minister manifestly invades those rights and liberties . . . every Englishman, soldier or not soldier, ought to consider their cause as his own . . ."

Since he was not an American nationalist, Lee reasoned that he had the right to advise his captors on how to crush the American revolutionary armies. In suggesting this, he forgot the liberal principles for which he was supposed to be fighting; he forgot his oath of allegiance to the United States; and he forgot his duty as an officer. In his unhappy predicament, Lee remembered only one thing—his skin.

On March 29, 1777, this meddling intriguer submitted to Lord Howe a plan of operations for the British forces. He proposed the driving of a wedge through America by striking at Alexandria and Annapolis. As a result, Pennsylvania, Maryland and Virginia—the key areas of greatest wealth and densest population—would fall into British hands within two months and every "spark of this desolating war" would be extinguished. Lee pledged the success of

the operation "with the penalty of my life"—a none too subtle allusion to his captors' disagreeable plan of hanging him.

Although nobody has ever ventured to suggest that Lee gave this treasonable advice to help the American cause, it may well have had that effect. His plan was an extraordinarily poor one, but then Lord Howe was an extraordinarily poor General—personally courageous, but inert and pleasure-loving. How seriously he took Lee's proposals will never be known. Four days after the Lee operations plan was penned, Howe wrote Lord Germain, the cowardly formalist who headed the English War Office, announcing that he intended to modify the agreed-upon strategy of moving up the Hudson to join General Burgoyne who was invading southwards from Canada.

Howe struck toward Philadelphia in accordance with the general strategy Lee had suggested, but not in accordance with Lee's specific operational plan. He was outmaneuvered and accomplished nothing. This left Burgoyne isolated and without effective support. His supply lines became attenuated; his rear was harassed, and at Saratoga he was destroyed. This marked a turning point in the war.

How much did Lee's shallow advice have to do with this British disaster? His actual plan was not carried out, but if he had not been at Lord Howe's elbow, even that military incompetent might have done the obvious and logical thing—by joining Burgoyne in northern New York, fortifying the Hudson and thus severing New England from the rest of the Colonies.

Lee had been placed on the *Centurion* to be transported to England for trial as a deserter. But George Washington, unaware of Lee's treachery, intervened vigorously to save the life of his friend. Five Hessian officers of field grade were held as hostages for Lee's safety. Anxiously concerned over the effect of this on the morale of his German mercenaries, Howe paroled Lee in April.

Lee signed a pledge on his "faith and sacred honour" to "not directly or indirectly do anything contrary to the interests of his Majesty or their government." But the General's honor was a highly impalpable thing. Having prepared a plan of operations for the British Army, the master strategist now submitted a similar plan to George Washington.

Lee advised that a great fortress be built at Pittsburgh. The American women and children should be sent there first. Then, as defeat followed defeat, Congress could withdraw westward to

the fortress and finally scramble down the Ohio-Mississippi into Spanish territory. In other words, the British Army was invincible and the war was already lost!

For reasons which nobody has ever been able to fathom, Washington considered that the presence of this nincompoop at his headquarters was essential. As Lee put it, Washington "cannot do without me." When the double-crosser was exchanged, his return to American ranks provided a great military spectacle. Washington himself rode several miles beyond Valley Forge to meet him. They proceeded back to camp between files of troops drawn up for review. Charles Lee resumed his former rank and lived in Washington's house as a member of his family.

Again Lee felt he had been unjustly treated. He suggested that he should be advanced in rank and paid for the period of his confinement. The preposterousness of this claim would have been self-evident if the Continental Army had known that Lee had secretly renounced his American allegiance and agreed to work "sincerely and zealously" for England's cause. But this pertinent fact was to be hidden for seventy-five years in the British archives.

On rejoining the Continental Army, Lee wasted no time in resuming his illicit flirtation with the British. When Sir Henry Clinton was named British Commander in Chief, Lee hastened to congratulate him as Clinton's "most respectful and obliged humble servant." He affirmed that his views had not changed since his release from British hands, and that he would continue to work zealously for peace.

The last act in the Lee drama remained to be played. Washington gave him 6,000 troops and ordered him to engage and destroy the left wing of the British Army near Monmouth. At first, Lee took such an openly defeatist attitude toward the operation that the command was transferred to Lafayette. Then, at the last moment, he changed his mind and asked to lead the army. The generous French officer agreed.

In this vacillating mood and with the profound conviction that the British forces were invincible, Lee engaged Clinton's rear on June 28th as ordered. Mad Anthony Wayne launched the American attack. Then, with his vanguard in battle, Lee withdrew the main force toward a high ridge which offered a good defensive position. His assault force isolated, Wayne bombarded Lee with frantic requests for instructions. The Hero of Charlestown turned a deaf ear.

This was bad enough. But Lee's next step can only be explained

as either premeditated treason or craven funk. He pulled his army back from the heights into low swamp land. The day was sweltering and the American forces began to break ranks and move rearwards as a disorderly mass. Panic spread like a brush fire. The retreat was turning into a disaster.

Livid with fury, Washington arrived on the scene and demanded an explanation. Lee muttered something about having been sent out to engage the whole British Army and be destroyed in the process. If Lee had not meant to fight, inquired Washington caustically, why had he accepted the command? The Commander in Chief ordered Lee off the field and concentrated on turning the near rout into a modest American victory. As he straggled toward the rear, Lee made a last attempt to stab his army in the back. When he ran into Baron von Steuben, who was bringing up three brigades to reinforce the sagging American lines, he tried to persuade the German that the reinforcements were needed elsewhere. But the sturdy German was not deceived by this treachery.

The next day Washington delivered a masterly reproof: "As soon as circumstances will permit you shall have an opportunity of justifying yourself to the army, to Congress, to America, and to the world in general; or of convincing them that you were guilty of a breach of orders, and of misbehaviour before the enemy on the 28th instant, in not attacking them as you had been directed, and in making an unnecessary, disorderly, and shameful retreat."

Lee replied with characteristic insolence and bombast: "I trust that temporary power of office and the tinsel dignity attending it will not be able, by all the mists they can raise, to obfuscate the bright rays of truth."

His court-martial abundantly proved his cowardice, but the dark roots of his treason remained hidden. The sentence was merely removal from command for a year. Fortunately for the Army, Lee could not keep his serpent's tongue still. While in enforced retirement, he libelled Washington in a series of scurrilous attacks. Discharged from the Army, he retired to his Virginia estate and shortly thereafter died. His last wish was that he should not be buried within a mile of any church or meetinghouse. He said that having kept bad company in this world, he had no intentions of doing so in the next! Like Aaron Burr, he died a freethinker.

Charles Lee's dying request was ignored. His bones were buried

in a proper cemetery and in a manner befitting a distinguished American soldier and patriot, with the President of Congress attending the funeral.

Benedict Arnold

The 37 year-old General in command at Philadelphia was looking for a wife. His first one had died several years before, and the ardent General could not wait to find another. In April 1778, he had sent stilted and flowery declarations of love to Miss Betsy Deblois of Boston, but the lady firmly declined to be more than a friend. He was now busily engaged in recopying these amatory communications, with slight changes of phrase, and firing them at Miss Margaret Shippen—a somewhat moody, introverted and extremely pretty girl of eighteen, who was the youngest daughter of Judge Edward Shippen of Philadelphia.

“Suffer that heavenly bosom (which cannot know itself the cause of pain without a sympathetic pang) to expand with a sensation more soft, more tender than friendship.”

Was the lady moved by this touching appeal or by entirely different considerations? That is a difficult question to answer.

Benedict Arnold was not another Charles Lee. No aura of disreputableness clung to him. On the other hand, he lacked the worldly dazzle of his fellow traitor. Nor was Arnold a man to be swayed or even troubled by general principles.

He came from a New England family of some distinction. In his youth, he was apprenticed in a pharmacy but had the excellent sense to run away. He fought spasmodically in the French and Indian War, then deserted. In time, he became a merchant and smuggler who sailed his own ships to the West Indies. As Carl Van Doren points out, he was the sort of businessman who took big risks and engineered daring operations. He tended to launch projects in a grandiose way or not at all. He never achieved the dreary sobriety of the solid man of affairs.

This future traitor impressed even a casual acquaintance as an extraordinarily cold and calculating person. He was capable of violent emotions, but these centered on himself. He bickered endlessly with his fellow officers and, since he was deficient in finesse and grace, these squabbles had to be arbitrated at higher levels of command. He liked to live well and had a merchant's—though not a miser's—feel for money. Throughout his Army career, he kept a sharp eye open for business opportunities. These extra-curricular

activities stirred up clouds of accusations and rumors which resulted in investigations and finally court-martial. "Money is this man's god," John Brown wrote in a handbill, "and to get enough of it he would sacrifice his country."

Despite his brilliant military talents, Arnold presented something of a problem. Where could the man safely be put? And once he was put there, would there be another scandal?

Arnold's military career is too well-known to require repetition. The tragedy of it is epitomized by the nameless monument at Saratoga to "the most brilliant soldier of the Continental army." He led the gruelling, epic march on Quebec. By a brilliant ruse, he relieved Fort Schuyler. At Bemis Heights, he fought with blazing courage until his horse was shot from under him and his thigh shattered by an enemy bullet.

As a result of his wounds, he was sent to Philadelphia as military commander of the leading city of America—a city only recently evacuated by the British. In 1778, Arnold was convalescent and temporarily unfitted for battle leadership.

When he took command in Philadelphia, his reputation was ambiguous. In 1776, he had been court-martialled for plundering military stores at Montreal for personal profit. During the Canadian campaign, \$55,000 had passed through Arnold's hands and mysteriously disappeared. Then there had ensued a curious episode: a 75-ton schooner known as *Charming Nancy* was cleared by Arnold—contrary to army policy—to enter any American port without "umbrage or molestation" and sell its cargo at wind-fall profits in commodity-starved markets.

The Philadelphia command opened up similar magnificent opportunities. Arnold immediately ordered all shops closed so that British and Tory property could be requisitioned and goods needed by the military appropriated. This was entirely proper, but his next step was not. He entered into a secret contract with two merchants to buy up these frozen assets with Army funds, sell necessary supplies to the Clothier General, and unload the rest on the open market—an arrangement which promised splendid returns.

This was Arnold's background and situation at the time he courted and won Peggy Shippen. While the "little General"—Arnold was five-feet nine—was known to be lightfingered, he was not suspected of treason. Although he had been criticized in Philadelphia for his attitude toward Tories, nothing lay behind the charge but civilian spite. The General moved in agreeable

society and, as he said sarcastically at the time, had "not yet learned to carry on a warfare against women."

From this point on, the matter of dates becomes important. On April 8, 1779, Benedict Arnold and Peggy Shippen were married. A few weeks later—the exact date is unknown—General Arnold approached one Joseph Stansbury, proprietor of a china shop and a secret British agent. Arnold proposed that he be put in touch with General Sir Henry Clinton's Headquarters to work out an arrangement by which he could profitably betray America.

For 150 years, historians have believed that Arnold entered into these negotiations without the knowledge of his wife. Peggy Shippen Arnold has been regarded as a model of feminine virtue. As pure as snow, as innocent as a child, she had the misfortune to be married to a traitor. If she remained loyal to him after his treason was revealed, the sole motive was wifely devotion. George Washington, Alexander Hamilton, the Marquis de Lafayette—all believed that Arnold never confided his treason in Peggy until a few minutes before his precipitate flight.

It is comforting to believe that the sordid Arnold was the architect of betrayal and the lovely Peggy its innocent victim. But life does not correspond to the simple-mindedness of morality plays or popular magazine romances. It is somewhat more complicated and, for that reason, a great deal more interesting.

There is an accumulation of evidence that Peggy provided the inspiration behind the Arnold betrayal. The first and most obvious clue is the matter of dates. The second clue is the contact with Stansbury. How did Arnold know that this storekeeper was part of the communications net of British Headquarters? If this had been such a poorly kept secret that an American General was aware of it, Stansbury would have hanged. The fairly obvious inference is that Arnold learned about Stansbury's real role from Peggy.

But how did she know? During the days of the British occupation of Philadelphia, she had been squired by John Andre, who was responsible for liaison with the network of secret agents behind American lines. While the romantic story that Andre was in love with Peggy cannot be verified, it is significant that he took the trouble to do a sensitive pencil drawing of her in an elaborate coiffeur. This drawing shows every ruffle of Peggy's dress, a dress which old Judge Shippen thought so scandalously immodest that, at the last moment, he forbade Peggy to attend a ball in it. More-

over, Andre personally designed her costume. All of this must have taken many hours of Andre's valuable time.

As she appeared to Andre, Peggy was an intriguing young woman. The drawing gives her a petulant, almost sullen, expression. The eyes are wide and highly intelligent, but they are at the same time sly and secretive.

Whatever Andre's feelings toward her may have been, it is hardly to be supposed that during a flirtation or courtship, he would have disclosed the identity of his secret agents in Philadelphia. But if he had previously recruited Peggy into his espionage net, he would naturally have put her in contact with a courier such as Stansbury.

Benedict Arnold was apparently engulfed by waves of guilt immediately after taking the fatal step. He had been accused of speculation by the Pennsylvania civil authorities. On May 5th, probably a fortnight or so after he had become a traitor, the General dealt hysterically with this allegation in a remarkable letter to George Washington: "If your Excellency thinks me criminal, for heaven's sake let me be immediately tried and, if found guilty, executed." Now this was sheer nonsense. He had not been accused of any crime which warranted the death penalty. But, while nonsense, it was by no means hypocrisy. In an oblique and perhaps unconscious way, Arnold was confessing to treason—a crime which does carry the death penalty. His "confession" was in a sense an expiation.

After this "confession," came the justification: "Having made every sacrifice of fortune and blood, and become a cripple in the service of my country, I little expected to meet the ungrateful returns I have received from my countrymen; but as Congress have stamped ingratitude as a current coin, I must take it. I wish your Excellency, for your long and eminent services, may not be paid in the same coin. . ."

Irrational as a defense against the charge of grafting, this was a thinly concealed justification of treason, closing with the implied suggestion that Washington join him in conspiracy. Congress had already betrayed Arnold; it was about to betray Washington!

On May 10th, a month after Arnold's wedding, Captain John Andre sent him a reply from Sir Henry Clinton's Headquarters. He addressed Benedict Arnold as "Monk"—the name of the Commonwealth General who had earned a dukedom by turning over to the Royalists. After this subtle appeal to Arnold's cupid-

ity, Andre assured him that he had "full reliance on his honourable Intentions" and that if his treason should result in "the Seizing of an obnoxious band of men" or some other tangible service, British generosity would "exceed even his own most Sanguine hopes." On the other hand, if he failed, he would be reimbursed for all losses sustained.

There were three types of service which Benedict Arnold could perform: supplying military intelligence (information about troop and arsenal dispositions, operational plans); subverting the loyalty of other American Generals; and organizing a military blow of importance.

Arnold and Andre corresponded through the courier net. Each had a copy of Blackstone's *Commentaries* and used the page, line, word-order code in three digits. Other letters were underlined in special invisible inks. Two key letters showed whether the hidden messages were to be revealed by fire or acid. Naive methods obviously, but chemistry, cryptography and decoding machines had not yet been developed.

Still other messages took the form of innocent letters, dealing with social matters "& other nonsense." They were sent to Peggy Chew, an innocent, with a request that they be communicated to Peggy Arnold. This is, of course, conclusive proof that she was party to the treason from the beginning.

Van Doren has arraigned Peggy on the basis of these documents which he made public for the first time. He believes, however, that she "could hardly have done more than confirm a powerful will like Arnold's in its own decision." This is at least debatable. Benedict Arnold was a virile man who had found considerable difficulty in getting a suitable bride. And Peggy satisfied him completely. As he put the matter in a rather quaint letter to a friend: "I myself had enjoyed a tolerable share of the dissipated joys of life, as well as the scenes of sensual gratification incident to a man of nervous constitution; but when set in competition with those I have since felt and still enjoy, I consider the time of celibacy in some measure misspent."

Peggy was perhaps less enraptured of her partially crippled and considerably older husband. When Arnold went to West Point and left Peggy behind in Philadelphia, his waspish sister, Hannah, wrote him that his wife was having a gay time and making "frequent private assignations." After Arnold's treason was discovered, his wife was allowed to choose between proceeding to Philadelphia—still in American hands—or joining her husband

in New York. Having decided on Philadelphia, she proceeded to New York only when the suspicious civilian authorities ordered her expulsion.

On July 11, 1779, Arnold stated his price to the British: £10,000 plus indemnification for any losses sustained, to be paid whether he succeeded or failed. Andre took up the foils. The plans of West Point would be most helpful to the British. If Arnold would assume an active field command, he and Andre could arrange to meet face to face and settle the unpleasant matter of money in a few minutes. This was an artful way of telling the General that he was of little value to the British vegetating in Philadelphia.

Arnold whetted the British appetite by furnishing information on American operational plans, troop dispositions, French fleet movements, etc. But John Andre was not impressed. This superlatively able young man knew that wars are not won by stealing documents. He wanted Arnold to betray a fortress, surrender an Army or lose a battle. The real business of warfare was to smash up the enemy's means of resistance.

Arnold insisted on contracting for his betrayal in advance. He knew that all governments use traitors when necessary and disavow them when convenient. Andre, however, was too shrewd to agree to a proposition giving Arnold the same pay whether he succeeded or failed. This would give Arnold a strong motive for avoiding risk. After talking it over with Sir Henry Clinton, Andre transmitted a counter-proposal. If Arnold would get himself appointed to an important military command and surrender it, the British would pay two guineas a head for all captured soldiers captured up to 5,000 or 6,000.

This offer dictated Benedict Arnold's next move. A field command would obviously be unprofitable. If he bungled and lost a battle, it would be most difficult to collect. The British could always claim that the victory was due to their superior skill and valor. But command of a fortress, where he would also enjoy undivided authority, was a different matter.

Deciding to carry out this program, Arnold wrote General Schuyler in March of 1780 suggesting that he be given West Point and hinting delicately that his wounds incapacitated him from active military service. The little General then made a hurried visit to the post he intended to betray, found the commissary supplies low and the fortifications in disrepair. All this was to the good. But unfortunately the fort was garrisoned by only

1,500 men. Their surrender to the British would yield him only £3,150—poor pickings for treason.

In July the traitor's plot was almost disrupted. Still respecting Arnold as a courageous and brilliant soldier, a man who loved battle, General Washington offered him command of the left wing of the army then crossing the Hudson to attack the British in New York. "Instead of thanking me, or expressing any pleasure at the appointment," Washington recalled afterwards, Arnold "never opened his mouth." Doubtless this seemed less suspicious at the time than in retrospect. Badly wounded men often live in fear of being hit a second time. And Arnold was newly married and not too old to absorb himself in the pleasures of the bed. As for Peggy, her reaction was revealing. When she heard the news at a dinner party given by Robert Morris, she threw a fit of hysterics. What a devoted wife, the guests doubtless thought, a young bride terrified that her husband might be killed in battle!

Arnold was obliged to undergo the humiliation of pleading with Washington that his old wound unfitted him for active campaigning. The Commander in Chief pretended to believe this and, on August 3rd, he gave Arnold the fortress which the latter had contracted to betray.

During the next month, Arnold busied himself with drawing troops into West Point and thus enlarging his garrison. In July, the British had increased their offer to £20,000 for the surrender of 3,000 men. By September 13th, he was able to allege to the enemy that he had brought his command up to the strength of 3,086 troops.

The Andre Tragedy

The next step was a face-to-face meeting with John Andre. This was absolutely necessary. There had been no meeting of minds on the all-important question of traitor's pay. Arnold had to provide the British Adjutant General with the military information needed for a successful, surprise attack on the Point. Even more important, timing, place and tactics had to be co-ordinated so that Arnold could sterilize the American defenses when the British assault began.

It was, of course, out of the question for Arnold to cross British lines. He had to be beyond suspicion if he was to succeed in betraying West Point. Therefore, Andre must come to him. There were two possible ways of doing this without exciting undue suspicion. The British emissary might cross American lines as a

patriot secret agent who was reporting intelligence to Arnold. Alternately, he might proceed to a neutral zone under a flag of truce with an American Tory who had a message to convey to the West Point commander.

The real issue was whether Andre should arrive in regimentals as a British officer, or in civilian clothes as a spy. Arnold obstinately insisted that Andre must arrive disguised, but the latter was under specific orders from General Sir Henry Clinton that he must not cross American lines, that he must wear his uniform at all times and, finally, that he must not carry compromising papers.

While the fateful meeting was being arranged, Washington wrote Arnold in strict confidence that he would be in Peekskill on a Sunday evening en route to Hartford where he planned to confer with General Rochambeau. Arnold was to provide a guard of fifty men. The clear inference was that the Commander in Chief would arrive inadequately protected.

Despite the fact that Washington had consistently protected him against criticism and had been practically a father to his wife, Arnold did not hesitate to betray this vital bit of intelligence to Clinton and Andre. This was perhaps his most sordid act. Fortunately, Arnold's report arrived too late for the British to kidnap the Commander in Chief.

The drama began to unfold in earnest when the British armed sloop *Vulture* sailed up from Spuyten Duyvil and dropped anchor at the lower end of Haverstraw Bay. Official letters from the enemy man-of-war were delivered openly to Arnold. These contained one item of carefully masked information: Andre was on board the *Vulture*.

Events were swiftly spiraling toward a climax. A few days earlier, Peggy had arrived from Philadelphia to be at the kill with her husband when the fort was surrendered.

On a moonless night, a rowboat brought a man called Joshua Smith on board the *Vulture*. This Smith had been duped by Arnold into believing a weird tale: he was to take ashore a pro-American merchant who would be dressed in a British officer's uniform because he enjoyed posing as a soldier. The "pro-American merchant" was, of course, Major Andre.

Young Andre was rowed ashore without difficulty and met Arnold in a forest near the river's edge. Here they talked for three hours. Arnold turned over a detailed plan of West Point which indicated troop dispositions, described the nearby forces under his command and their standing orders in the event of an attack

on the Point and, finally, analyzed at length the weaknesses of the fort: "the wall on the east side broken down . . . on the west side broke in many places: two bomb-proofs and provision magazine in the fort and slight wooden barrack. . ." They probably agreed then and there on the timing and tactics of the British assault.

At four in the morning Joshua Smith interrupted to tell them it would be daybreak in two hours. But the oarsmen were too tired or too lazy to row Andre back to his ship. They were independent Americans and it did not appear advisable to coerce them. After Arnold returned to his Headquarters Smith advised Andre to come home with him. Wrapped in a long blue cloak, Andre passed American outposts and entered enemy territory. He had violated Clinton's instructions and was now, according to the laws of war, a spy.

Bad luck at once fastened on the debonair young officer whom fortune had previously favored. Obviously acting without instructions from his commander, one of Arnold's subordinates ordered a heavy cannonade on the *Vulture* that morning. The British vessel was immobile on a windless day. Shrouds ripped and decks torn apart, the *Vulture* raised anchor and drifted down-river to safety.

After this attack, it was virtually impossible for Andre to return to his warship. The trip on the river had been greatly lengthened and that stretch of the Hudson would almost certainly be patrolled by American boats. Andre's plans had completely miscarried. He intended to return to the *Vulture* that night, wearing his regimentals with the incriminating plans Arnold had given him tied to a stone so they could be dropped quietly into the river in an emergency.

Joshua Smith now took charge. He told Andre that he would have to make his way overland through American lines, using the pass which Arnold had made out in the name of John Anderson. This was the only possible decision. Nevertheless, it was to cost Andre his life.

In civilian attire—a claret-colored jacket with gold-laced buttonholes—and with his false papers, Andre passed the last American outpost and entered a no-man's land continually ravaged and raided by two franc tireur bands, known as Skinners (pro-American) and Cowboys (pro-British). The motives of patriotism and love of plunder were inextricably mixed in these guerilla groups, to whom a well-dressed traveller was always big game.

The Skinners ambushed John Andre. Upon searching him, probably for money, they found the plans of West Point in Arnold's handwriting. When Andre was haled before a dull-witted American officer, this worthy concluded that "John Anderson" had stolen papers from Arnold. He sent the documents by messenger to General Washington, who was riding from Hartford to West Point, but made the incredible decision to ship Andre under guard to Benedict Arnold!

Almost too late, Major Benjamin Tallmadge, an intelligence officer, arrived on the scene and perceived immediately that Arnold was guilty of treason. He had the guards who were taking Andre to West Point recalled and instead confined the British officer in safe territory. But he was unable to stop the messenger who had been sent with a full report to General Arnold.

At nine o'clock Monday morning, Alexander Hamilton rode into Arnold's Headquarters to report that His Excellency Lieutenant General George Washington would be late for breakfast, but wished the staff officers to begin without him. Shortly thereafter, a messenger arrived and handed Arnold a letter. Impassive and poker-faced, he read the shattering news that "John Anderson" had been apprehended. Instructing the messenger to say nothing about the matter, he bounded to tell Peggy that the treason had been discovered, that the only recourse was headlong flight, and that she must stay behind and convince the American Command of her innocence.

At that moment, one of Arnold's aides came upstairs to announce that Washington was on his way. He would arrive at any minute; they could have breakfast together after all. The Commander in Chief was the last man in the world Benedict Arnold wanted to meet. He "came down in great confusion," and announced he was off for West Point and would be back to greet General Washington in an hour. After a maddeningly slow trip on a barge, Arnold boarded the *Vulture*—at last safe within English lines.

Back at the command post, as long as General Washington was there to be entertained, Peggy showed admirable sang-froid. When he rode off to West Point to find Arnold, her weak nerves snapped and she broke down into violent hysteria. This was not acting; it was a dangerous failure of nerve.

One of Arnold's aides found her in her bedroom, dishevelled, shrieking and raving. "Her morning gown with few other clothes remained on her—too few to be seen even by gentlemen of the

family," he recalled years later. She fell on her knees with a plea that her innocent baby should not be put to death—a request which shocked the susceptible young aides. She screamed that she had no friends in the world. "No, General Arnold will never return: he is gone, he is gone forever: there, there, there, the spirits have carried [him] up there, they have put hot irons in his head"—pointing that he was gone up the ceiling."

The young aide was obviously bewildered. All that he knew at the time was that General Arnold had said he was off to West Point but had not gone there, and that a man called Anderson had been taken as a British spy. What did the "hot irons" in Peggy's hallucination mean? Were they an allusion to the braziers in which the knives were heated for the disembowelling of traitors in England? Or did they have a deeper significance?

Washington appeared. "No, that is not General Washington; that is the man who was a-going to assist Colonel Varick in killing my child," Peggy cried. She had known General Washington well since she was fourteen years old.

All were touched by these scenes of matronly innocence and despair. The young and romantic Alexander Hamilton reached a sentimental conclusion: "All the sweetness of beauty, all the loveliness of innocence, all the tenderness of a wife, and all the fondness of a mother showed themselves in her appearance and conduct. We have every reason to believe that she was entirely unacquainted with the plan, and that her first knowledge of it was when Arnold went to tell her that he must banish himself from his country and from her forever."

Peggy recovered from her nightmares about hot irons, received Washington and Lafayette the next day and played the role of a heart-broken woman who was afraid that popular vengeance would be visited on her and on her children. She then proceeded to Philadelphia, having won the hearts and aroused the sympathy of all the officers who had witnessed the West Point drama. She stopped off en route at Paramus, the home of lovely Mrs. Theodosia Prevost, the widow of a British officer and the future wife of an American traitor—Aaron Burr. Some thirty years afterwards, Matthew Davis, the biographer of Burr, reported what happened there as he had heard it from Burr and as Burr had heard it from Theodosia.

"As soon as they were left alone, Mrs. Arnold became tranquillized and assured Mrs. Prevost that she was heartily sick of

the theatricals she was exhibiting," Davis wrote. She said that she had been "disgusted with the American cause and those who had the management of public affairs, and that through unceasing perseverance she had ultimately brought the general into an arrangement to surrender West Point."

For about a century, this story was generally discredited. The Shippen family alleged loyally that the scoundrel Burr had attempted unsuccessfully to seduce Peggy (in his future wife's house while she was present!) and spitefully slandered her. This is quite out of character. Whatever else Burr may have been, he was discreet about his amours.

It is true that the story does not gibe with the facts in its details. Arnold agreed to treason long before the question of selling West Point became practical. Moreover, Davis' account is hearsay at third hand, reported a generation after the event. In substance, however, it is almost certainly true. If such a conversation had occurred, both Theodosia and Burr would have remembered the gist of it as long as they lived. The inherently conspiratorial Burr kept his secrets and gloated over them; it was the one avaricious element in an otherwise spendthrift character. His decades of silence concerning the alleged complicity of Andrew Jackson and John C. Calhoun in his traitorous ventures are a case in point.

While Peggy Arnold acted her part with consummate talent, John Andre was taken before a court-martial which comprised some of the best experts on military law in the Continental Army. There was unfortunately no doubt of his guilt. He had operated behind American lines in civilian clothes and had been caught carrying secret documents. Although Arnold had given him a pass, it was issued under an alias and had no validity in view of the traitorous purpose behind it.

Andre's death is the principal reason for the peculiar infamy of Benedict Arnold's name. The contrast between the characters of the two men was so glaring that every American officer present on the scene wished Andre free and Arnold swinging on the gallows.

Andre was not only an artist, a poet and a playwright; he was also a gentleman in the classic sense. He behaved during his trial with a quiet, impressive courage, knowing that death was the inevitable outcome. One of his last acts was to write General Sir Henry Clinton a letter of unusual graciousness in which he

absolved that officer of any responsibility for the events leading to his capture and execution. He did not even blame Arnold for neglecting to ensure the safety of his guest.

Believing that he would be shot as an officer and a gentleman, Andre was taken from his prison and accompanied by Major Tallmadge, whose vigilance had uncovered the conspiracy. Tallmadge was "entirely overwhelmed with grief." When Andre saw the gibbet on the hill near Tappan which revealed that his death would not be honorable, he showed no emotion.

While this tragedy was running its course, Alexander Hamilton sent a frantic letter to Sir Henry Clinton concerning Andre's plight. "Though an enemy his virtues and his accomplishments are admired. Perhaps he might be released for General Arnold, delivered up without restriction or condition, which is the prevailing wish."

When this proposal arrived at British Headquarters, Andre was already dead. In any event, the suggested barter deal was obviously impossible. Benedict Arnold had served the British Command to the best of his abilities. He was now under its protection. For Clinton to have surrendered him would have been utterly dishonorable and would have endangered the entire system of secret agents which Andre and he had created.

Aftermath

Benedict Arnold intervened in the most inept possible way to save Andre. Or was that his real purpose? At any rate, he sent Washington a mendacious letter in which he personally assumed full responsibility for Andre's putting on civilian disguise—on the theory that the spy might be acquitted if *force majeure* could be alleged. He then concluded with the rash threat that, if the death sentence against Andre were not rescinded, "a scene of blood at which humanity will revolt" would occur on the American Continent. For this "torrent of blood" history would hold Washington—not Arnold—responsible!

Arnold clearly had a strongly developed sense of guilt. His warped conscience was always twisting and squirming to shift that guilt to the shoulders of others. He was now saying in effect that the real criminal was Washington—that Washington had plotted the murder of the irreproachable Andre. Somebody suggested to Washington that Benedict Arnold would find it hard to sleep at night. The traitor must be "undergoing the torments

of a mental hell." Washington disagreed. He thought Arnold "hackneyed in villainy, and so lost to all sense of honour and shame that while his faculties will enable him to continue his sordid pursuits there will be no time for remorse."

. Arnold was made a British General. He wrote, or had written for him, a lengthy justification of his course. The gist of it was that the British peace commissioners had offered honorable and fair terms in 1778, but the American diehard radicals had refused them. Then had come the alliance with France—a scandalous bedding down with monarchical tyranny and Popery. These were, of course, Arnold's afterthoughts.

The new British General soon led a raiding expedition into Virginia—an operation which required courage since the certain result of capture was death. Secret agents of the Continental Army were assigned to the task of taking Arnold prisoner and spiriting him back to American lines alive. Sergeant Major John Champe "deserted" the Continental Army and enlisted in Arnold's Tory legion. The plan was to kidnap him at midnight, when the traitor was strolling in his garden in New York (then in British hands), hurry him gagged and stunned through a breach which had already been prepared in the fence, and take him through deserted alleys to a waiting boat. Washington had set the plan in motion with cold, implacable anger. He was determined to make an example of the arch-traitor. But the plan misfired. The day before the kidnapping was to occur, Arnold's legion was placed on a transport and sent off to Virginia. Poor Sergeant Champe had to fight on the British side against his own people.

After defeat, Arnold emigrated to Canada and resumed his old occupation as a West Indian trader sailing his own ships. The people of New Brunswick hated him and his warehouse was burned down under mysterious circumstances. Arnold moved again—this time to England. He was insulted in the House of Lords and fought a duel with Lord Lauderdale which at least served to re-establish the fact that he had courage. During the war of the monarchical coalition against revolutionary France, Arnold operated in the West Indian islands as a secret British agent. He used the alias, Anderson, the same name that Andre had chosen for the last venture of his life. Arnold landed in prison, escaped, and drew up a daring but unsuccessful plan for a putsch to seize some of the Spanish islands for England.

The last years of his life were anticlimactic. Although given

rights to a vast tract of land in Canada, he soon hazarded and lost the remainder of his fortune in privateering. In 1801, he died in poverty.

Historian John Fiske tells of his death in moving words:

"He had always carefully preserved the American uniform which he wore on the day when he made his escape to the Vulture; and now as, broken in spirit and weary of life, he felt the last moments coming, he called for this uniform and put it on, and decorated himself with the epaulettes and sword-knot which Washington had given him after the victory of Saratoga. 'Let me die,' said he, 'in this old uniform in which I fought my battles. May God forgive me for putting on any other.'"

This yarn is every bit as true as the tale concerning young George Washington and the cherry tree.

The British paid Arnold exactly £6,000 in cash for his treason. In addition, after the war was over, he received half-pay as a British Colonel amounting to £225 gross per annum. Furthermore, to his three sons by his first marriage accrued an aggregate as English officers of £225 per year.

These were more or less obligatory payments. But there was no such understanding as far as Peggy Arnold was concerned. Even so, in 1782 the King conferred on her a pension of £500 a year for "her services, which were very meritorious," as Sir Henry Clinton put it. Moreover, each of her children was given a yearly stipend of £100 and, unlike Arnold's progeny by his earlier marriage, they were not obliged to serve in the Army to get it.

In current purchasing power, Peggy's personal pension grossed about \$15,000 a year. Where Arnold had to plead, bargain, wheedle and lie to get money from the British Government, Peggy was paid a generous reward without asking for it. The inference as to her leading role in the treason seems inescapable.

End Results

Aside from monetary aggrandizement, however, what had Benedict Arnold achieved? In Carl Van Doren's judgment: "No event in the course of the whole Revolution did so much to intensify patriotic sentiment. After Arnold few patriots could continue to hold in their minds a lingering image of the war as a conflict between political parties. This was between nations, and Arnold had not merely gone over from Whig to Tory but had betrayed—or tried to betray—his country. It was treason,

for there was a state to be treasonable to. Arnold as traitor helped fix a powerful new image of the 'United States in the minds of its people.' In short, his act had roused vast, sleeping forces of nationalism, an incalculable latent power within the mass which could immensely accelerate victory. It is perhaps safe to say that Arnold's unintentional service to the United States at West Point was greater than his deliberate services at Saratoga and Ticonderoga. And it is almost certain that, if he had succeeded in betraying the Point, he would still have failed in his purpose. While giving the British a limited, tangible and static asset, he would still have conjured forth the powerful Jinn of American patriotism.

This is not as paradoxical or as unique as it may appear to be. It is, in fact, a commonplace of history. Lavals and Quislings almost invariably stir up mass hatred on a scale utterly disproportionate to the value of their traitorous services. In World War II, the Nazis, as a general rule, encountered least civilian opposition from countries where the fifth column was negligible or unobtrusive. As will be shown later, the cloak and dagger operations of Franz Rintelen von Kleist and Franz von Papen in the United States during the First World War spurred public opinion toward the one disaster Germany was most determined to prevent—American belligerency.

The dragon's teeth that Benedict Arnold sowed were in the mind. To a man of his practical bent, being intangible they were non-existent. And yet in the end, the unconscious forces which he loosed alone proved durable.

THE WHISKEY REBELLION

"My hammer is up, and my ladle is hot."—Tom the Tinker.

In 1794, the western counties of Pennsylvania became the theatre of the most ominous frontier uprising in American history—the so-called Whiskey Rebellion.

Seen through present day eyes, this "revolt" seems a joyful, rollicking affair in which revenue officers were tarred and feathered, grist mills were smashed and houses were burned to the ground—all with a rough, bucolic humor. Most historians can't help liking "the whiskey boys". They see them as stalwart sons of toil who represented the very backbone of American democracy. According to this sentimental view, Alexander Hamilton, a cold, implacable schemer, wantonly sent an army into Western Pennsylvania to beat the pioneers to their knees and destroy the party of Jeffersonian democracy in the process.

Is this the hidden drama behind the sometimes ludicrous scenes of the Whiskey Insurrection? Was Hamilton's decisive intervention the work of an agent provocateur rather than a statesman? The charges against him are vague and have never been proved. The one certainty is that the wild events in Western Pennsylvania became finally merely the chessboard on which two titanic figures of the formative period of American history—Jefferson and Hamilton—fought to determine the shape of the nation.

The Whiskey Rebellion was neither trivial nor innocent. It was a farm revolt and, throughout the Revolutionary War period, the farming population had proved the explosive, dangerous ingredient which threatened to burst apart all viable national bonds.

Take the period from 1750 to 1800. In 1765-71, Herman Husbands' Regulators waged war on North Carolina rather than pay taxes. In 1769, the Green Mountain Boys under their redoubt-

able guerrilla leader, Ethan Allen, began their twenty-two years struggle against the authorities. In 1784, the pioneers of western North Carolina seceded to form the rump state of Franklin. The mobs of 1786 which closed the Massachusetts courts and tried to storm Springfield Armory under Daniel Shays were composed in the main of debt-ridden farmers. The Whiskey Insurrection of 1794 was the first major burst of agrarian violence under the Constitution. Five years later, it was followed by the tragicomic armed tax revolt of John Fries and his Pennsylvania Dutchmen.

Of all these troubles and abortive uprisings, the Whiskey Rebellion was probably the most serious. Five thousand armed men under the leadership of rebel David Bradford marched on Pittsburgh and entered it without opposition. The farmers boasted that, if an American army were sent into the area to restore order, they would hurl it back over the Appalachians. There was loose talk of joining forces with the Spanish Crown, which had spread a web of intrigue and corruption over all American territories west of the watershed.

Inchoate, aimless and badly led, this mass movement of irate farmers was nonetheless a danger to the fledgling American nation. The issue over which the Monongahela pioneers took up arms was the right of the Federal Government to tax them. Almost completely isolated from the seaboard by the seemingly impenetrable Appalachian barrier, the Westerners felt that the levies they paid brought them no benefits. Had their claim been conceded, any group, anywhere in the nation, would have been able to act on that precedent.

A government which cannot tax cannot govern. The danger was grave and present that the American nation might be forced back into the anarchic conditions which preceded the adoption of the Constitution.

The Whiskey crisis broke five years after the Constitution's ratification. It battered against a nation born from revolution, but not yet unified by time and custom in habitual allegiance. Due to the relentless perseverance of Hamilton, the insurgents were crushed. An overwhelming and disproportionate force was applied with unnecessary brutality and vindictiveness toward this purpose. Impure motives may well have been alloyed with Hamilton's primary aim. Yet what he accomplished was seemingly necessary. With massive power, he asserted the authority of the nation in a crisis which might eventually have disintegrated it.

To him the issue was simple:

"Those, therefore, who preach doctrines, or set examples, which undermine or subvert the authority of the laws, lead us from freedom to slavery. They incapacitate us from a GOVERNMENT OF LAWS, and consequently prepare the way for one of FORCE, for mankind must have GOVERNMENT OF ONE SORT OR ANOTHER."

He wrote this in 1794 at the height of the Whiskey crisis.

Revolt in Pennsylvania

Should the President of the United States be addressed as "Excellency", as "Majesty", as "Elective Highness" or with the sonorous appellation "His Highness the President of the United States and Protector of the Rights of the Same"? The pudgy and ponderous John Adams, Vice President of the Republic, racked his brains to find answers to these pressing problems of court etiquette and procedure while the ladies of New York gathered garlands of flowers and waited breathlessly for the arrival of George Washington to take the oath of office.

There were at the time some 70,000 people in the Western counties of Pennsylvania to whom the pomp and luxury of the eastern seaboard, the pleas in Fenno's *Gazette* for "titles of distinction" and even the resplendent uniform of the first President with "medal buttons, an eagle on them, white stockings, a bag and sword" would have seemed like invitations to Satan to claim his own. Had they known about these transactions in New York they would surely have believed that the new Government was destined for hell's fires. To the austere men of the Monongahela farming country, even the rising little industrial town of Pittsburgh, with its government bateaux bringing passengers and mail, its incipient coal mining, boat building and burr stone milling, was a City of the Plain. Some day God in his infinite wisdom would punish this western Sodom for its vainglory with utter ruin and desolation.

These hardy settlers had come down the Ohio and up from the Virginia Piedmont. They were mostly Scotch and Scotch-Irish with a German-speaking minority which kept apart. They were dour men, hard-working, hard-drinking and hard-praying. No songs were permitted except religious hymns and odes in praise of George Washington. There were two great recreations in the western country—sermons and militia musters. For the most part, ministers of the Gospel were paid in liquid coin, one gallon of whiskey being reckoned equivalent to a shilling. There

was a still house to every six farms and whiskey was the universal drink, since it was not only a pleasant beverage, but a sovereign remedy for the ague, the fevers, for snake bite and for what was called "the decline". It was consumed neat, with tansy, with maple sugar or with mint.

As Leland D. Baldwin points out in his classic study of the Whiskey Rebellion, these pioneers lived a rough, cheerless life, which was gradually changing as the frontier pushed further westward and as trade grew apace with the East and with New Orleans. Indian raids were a continuous danger. Wolves preyed on the cattle. Only hard and often brutal men could survive under these conditions. A few years before the Western Insurrection broke out, a man called David Williamson had led an expedition against three Moravian missions in which Christianized Indians lived peacefully, and had butchered all—men, women and children—in cold blood. On his return, he was elected sheriff. People who couldn't get along in the western country were "hated out" of it. Thirty-nine lashes on the naked back was a punishment frequently administered for theft. By the time of the rebellion, however, more gentle manners were penetrating the area. The once universal sport of eye gouging was by then indulged in chiefly by drifters and bateaux crews.

The pioneers lived on hominy, pork, berries, vegetables and game. They ate from home-carved wooden dishes or gourds. A family's possessions would normally consist of an iron pot or two, a frying pan, a few pewter spoons, a gun and a hunting knife. The clothing was homespun from flax. Even in the days of the worst Indian raids, some of the pioneers were too poor to own a gun. They would appear at musters with a corn cutter as their only weapon.

This was a frontier democracy. All worked their own farms; all turned up for the militia muster calls; all had mortgage and tax troubles, and all hated the effete and luxurious East.

The people of the western counties had their grievances. Until 1780, they had been part of Virginia. When the territory was transferred to Pennsylvania, which charged ten times as much for public land, speculators from the East began to grab the virgin soil and hold it for an unearned profit against the tide of poor farmers who were moving into the rich new lands of the Monongahela, looking for a place to build their cabins, cut down the timber and raise grain crops. One observer stated that there weren't ten men in the whole country who wouldn't fight against

the State of Pennsylvania and it soon became the custom to open fire on Pennsylvania tax assessors on general principles.

The rich land of the West was being swallowed up by speculators. Many of the men of the American Revolution had had the foresight to buy up tens of thousands of acres in the wilderness against the day when the immigrant torrent would sweep toward the Mississippi, creating farms from virgin forest, building new wagon trails, new industries and new cities. William Morris, for instance, in 1795 bought 200,000 acres in North Carolina, a million in Virginia. At one time, he owned nearly all the western half of New York State. He purchased 1,300,000 acres in Massachusetts and sold nine-tenths of it to absentee owners in Europe. William Bingham was reputedly considerably richer than Morris and a large part of his wealth was in land. The frontiersman, Patrick Henry, prospered after the Revolutionary War and became a staunch conservative. As early as 1788, he had a fifth of a million acres in Virginia. John Marshall, later to become Chief Justice of the Supreme Court, was involved in a business deal to buy up 160,000 acres of the best land of Virginia in partnership with William Morris.

In the western counties of Pennsylvania, General John Neville of Virginia headed the Federalist faction, controlled through his clique the main plums of government, owned ten thousand acres surrounding his beautiful estate, Bower Hill, in the Chartiers Valley. Neville, who directed this "damned Junto", was a popular figure in the western country—affable, kindly, personally courageous, but arrogant and sometimes abusive toward those he considered his social inferiors. He once fired buckshot at a Negro woman "to amuse his friends". His son, Presley, abandoned the study of the law because he thought it was "not an occupation fit for a gentleman".

Gathering Storms

In 1790, Alexander Hamilton proposed that the Federal Government assume the entire internal debt arising out of the Revolutionary War, fund the obligations and service them at par. The terms of this plan leaked out to a favored few. Congressmen and Senators—allied with New York financiers—bought up soldiers' certificates wholesale for two shillings sixpence on the pound in a wild, competitive scramble to reap eight-fold profits overnight. While the men who had starved and frozen at Valley Forge and Quebec gained little from the Hamilton funding plan, it became

a bottomless cornucopia of wealth for the shrewd and unscrupulous. The Hamiltonian plan became law through the votes of Congressmen who had already feasted at the speculative orgy.

Hamilton did not profit personally from his program. His purpose was deeper. With a single bold operation, he bound the wealthy merchant and financial groups to the Federal Party.

Having assumed this substantial debt load, the Federal Government was obliged to impose taxes. On March 3, 1791, Congress enacted an excise law, providing for a sliding scale of taxes on domestically produced spirits, ranging from 9¢ to 25¢ a gallon.

This law stirred up a hornet's nest in the six counties of western Pennsylvania which contained 25% of the nation's stills. The tax threatened the livelihood of the people and they prepared instantly to resist it.

In those days, trade between the Monongahela and the eastern seaboard moved by pack train over the Alleghenies. A horse could load only about four bushels of grain—worth approximately \$1.60 in 1794—and there was no profit in the business. But the same animal could carry the equivalent of 24 bushels in whiskey. Consequently, even the poor farmers banded together to build stills which they owned cooperatively. In 1794, a 100-gallon still was worth as much as a 200-acre farm. The whiskey that wasn't shipped overland or consumed locally by hard-drinking Pennsylvania pioneers moved downstream by flatboat to New Orleans.

Thus whiskey was the essential export commodity simply because transportation was bad. Yet, even while the excise law was being debated in Congress, economic changes were swiftly reducing the importance of hard liquor to the livelihood of the western country. Grain was beginning to move by water to Spanish territory, undercutting shipments from the seaboard. The sprouting industries of the Pittsburgh area were drawing specie into the money-poor farming regions.

But the westerners were not economists. They were hot-tempered, hard-working, unlettered men, quick to feel indignation and to resist whatever they deemed an encroachment on their rights. Moreover, like all Americans of the time, these men held strong views concerning excise taxes. An English wit in 1734 had compared this tax to the Trojan Horse because "it hath an *Army* in its belly." The Continental Congress forty years later assailed the excise as "the horror of all free states." In the debates on the whiskey bill, a Virginia Congressman predicted it would "convulse the government" and "let loose a swarm of

harpies" called revenue men who would be "prying into every man's house and affairs."

Pennsylvania had tried to impose a tax on whiskey in the western counties as early as 1780. A man called Graham was authorized to collect it in three stormy western counties later to become a stronghold of the Whiskey Rebellion. A mob waylaid the unfortunate tax collector. Graham's wig was singed, live coals were stuffed in his boots and his horse's tail was bobbed. But he was either stubborn or unperspicacious. Further hints were obviously needed. One night, he was attacked by a man who called himself Beelzebub and was invited outside to meet "the other devils":

"His Commission and all his papers relating to his Office tore and thrown in the mud, and he forced, or made to stamp on them and Imprecate curses on himself . . . they then cut off one half of his hair, cued the other half on one side of his Head, cut off the Cock of his Hat . . . and in the above plight they marched him amidst a Crowd from the frontiers of the County to Westmoreland County, calling at all the Still Houses in their way where they were *Treated Gratis*, and exposed him to every Insult, and mockery that their Invention could contrive." He was then threatened with "utter Desolution" if he returned to the western country.

Nightriders attacked supporters of the law. Even those who believed that the law, while bad, must be enforced, were mobbed.

The pro-Jeffersonian historian, Claude Bowers, regards these men as heroes and paints them in idyllic colors: "The Whiskey Boys of the 'insurrection of 1794'," he writes, "have been pictured as a vicious, anarchistic, unpatriotic, despicable lot—and they were nothing of the sort. These men were doing more for America than the speculators of Boston and New York, for they were hard-working conquerors of the wilderness, felling the forests, draining the swamps, redeeming the land for the cultivation of man. . . It was a long cry from these powerful figures with muscular arms and dauntless hearts to the perfumed dandies simpering silly compliments into the ears of the ladies at Mrs. Bingham's."

This is a highly sentimentalized verdict. The masked hoodlums of the whiskey country attacked isolated individuals anonymously and in overpowering force. Disguised as Indians, they branded school teachers with red-hot irons, lashed, tarred, feathered and burned all who disagreed with them. Mob terrorism was no more

"dauntless" when practiced by the poor and hard-working members of society than when undertaken by the rich and idle. Did they really "do more for America" than the "perfumed dandies" at Mrs. Bingham's, among whom Alexander Hamilton must naturally be included?

In 1792, Committees of Correspondence were organized at a conference in Pittsburgh. A protest against the excise law was forwarded to Congress. A resolution, signed by Albert Gallatin, later to be Jefferson's Secretary of the Treasury, proposed to have no dealings with revenue officers, to "withdraw from them every assistance, withhold all the comforts of life . . . and upon all occasions treat them with that contempt which they deserve."

A year later, John Holcroft, who signed himself Tom the Tinker, emerged as the symbol of the rebellious movement. Men who had committed the crime of registering under the law would receive an offer from Tom to have their distilleries mended. Still-houses were shot full of holes and burned down; vital sawmill parts were smashed up; gristmills were wrecked. After Tom the Tinker and his men had made their "repairs" with buckshot, crowbars and the torch, their victims were forced to publish what had happened to them in the *Pittsburgh Gazette*.

Liberty poles—the traditional American symbol of protest against tyranny—began to sprout like mushrooms in the western country. Jacobin or Democratic Societies—the Federalists called them Demoniactal Societies—were organized in the region. These became almost, but not quite, an invisible government. They usurped the authority of General Neville's clique of Federalist officials. The Mingo Creek Democratic Society, for instance, barred all Government officials from membership. It provided that disputes within the democratic family should be settled by the Society. Its purposes were to support Jeffersonian principles at home and the cause of revolutionary France abroad. The parent Pennsylvania organization was dedicated "to erect the temple of LIBERTY on the ruins of *palaces and thrones*."

The creed of western Pennsylvania was that a 9¢ tax on whiskey spelled iniquity. The excise worked out to about \$1.50 a family at a time when the average western farmer saw less than \$25 in hard cash from one Christmas to the next. But this plain and rudimentary protest was somehow merged in a gathering national crisis, far broader in program and motivation. In 1793 and 1794, events occurred in the national arena which made the whiskey disturbances the mere symbol of a far deeper national cleavage.

"The Liberty of the Whole Earth"

As the year 1793 began, an armed coalition of the great European monarchies attacked revolutionary France with the avowed purpose of strangling the new republic in its cradle. The French were beleaguered. Bloody religious rebellion broke out in the Vendée. In this desperate crisis, power passed into the hands of a radical triumvirate—Danton, Marat, Robespierre. Committees of Public Safety were organized in March and disaffection was decapitated under the guillotine. Simultaneously, the revolutionaries mobilized the nation's resources for war on a scale never before conceived by any government.

A sanguinary, continent-wide struggle had begun, which was to rage intermittently for twenty-two years and have major repercussions in America. In its initial phases, this war took the guise of a crusade to save republican government from extinction and, as such, it was supported by the vast majority of the American people. Later, under Napoleon, it became clear that the fundamental objective was to establish, through force of arms, the unification of Europe. This aim was clearly contrary to the American design of national expansion on this Continent—an expansion which could best be achieved through dealing individually with weak, bickering and divided European states.

In 1793, the French Revolution passed into the phase of the Reign of Terror. Despite some disapproval of the wholesale executions which brought innocent and guilty alike under the shadow of the guillotine, popular enthusiasm for the revolutionary cause in America reached a frenzied pitch. "The liberty of the whole earth," wrote Jefferson, "was depending on the issue of the contest, and was ever such a prize won with so little innocent blood? My own affections have been deeply wounded by some of the martyrs to this cause, *but rather than it should have failed, I would have seen half the earth desolated.*" (Author's emphasis). The mild statesman of Monticello believed that ninety-nine per cent of the American people subscribed to this bloody hope. And perhaps no American leader was a more accurate judge of public opinion.

That summer, Citizen Genêt, the envoy of revolutionary France—attractive, precocious, the embodiment of brilliance without judgment—arrived in Charlestown. His leisurely journey to the capital at Philadelphia was a wild procession through frantically cheering crowds. The red, white and blue cockade of the French

Republic began to supplant the black cockade of the American Revolution. Jacobin clubs sprang up all over the country. A perhaps apocryphal Southern planter called in his Negro slave and, in accordance with the new customs of the revolutionary day, ordered: "Citizen Pompey, clean my boots." Men were addressed as "Citizen"; women as "Citizeness" or, for short, "Cit-ness". A satiric Federalist poet wrote:

*"No citness to my name, I'll have, says Kate,
"Though Boston lads so much about it prate;
"I've asked its meaning, and our Tom, the clown,
"Says darn it 't means 'woman of the town'."*

America had split into two camps. On the whole, the merchants, the large landowners, the rich, the conservative and powerful—all those who wished a strong aristocratical government—were ranged on England's side. The masses, the Jeffersonians, were fervent for France. The armed struggle in Europe had become a projection in enlarged form, on a vast and turbulent screen, of similar class and party battles within the United States.

In the spring of 1794, popular clamor for war against England was loud and insistent. But during this national crisis, the Western Insurrection broke out. Men's minds were turned toward the danger of disunion at home. In shattering the Whiskey Rebellion, the Administration dealt a mortal blow at the Jacobin clubs. It charged them with being morally accountable for the uprising. Popular enthusiasm for the French cause was chilled; the danger of American involvement in a European war, from which the nation had nothing to gain, was averted.

Was the Whiskey Rebellion provoked by Hamilton as a deeply calculated move to ensure continued neutrality and at the same time destroy the Jeffersonian party? Historians have suggested this, but there is an utter absence of convincing evidence.

Six Nations of White Indians

One of the chief grievances of the westerners was the provision in the excise law that tax resisters be tried in the nearest Federal Court. The unfortunate accused were obliged to travel by horse or stage coach across the Alleghenies to Philadelphia, leaving wife and children behind to mind the farm as best they could. In Philadelphia, they would be arraigned before Federalist judges—generally monuments of learned bigotry—and tried by hand-

picked juries of conservative city dwellers who aped European manners and regarded the frontier and its inhabitants as skeletons in the national closet. Farmers, who wore buckskin and homespun and earned twenty dollars a year, could ill afford to bring witnesses over the mountains to testify in their defense.

Hamilton saw that this procedure was unfair. On his recommendation, a bill was introduced in Congress on April 4, 1794, providing that tax violators be tried before state courts unless there was a Federal Court within 50 miles of the scene of the alleged crime. This bill passed both Houses and was signed by the President on June 5th.

Meanwhile, sixty-one processes against distillers who had not registered under the excise law were issued by the Philadelphia Federal Court. These writs were put on the dockets on May 31st and United States Marshals rode west to serve them in July. It is important to note that there was ample time to withdraw these writs, issued under the old law, and request that they be served by the state court in Pittsburgh. The fact that Hamilton did not use his enormous influence to see that this was done is the chief reason for accusing him of precipitating the Whiskey Rebellion. By August at the latest, he had repented of his decision to permit state courts to assume jurisdiction on the theory that appeasement of the Whiskey Boys would be misunderstood as governmental weakness. Thus Leland D. Baldwin, the outstanding contemporary scholar on the Whiskey Rebellion, concludes that "though there is no conclusive evidence" of Hamilton's complicity, "his ability to keep an ubiquitous finger in all government pies lends an air of suspicion to the circumstances." It was not, however, Hamilton's business to dictate procedure to Federal Courts and he was an early and strong protagonist of an independent judiciary.

If the Government had planned to force an uprising in the western counties, it need not have done more. Men were to be dragged from their farms during the busiest season—harvest time—although labor was short and the livelihood of the farmers depended on getting the crops in. This was to be attempted wholesale at a time when the western counties believed that the new law protected them against being forced to stand trial in unfriendly country before hostile juries not selected from the vicinage.

By some unrecorded miracle, United States Marshal David

Lenox succeeded in serving over fifty processes without encountering resistance. On July 15th, he went out to a grain field, where a group of farmers were reaping under a broiling sun and simultaneously fortifying themselves with potations of whiskey, and presented one William Miller with an order to leave his farm forthwith and appear at the Federal Court in Philadelphia. "I felt myself mad with passion," Farmer Miller said later.

The report spread through the strongly Jeffersonian Mingo Creek region that Marshal Lenox was taking the people to Philadelphia for trial. The farmers met hurriedly and decided to summon the Marshal before a meeting. Somebody reported, falsely as it turned out, that Lenox was at General Neville's place—Bower Hill—and a force was organized to get him under John Holcroft, the man who had successfully led the cold war against the excise for a year under the terrifying pseudonym of Tom the Tinker.

They reached Bower Hill at dawn on July 16th. For the time and place, this estate was a veritable palace. It had four looking glasses, real China, genuine prints, an eight-day clock and a Franklin stove. Here the wealthy aristocrat, Neville, wallowed in luxury. Although he was alone in the house, except for his wife and small granddaughter, General Neville ordered the mob to stand off. At the same time, he opened fire and killed one of its leaders. For about half an hour, the foolhardy old General sniped at the farmers from the windows, while the women lay belly down on the floor and loaded his guns. When it was all over, four farmers were wounded; the General was in one piece, and the mob had been driven off.

This drunken attack was the beginning of the Western Insurrection. It seemed like a small thing, but by now, the blood of the farmers was up and they were determined to fight. They held a large meeting at Couch's Fort. It was decided to send a "delegation" of five hundred men—armed, of course—to call on General Neville and inform him that if he would resign his official posts he would again be "received as a good citizen".

Now a man called David Bradford had been involved somehow in the ill-planned, drunken shennanigans at General Neville's house—in the plot to kidnap the United States Marshal who wasn't there. This was to have momentous consequences for the simple reason that Bradford was a lawyer. He was thirty-two years old at the time, a recent immigrant from Maryland, and served as deputy state's attorney for the county. In addition to

being well-liked and successful, he lived in the finest house of the town of Washington, each step of which was said to have cost a guinea.

Bradford ruminated about the events in which he had just participated. He realized at once that, according to the English Common Law (which, at the time, reigned as undisturbed in American courts as if George the Third were still sovereign there) the disturbances at General Neville's house constituted treason. Moreover, in treason, all participants are principals. This meant that, regardless of how minute his personal role may have been, he was guilty of all the crimes committed by the mob.

What should he do? He had an understandable disinclination to play the leading role in a hanging. Bradford's solution to the problem was a bold one. If the men who had attacked Neville's house were isolated, they would assuredly be hanged. But, if the entire western area should be involved in an ever-widening campaign of violence and armed insurgency, the Government would not dare to apply the treason law. The safety of treason lay in its success.

Bradford thus passed boldly into the extremist camp. He assumed leadership over a remarkably imprudent rebellion because of his dominant characteristic of prudence. He was a radical malgré lui—a reluctant dragon who, at the same time, had a flair for leadership and a wayward drive for power which was intermittent, fickle and flickering. Despite his deficiencies as a commander of men, Bradford organized the movement. He disciplined it. He moved in a more or less logical sequence from one phase to the next. It became a major display of armed force overnight, potentially sinister and a national issue. Under the prior leadership of unlettered boys in buckskin such as Tom the Tinker, it had involved no more than nightriding and undirected and sporadic violence.

Meanwhile, the armed "delegation" arrived before Bower Hill and demanded to search the house for General Neville, who had, however, absconded. This demand was refused. Women and children were evacuated, then a miniature battle began for the chevron-shaped mansion on the hill. After killing two or three farmers, the outnumbered garrison surrendered under a flag of truce. The Whiskey Boys looted the fine house of its furnishings and transferred the contents of General Neville's excellent cellar to their own stomachs. When these essential matters had been

attended to, they burned the place down—sparing the smoke-house which contained the winter provisions of the slaves.

At this juncture, thimble-brained, haughty young Presley Neville—Crown Prince of the reigning Monongahela dynasty—rode up and addressed the crowd: "If there is a gentleman amongst you, let him come out and speak to me." After that remark, there was a strong sentiment for killing young Presley on the spot, but, since he was unarmed, the farmers decided to let him go. They caught the obnoxious marshal, David Lenox, made him dance to the tune of buckshot and slashed his coat with knives. Drunken parties prowled through the woods all night, threatening pro-government men with lynch law. Oddly enough nobody was killed.

The farmers had been gloriously drunk; Neville and Marshal Lenox had been sent packing; Bower Hill was in ashes—but nothing was settled. While Lenox had agreed not to serve any new writs, he still had the old ones. The law was still in force. The farmers had taken a step toward rebellion. They were burning with anger against the Federal Government. They were unwilling to retreat and it was dangerous to stand still.

The countryside was being organized. Distillers who refused to come armed and equipped to militia musters were branded as enemies "of republican liberty, and shall receive punishment." A minority believed that Marshal Lenox must be assassinated before he could serve the writs. "It was better that one man should die," they reasoned, "than so many persons, with their families, lose their plantations."

These were days of interminable meetings, of harangues, threats and fulminations, of old-fashioned oratory. The harvest, which had seemed all important a few weeks ago, had by now been forgotten. Speechifying and huzzaing, feeling their strength as a mass in motion, organizing and preparing for they knew not what—these matters preoccupied the people of the western country.

At a great meeting at Mingo Creek, David Bradford stepped forward openly as the leader of the movement. He urged resistance on a larger scale. The men of Bower Hill—those who had burned down Neville's house—must be supported.

Another lawyer, Hugh Henry Brackenridge appeared at this meeting to propose a conciliatory policy. This was a dangerous course, but Brackenridge was subtle and experienced in handling

crowds. What the rioters had done, he suggested, might be morally right, but legally it was treason. The farmers had not considered this possibility. They knew that there was only one possible penalty for treason against the United States—death by hanging.

Brackenridge maintained the only sensible course was to stop resisting the law. President Washington could ignore the arson at Bower Hill, but could he close his eyes to an insurrection? Did they want an army marched into the western country?

This Brackenridge was Princeton-bred, a classmate and friend of Madison and Freneau. He was a rolling stone, an enthusiastic meddler in dangerous matters, a man who never could be sure what side he was on. Author of *Modern Chivalry*, a picaresque satire of the West and perhaps the best American novel of the Eighteenth Century, he had been parson, politician, magazine editor and orator, ending up as a lawyer. Brackenridge had a rich sense of humor, an eye for the absurd, a vacillating mind and a knack for getting into trouble.

Historian Baldwin tells two characteristic anecdotes about him:

During the Revolutionary War, he pried into a romance between Rebecca Franks, the famous Tory belle, and General Charles Lee, second in command to George Washington and secretly a traitor to the American cause. In his *United States Magazine*, he characterized Lee as "an insignificant, capricious and fluctuating weazel." This was an apt description and it carried with it the implication of treachery. The enraged general—uncouth, dirty and followed by his pack of dogs—appeared one day at Brackenridge's lodgings to offer the scribbler "as good a horsewhipping as any rascal ever received." Brackenridge sent his regrets: "Excuse me, General, I would not go down for two such favors."

Many years later, Brackenridge was riding circuit in western Pennsylvania with a group of lawyers when he saw a ragged country girl hurdle a fence without touching the rails. "If she does that again, I'll marry her," Brackenridge remarked casually to his friends. The girl—named Sabina Wolfe—did.

When he was next in those parts, he stopped at her father's farm and asked for the hand of this agile female. Mr. Wolfe refused. He had no farmhand and needed Sabina to shrub the meadow. Then and there Brackenridge purchased his bride for ten dollars. Immediately after the wedding, he shipped her off to Philadelphia to spend a year "under the Governance of a

reputable female Character, whose Business . . . (it was) to polish the Manners, and wipe off the Rusticities which Mrs. Brackenridge had acquired whilst a Wolfe."

All that Brackenridge accomplished at the Mingo Creek meeting was to sow doubts and fears. Bradford's program—support of the Bower Hill men with all the resources of the western communities—easily carried the day.

The need at this point, as Bradford saw it, was to involve a large multitude in some irrevocable action. In every insurrectionary movement, there is the danger that at a crucial point the majority will draw back, isolating the extremist vanguard. Men must be compelled to choose sides through some incriminating action which they cannot later expunge or explain away; all lines of possible retreat must be cut off for the wavering majority.

On July 26th, Bradford sent two of his men out to rob the mails. They opened the letters and found that western Pennsylvania Federalists had denounced the insurgents to Alexander Hamilton and other officials. Bradford was livid with fury. He warned the farmers that they all stood in danger of being hanged as traitors. The only safe course was to extend the movement in the direction of open rebellion.

Bradford decided to march on Pittsburgh immediately. There was a government arsenal there, Fort Fayette. They must seize it. The writers of the objectionable letters must be arrested. Some of the farmers talked of burning Sodom.

On July 28th, Bradford and two others issued a circular appeal to the western militia to rendezvous at Braddock's Field—scene of the crushing British defeat in the French and Indian War. They were to appear armed with four days provisions.

"You are thus called on, as a citizen of the western country, to render your personal service," the circular exhorted. The muster would offer "opportunity of displaying your military talents and rendering service to your country."

Militia musters were the great secular celebrations of the day. From five to seven thousand men appeared armed at Braddock's Field. Bradford, who had appointed himself Major General, was "mounted on a superb horse in splendid trappings, arrayed in full martial uniform, with plumes floating in the air and sword drawn. . . The insurgents adored him, paid him the most servile homage. . . I saw a man wade into the river, lift cool water from the bottom of the channel, and bring it in his hat for him to drink."

Bradford was at the zenith of personal popularity. The people

adulated him; he had an army prepared to do his bidding. But where was he going? Bewildered by the forces he had unleashed, he announced: "The people came out to do something, and something they must do." Bradford ordered the march on Pittsburgh to seize Fort Fayette and obtain arms. At the same time, he despatched a secret emissary to the commander of the arsenal to assure the latter that he had no intention of attacking it.

They were vague as to ultimate objectives. There was talk of a new state of Western Pennsylvania—like the abortive state of Franklin which had been carved out of a few North Carolina counties in 1784. Some of the people wanted to return to the British flag. English agents, it was understood, had recruited four hundred disaffected western Pennsylvania farmers to begin a new settlement under the Union Jack. Meanwhile, Brackenridge wrote to Tench Coxe, Supervisor of the Revenue, forewarning him that, if the Government resorted to force, "the question will not be whether you will march to Pittsburgh, but whether they will march to Philadelphia." He warned Coxe of "a torrent, irresistible and devouring." In a lyric mood, he compared the military potentials of "the rage of a forest, and the abundance, indolence, and opulence of a city."

On the day of the great meeting, a man with a tomahawk, who has never been identified, rode through the streets of Pittsburgh. "It is not the excise law alone that must go down," he thundered. "Your district and associate judges must go down; your high offices and salaries. A great deal more is to be done. I am but beginning yet." Whoever he was, this person spoke with authority.

Pittsburgh surrendered ignominiously. Four men obnoxious to the insurgents were banished. Stores and taverns closed as a protection against looting. The frightened townspeople provided boats to ferry Bradford's army across the river. Thus, five thousand armed farmers marched through Sodom, the first contingents arriving about noon, the rearguard entering the town toward sundown. Although there was sporadic gunfire, it was a remarkably disciplined and orderly affair. The farmers wanted to burn down the house of a man called Kirkpatrick, whom they disliked. When told that the fire would probably spread to destroy the entire frame city, they desisted. There were huzzas for Tom the Tinker. There were Liberty Poles with the ominous symbol of a serpent cut in twain. There was heavy drinking. But

after their night in Sodom, there was nothing left for the farmers to do but go home to their cattle and wives.

The Government Prepares for War

The day after the Whiskey Army entered Pittsburgh, Washington called a meeting of high officials, listened to Hamilton's report on the history of the Western Pennsylvania disturbances. The Secretary of the Treasury recommended recruiting an imposing force and sending it west to crush rebellion. Washington agreed to this and on August 7th issued a proclamation calling for thirteen thousand militia from the states of Pennsylvania, New Jersey, Maryland and Virginia.

As early as 1792, Hamilton had uttered shrill, Cassandra warnings about the western Pennsylvania situation. "The time for acting is at hand," he had told Washington. Unless the rebellion was crushed by martial force, "the spirit of disobedience will naturally extend and the authority of the government will be prostrated."

At that time, Washington had agreed to a proclamation against the western insurgents, drafted by Hamilton, but had insisted on sending it to Jefferson for prior approval. While the document meandered by post horse over the long, dusty roads, studded with chuck holes into which carriages sank up to their axles, Hamilton fumed and scolded. The draft proclamation finally arrived at Monticello. While Jefferson was giving the matter his leisurely consideration, the whiskey crisis of 1792 passed.

Thus, for two years, Alexander Hamilton had exerted his vast influence within the Administration in favor of forceful suppression of the Pennsylvania insurgents. He saw the rebellion as a personal challenge, since the excise law had been a direct consequence of his funding and assumption program. But his opposition had far deeper causes. The Whiskey Rebellion symbolized everything that he personally detested—democracy, direct action and the vesting of sovereignty in the vicinage. It was the embodiment of ideas which he had spent his adult life in combatting.

Hamilton had come to New York penniless from a small island in the West Indies. His origins were obscure and his birth illegitimate. Brilliant, cold, affable, domineering, a connoisseur of beautiful women, and, on the whole, a strange, tortured genius with unfathomable drives and compulsions, he had entered the American aristocracy through marriage although debarred from it by birth. Hamilton had the rare talent of piercing almost instan-

taneously to the heart of every question. He took a very long view. A logician with a creative mind, a philosopher who wrote in a crystal-clear style, a first-rate executive, a leader who combined vision with practicality, he believed that all these qualities were of secondary importance. Hamilton suffered from the life-long delusion that his place in history would be established as a military genius. The curious thing was that he should have considered this important.

His attitude toward the common people was a scarcely disguised blend of contempt and fear, reflecting his own personal insecurity as a patrician by marriage and a bastard by birth. He also lacked one of the most indispensable arts of genius—that of hiding its own superiority. He drove men by superior intellectual force when it might have been wiser to persuade them by guile. His love of intellectual order made him unnecessarily dogmatic and unbending. There was, moreover, a thoroughly unattractive side to his character. Hamilton was addicted to slander and back-biting. He moved through subterranean intrigues and devious, disloyal projects. All of these somewhat sordid transactions seemed to him justifiable on lofty grounds of principle and public policy.

Although he believed the Constitution was "a frail and worthless fabric," Hamilton advocated its adoption vigorously. He wanted an American monarchy, but thought any government preferable to none. His zeal for an aristocratic form of government stemmed in part from his own personal insecurity. The putative stain of illegitimacy was indelible. To John Adams, he was nothing but "the bastard brat of a Scotch peddler." Hamilton's fear of the people probably projected a personal anxiety that he might some day sink back into the social obscurity from whence he had come.

As soon as the decision to march an army into western Pennsylvania had been taken, Hamilton seized on the disorders to divide, not unite, the country. In a series of articles signed with the pseudonym, Tully, he accused the Jeffersonians of moral responsibility for insurrection. Washington followed suit. Addressing Congress, he characterized the democratic societies as the root of the evil and challenged the right of the people to organize in political factions. Both Jefferson and Madison were shocked and bitterly disillusioned. "One of the extraordinary acts of boldness of which we have seen so many from the faction of monocrats," the former wrote. "The freedom of discussion, the freedom of writing, printing and publishing"—all were in jeopardy. The

Federalist press screamed that the Whiskey Rebellion was "a black hydra" which "would wrap you in its poisonous web." They blamed the troubles on "the refuse of Europe"—meaning the Irish. This was perhaps the first major Know-Nothing attack against immigrant minorities.

In the growing party battle for national power, Hamilton and the Federalists hammered their central point home. The complicity of Jefferson in the Whiskey Rebellion was "proved" by innuendo and association. However reluctant the Monticello sage was to admit paternity, the misshapen baby was left at his doorstep.

The Jeffersonians conducted an orderly retreat. Characterizing the excise law as "a nursery of vice and sycophancy", the democratic press nonetheless insisted that it must be obeyed. They would prove their patriotism by filling the ranks of the expeditionary army.

Hamilton secured Washington's permission to join the punitive force. Though not given a command, he was soon running things.

The march of the so-called Watermelon Army against the Six United Nations of White Indians, i.e. the six insurgent Pennsylvania counties, began in mid-September of 1794. Washington was deeply moved by the patriotism of the blue-bloods. "There are instances," he wrote, "... of the first fortunes in the country, standing in the ranks as private men, and marching day by day with their knapsacks and haversacks at their backs, sleeping on straw with a single blanket in a soldier's tent."

By contrast, draft riots were spreading like prairie fire among the poorer people. In Morgantown, Virginia, in Winchester and in Martinsburg, crowds damned the excise law and battled with the soldiery in the streets. Near Frederick, the people put up Liberty Poles with the old legend "Liberty or Death" and the troops cut them down. When the militia were mustered in Hagerstown, they committed mayhem on their officers, erected a Liberty Pole in the town square and attempted to seize the arsenal. In his invaluable study of the Whiskey Rebellion, Baldwin quotes a letter to the *Independent Gazeteer* which expressed the prevailing sentiment of the Jeffersonians:

"... that those gentlemen who reap the benefit of the late revolution by having become purchasers of Soldiers' notes at 2/6 on the pound ought to be enrolled in military form, and as they claim the revenue arising from the Excise Law, let them compel obedience to it—and not trouble—*An Old Soldier.*"

Washington himself appeared before the troops at Carlisle. A solemn occasion. The field "glittered with a forest of muskets and death pointed bayonets," wrote an entranced soldier, "while the sun occasionally broke through the fleecy and obstructive clouds. . . . Streams of lightning flashed from the drawn blades of the gorgeous cavalry . . . THE MAN OF THE PEOPLE, with a mien intrepid as that of Hector, yet graceful as that of Paris . . . nor once turned his eagle eye from the dazzling effulgence of the steel clad band."

Defeat and Retribution

A month earlier, delegates from all of the insurgent counties had met at Parkinson's Ferry to decide their course. A Liberty Pole with six stripes—one for each county—flanked the American flag.

Albert Gallatin, Swiss aristocrat by birth and democrat by conviction, urged moderation. Brackenridge privately agreed. If they fought, he considered, the mountain passes might be defended, but the country would be impoverished by the war. Separated from the Union, the western country would stagnate economically. Bradford characteristically spoke for war to the bitter end. For the first time, he was outmaneuvered and voted down.

Peace delegations crossed the Alleghenies and made contact with the Government. Brackenridge parleyed with an official delegation at Pittsburgh and found to his horror that even old friends suspected him of treason. In despair, he ruminated over other possibilities. Should he stand with Bradford and organize overt rebellion? "Collect all the banditti on the frontiers of the state . . . tell the Spaniards to come up to the mouth of the Ohio, and give us a free trade; let the British keep the (military) posts, and furnish us with arms and ammunition; get the Indians of the woods to assist us . . . we might wage war and perhaps succeed."

This was a momentary aberration. Using all of his subtlety, Brackenridge tried to dissuade the authorities from invading the western counties, warning them that the whiskey rebels knew where to get arms and ammunition in abundance. If the Government would be patient, he thought, the moderates in the western country could re-establish control, but, as matters now stood, any Westerner who talked for peace was asking for assassination.

All this was unavailing. The machinery of Government was at last in motion; only outright submission to the laws could halt

its course. When Brackenridge returned to the insurgent country, the people believed he had sold out to the Federal Government and that his saddle bags were stuffed with gold. When Bradford threatened to smash up the first army that crossed the Alleghenies, Brackenridge predicted that they would have to "descend the current with the frogs." Tom the Tinker announced that a few Westerners had been scared by bigwigs from Philadelphia and were ready to sell out. He reminded the weak-kneed: "My hammer is up, and my ladle is hot."

Meanwhile, thirteen thousand troops in full accoutrement for a protracted war advanced into the heart land of insurrection. When they arrived, they found that all was quiet. The moderates, under Gallatin and Brackenridge, were slowly taking control. Former insurgents were taking advantage of the limited amnesty offer. A man called John Baldwin humbly begged General Neville's pardon for his role in burning the latter's house. He asked to be allowed to pay Neville damages privately "with out having my name Cauld in A public Cort to under goe the rede Cule of a Lawyer. . ."

Alexander Hamilton had not been "too anxious for a peaceful settlement of the alleged rebellion." While on the march, he wrote his crony, Rufus King: "It will give you great pleasure to learn that there is every prospect of our being able to apply (force) effectively. . . It will occasion a large bill of Costs, but what is that compared to the object?" Hamilton's secret purpose, James Madison thought, was to use the Whiskey Rebellion as the pretext for establishing a powerful standing army. Under Hamilton's command such a force would further strengthen Federalism. Unfortunately, however, the "rebellion" was hibernating. On reaching the western country, Hamilton complained to Washington that there were "not many fugitives from justice yet."

Arriving in the theatre of the disturbances, Hamilton became public prosecutor. He threatened Brackenridge—apparently in the hopes of getting him to incriminate Albert Gallatin, the one nationally prominent Jeffersonian leader implicated in the affair. Brackenridge refused. When he convinced Hamilton that both Gallatin and he had done their utmost to prevent a full-fledged insurrection, Hamilton became his staunchest defender. Returning depressed and disheartened from this expedition, which had promised glory and turned out to be comic from start to finish, Hamilton began to doubt whether he had been cut out for the American scene. "It is long since I have learned to hold popular

opinion of no value," he confessed to Washington in mid-November.

The conduct of the Army in the disaffected territory is a sorry page in United States military history. Wholesale and indiscriminate arrests, harsh treatment of prisoners, inhumanity as Standard Operating Procedure—best describes it. On what the Westerners later called "the dismal night", General Irvine had eighteen suspects seized in their beds at two in the morning. Before terrified wives and screaming children, they were marched outside, shoeless and half undressed, then forced to run ten miles—the sick as well as the healthy—with a cavalry troop prodding them along. They were thrown into a pit, moved elsewhere, driven from the fire at bayonet point when they tried to warm themselves, incarcerated for ten days in a waste house, then finally haled before a judge who promptly dismissed all the cases for lack of evidence. At least one of these men was invalided for several months as a result.

An arrested farmer had an epileptic fit while being driven to a military prisoner camp; he was tied to a horse's tail and dragged there. Others were confined in stables. Their rations—soggy dough and raw meat—were thrown into the manure. General "Blackbeard" White, a notorious military sadist, tossed forty suspects into a damp cellar, tied them back to back and gave them neither food nor fire.

The victorious army finally returned to Philadelphia, leaving a garrison of occupation in the disaffected area. Crack Philadelphia regiments, such as Macpherson's Blues, rode in their brilliant uniforms, on perfectly matched horses, their saddles gleaming with silver. These patrician volunteers drove their prisoners before them:—weather-tanned, tired farmers on plough horses, striplings and old man, many of them wasted by sickness and abuse. They wore paper placards on their hats on which the word "Insurgents" had been written. They had been driven "like cattle through creeks when the water was waist high" and as they passed through the jeering Philadelphia crowd they seemed an unkempt, stinking mass—the dregs of humanity.

All the main leaders of the rebellion had been amnestied or had escaped. Just before the federal troops arrived in Washington, Pennsylvania, David Bradford rode off to a place where a flatboat was waiting for him. He was overhauled by a posse of four soldiers, but fought them off and floated downstream to the safety of Spanish territory. Although he was pardoned in 1799,

Bradford spent the rest of his life as a Natchez planter under the Spanish flag.

Two miserable creatures were indicted for treason. One was an insane Pennsylvania German called Weigel (who appears in the court records as Vignol); the other was a simple-minded fellow by the name of Mitchell, who had been one of the mail robbers. Mitchell had appeared voluntarily before General Daniel Morgan to confess his guilt, but the latter pretended to doubt his story. When Mitchell insisted on giving him circumstantial evidence, the General told him to take off for Philadelphia and surrender himself to the Federal Court there. Since he was unguarded, the assumption was that he would escape. But General Morgan had overestimated Mitchell's intelligence.

The treason trial of United States v. Mitchell was held before Judge Paterson in Philadelphia.

The first issue to decide was whether or not the objectives of the Whiskey Rebellion had been treasonable. The Constitution defined this type of treason as "levying war" against the United States. Did that mean, as it seemed to, that the objective of the movement must be to overthrow the Federal Government by military action? The judge and prosecution turned to the English Common Law. There it was held that any concerted, armed action to nullify a law, to suppress a class of officials or to exterminate an institution was a blow against sovereignty and therefore treason. If armed mobs suppressed the functions of government, they destroyed it. The supreme authority, Blackstone, with two bad decisions dating from the late Stuart period in mind, had gone so far as to say: "Levying war against the King is pulling down all enclosures, meeting houses, prisons or brothels." This unsound opinion had been enthroned through repetition in the judicial mind.

The issue then was whether the general objective of the Whiskey Rebellion had been universal or particular. If the attack on General Neville had been directed against him personally, it was merely riot. But if it had been levelled against him as an excise officer and if the purpose was generally to suppress all such officers and thereby make the law unenforceable, then treason it was.

The defense claimed that the aims of the rebellion were confined to Western Pennsylvania; its purpose was to nullify the law in that area only. Therefore, the men were rioters, not traitors.

Without once analyzing the real purposes of the rebels, Judge Paterson brushed this objection aside. At General Neville's house,

he said, the insurgents "were arrayed in a military manner; they affected the military form of negotiation by a flag; they insisted on the surrender of his commission. Can there be any doubt that the object of the insurrection was of a general and public character?"

The defense's objections had been splendidly disposed of. Old phrases filtered through the judge's mind—"arrayed in a military manner . . . the military form of negotiation by a flag." All this conveyed a picture of well-drilled troops organized for a serious insurrectionary purpose. It was foreign to the reality of drunken farmers firing into a house at night and afterwards getting still drunker in its cellars. The defense characterized this reasoning as a theory "by whose magic power a mob may easily be converted into a conspiracy; and a riot aggravated into high treason."

But this approach was in advance of the legal thinking of the time. Not only the Philadelphia court, but the overwhelming majority of American lawyers—Jeffersonians as well as Federalists—parroted the English doctrine. The insurgents themselves had paid homage to it. If David Bradford had not believed that the burning of General Neville's house was legally treason, he would not have assumed leadership over the farmers and taken them to the brink of civil war. And, without Bradford, there would perhaps have been no Whiskey Rebellion.

How significant a part had the nincompoop, Mitchell, played in the affair? The issue was not too important, Mr. Rawle suggested for the prosecution. Those who join a treasonable conspiracy, "though not concerned at first in the plot, are as guilty as the original conspirators. . ." In treason, all are principals.

A doctrine of despotism, the defense retorted. It meant that men "are doomed to answer for the conduct of others, which they may, in fact, disapprove; and which they cannot, in any degree, control."

Judge Paterson turned toward the moron in the dock. "On the personal motives and conduct of the prisoner," he remarked, "it would be superfluous to make a particular commentary. He was armed, he was a volunteer, he was a party to the various consultations of the insurgents. . . His attendance, armed, at Brad-dock's Field, would of itself amount to treason, if his design had been treasonable."

There was an interesting legal matter to consider before passing sentence. The Constitution provides that no man can be convicted of treason "unless on the Testimony of two Witnesses to the

same overt Act, or on Confession in open Court." While Mitchell had heretofore done everything possible to aid the authorities in hanging him, he showed no disposition to make a public confession.

The clearly treasonable act was the burning of General Neville's house, rather than the previous meeting to plan it at Couch's Fort. One witness stated unequivocally that he had seen Mitchell at Bower Hill; a second witness said "it ran in his head that he had seen him there;" a third witness had passed him on the march to the place.

Where were the two witnesses to the same overt act? The testimony of the second witness must obviously be disregarded, while the first and third spoke of acts separate in time and space. The purpose of the two-witness provision, which derived originally from the Bible, was to make it possible to detect perjury through unearthing discrepancies of testimony. Now could these discrepancies be discovered if each witness testified to a separate event? The judge appealed to common sense over the exact letter of the law. Mitchell had been at the meeting where plans were laid to attack Neville's house; he had then been seen marching there; finally, one man had seen him at Bower Hill. Judge Patterson ruled that these events formed a single, interconnected whole, that in conjunction they constituted the necessary overt act of treason.

The jury convicted and Weigel and Mitchell were sentenced to hang by the neck until dead. Thus the gallows crop of the first armed challenge to American Government under the Constitution was a madman and a moron. With both Bradford and Tom the Tinker at liberty, President Washington showed his customary good sense and pardoned the convicted men.

Peace had been restored in western Pennsylvania without shedding blood or exacting vengeance—a pattern that was to be typical in other American crises. What, if anything, had the Whiskey Rebellion achieved? What was gained or lost by using the military to put it down?

The main result was to demonstrate that the United States was not, as Daniel Webster was to suggest rhetorically half a century later, "a rope of sand". It was a nation. It had laws and exercised sovereignty. Whether for good or for bad, those laws had to be obeyed and that sovereignty respected. This lesson had to be learned all over again fifty years later at far greater cost in American blood. Whatever criticism may be levelled against Alexander

Hamilton in this affair, he had asserted the power of the nation against the conflicting claims of the frontier community.

As far as the western counties were concerned, the whole affair was something of an anachronism. The Whiskey Rebellion had been, in the main, a reaction against the growth of industry, trade and transportation—a development which was quietly re-vamping the frontier economy. This trend was also making whiskey taxation increasingly unimportant. While democratic politicians shouted that the excise law was tyranny and Federalist orators depicted the insurgent farmeres as sans-culottes ready to erect guillotines on the Monongahela, the quiet, massive forces of economics were relegating the issues to oblivion.

Flat boats carrying grain to New Orleans uprooted the region's dependence on whiskey exports. During the height of the disturbances, Judge Alexander Addison smuggled a lecture on economics into his charge to a Pittsburgh grand jury. This Addison was, in Albert J. Beveridge's opinion, a scandal to the bench, a Federalist diehard who "bullied counsel, browbeat witnesses, governed his associate judges, ruled juries." He was also an exceptionally able man.

After pointing out that the government was paying out more money for whiskey purchases than the tax could withdraw and that the specie shortage in the western country was hence a thing of the past, Judge Addison commented: "There have been more public buildings raised and fewer sheriff sales for debt, within this period, than for the nine years past preceding. . . Last spring our best flour was sold (in New Orleans) a dollar each barrel dearer than flour from New York. . . From this increased exportation of our grain, the necessity of distillation is greatly lessened in degree, and will every day lessen."

Thus the issues for which the Whiskey Boys fought were being dissolved even during the incandescent heat of struggle. As often happens, the protest bore no rational relationship to the problems. Had the hotheaded leaders of the rebellion forced the issue to secession, the result would have been economic desolation for the region.

THE BLACKOUT OF FREEDOM

"I suppose that you are a Christian and as *such* I address you. . . Your *day of life* is almost spent and the *night of death* fast approaches. . . You have a great and immense work to perform, and but little time in which you must finish it. . . By *repentance and faith* you are the object of God's *mercy*; but if you will *not* repent . . . you will be the object of God's justice and vengeance."—Mr. Justice Chase passing sentence of death on John Fries for treason.

Between 1798 and 1800, a remorseless manhunt for "traitors" and "seditionists" swept over the country. Under the guise of saving the nation in a desperate emergency, a miniature Reign of Terror was created.

In this period, freedom of speech was stifled, political enemies of the John Adams Administration were jailed, virtually every Jeffersonian editor was indicted. It seemed as if the Constitution had lost its power to shield the liberties of the citizen. The states faced strangulation in the grip of executive despotism. Even such a sober and gentle man as Jefferson meditated revolution.

With few exceptions, the men victimized by the Alien and Sedition Acts were guilty of no disloyalty. But those who carried out the prosecutions and voted the gag laws were, in a large sense, traitors to basic American ideals.

In the summer of 1798, the Administration of President John Adams was preparing for war with France. The flirtation of the people with revolutionary France had come to an abrupt, quarrelsome end. The American negotiators in Paris had been treated with calculated insult by the saturnine French Foreign Minister, Charles Maurice de Talleyrand-Perigord. American ships were being overhauled and left to rot in French harbors, their cargoes confiscated. The French Foreign Minister had insisted on re-

ceiving a substantial bribe before even discussing outstanding grievances between the two nations.

No proud and self-respecting people, least of all the American, could accept insult of this nature with equanimity. When the so-called XYZ Papers, revealing the details of these diplomatic discussions and the affronts and corrupt proposals with which they were accompanied, were published, the immediate consequence was a tidal wave of anger against France. Five years earlier, the black cockade of the American Revolution had been supplanted by the tri-color of Revolutionary France. Now it reappeared. Popular meetings resounded with bombast against French tyranny and fervent appeals for war. "Millions for defense, but not one cent for tribute" became the slogan of the day.

Except for prestige and national honor, the United States had nothing to gain by challenging the armed power of Napoleon. Nonetheless, President Adams delivered a warlike message to Congress in March and by summer the United States was involved in an undeclared conflict abroad and unvarnished oppression at home. Military operations were confined to privateering and naval engagements. Meanwhile, the Administration prepared to recruit an army—ostensibly to repel an invasion which Napoleon had not for a single moment contemplated.

As is usual in politics, there was a long-range, calculated strategy behind this apparent madness. The Federalist Party controlled each of the three departments of the National Government, but had lost the support of the American people. In two and a half years, there would be a new Presidential election. The prospects were for a Jeffersonian victory. And to the Federalists, Jefferson was a "Character Assassin, Libeler of Washington, Atheist, Anarchist, Liar." Peter Porcupine, pseudonym of the viperous Federalist newspaper editor, William Cobbett, looked forward to the day when the head of the sage of Monticello "will be rotting cheek by jowl with that of some toil-killed negro slave."

The Jeffersonian Party had injudiciously yoked its wagon to the wild horses of the French Revolution. The violent Administration attacks on the combination of terrorism and organized corruption which passed for government in Paris were aimed at the democratic party at home. Under the mask of military necessity, Federalist majorities in both houses of Congress enacted the notorious Alien and Sedition laws. Never before or since has an American Government launched such a calculated and unscrupulous attack on the civil rights of the people.

The two parties of the day were opposed on all fundamental principles to a degree unprecedented in the American story. Nationalism was pitted against local sovereignty, strong against weak government, the emergent merchant-industrial economy against a vanishing yeomanry, control of government by the well-born and wealthy against government by and for the people.

That common agreement on basic principles which permits an orderly settlement of differences did not exist. The fact that England and France were engaged in an armed struggle for Continental domination had mighty repercussions on the American scene and suggested the necessity of a violent solution to the internal crisis. Traditions of national loyalty had not had time to strike deep and tough roots in the American soil.

An even more ominous aspect of this period of convulsive factional struggle was that the Government as a whole, including all of its three branches, was ranged against the majority of the people. In subsequent national crises, we shall not find cleavages of this sort. When the Administration party loses public confidence, this fact is promptly reflected in a divided Congress. The President is to that extent effectively prevented from imposing a partisan program. The system of checks and balances includes a Congress almost instantaneously sensitive to the popular will and a judiciary which responds to it at a glacial tempo. These differing time factors in the adjustment of the various branches of Government to public opinion are often considered by foreign observers to be a source of weakness in the American system. But in reality, they give it strength. They provide stability. They hinder the implementation of rabid and extremist policies. They prevent recurrence of a situation analagous to that of 1798-1800 in which the measures of the United States Government as a whole were imperceptibly goading the people toward armed resistance.

That this extraordinarily dangerous crisis in American history was resolved without civil war was due in part to the belated awakening of "His Rotundity," President John Adams, to the fact that his entire Cabinet was disloyal to him and that Alexander Hamilton, nominally in retirement but actually in the saddle, was swiftly driving the nation toward populist uprising and chaos. Withdrawing from this program of national suicide without warning, the super-sensitive Chief Executive lashed out at the Hamiltonian clique—which he deemed a British faction—and dragged the Federalist Party into a venomous internecine struggle from which it emerged exhausted and emasculated. The deeper

cause of the failure of the Administration to nullify the results of the American Revolution in the spheres of democracy and protection to the individual was the character of the people—its hatred of anything that smacked of aristocracy, its fear of strong government, its sometimes wavering—but nonetheless deep-seated—faith in a free press and in the citizen's right to express political opinions without judicial reprisal. The persecutions of the Alien and Sedition Acts became the political graves of their authors. "The terror of despotic power," Montesquieu had written in *The Spirit of the Laws*, "is so great that it even turns against those who exercise it."

The Alien and Sedition Acts

The Alien and Sedition Acts were approved by narrow congressional majorities in the summer of 1798. The Alien Law authorized the President to deport any foreigners whom he thought "dangerous" or whom he "suspected" of any "treasonable or secret machination against the government." It thus placed in the hands of one man the right to order aliens out of the country without due process of law and without setting up any criterion—other than the President's personal judgment—to determine who should be deported and who should be allowed to stay. This statute was probably constitutional. American law, Professor Zechariah Chafee of Harvard points out, "takes the position that deportation is not a criminal proceeding and involves no punishment. It is simply an exercise of every sovereign state to determine who shall reside within its borders."

The Sedition Law was an infinitely more virulent measure. It punished anybody who wrote or said anything "false, scandalous and malicious" against the Government, the President, the Congress or the Senate "with intent to defame" them, "bring them or either or any of them into disrepute; or to excite . . . the hatred of the good people of the United States, or to stir up sedition within the United States." The Federalists had originally proposed that violations of this law carry the death penalty, but the final provision was imprisonment for not more than two years and a fine of not more than \$2,000.

If this measure is compared with the Sedition and Espionage Laws which President Wilson signed, the parallel is not entirely to the disadvantage of Adams. It is true that the Sedition Act was more sweeping in its terms than the dragnet enactments of the First World War. But it was less savagely enforced. Under

Adams, American citizens were not imprisoned for twenty years for merely speaking and writing according to their convictions on the momentous issue of war or peace. Under Wilson they were.

The Sedition Law departed from the English Common Law of seditious libel in one important respect. Under the American statute, the truth of a damaging statement was a sufficient defense, whereas in England any words calculated to bring government officers into contempt were considered to be a dagger blow against the state and, whether true or false, were punishable. However, as the law was interpreted by rabidly partisan judges steeped in the English tradition of political prosecution, assaults on government policy were generally punished regardless of truth. Judges such as Samuel Chase confessed to be choked with rage because newspaper editors on trial under the Act had stated commonly known facts about the unsatisfactory position of the Government's finances. Bad and intolerant as the Federalist judiciary was, it could not be compared with the English courts. Thus, in England in 1811, a man called Drakard was convicted of sedition for criticizing the prevalence of flogging in the British Army. In the trial, Baron Wood animadverted on the implications of tolerating such aspersions: "It is said that we have a right to discuss the acts of our legislature. That would be a large permission indeed."

The most flagrant element of injustice in the Sedition Act prosecutions in the United States was the "constructive" reasoning resorted to by the judges. No man has an absolute right to freedom of speech. In fact, there are and can be no absolute rights within a society, since there is always an interstitial area within which the manifold "rights" of citizens nullify each other. The right of a man to swing his arms, it has been said, stops at the jawbone of his neighbor. The modern American approach is that freedom of speech and of the press is a social value of inestimable importance, that in the turmoil of debate and discussion the truth is more likely to win out than under a regime in which ideas are confined in the straight-jacket of coercive laws, that economic and social progress, the intellectual vitality of the nation and the capacity of the people to govern are all furthered by minimizing restrictions on utterance. Accordingly, the Supreme Court in the present day has tended to hold that speech and writing may be punished only where there is an intent to instigate the commission of a crime or where the circumstances under which the speech is delivered create a "clear and present danger" to society.

By contrast, the "constructive" interpretation permits the judges to disregard a man's motive in uttering or writing certain words and to substitute their possible effect. In accordance with this view, the courts under President Adams imprisoned editors for calling the Chief Executive a well-meaning blunderer on the theory that the effect was to destroy public confidence in government. The prejudices of the judiciary became the acid test of sedition.

The most intolerable aspect of the Alien and Sedition laws was that they were weapons of internal political warfare, designed to disintegrate and shatter the opposition party. And this resort to naked force to consolidate the power of a minority government is fortunately without parallel in American history.

George Washington stoutly defended both laws as necessary weapons against men "poisoning the minds of our people . . . in order to alienate their affections from the government of their choice." A belief in the ability of the people to arrive at solutions to their problems through the rough and tumble of party struggle and political debate was not part of the great man's creed. The two greatest intellects of Federalism, however, took a more mature view of the matter. "Let us not establish a tyranny," Alexander Hamilton wrote Wolcott. "Energy is a very different thing from violence." John Marshall also opposed the Sedition Law and broke party discipline to cast the deciding vote in favor of its repeal on June 23, 1800. Furiously, Fisher Ames assailed him. Marshall, who had been the great hope of the Federalist Party, had shown himself "the meanest of cowards, the falsest of hypocrites." Abusive and intemperate by nature, Ames typified the irreconcilable spirit of New England conservatism. He believed that these acts, striking at the heart of the Bill of Rights, were the acid test of political soundness.

The Republicans to a man attacked the laws. Madison at once characterized the Sedition Act as "a monster that must forever disgrace its parents." Slower to react, Jefferson at first silently reflected. Then as his anger slowly rose, he turned the heavy artillery of his party against the Sedition Law, finally making it an issue of such cardinal importance as to warrant secession and civil war.

No sooner had the bills been signed by the President than what Claude Bowers describes as an American Reign of Terror swept over the country. The Alien Law was aimed chiefly against Irish patriots who had sought and found asylum in the United States.

These Irish were at the time being driven to the gallows under Lord Castlereagh or shot down in the streets by Lord Cornwallis' soldiery. To the Federalist leaders, the Irish were undesirables, malcontents, "fugitives from the justice of Great Britain." The sneering Peter Porcupine, himself a British subject equally affected by the Alien Act, hinted in favor of their deportation.

The Sedition Law almost immediately became a weapon of unparalleled effectiveness for muzzling the Jeffersonian press and incarcerating Jeffersonian politicians. On the floor of Congress, a proposal to resume negotiations with France was denounced as sedition, punishable under the law. Edward Livingston, a New York aristocrat and one of the leaders of the Jeffersonian camp, was warned by a thimble-brained Federalist Congressman that he had been guilty of sedition in opposing the Alien Bill on the floor of the House. This was nonsense, as two separate provisions of the Constitution protected him, but it was the sort of nonsense which illustrated the bitterness of the factional struggle.

In this gathering crisis, Alexander Hamilton lost his head and began an incomprehensible series of political blunders which eventually impaired his reputation and destroyed his party. He had been having a liaison with a certain Mrs. Reynolds and had handled matters so ineptly that he opened himself to blackmail by her husband. There was the usual flurry of rumor and scandal. Instead of remaining silent, Hamilton published a long account of his relations with the lady. He thus became the only statesman who ever published a pamphlet to prove that he was an adulterer. On the heels of this blunder, Hamilton chose to interpret a political attack, comparing him to Caesar, as an assassination threat and gasconaded about his readiness to defend himself. His opponent replied: "You fall beneath resentment and excite my pity."

In this frenzied, hysterical atmosphere of quasi-war abroad and molten factional strife at home, a distinguished veteran of the American Revolutionary War—Brigadier Benedict Arnold—congratulated his former countrymen on having "shaken off their delusion" of independence and offered his sword to America in the forthcoming war with France.

The Case of Matthew Lyon

An Irish immigrant whose father had ended his life on a British gallows, Matthew Lyon had a fierce love of freedom, a hatred of

all pomp and aristocracy, a capricious sense of humor, a love for the eye-gouging contests of contemporary political war and a pen that left weals on the bodies of his enemies. Retorting to sneers about his Irish ancestry, he once said in Congress that he did not pretend to be "descended from the bastards of Oliver Cromwell, or his courtiers, or from the Puritans who punish their horses for breaking the Sabbath, or from those who persecuted the Quakers and burned the witches." Peter Porcupine—who put great store on what he called birth and breeding, perhaps because he himself had not been favored with either—attacked Lyon in a manner that was vile even by the almost nonexistent standards of the period. He fulminated that as a child Lyon had been "caught in a bog" and domesticated and alleged that his wife "would stroke him and play with him as a monkey."

Lyon started a newspaper called *The Scourge of Aristocracy* in his native state. Its prospectus promised: "When every aristocratic hireling from the English Porcupine . . . to the dirty hedgehogs and groveling animals of his race in this and neighboring States are vomiting forth columns of lies, malicious abuse and deception, the *Scourge* will be devoted to politics." In the columns of this decorous journal of opinion, Lyon called the President a bully, was promptly haled before a Vermont court, sentenced to four months in prison and fined a thousand dollars.

Now there was a perfectly good jail at Rutland, as jails went in those days, but although Lyon had been tried and convicted in that city, he was hauled to Vergennes, thrown into a stinking cubicle and kept there without decent toilet facilities or heat and even denied pen and paper. This particular prison was "the common receptacle for horse-thieves . . . runaway negroes, or any kind of felons."

This treatment helped make Lyon a martyr. Mobs of Green Mountain Boys—the men who had fought under Ethan Allen—swarmed around the jail and would have torn it down if the prisoner had not dissuaded them. Thousands signed a petition for Lyon's release which President Adams refused to receive. "I know not which mortifies me most," Jefferson wrote, "that I should fear to write what I think or that my country should bear such a state of things."

The sequel to this persecution was that Matthew Lyon was swept into Congress as a popular hero, beating his nearest rival two to one in the popular vote. The Federalists now tried to thwart the people's verdict. They sifted Lyon's correspondence to

find a basis for re-indictment. Failing in this, they hoped that the penniless democratic journalist would not be able to raise the thousand dollar fine and hence could be kept indefinitely in the sulphurous hole at Vergennes. It was a patriotic duty, the *Commercial Advertiser* of New York thought, to prevent this "vile beast" from again disgracing the deliberations of Congress.

Republican political leaders raised the fine and appeared with the needed specie packed in their saddle bags on the day the sentence terminated. Matthew Lyon rode to Congress in a sleigh followed by a procession of farmers, artisans and friends of freedom that stretched out twelve miles behind him along the ice-covered roads.

Suppression and Secession

The Sedition Law was used systematically as a means of strangling the Jeffersonian press throughout the United States. The issue involved was more than a sequence of savage persecutions, conducted by intemperate judges ready to weave the fabric of law from the web of reactionary prejudice. It was more than a degradation of justice into the misshapen pattern of the British courts. It was more than a demonstration that the learning and competence of the Federalist judiciary was often as slight as its sense of tolerance and fair-play. It was all this and a good deal more. The opposition press—intemperate, libellous, addicted to the lowest forms of personal calumny, but nonetheless a necessary safeguard of constitutional democracy—was being uprooted by violence masked under the semblance of law.

A cultured Jeffersonian editor in Vermont, Anthony Haswell, was arrested late at night and, although seriously ill, driven sixty miles through drenching rain, haled before a judge who suppressed all relevant evidence offered by the defense and convicted by a packed jury.

Another editor, Dr. Thomas Cooper, was arraigned before Associate Justice of the Supreme Court, Samuel Chase, a learned Bourbon, brick-red with port, a man who shook with paroxysms of rage whenever his prejudices were prodded—a tyrant, a bully and a moral coward. Cooper had not accused the President of evil intentions, but had said, in his restrained way, that Adams was "hardly in the infancy of political mistake," that the half-war with France had saddled the people with the burden of a permanent navy and that government credit was so low that the Treasury

was obliged to borrow at eight per cent. The first statement was opinion; the last two were fact. "If a man attempts to destroy the confidence of the people in their officers," Chase declared, "... he effectually saps the foundation of their government." The truth or falsity of the statements appeared to Justice Chase utterly inconsequential. And as for the criticism of the eight per cent interest rate, "I cannot suppress my feelings at this gross attack on the President." Cooper was clearly guilty. He had committed the crime, Justice Chase said, of intending "to mislead the ignorant . . . and to influence their votes at the next election."

This was the quintessence of the matter. It was sedition to influence the votes of the "ignorant" electorate. Since the Federalists had no use for democracy, either in theory or in practice, they saw no virtue in a factional press. It seemed to them the matrix of libel, the principal sapper of public confidence in the public's preordained rulers, a dangerous device for stirring up the sleeping popular beast to question, doubt and propose, where the function of the beast was merely to be silent and obey.

These Federalists were admirers of British institutions. They held that government was the master, not the servant, of the people, and consequently attempted to introduce, with only minor modifications, the English Common Law of seditious libel—one of the political catalysts of the American Revolution. This law punished "intentional publication . . . of written blame of any public man, or of the law, or of any institution established by law." It was a logical corollary of dynastic government, entirely incompatible with democracy. Perhaps the best statement of what was eventually to become the dominant American theory was also the work of an Englishman—John Milton:

"And though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter."

At the close of the 1798 session of Congress, Jefferson returned to Monticello deeply disturbed over the use of the Sedition Law to cripple the press and destroy freedom of speech. "We shall immediately see attempted another act of Congress declaring that the President shall continue in office for life," he predicted to Madison.

The majority of the people opposed the Adams Administration, which Jefferson suspected was pursuing a strategy of encroach-

ing repression which would end only in the establishment of dictatorship. Believing it imperative that the Republicans assume the initiative, he hurled into the struggle the thunderbolt of the Virginia and Kentucky Resolutions.

A few months earlier, John Taylor of Caroline, the brilliant theorist of agrarian democracy, had urged launching a counter-offensive based on "the right of the State governments to expound the Constitution." Jefferson seized on this. Working behind the scenes, with young John Breckenridge as the nominal instigator, he drafted the Kentucky Resolutions and had them submitted to and approved by the Legislature of that state.

These Resolutions argued that the Alien and Sedition laws were unconstitutional. The Sedition Act "commits the sacrilege of arresting reason . . . punishes without trial . . . bestows on the President despotic powers. . . ." These were the harbingers of naked dictatorship. Infractions of the Constitution could be expected to continue "until the people arose . . . in the majesty of their strength."

The Kentucky Resolutions are a powerful and classic statement of the constitutional rights of the states to interpret the Constitution and secede from the Union. ". . . the government created by this compact was not made the exclusive or the final judge of the powers delegated to itself; . . . *each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.*" Congress, Jefferson held, was authorized "to punish treason, counterfeiting the securities and current coin of the United States, piracies and felonies committed on the high seas, and offenses against the laws of nations, and no other crimes, whatsoever. . . ."

Jefferson was hesitant about secession. He sent a draft of the Kentucky Resolutions to Madison on November 17, 1798 with the comment: "I think we should distinctly affirm all the important principles they contain so as to hold that ground in future, and leave the matter in such a train as that we may not be committed absolutely to push the matter to extremities, & yet may be free to push as far as events will render prudent."

The main issue between the Jeffersonians and the Federalists was not the nature of American allegiance. If the Constitution had, in fact, been violated and the people deprived of their civil rights under that compact, the Government guilty of this had ceased to be legal. On any other theory, the loyalty of Americans was owing, not to democracy under the Constitution or any other

set of principles, but to mere power and to whatever regime happened to hold it. If this were the case, the American Revolution had been unjustifiable treason.

It seemed clear that, since the authority of the laws derived from the Constitution, allegiance was due to that instrument. But who was to decide what was and what was not constitutional? Jefferson held that this responsibility rested with the states and the people. The New England states contended that it was the province of the Federal courts, and of the Supreme Court in particular. If any state could nullify those statutes which displeased it, major differences within American society would have to be settled by secession or civil war. The ultimate logical consequence of the Jeffersonian doctrine was the fragmentation of the United States into petty local sovereignties.

Hamilton welcomed the Resolutions as an opportunity to establish a standing army and a more centralized government. With professional soldiers to command, he would be ready "to subdue the refractory and powerful State." In a letter to Sedgwick, he exulted over the opportunity for a test at arms. Let military forces be "drawn toward Virginia for which there is an obvious pretext—& then let measures be taken to act upon the laws, & put Virginia to the Test of resistance."

But with that sound political judgment which so often tempered even his worst mistakes, Jefferson withdrew from the dangerous course of nullification and probable civil war. The northern state governments had not supported him. Moreover, there were signs of an impending democratic upheaval which would shake the earth under the feet of the Federalist Administration and radically change the balance of power. Jefferson waited. The Federalists, with popularity slipping from them, soon plunged into one of the most violent and suicidal internecine struggles in American history.

Meanwhile, their effort to establish an authoritarian system indirectly caused a final tragi-comedy.

John Fries: Rebel Auctioneer

Alexander Hamilton had laid plans to command a large expeditionary force which, under cover of war against France would pounce upon the Spanish possessions in the Americas and add them to the United States. In this shower of military glory, he hoped to give new luster to the tarnished Federalist cause.

Perhaps the rainbow of victory would dazzle the electorate. As for Hamilton's personal objectives, he hoped within four years either to "lose his head or be the leader of a triumphant army."

The preparation of this striking force required money and this meant additional taxes. Thus, for the second time in the course of a decade, Hamilton's plans to expand the scope and power of the Federal Government led to tax revolts which were considered by the courts and Presidents of the day to be treason against the United States by levying war.

In the preponderantly German-speaking counties of Northern Pennsylvania, a venue cryer called John Fries lived with his wife and ten children in a log cabin. This Fries could read and write and knew the rudiments of arithmetic. He was a fluent man, sharp-witted, with humor and common sense, well liked by everybody and only occasionally drunk. His business was to wander around the countryside wherever there were auctions, stand on top of a barrel and ring a bell, harangue the crowds in a strange garble of German and English and show his quickness of wit with coarse, but not unkindly, personal jibes. Auctions were one of the great social festivities of the day and a good venue cryer was much in demand. Fries' appearance in a house or village was often announced ahead of time by a small and devoted black dog, named Whiskey, which, oddly enough, was to play a decisive role in the "rebellion."

Fries had distinguished himself as a company commander in the American Revolution and had been one of the officers of the Watermelon Army which "put down" the Whiskey Rebellion. He was short and compactly built, pleasant, with quick black eyes "as keen as the eyes of a rabbit." About fifty at the time, he had the gift of swaying multitudes and a passionate hatred of what he believed to be injustice.

While he was wandering around the countryside crying venue alternately in German and in bastardized English, taunting the farmers who bid too low and calling everybody in four counties by his first name, Fries heard that assessors were being sent into the villages to collect a tax on the houses in order to finance Hamilton's war against France. From the first, he opposed this tax violently and implacably. Yet he was not radical. Prior to the Alien and Sedition Laws, he had been a staunch supporter of President Adams.

The tax was designed to raise \$237,000 in the state of Pennsylvania for the support of the army. It was to be laid on the houses

of the people according to a sliding scale, the poorest dwellings to pay 0.2% and the richest 1.0% of their assessed valuation. It seems to have been a fair and entirely reasonable levy.

High-voltage rumors crackled through Bucks, Northampton and Montgomery Counties. The tax was unconstitutional. Washington was against it and was going to march at the head of an army to subdue the monarchists, Hamilton and Adams. The assessors were counting windows and this could only mean that the hated window tax of colonial days would be re-imposed. All over America, the people were refusing to pay. The tax assessors were putting the money in their own pockets. These were the rumors, and none of them were true.

Meetings were held throughout the German-American counties of Pennsylvania. The people wore the French cockade and set up liberty poles. The tax assessors tried to explain the law, but the crowds hardly understood a word of English and, whenever an assessor appeared, the people would cry 'Schlaget', or hit him. Women did their mite by pouring scalding water and the contents of chamber pots on the officials' heads.

A Captain Kuyder of the militia told the people to drive the assessors out of the country. He recruited about a hundred men—some armed with clubs, others with rifles. They marched to drum and fife with a liberty flag and shook their guns at assessor Israel Roberts, saying: "This is our law and we will let you know it." The power of this people's army might easily be exaggerated. In the subsequent military investigation, an old German was arrested. He admitted to carrying "a mustick, but she was goot fer nossing, she would not go loose."

"Q.—If so why did you carry it?"

"A.—O, I dunnow—I dought mebbe I might schkeer some potty."

Fries took leadership. He warned the assessors not to go to any more houses. The latter replied that, if Fries opposed the law, the Government would send an army into the country. His answer was: "We will soon try out who is strongest . . . Huzza, it *shall* be as it is in France. . ."

Threatening letters were sent to the tax commissioners. An anonymous note to one Captain Jarrett read: "I will burn your house and barn and will shoot you and your brother dead wherever I shall detect you cursed stamblers. . . These are the weapons for your slaughter." At the bottom of the note there was a crude drawing of a cutlass and a horse pistol.

In January 1799, Judge Henry issued subpoenas against various farmers accused of mobbing or threatening the tax collectors. This act was to transform aimless violence into something which had enough acid in it to tint the judicial litmus paper with the red of treason.

Arrests were made in Northampton and Millarstown. The women poured hot water on the United States Marshal's men. That night a meeting was held. The crowd cried: "Daemm de Praesident; daemm de Congresz; daemm de Arischdokratz." The farmers decided to rescue the prisoners whom the Marshal had taken to Bethlehem and John Fries was elected their leader.

The next morning, a ridiculous little army of about 140 men, armed with rifles, clubs, swords and pistols, marched toward Bethlehem, recruiting irate farmers on the way. John Fries rode at the head of the column, a tricolor cockade in his hat, a sword and pistol at his saddle.

Eighteen deputized guards were holding twenty farmers in the bedrooms of the Sun Tavern, a hostelry which had originally been built by the Moravian Brethren and which supplied its guests with "exquisite old Port and Madeira . . . venison, moose, game and the most delicious red and yellow bellied trout, the highest flavored strawberries, the most luxurious vegetables."

The "army" under John Fries arrived, demanded the release of the prisoners and was refused. They then stormed into the tavern and pounded the floor with their gun butts. The United States Marshal ordered the liquor bar closed. But free Americans were not willing to tolerate such tyranny. Fries' men surrounded the house and pointed their rifles at the windows. The Marshal yielded to superior force; the prisoners were released; the rural "army" dispersed, and John Fries went back to venue crying.

Adams Discovers an Insurrection

Fries was repentant about the whole matter. He invited the tax assessors to dinner in his log cabin and addressed a meeting at which the people agreed not to resist the tax. He went to see a certain Judge Peters and explained carefully why he had opposed the tax, emphasizing that the people had believed George Washington was against it. Although Peters was a Federalist and a hanging judge, the naive Fries believed him to be sympathetic.

Judge Peters guilefully asked Fries whether he had rescued the prisoners "from personal attachment." Fries replied in the negative. His motive, according to Peters' subsequent account, had

been "general aversion to the law, and an intention to impede and prevent its execution." This was a deep trap for an unlettered man. Fries' answer was enough to convict him, according to the warped standards of the English Common Law, of treason against the United States.

The Judge sent a report of these picayune occurrences to President Adams and that suspicious, touchy and arrogant personage decided that the matter was of sufficient moment to justify calling a Cabinet meeting.

Although all resistance to the law had ceased three days before, President Adams issued a proclamation against "certain acts, which, I am advised, amount to treason, being overt acts of levying war against the United States." He ordered the "insurgents" to lay down their arms by March 18th; then on March 20th, Secretary of War James McHenry announced that a call on the Pennsylvania militia was necessary "to suppress the insurrection now existing in the Counties of Northampton, Bucks and Montgomery." Crack cavalry and artillery units were sent on the march under the command of Brigadier General Macpherson, the aristocratic leader of Macpherson's Blues. Two thousand militia were requisitioned from New Jersey alone.

The conduct of the President in this matter seems irreconcilable with any rational theory of human conduct. The only violence had been the bloodless tavern brawl at Bethlehem. The disturbances had already died down and the people were obeying the law. In the far more serious Whiskey Rebellion, Washington had waited two years before raising an army, had made numerous appeals for the restoration of order, and had sent a general pardon with his military expedition. Adams, however, plunged headlong into repressive measures without any knowledge of the facts. And since Bucks County was within two days ride of the national capital at Philadelphia, these facts were readily obtainable.

Hamilton's men in the Cabinet had built a Chinese Wall around the President. They exulted over the Fries affair as an opportunity to brand the Jeffersonians as traitors and win popularity as champions of law and order.

A Lutheran Minister called Helmuth went with the Army and issued a proclamation to the "rebels." They were "wicked, restless men." Their leaders would "know perfectly well how to slip their necks out of the halter and let the deluded suffer." Soldiers were to be quartered on the people. He added cheerfully that "excess will be committed by an army."

The Hot Water War

When John Fries read the treason proclamation, he despaired. "He said he had not slept half an hour for three or four nights, and that he would give all he was worth in the world if the matter were settled and he clear of it."

One morning, as Fries was auctioneering away, standing on the head of a barrel with his dog, Whiskey, at his feet, he saw President Adams' army approaching. A soldier in the expedition describes the sequel: "Truxton's splendid naval victory must yield to the superior splendor of the late action, which took place on the 5th instant . . . He (Fries) carried no arms for his defense, but his heels, and, of course, the formidable appearance of a *regular* and *disciplined* army struck him with such a panic that he threw down the fire shovel he was carrying and made the best of his way to the woods." The troops then fired at an 18-year old Dutch boy, perforated his hat with shot, knocked him down and drew their swords to despatch him—only to discover that he was not the arch insurrectionary.

"Fries had a dog—(this dog, no doubt, will be entitled to a commission or a pension for life for his services)—this dog having missed his master was in search of him." Though "as rank a rebel as Fries," Whiskey was used as a pilot by the army of invasion and treacherously led the troops to the clump of briars where his master was hiding, whereupon John Fries surrendered without resistance. "A dog worth two of Homer's hero's dogs!" the soldier correspondent comments, "for he has, in a manner, quelled the formidable insurrection, an insurrection that has called forth the energies of government from all quarters."

With peace restored, the troops proceeded to persecute the German inhabitants of the area as a dangerous alien group speaking an uncouth, guttural tongue. According to the letters of soldiers, "the houses of quiet, unoffending people were entered at the dead hour of night by armed men, and the husband torn from the arms of his wife and screaming children." Prisoners were marched in 17-pound handcuffs and made to sleep on the ground. An officer with the expeditionary force writes of "the system of terror here . . . the inhuman disposition exhibited . . . vaunting exultation over . . . captives." "Extremely ignorant people" believed that an arrest would be followed by an almost certain hanging. This illusion was not dispelled by a magistrate who, when asked by a captive what his fate would be, replied: "In a

fortnight the Circuit Court will meet, when you will be tried, and, in a fortnight after, will be in hell, sir."

"The system of terror," one officer thought, was designed to serve as a "warning to those who may be disposed to vote as they think best at the next election." The officer's landlord served as an informer. He delated against several neighbors and said "they should be hanged together with Fries, but particularly Fries for holding a captain's commission in the last war." The landlord was accusing Fries of having served as an officer of the Continental Army. He was apparently under the not entirely unnatural impression that the United States under President Adams had returned to its former status as a British colony.

"About seven detained in irons and I am grieved to see among them some old men whose wrists are raw to the bones with the hand-cuffs," wrote another officer. "I would wish to see more humanity among my countrymen, but, unhappily we copy too much the cruel and unfeeling practices of the English."

There was little bloodshed in this war and only one death. An excitable Congressman, travelling with the Army, decided one night to reconnoiter. He reported insurgent detachments in great force "in rear of the baggage." A platoon marched up and opened fire. There was a heavy groan. The troops advanced into the night to engage the enemy. They discovered a dead bull.

Blood was spilled elsewhere though in small drops. On April 22nd, a troop of Lancaster Light Horse under Captain Montgomery—the most brutal and abusive commander in the expedition—assaulted Jacob Schneider, the Jeffersonian editor of the Reading *Adler*, the oldest German language paper in the United States. This Schneider had called the troops "cannibals and banditti" and had accused them of flogging children. The soldiers tore the clothes from his body and dragged him before Montgomery who ordered twenty-five lashes on the editor's bare back—this punishment to be inflicted in the public marketplace. After six strokes of the whip, another officer arrived on the scene and ordered Schneider released.

The Trial of John Fries

John Fries was tried for treason before Judge Iredell, a rabid Federalist with an incisive, subtle mind. His charge to the Grand Jury in the Fries case was a political tirade:

"We have heard the Government as grossly abused as if it had

been guilty of the vilest tyranny," he bawled at the hand-picked jurors, "... as if ... pure principles of republicanism could only be found in the happy soil of France where ... liberty, like the religion of Mahomet is propagated by the sword."

But Fries was not on trial for abusing the Government. Nor was this simple-minded, semi-literate auctioneer an international Jacobin agent. Plainly, the Judge was interested in larger game.

Iredell then argued the constitutionality of the Alien and Sedition Laws—a matter equally remote from the issue, since Fries was charged with treason. The Judge thought that, since the Constitution merely prevents Congress from passing laws "abridging" the right of freedom of speech, any limitation on utterance not more drastic than that imposed by the English Common Law was constitutional. This was adroit sophistry. Every literate American knew that the British law of seditious libel had been one of the precipitants of the American Revolution and that the framers of the Constitution had never had any intention of re-establishing it on American soil.

Iredell concluded with an eloquent peroration for the preservation of the Union. "If you suffer this government to be destroyed, what chance have you for any other? A scene of the most dreadful confusion must ensue. Anarchy will ride triumphant and all lovers of order, decency, truth and justice be trampled under foot."

The trial was a curious blend of Lewis Carroll and Kafka. The jury was chosen in Philadelphia although the "treason" had occurred in Bethlehem. The Government urged that a dispassionate jury could not be found in an area still smouldering with insurrection. Yet the violence had long since subsided. The counsel for the prisoner, Alexander Dallas—a brilliant lawyer, an outstanding Jeffersonian politician and a tireless defender of civil rights, who was later to become Madison's Secretary of the Treasury—complained that he had been presented with a list of 98 prosecution witnesses and given only five working days to prepare the defense. The atmosphere in Philadelphia, he protested, was thick with prejudice. "Never till this day was the press employed in a base and sanguinary attempt to intimidate the jury ... in a capital case." The judge brushed these objections aside.

The Government argued, quoting Blackstone: "Levying war against the King is pulling down all enclosures, meeting houses, prisons or brothels." In other words, if Fries' object had been general—that is "to raise a military force ... with a design of

opposing the lawful authority . . . by dint of arms" and this opposition had been directed toward the general suppression of a law or a class of officers, rather than against individuals—then by British precedent, he was a traitor.

Dallas fought gallantly. What evidence was there to show "that these insurgents went further than to declare that the law did not please them?" Why they did not even know that the law was in force. They took riotous action because they were misinformed. The law was printed in English and most of them understood German only. "Plain men, then, have but plain ways to manifest what they feel; and they ought not to be tried and condemned by a more perfect and, generally, a more artificial standard."

This argument fell on unsympathetic ears. Ignorance of the law, Judge Iredell said, could not justify crime. If it did, it would be to every man's advantage not to know the law. It was almost impossible to prove what a man knew or didn't know. Thus conviction of felons would become impossible; anarchy would ride triumphant. The jury voted guilty and Iredell promptly sentenced Fries to hang.

Fortunately for Fries, a mistrial was declared because one of the jurors had falsely declared that he had no prejudice. A second trial was held before the notoriously rabid Justice Samuel Chase.

The Judge was convinced of the prisoner's guilt and wanted to get on with the hanging. When Dallas argued that Common Law precedents did not apply to American soil and spoke about the dark and intolerant pages of English constitutional history, Chase silenced him. He would hear no arguments concerning the law of the matter. Chase read a prepared opinion which he had written and which he supposed clarified the law of treason for all time.

The defense lawyers dramatically withdrew from the trial on the grounds that Judge Chase's conduct made it impossible for them to defend their client. Unperturbed, Chase turned to the prisoner with the suggestion that he offer what he please to the jury:

"Prisoner.—I submit to the court to do me that justice which is right.

"Judge Chase.—That I will, by the blessing of God, do you every justice."

Judge Chase gave an opinion which slavishly followed Black-

stone. When he had finished, the jury convicted. It was now Judge Chase's task to do John Fries the justice he had promised him:

"If you could see in a proper light your own *folly* and *wickedness*, you ought to bless God that your insurrection was so happily and speedily quelled . . . Violence, oppression, and rapine, destruction, waste, and murder, always attend the progress of insurrection and rebellion . . . I suppose that you are a Christian and as *such* I address you . . . Your *day of life* is almost spent, and the *night of death* fast approaches. Look up to the Father of mercies, and God of comfort. You have a great and immense work to perform, and but little time in which you must finish it . . . By *repentance and faith* you are the object of God's *mercy*; but if you will *not* repent . . . but die a hardened and impenitent sinner, you will be the object of God's justice and vengeance." Immediately thereafter, Justice Chase sentenced Fries to hang by the neck until dead, expressing the usual hope that God would have mercy on his soul.

Samson and the Pillars

The trial and conviction was to have momentous national consequences. Dallas and Lewis, the attorneys for Fries, had walked out on the trial as a demonstration that no justice could be expected from Chase. They advised their client to refuse any counsel the Court assigned. All this was to maximize the chances of presidential pardon.

By now, strong popular sentiment had developed for letting Fries go. The public saw that the "insurrection" had been a paltry affair and that the trials before Iredell and Chase were scandals. The "deluded and unfortunate" Fries sent a pathetic plea to the President. "In this awful situation, with a just sense of the crime which he has committed, and with the sincerity of a penitent offender, he entreats mercy and pardon." He referred to the "ignominious death" before him and to the "large and hitherto happy family" which would be orphaned and face "future misery and ruin."

President Adams wavered. Something Fries had said about "a great man" who had stood in the background and engineered the disturbances awakened one of the Chief Executive's dominant emotions—suspicion. He deluged his Secretary of the Treasury, Oliver Wolcott, with irrelevant questions about Fries. Was he an American citizen? Was he in debt? Did he drink to excess?

Uneasy in his conscience about the matter, Adams requested Lewis and Dallas to write him a letter, stating their reasons for believing the trial before Chase to have been unfair. The two attorneys replied with a forceful memorandum:

Justice Chase had tried the case in Philadelphia although the laws of the United States required that a crime be judged in the county where it is committed. He had allowed a juror to sleep at home, where he had been harangued by a visitor on why Fries should hang. To make matters worse, the Judge had silenced the defense attorneys, prohibiting them from arguing issues of law and thereby frustrating the prisoner's right to a defense by counsel.

Moreover, Judge Chase's conceptions of the law were rudimentary. Treason by levying war was "a forcible opposition to the powers of the Government with the intention to subdue and overthrow it." To compel the repeal of a law by force was treason; to hinder its execution was not. All Fries had done in reality was to rescue prisoners from a United States Marshal. Even in England, a rescue was not high treason.

Adams was impressed. He called a Cabinet meeting. The unanimous advice of the Cabinet was that Fries be hanged. The hornet's nest of enraged Federalism had been stirred up and, in the eyes of the Hamiltonians, Fries had ceased to be a human being and had become a symbol of anarchy. Timothy Pickering, Adams' Secretary of State, rubbed his hands in delight when the death sentence was first announced: "I feel a calm and solid satisfaction that an opportunity is now presented, in executing the just sentence of the law, to crush that spirit, which, if not overthrown . . . may . . . overturn the government." This Pickering was a harsh, sanctimonious, God-fearing, acidulous man. A few years hence, he was to attempt to destroy the Government of the United States. And he would betray his country with an unwavering belief in his own righteousness.

"You have got General Fries," wrote Chauncey Goodrich, a Federalist bigwig from Hartford. "A firm execution of law . . . Government should not cringe."

Secretary of the Treasury Wolcott had been delighted at the outbreak of the "paltry insurrection" in rural Pennsylvania which "may, however, be nursed into something formidable." He believed that this area, which he insisted on calling "western" Pennsylvania, had always been the "seat of French intrigue." The whole state should be cleansed. Pennsylvania was "the most vil-

lainous compound of heterogeneous matter conceivable." The State Governor was "an habitual drunkard. Every day, and not infrequently in the forenoon, he is unable to articulate distinctly." The root cause of the evil was that the Governor's officials were democrats and therefore "vile."

Adams overruled his Cabinet's advice and pardoned Fries. This act of decency unleashed the furies of reaction within his own party and they now wanted his head. The pardon of Fries was part of the President's belated declaration of independence against Alexander Hamilton, who manipulated the affairs of government from nominal retirement. Without warning, the sensitive, vain, self-critical, introspective, cold, ponderous and extraordinarily intelligent Chief Executive awakened to the fact that he was being used as a catspaw. He tossed his harsh and treacherous Secretary of State out of office without ceremony or face-saving pretext. He referred to Hamilton contemptuously as a British agent. Then, to climax the injury, he reopened peace negotiations with France, thus dashing to the ground the Hamiltonian dream of power.

Hamilton retorted with a violent, pamphlet attack on his party chief, split the Federalists into two factions, became the acknowledged leader of the die-hards, and, by these ill-considered measures, ensured Jefferson's sweep into office in the forthcoming presidential elections. The ferocious Hamiltonian diatribe alluded at length to the Fries affair. The Government must dare "to inflict capital punishment for political offenses. . . A salutary rigor should have been exerted."

While Hamilton fumed, the great edifice that he had built was crashing over his head and it was he who was unwittingly pulling down the pillars. The faults of his youth had become accentuated with the advent of middle age—rashness, inflexibility, impatience, lack of judgment, a readiness to destroy what he was unable completely to dominate.

Fries returned to venue crying. In later years, John Adams never regretted his decision to pardon him. Under Jefferson's Presidency, Samuel Chase earned the distinction of being the only Justice of the United States Supreme Court to be impeached for official misconduct.

Thus the concerted effort to destroy democracy had proved a boomerang. Popular reaction against the Alien and Sedition laws broke the grasp of the aristocratic Federalist Party on national power. In the Jeffersonian era, the Federalists were to edge toward conspiratorial and treasonable tactics.

THE BURR CONSPIRACIES

"I witness your extraordinary fortitude with new wonder at every new misfortune. Often, after reflecting on the subject, you seem to me so superior, so elevated above all other men . . . that very little superstition would be necessary to make me worship you as a superior being . . . I had rather not live than not be the daughter of such a man."
—Theodosia Burr Allston to Aaron Burr.

The conspiracies of Aaron Burr remain one of the greatest enigmas in American history. Was his true aim to dismember the United States and establish an independent nation west of the Alleghenies? Or was this a blind and did he "merely" intend to make himself Emperor of Mexico? Was Burr a martyred precursor of the surge of American expansion to the West and to the South? Was he patriot or traitor?

During the past sixty years, industrious scholars have dredged the archives of England, Spain, Mexico and France. They have harvested an incredibly rich crop of plots, subplots, intrigues and deceptions. The story of the Burr conspiracies has become more and more ramified.

Today we know infinitely more about Burr's plans than his contemporaries did. And what we know is for the most part highly incriminating. Yet as the damning mass of evidence accumulates, a group of historians persists in viewing Burr as "a much maligned man, a victim of circumstances, a pathbreaker in American national expansion.

This charitable interpretation took form in the first quarter of the present century—a solid, matter-of-fact era in which treason on a towering scale may have well seemed psychologically impossible. Unable to believe in the lurid documentary evidence, historians were driven to the theory that Burr was a master of deception who told hobgoblin tales to his contemporaries in

order to swindle them. But this did not dispose of the difficulty. It merely placed it elsewhere. Why were Burr's contemporaries—many of them shrewd and practical men—taken in by cloak and dagger yarns?

After the Nazi and Communist movements arose to shake the foundations of the western world, the Burr story, literally interpreted, became less incredible. His paranoia, his passion for secrecy and deceit, his unlimited ambition, his exclusive allegiance to self and his abrupt transitions from hard-headed political calculation to the nightmare world of phantasy—all these could be accepted at face value. The figure of Burr slowly emerged as a man with a vast power drive, living in a period of turmoil and convulsion in which all things seemed possible, given daring and steadfastness.

There was little or nothing in the early life of Aaron Burr to indicate that this extraordinarily gifted man would become the supreme conspirator in American history and reach the climax of his career on trial for treason. His father was the founder of Princeton University and his maternal grandfather, Jonathan Edwards, one of the leading theologians of the day. He started life with brilliant prospects.

At sixteen, Aaron Burr graduated from Princeton with distinction. After a period of private study of the law, he heard the rumblings of Lexington and Concord. He got up from a sickbed to join Benedict Arnold's gruelling expedition to Quebec. The columns marched in subzero weather. Rations were short; hungry swine devoured the frozen bodies of stragglers.

A frail, dapper adolescent, Burr showed extraordinary will-power and courage. He proposed a sound and daring plan for the assault on Quebec, which, had it been adopted, might have brought Canada under the American Constitution.

Burr was part of the small vanguard detachment which led the charge on the lower town of Quebec. This unit was caught under fire from British blockhouses and all of its members killed except Burr and a guide. Burr remained under fire, shouting for the rest of the American infantry to advance through the cannonade, but the officers commanding the main echelons were less than heroes. Alone in the field, under harassing artillery fire, Burr went forward, picked up the 200-pound corpse of General Richard Montgomery—who had been killed instantly by enfilading fire from the British blockhouses—and attempted unsuccessfully to carry his commander through the deep snow to the American lines.

This act of dramatic courage made the young volunteer a minor national hero overnight.

Throughout the Revolutionary War, Burr showed great organizational ability, fortitude of an unusual order, strategic brilliance and a natural flair for command. At the same time, he was insubordinate, captious, avid for promotion.

When he was about twenty years old, he decided to give Washington some unsolicited advice. New York must be evacuated; the position was strategically untenable. The enveloping movement which Burr had predicted occurred and the American forces were driven back in panic and disorder. Burr found an isolated brigade, whose commander, General Henry Knox, was spouting heroics about fighting to the last man. Without a shadow of authority, he pushed the General aside and assumed personal command. He led the trapped force back to the American line, smashing up the enemy units which stood in his way.

Burr's views about his superiors were seldom generous. He thought Washington "defective in grammar" and education. His verdict on General Benedict Arnold was perceptive: "Arnold is a perfect madman in the excitements of battle, and is ready for any deeds of valor; but he has not a particle of moral courage. He is utterly unprincipled and has no love of country or self-respect to guide him. He is not to be trusted anywhere but under the eye of a superior."

When Washington made him one of the youngest Lieutenant Colonels in the Army, the 21 year-old Burr—who had expected a full Colonelcy—wrote his Commander in Chief an impertinent letter, begging "to know whether it was any misconduct in me or any extraordinary merit or service in them, which entitled the gentlemen lately put over me to that preferment."

By 1779, Burr was suffering from battle fatigue. He was assigned an inactive command where again he proceeded to drive himself relentlessly, sleeping one hour at a time and in his clothes, personally inspecting his patrols at night and welding a border force, which had previously been engaged in smuggling activities and the impartial plunder of civilian property, into a disciplined military organization.

During the latter part of the war, he became actively involved in intelligence work and counterespionage. This suited his secretive character. In this work, Burr formed a lifelong habit of writing his political correspondence in cipher and of formulating his projects in evasive language.

Young Burr courted and married the cultivated Theodosia Prevost, the widow of a British officer, a woman ten years his senior and the mother of two sons of military age. Although he was unfaithful to her, she was a stabilizing influence on the erratic and moody Burr, whose mother had died when he was two years old and whose home life had been chilly and devoid of affection. For both husband and wife, it was a happy and passionate marriage.

At twenty-five, Burr was already complaining of splitting headaches, hinting at suicide, suffering from violent bouts of exertion and insomnia in which he would sleep but two hours in five nights. In appearance, he was somewhat Byronic with an exceptionally high forehead, large, deep-sunk, luminous eyes and an almost feminine mouth. Between his sixteenth and his seventy-seventh year, he found time for indefatigable explorations of the *mons veneris*. An interminable procession of women trooped through his life, but, with the exception of his wife and daughter, they had little influence on it. He was extravagant, courtly, a connoisseur of foods and wines, a lavish entertainer, a man who squandered his money on his friends. Sycophants settled on him like fleas on a sheep dog.

The Man Who Might Have Been President

After the end of the war, Burr entered the New York bar, where his only rival as a lawyer was Alexander Hamilton. He became Attorney General of New York in 1789 and was soon involved in corrupt land speculation. Two years later, a coalition of Clintonian Republicans and disgruntled Federalists secured his election as United States Senator from New York.

Burr was now wealthy, successful and a powerful politician. He could entertain two hundred guests in his home overlooking the Hudson—Richmond Hill. His favorite maxim was a saying of Napoleon's: "Great spirits are not bothered by small morals."

Although a patrician by birth and temperament, Burr had shrewdly allied himself with the democratic forces in his state. Through his henchmen, he controlled the Society of Tammany—a radical political machine which challenged the traditional rule of the wealthy New York families. Although Jefferson believed that Burr had been for sale to the highest bidder since 1790, he did not hesitate to approve him as his vice-presidential running mate in the 1800 campaign.

The elections swept the Jeffersonians into power. There was only one cloud in the clear sky of victory. In those days, the

Constitution provided that the candidate with the highest number of electoral votes be President and his runner-up Vice-President. Since Jefferson and Burr were tied with seventy-three votes each, the issue was thrown to Congress for decision.

Through February 1801, the House balloted again and again. The popular mandate had clearly gone to the gangly Monticello sage and the Jeffersonians threatened that "ten thousand republican swords will instantly leap from their scabbards" if their idol was swindled out of the White House. The Federalists replied that Burr "has seen southern regiments in former times and knows what they are composed of." They jeered that Thomas Jefferson had fought the Revolutionary War with ink, while Burr had fought it with blood. Federalist New England boasted that over seventy thousand well-trained militiamen were ready to defend the Constitution against republican violence.

Alexander Hamilton lashed out against Burr in secret letters of denunciation to prominent Federalist politicians, damning him as a conspirator and potential traitor, blasting his character. "As true a Cataline as ever met in midnight conclave," he wrote luridly. With an almost eerie prescience of future events, he warned Congressman James A. Bayard:

"Burr is a man of very subtle imagination, and a mind of this make is rarely free from ingenious whimsies. . . . With great apparent coldness, he is the most sanguine man in the world. He thinks everything possible to adventure and perseverance; and though I believe he will fail, I think it almost certain he will attempt usurpation."

The Federalists, however, had by now formed the habit of listening to Hamilton's advice respectfully and then promptly disregarding it. What was the underlying motive of these frenzied Hamiltonian denunciations? Was it unalloyed patriotism or a convulsive effort to maintain his weak grip on the leadership of the Federalist Party against the more politically capable Burr? Probably the two impulses were inextricably mixed.

The Presidency finally fell to Thomas Jefferson because Burr was unwilling to accept it as a hostage of the conservative faction. He remained quiescent during the heated and dramatic battle. "Had Burr done anything for himself, he would long ere this have been President," Dr. Charles D. Cooper wrote at the time. Jefferson publicly praised Burr for his disinterested conduct and privately excoriated him for intriguing behind his back. The Federalist managers were disgusted with Burr. He had acted "a

miserable poultry part," Bayard thought. "The election was in his power, but he was determined to come in as a Democrat."

During the next four years, the "quiet, gentlemanly and rather dignified figure" who "impressed with favor all who first met him"—this combination Bonaparte and Lord Chesterfield—was subjected to an implacable and extraordinarily effective species of silent, invisible warfare. Jefferson used the power of his office to entrench Burr's enemies in control of New York State. Simultaneously, Hamilton was carrying on a more virulent, but considerably less effective, struggle to blight the flirtation between Burr and the Federalists. By the end of his vice-presidential term, Burr seemed politically and financially ruined.

What were the reasons behind these unrelenting attacks? Both Jefferson and Hamilton were men of considerably greater mental and moral stature than Burr. Each stood for a set of principles, a system of government and a philosophy. Each was a creative leader, who led in order to bring a policy to life. Burr, on the other hand, used programs and principles as weapons in the struggle for power. Burr found the emerging American political system—whether in its Jeffersonian or its Hamiltonian form—alien to him. His ambitions had been most nearly fulfilled in the exercise of military leadership. The role he wanted to play in the world's affairs was that of a benevolent despot, surrounded by a glittering court of intellectuals and aristocrats, in a dynamic and militarily expanding nation. He had no more sense of patriotism than his contemporary, Napoleon, who had once considered deserting the French service to re-establish the empire of Alexander of Macedon. For Burr, a nation was an object to be ruled, not a community to be served.

Jefferson rejected him because Burr's advocacy of democracy was fraudulent. Hamilton, who thought the people "a great beast", opposed Burr, because he had no loyalty to his country.

Sudden Death and Budding Treason

Thus the events which were to drive Burr into his desperate conspiracy had slowly matured and come to a head by the summer of 1804. An avalanche of debt threatened to bury him. His once lucrative law practice had long since been abandoned.

Burr was forced to turn toward the Federalist Party, still entrenched in New England, but mauled and mutilated by the Jeffersonians elsewhere. This group was already committed to secession.

The Jeffersonians were on the offensive and time was on their side. In 1803, Louisiana Territory was annexed over strenuous Federalist opposition and a new wilderness thus opened to the pioneer's axe. The consequences of this seemed plain. The new area would be peopled by yeomen and democrats. The North-eastern states would be permanently submerged by the political alliance of the agrarian South and West.

A few months after the Louisiana Purchase, Congressional Federalists met in secret caucus. Leadership was assumed by "Honest" Timothy Pickering, U. S. Senator from Massachusetts who had been Secretary of State under President Adams. This bleak, harsh individual was a man of action and an extremist. Devoid of tact, waspish in debate, mediocre in intellectual equipment, Pickering's physical appearance was reminiscent of a large, predatory fish. What he had to propose was treason.

Government by "the wise, the good and the wealthy" must not perish from this continent. A majority of the caucus agreed that New England must be persuaded to secede from the Union with British support. But the Essex Junto—the little band of New England Federalist leaders who controlled the party—was far more clearly aware of the realities of the situation than the Senators, almost totally isolated in the swampy village of Washington. George Cabot, the chief political strategist of Federalism, told Pickering the plan was premature. To get majority support for secession, even in New England, they must wait till the people saw clearly that the United States was "the instrument of debasement and impoverishment." The catalyst, in plain English, must be "war with Great Britain." This, Cabot thought, would be "manifestly provoked by our rulers."

Alexander Hamilton—the nominal leader of the party, but by now habitually overridden—opposed the scheme on grounds of both expediency and principle. "Dismemberment of our empire" would sacrifice great positive advantages without curing "our real disease, which is *democracy*." But the bull-headed Pickering disregarded this excellent advice. He had just enough horse sense to see that Federalism was sliding toward ruin and could not be rescued by subtle, philosophical essays.

In early 1804, Pickering and Senator Roger Griswold called on British Minister Anthony Merry. "Honest Tim" explained that they would like to dismember the United States into two separate republics. Could English assistance be obtained in this laudable enterprise? Perhaps Britain might reject the Boundary

Treaty, thus aggravating the tension between the two powers. Understandably delighted, Mr. Merry pledged cooperation with the Federalist fifth column.

The next step was to link New York to the New England conspiracy and make it the hub of secession. The ideal agent for this purpose was Vice President Aaron Burr—a “crooked gun,” Jefferson thought, “or other perverted instrument, whose aim or shot you could never be sure of.” His term coming to a close, Burr was running for Governor of New York—an uphill battle against the entrenched Clintonian machine behind which stood the Jefferson Administration.

The Federalists sounded him out. Burr was courteous, bland, evasive. Although they left with nothing more than Delphic promises, the Federalists agreed to throw their support to Burr. The logic of the situation implied that Burr must now discard his Joseph's coat of many colors and become the avowed national leader of Federalism. Alexander Hamilton was to be dethroned.

A dark, subterranean struggle for power now ensued between these two men—“secret, stifled, mysterious; the intrigue of men afraid to avow their aims,” as Henry Adams puts it. This struggle was to end a few months later with superb irony. A week before his fatal duel with Burr, Alexander Hamilton had been a finished man politically. Despite his great gifts, he had always been unpopular; by 1804, he suffered the greater torture of being disregarded. Inflexible, back-biting and guided by the strange lights of a torturing sense of duty, he was crawling toward his political grave. The duel changed everything. The dead Hamilton was promptly canonized among the American immortals. The petty and unpleasing features of his character were dissolved and all that remained was the iron-minded statesman of American nationalism.

With Burr, exactly the opposite occurred. He left the dueling field with his most vindictive rival beyond power to inflict evil. The national leadership of the Federalist Party seemed in his grasp. Burr's devious mentality, his ability to win blind loyalty, his unscrupulousness and his genius at political organization and intrigue were qualities enough to infuse life into the rotting New England organization. The future seemed to hold out one of two things:—the Presidency of the United States or the leadership of a Northern Republic hacked from the Union through secession.

The reality was entirely different. A torrent of popular indignation—fanned by mercenary scribblers and blackmailers, but nonetheless reflecting a genuine popular protest against the prevailing practice of butchering American statesmen on “the field of honor”—swept over the country. According to the doggerel of the day, Burr had lain in wait for Hamilton and shot him down in cold blood from behind a thistle. The “thistle” appeared in this legend solely because the anonymous poet-historian was under the strange illusion that it rimed with “horse pistol”. In any event, Burr was finished in the Northeast. He fled south, under indictment for murder in both New York and New Jersey, and observed airily that two states were contending for the honor of hanging the Vice President.

Intrigues with England

Hounded out of New York and under indictment for murder, Burr proceeded to Philadelphia. With that incredible resilience which characterized him, the Vice President had already decided that he was finished in the East and had developed a plan to re-establish his political fortunes beyond the Alleghenies. He made contact with British Minister Anthony Merry in Philadelphia and proposed “to lend his assistance to his Majesty’s government in any manner in which they may think fit to employ him, particularly in endeavoring to effect a separation of the western part of the United States . . . in its whole extent.”

There was no indication that Merry was astonished at this proposal. The Federalist Senators had been to see him earlier in the year with an offer only slightly less dishonorable. Treason must have seemed to him to be a commonplace American activity. Mr. Merry hated the country to which he was assigned; he thought most Americans vulgar, uncouth and venal. To Jefferson, the English Minister was a snob and his wife a “virago”; both were socially ostracized. A proper Tory, unable to penetrate beneath the surface of things, but loyal to his country and capable of representing it in routine matters, Merry was a man without imagination or depth, his mind clogged by class prejudices.

In his despatch to the British Foreign Secretary, Merry conceded that Burr was notoriously profligate, but added that “his great ambition and spirit of revenge” should make him useful. From the outset, Merry was a strong partisan of Burr’s schemes.

The Vice-President’s eyes were now definitely toward the West. At least two major plots were revolving in his extraor-

dinarily active and imaginative mind. The first was to organize a revolution in the West, take the Ohio and Mississippi valleys out of the Union and form them into a separate republic. This was unequivocal treason. The second was to cut out a domain for himself in the sprawling Spanish possessions bordering on the United States. This was misdemeanor. For one hundred and fifty years, historians have argued the question:—which was Burr's real plan?

In the winter of 1804-05, Burr went to South Carolina to visit his daughter, Theodosia, who had been married for four years to Joseph Allston, a young man reputed to be a millionaire and the richest planter in the South. This Allston was an ideal son-in-law for a man like Burr. He was moderately intelligent in his way and pompous beyond his years. He had no sense of humor at all and visualized himself in heroic roles for which he had none of the necessary attributes. Gullible and vain, Allston was a useful tool.

At the same time, Burr re-established his close friendship with Brigadier General James Wilkinson, Commanding General, United States Army. This Wilkinson plays a crucial role in the Burr story—the role of double, or rather triple, traitor. Although he was Burr's right-hand man and inextricably implicated, he betrayed his friend at the critical moment.

General Wilkinson: Spanish Agent 13

Wilkinson is the classic prototype of treason. During his long and useless life, he was never loyal to any friend, to any cause or to any country. There is something so monumental and aesthetically perfect about his rascality that one almost admires him. Practically all of his contemporaries regarded him as the apotheosis of disloyalty. Both Washington and Hamilton thought him a possible secret agent of Spain. To John Randolph, he was "the mammoth of iniquity . . . the only man that I ever saw who was from the bark to the very core a villain." His contemporaries publicly and correctly accused him of cowardice, perjury, corruption, attempted murder and treason.

Unlike the Deist Jefferson and the pagan Burr, Wilkinson either was or pretended to be righteous, pious and god-fearing. When he finally died in Mexico of over-indulgence in opium, he held the position of agent of the American Bible Society.

This "finished scoundrel" had a meteoric army career. He be-

came a close friend of Aaron Burr when both served as young aides to Colonel Benedict Arnold during the Quebec expedition. When Saratoga fell, he plagiarized another man's heroism to gain a general officer's commission before his twenty-fifth birthday. The young General then plunged into the Conway Cabal against Washington. At the last moment, he saved his skin by allowing papers, which compromised his patron and commanding officer, to fall into Washington's hands. He moved West after the War and re-established his position in the Army by intriguing against George Rogers Clark and General "Mad Anthony" Wayne.

At this time, the mouth of the Mississippi was in Spanish hands and the entire area west of the Appalachians regarded New Orleans as its natural export outlet. Spain realized that Louisiana could best be held if Kentucky and Tennessee were brow-beaten into secession from the Union and affiliation with the Spanish Crown.

As part of their strategy, the Spaniards financed Indian massacres of the white settlers under leaders such as Alexander McGillivray, the half-Scotch chieftain of the warrior Creeks. For more delicate negotiations, they used renegade Americans.

The most important of these was General James Wilkinson. He was put on the Spanish payroll secretly and between 1790 and 1804 received at least \$38,000—an immense sum in those days—for using his position in the American Army to serve the interests of a nation with which we were half at war.

James Wilkinson, Cipher Agent #13 of the Spanish Foreign Office, took a secret oath of allegiance to his new paymaster in 1787. "Self-interest," he wrote his new masters, "regulates the passions and he who imputes different motives to human conduct deceives himself. While a man may owe some duties to his country, "to assert that an intelligent being, able to do as he sees fit, should plant himself like a vegetable . . . would be setting at naught the wisdom of Providence. . ." Wilkinson added the hope that, while "laboring to advance a work which may lead to the aggrandizement of Spain and the happiness of thousands," he would be forgiven if he sought "to provide for the safety and happiness of my own family. . ."

Thus did "el Brigadier Americano, Don Jaime Wilkinson, un notable de Quintuqui" (as the Spanish document puts it) agree to betray his trust as an American officer and hire himself out as a spy and traitor to an unfriendly power.

Millions of American boys still read the heartbreaking story

of Philip Nolan, *The Man Without a Country*. According to Edward Everett Hale's novel, Nolan in a moment of weakness joined the Burr rebellion and was sentenced to float around in American warships for the rest of his life without ever again setting foot on United States soil.

The real Philip Nolan was a tough, hard-bitten contraband trader, a border runner and secret agent of Wilkinson. In 1787, Wilkinson had asked for the privilege of shipping \$50,000 worth of Negroes, livestock and supplies to New Orleans for sale, the proceeds to be held for his account by the Spanish Governor. For a time, he had exclusive trading rights in that golden market. In all these shady commercial operations, Nolan played an active role and shared handsomely in the profits. Years before the Burr conspiracy broke, a time came when Nolan failed to return from a frontier foray. The cause of death may have been a scalping knife or a swift onset of lead poisoning. He had nothing to do with Burr and was never sentenced as a traitor. Nor did he drift melancholically over the seven oceans, shedding a tear whenever he caught a distant glimpse of American shores.

Perhaps the most remarkable thing about James Wilkinson was that he continued to advance in the world despite the fact that nobody trusted him. In 1799, the Adams Administration was preparing for an aggressive war against Spain—the purpose being to seize the Floridas, New Orleans, conceivably Mexico. The ostensible aim was to fight France, but this was a blind.

In this extremely delicate situation, Alexander Hamilton, who was temporarily in command of the armed forces, persuaded George Washington to recommend that Wilkinson be promoted to the grade of Major General. Both statesmen believed that Wilkinson might be a secret Spanish agent—they discussed this frankly—but concluded that his loyalty could be bought by a promotion.

In the fall of 1804, Wilkinson was at Army Headquarters in Fredericktown near Washington. This portly, florid personage rode up and down Pennsylvania Avenue in a magnificent uniform which he had designed himself. His saddle cloth was of leopard skin, the claws dangling over the horse's belly. His stirrups were of gold.

The enterprise he was engaged in was lobbying. The Jeffersonians were toying with the idea of abolishing the standing army which had already shrunk to dwarf size. Under these conditions, Wilkinson was of little use to Spain. His pension was in jeopardy.

There was a swift, inexplicable turn of the wheel. Fortune again smiled on the mammoth of iniquity. Previously, Jefferson had refused Burr even the most insignificant patronage requests. Now, suddenly, the quarantined Vice President was invited to dine at the White House. The Administration intervened to quash the murder indictments against Burr. More important, Burr henchmen were suddenly advanced to key positions in the newly acquired Louisiana Territory. James Wilkinson was made Governor of Upper Louisiana—with headquarters in St. Louis—exercising both civil and military powers. Other Burr men got judgeships and key administrative jobs in the West.

Despite the fact that the Administration was now prepared either to support or appease him, Burr waited only a few months before returning to the British Minister to talk treason again. Time, he felt, was short. He told Merry that the inhabitants of Louisiana wanted to break away from the United States—and there was much truth in this. Once Louisiana seceded, all the western country, which hinged economically on the Mississippi trade artery, would be drawn into the vortex. To accomplish this great mission, Burr needed “assurance of protection and assistance from some foreign Power.” Specifically, England must supply him with a loan of half a million dollars and a British naval squadron must be despatched to the mouth of the Mississippi.

Burr: Patriot or Scoundrel?

Some historians believe that these traitorous proposals were merely a clever ruse to swindle the British Treasury out of \$500,000 with which Burr intended to give a major push to American westward expansion. Thus in his massively documented work, *The Aaron Burr Conspiracy*, Walter Flavius McCaleb emphasizes that all Burr really wanted was to conquer Mexico. He was a *filibustero* and, therefore, by the standards of the day, a patriot. The talk about secession and the request for a British squadron was all hogwash, of course. So runs the theory. Sometimes the economic interpreters of history tend to fit stubborn political events into a Procrustean bed even where a limb has to be hacked off from time to time. Westward expansion was a dominant economic force in American history; Napoleonism was not. It is neater to view Burr as an agent of these vast centrifugal forces.

Let us return to Burr's proposals to Anthony Merry. Namely,

a British squadron off New Orleans and \$500,000. Nobody doubts that Burr wanted the money. But the British naval force to support insurrection against the United States? Well, that is a different story. It is on this unquestionably treasonable point that the modern pro-Burr historians boggle.

McCaleb states dogmatically that this was "a blind." The West was unconditionally loyal to the Union; secession would have been impossible. Possibly; but, at that time, Burr had no first-hand knowledge of the country.

Wandell and Minnigerode in their stimulating biography, *Aaron Burr*, are much more imaginative. They describe their hero's request for a squadron thus:

"Mr. Merry was all breathless about it, but a complete suffocation would have overtaken him had he for a moment understood the real objective of the late Vice President's venture, and the use to which the British treasury's gold was actually destined. At no time does it seem to have occurred to Mr. Merry that he was being gloriously bamboozled."

As to how Mr. Merry would have felt under these entirely hypothetical circumstances, we venture no opinion. The blunt and somewhat lethal instrument of common-sense can be brought to bear on this bizarre theory that Burr went to Merry and talked treason solely in order to finance a filibustering expedition. American money could have been raised for Mexican filibustering—money which was not gallows bait.

Moreover, Burr wrote General Wilkinson on July 29, 1806, urging him to remain loyal to the conspiracy and adding: "Naval protection of England is assured." If, as Wandell and Minnigerode believe, the talk about British fleet support was sheer balderdash, designed to deceive a mentally defective diplomat, why was the same lure used in suborning the most adroit American military intriguer west of the Appalachians? Especially, since every time the lure was used Burr risked exposure with its fearful legal consequences?

As it turned out, Burr never received either a dollar or a row-boat from His Majesty's Government. Pitt died and was succeeded as Prime Minister by Charles James Fox, a lifelong friend of the United States. Fox considered the Burr-Merry negotiations indiscreet, dangerous and damnable. On June 1, 1806, he abruptly recalled Minister Merry. But until this blow fell, Burr continued to cajole Merry about the western adventure. In the fall of 1805, he made a specific request for "two or three ships of the line, the

same number of frigates, and a proportionate number of smaller vessels."

What if Pitt had lived and these subterranean discussions had been approved by the Cabinet in London? According to the interpretations of McCaleb, Wandell and Minnigerode, one must assume that Burr would then have pocketed the British money, gone to New Orleans and recruited men for an expedition against Mexico. At that point, a British squadron would have appeared and Burr would, one is to suppose, have politely asked it to go home. But it is too much to assume that, having been tricked in this manner, the British fleet would have permitted Burr to sail for Vera Cruz. Once he was bottled up in New Orleans, even the sometimes lethargic and frequently incapable Jefferson Administration would have had ample time to smother him. Even his enemies admit that Burr was a chessplayer and it seems discourteous to believe that he was unable to calculate three moves ahead.

Reconnoitering the West

In the spring of 1805, Burr proceeded on a triumphal tour down the Ohio and Mississippi to New Orleans. The craggy, acromegalic Andrew Jackson, Major General of the Tennessee militia entertained him lavishly and they spent five days together reviewing troops in Nashville. Jackson was fanatically for war with Spain and expansion westward and southward. Henry Clay of Kentucky also became a staunch Burr adherent and so, it was later charged, did John C. Calhoun.

As Burr proceeded southward in his splendid barge, powered by colored sails and the arms of ten soldier-oarsmen, he pretended to be concerned solely with the popular project of conquering Mexico. Already strongly entrenched in the Kentucky-Tennessee area, Burr rapidly organized support for his cause in New Orleans. His main attention was devoted to the Mexican Association—some three hundred Louisiana citizens who were engaged in intelligence work and propaganda for the "liberation" of Mexico. Burr also established subterranean contacts with priests in Mexico who were interested in overthrowing Spanish rule.

Returning from the West, Burr saw Minister Merry and told him that the axis of the plot had shifted from the Ohio Valley to New Orleans. His technique of conspiracy was to operate in a goldfish bowl. He made so many conflicting and apparently irreconcilable statements; and placed himself in conspiratorial relationships with so many incompatible groups that his real ends

seemed unfathomable. Instead of secrecy, he relied on bewilderment.

By the winter of 1805, the plans for the conspiracy seem to have matured. Burr had seen the West with his own eyes. He realized that mass support could be organized for a blow against Spain, but that seceding the West was hopeless. To most of his co-conspirators, he talked as if he had the tacit support of Jefferson. Meanwhile, he put a deposit on the immense Bastrop Grant—a million acres in the bloody border region between Spanish and American domains. This land purchase was a hedging operation and, at the same time, a blind in case he should be accused of subversive purposes. If the expedition against Spain appeared premature, he could always settle armed men in the Bastrop lands and wait for the most propitious moment for military action.

The Burr program at this point seems to have been hydra-headed. The first step would be to seize New Orleans; the second to attack Spanish territory. Dissatisfied with American rule the Creoles entered into treasonable contact with Burr. The Anglo Saxon imperialists and would-be filibusterers of the Mexican Association were, in all probability, loyal to the United States, but they chafed under the incompetent administration of Governor Claiborne. If Burr would lead them against Mexico, they would follow.

The pivotal element in the plan was the subversion of the American Army on the Mississippi. This was commanded by Wilkinson—the smug, double-dealing crony of Burr, the Number Two man of the conspiracy. Funds for the expedition would be supplied, Burr hoped, primarily by the British Government; secondarily, by wealthy friends and relatives, notably Burr's son-in-law, Joseph Allston. The second military element in the conspiracy was the British naval unit Burr had so insistently requested. This was essential if the expedition was to follow the traditional line of a sea assault on Vera Cruz and then march up the towering rock wall of the eastern sierras into the Mexican capital.

Burr had detailed plans of Vera Cruz harbor. To get there, he needed a navy. He had never for a moment wavered in his choice of the sea route into Mexico. There was no real alternative.

Without naval units, Burr would have had to move by land through Texas, across the Mexican desert and down the southward-tilting plateau of Central Mexico. Burr was an able strategist; his crony, Wilkinson, knew logistics. Each man must have seen

independently the major obstacles to the land route of invasion. First, it would have been necessary to provision and equip an army over two thousand miles of almost roadless wilderness, sparsely settled and in the rainy season virtually impassable. Any such invading force could be halted, contained and starved before it reached any place satisfactory as a base of operations. Second, the native revolutionary forces prepared to aid Burr were to be found in the densely populated Central Plateau, not in the northern wilderness. Third, there was a very real possibility that an army of American adventurers—greedy for spoils and unearned wealth—would melt away the moment it saw an opportunity to carve out plantations on the Texas plains. It was equally possible that such an army would insist on moving westward from Texas toward California. Once landed at Vera Cruz, however, the invading force would have the simple choice of fighting its way up the sierra to the capital or being cut to pieces.

Psychologically, a man with Burr's ambitions could not have hesitated between these alternatives. A land invasion of Mexico would simply add to American territory and, even if Burr had conquered Texas, he could never have established an independent empire there. A successful blow levelled at Mexico City, however, would have placed him in authority over an already settled, highly articulated society which, by its nature, could not be absorbed by the advancing waves of American pioneers.

Mexico at the time was ripe for revolution. The Spanish Administration had degenerated to an incredible extent. It was calcified with bureaucracy, blind worship of precedent and utter corruption. Major rifts had appeared between the various social and racial strata. The time and the victim were propitious for Burr's plans.

Since the main force to be used was the United States Army under Wilkinson, the initial step involved treason. The seizure of New Orleans was an obvious requirement since a secure base of operations would be needed for Burr's naval units. This too was treason. Whether the Western area would ultimately be drawn by lines of economic force into the Burrite Empire was a matter which did not have to be determined at the moment. Even the ultimate disposition of New Orleans was secondary.

Returning to Washington, Burr saw—probably as early as November 1805—that no assistance could be expected from the British. The resilient adventurer immediately decided to turn elsewhere. Why shouldn't the Spanish Government pay him for the

privilege of having its American Empire destroyed? He had no sooner conceived this extraordinary theory than he began to act on it.

The sinister, scoundrelly ex-Federalist Senator, Jonathan Dayton, one of Burr's most intimate political associates, appeared secretly in Philadelphia in December 1805 at the home of Carlos Martinez, Marquis de Casa Yrujo, the Spanish Minister to the United States. Dayton—an over-shrewd customer with a low, simian forehead—announced that he had secrets to sell to Spain for thirty or forty thousand dollars. Yrujo was interested.

Dayton revealed the Burr conspiracy to separate the western territories from the Union and conquer Florida. Claiming to be a fellow plotter ready to betray his chief for money, Dayton said that Burr had expanded his plan to include the conquest of Mexico. The new scheme was "very well received by the English Cabinet."

Unblushing, Dayton told Yrujo how he had first betrayed his country to the British and now was betraying Burr and his English patrons to Yrujo. Whatever the Marquis' feelings may have been about Dayton's moral character, he had no reason to fall into the trap that had been contrived for him. He realized at once that the Senator was there not to betray Burr, but as Burr's emissary. He was supposed to believe that Burr could be turned away from Mexico back to the original plan of dismembering the United States with Spanish gold. Yrujo at once saw the transparent lie in the thing. If Burr had actually received a pledge of support from England, he would not betray the plan to Yrujo for a few thousand dollars and thus throw away an empire. The Minister therefore assumed that the British were out of the picture. And that meant that nothing serious could be attempted. The Crown had nothing to fear from Burr and nothing to gain by bribing him. Or so Yrujo thought.

Coup d'Etat in Washington

With the British ice cold toward his overtures, Burr still needed a naval force. There was one lying right at hand—in the Anacostia River. But, unfortunately, it was difficult for a private American citizen to take over the United States fleet for his own secret purposes. Burr sounded out Captain Truxton, a naval hero of the Barbary Wars who had unjustly been deprived of his commission. Discovering that Truxton was plainly loyal to the United States, he made similar tentative soundings of Decatur and Preble.

The Jefferson Administration had virtually scuttled the Navy despite its brilliant defeat of the North African pirates and at a time when a sea war with England was on the horizon. Burr may well have thought that the Navy commanders would prove fertile ground for treason. They did not.

He next approached "General" William Eaton. Here was a man after his own heart—a man with a weakness that should easily be exploitable. Formerly a school teacher, Eaton had gone to the Barbary States as United States Naval Agent. There he had organized a polyglot army under the deposed brother of the Pasha of Tripoli and marched across the Libyan Desert to take the fortified town of Derna in battle. This was one of the great exploits of American military history and it took a leader of great tenacity and fortitude to carry it out. After winning this brilliant victory, Eaton had to stand by helplessly while his ally and his army were betrayed through the diplomacy of the State Department agent, Tobias Lear. On returning to the United States, Eaton found his pecuniary claims on the Government pigeon-holed.

He was a popular hero and an embittered man. He dressed extravagantly, was an intolerable braggart and had already degenerated far into the alcoholism which was to kill him off at the age of forty-seven. He had no love for Jefferson, whom he considered a nincompoop and a shallow-minded visionary.

Burr, probing adroitly for weak spots first gave Eaton substantially the same story he had retailed to Truxton—a filibustering expedition against Spanish possessions. When Eaton snapped at the bait and volunteered to command a division, Burr disclosed his real intentions—to "turn Congress neck and heels out of doors, assassinate the President, seize the treasury and Navy; and declare himself the protector of an energetic government."

Eaton was horrified. He rushed to Jefferson with the peculiar request that Burr be given a diplomatic post. The President demurred. The reason: "something like a doubt of the integrity of Colonel Burr." Eaton indicated this was a masterly understatement. He had suggested the foreign assignment, because Burr was ambitious. If given a job, he would do it well. Then Eaton added: ". . . if Colonel Burr was not disposed of, we should in eighteen months have an insurrection, if not a revolution, on the waters of the Mississippi." Mr. Jefferson brushed this aside. He had confidence, he said, in the loyalty of the western people.

In January 1806 Dayton told Yrujo of an "almost insane" plan which Burr had concocted:

Having gradually infiltrated a number of well-armed men into Washington, Burr and his band would strike suddenly to seize the President, the Vice President and the substitute Vice President (always named at the beginning of each session of the Senate). They would then take over the public funds in the Washington and Georgetown banks and capture the arsenal on the Anacostia River. If he could succeed in stifling all opposition to this audacious coup d'etat, Burr would make arrangements with the individual states and assume the Presidency.

But if he could not maintain himself as American dictator, Burr thought, he would take the two or three ships of the line that remained seaworthy despite the Jeffersonian policy of starving the Navy, burn all the rest, and proceed to New Orleans. With his armed militia aboard the frigates, the public treasury in the holds and Jefferson presumably present as a hostage, he would set up a Western Republic and proclaim the independence of America west of the Appalachians.

Was this plan as fantastic as modern historians have suggested? Washington at the time was a sprawling frame city of about 1,500 inhabitants. Was there anything preposterous about seizing this sleepy mud hole with a few hundred—or perhaps a few dozen—resolute armed men? Particularly, if the naval commanders had been previously won over to the scheme, which was Burr's intention?

Presumably this was possible. Having taken power in Washington, could Burr have proceeded to New Orleans and set up an independent republic there? The Creoles were champing under the inept and in some respects tyrannical rule of Jefferson's appointees; their leaders had opened secret discussions with Burr. The Anglo-Saxons wanted a war policy against Spain. The military was under the command of Wilkinson, who despised democracy and yearned for military glory.

Once established, how were the Burrite conspirators to be dislodged? The presidential succession would have been withered by the kidnapping or murder of the three persons legally entitled to occupy the White House. In New England, the Federalists would have found their long-awaited opportunity to cast off American allegiance and ally themselves with Britain. A punitive naval expedition would have been out of the question until a new fleet could be built to replace the one Burr proposed to overhaul

and burn. The Army west of the Appalachians was commanded by Wilkinson; the Army east of the mountains had already been reduced by democratic parsimony and pacifism to a miserably small, ill-equipped and discontented force. England would probably have aided a successful Burr. Just what force then could have been applied to thwart this daring plan?

The plan was audacious, but not necessarily impractical. The most realistic politicians are not ordinarily Horatios. They do not have to be told that there are more things in this world than they have dreamed of. The Washington conspiracy failed to materialize simply because Burr failed in subverting the military leaders in the capital. Without at least their benevolent neutrality, Burr knew that the adventure would have ended with a hemp rope.

By the spring of 1806, his fortunes were again at a low ebb. He lacked the support needed to make success probable. England had finally decided to treat his proposals with cold silence. Yrujo was suspicious and prepared merely to buy information in small packages. At the same time, Jefferson was crawling toward war with Spain and the Westerners were waiting with furious impatience for the struggle. And Aaron Burr had gone too far with his treason to retreat.

To Blennerhassett's Island

Burr turned westward a second time. From this point on, he was to proceed cautiously. His strength in the western territories lay with the pro-war leaders—men for the most part staunch in their allegiance to the United States. Burr now represented his purposes as settling the Bastrop Grant and participating in an invasion of Mexico.

The question mark was Wilkinson. He was holding back in trepidation. Since October 1805, he had not been in communication with Burr. In the summer of 1806, the ineffable Dayton wrote him saying Jefferson planned to displace him from command at the next session of Congress. After this calculated appeal to the General's avarice and ambition, the letter concluded: "Are your numerous associates ready? Wealth and glory! Louisiana and Mexico!" In communicating with Wilkinson, who had been involved in the conspiracy from the outset, Burr's lieutenant continued to stress dismemberment of the United States.

Five days later, Burr bombarded Wilkinson with a flatulent communication in cipher. Practically every statement in this remarkable letter is a lie. It appears that Wilkinson was taken in

by these lies because he repeated them in his subsequent denunciation of the Burr conspiracy to President Jefferson.

"The Eastern detachments, from different points and under different pretences, will rendezvous on the Ohio 1st of November," Burr prevaricated. "Naval protection from England is secured. Truxton is going to Jamaica to arrange with the admiral on that station. It will meet us at the Mississippi. . . . It will be a host of choice spirits. Wilkinson shall be second to Burr only; Wilkinson shall dictate the rank and promotion of his officers. Burr shall proceed westward 1st August never to return. . . . Already are orders given to the contractor to forward six months' provisions to points Wilkinson may name . . . Burr's plan of operations is to move down rapidly from the Falls, on the 15th of November, with the first five hundred or a thousand men, in light boats now constructing for that purpose, to be at Natchez between the 5th and 15th of December, there to meet you; there to determine whether it will be expedient in the first instance to seize on or pass by Baton Rouge. . . . The people of the country to which we are going are prepared to receive us; their agents, now with Burr, say that if we will protect their religion, and will not subject them to a foreign Power, that in three weeks all will be settled. The gods invite us to glory and fortune; it remains to be seen whether we deserve the boon."

The peroration at the end of this chain of falsehoods was by no means characteristic of Burr's keen, arid prose. But it was the sort of windy appeal calculated to stir the superficial, easily dazzled Wilkinson. The code letter was carried westward by Ogden and Swartwout, two of Burr's stalwarts, in July 1806.

A month later, Burr was on his way. He arrived at Blennerhassett's Island on August 22nd and made it his base of operations for recruitment, barge construction and provisioning. Much had been written about Harman Blennerhassett, the weird Irish expatriate who had built a splendid estate for himself and his young wife on his island in the Ohio River. Here he lived a seemingly idyllic life among his microscopes, his books, his musical instruments, his hemp fields and his gardens. He provides an element of tragi-comedy in the Burr story.

Tradition has petrified the figure of Blennerhassett into one of pure pathos. He is seen as a male Eve, expelled from his little Garden of Eden by the serpentine machinations of the unscrupulous Burr. There is some truth in this picture, but it is overdrawn. It derives from William Wirt's classic rhetoric at the Burr treason

trial. This peroration is not without unconscious humor:

"Who is Blennerhassett? A native of Ireland, a man of letters, fled from the storms of his own country to find quiet in ours. His history shows that war is not the natural element of his mind. . . But he carried with him taste and science and wealth; and lo, the desert smiled! . . . Music that might have charmed Calypso and her nymphs is his. . . Peace, tranquillity and innocence, shed their mingled delights around him. And to crown the enchantment of the scene, a wife, who is said to be lovely even beyond her sex and graced with every accomplishment that can render it irresistible, had blessed him with her love."

"In the midst of all this peace, this innocent simplicity and this tranquillity, this feast of the mind, this pure banquet of the heart, the destroyer comes; he comes to change this paradise into a hell. Yet the flowers do not wither at his approach. No monitory shuddering through the bosom of their unfortunate possessor warns him. . ."

In other words, Blennerhassett was an eccentric, a fiddler of mean accomplishments, a dabbler in the sciences, an amiable windbag and a predestined victim. This poor fellow spent his life running away from himself, letting a large fortune slip through his clumsy fingers, and dreaming of becoming what he never could be. He had to leave England, not because of political "storms", but because he had eloped with the 18 year-old niece he was supposed to chaperone. Instead of settling on the Atlantic Seaboard, he continued running until he reached his island in the wilderness. Here he sank most of his fortune. Here in this idyllic spot, there is reason to believe that Harman and Margaret Blennerhassett were slowly boring themselves to death.

This scene of rural felicity was disturbed by the arrival of Colonel Burr. The Blennerhassetts grasped at this breath of glamor from the great world on which they had, perhaps rashly, turned their backs. The victim made an almost immediate effort to tempt the serpent with a humble request that he be allowed to engage in any venture which Colonel Burr might have in mind. Burr answered suavely that he had perceived from the outset that a man such as Blennerhassett was not destined to live like a vegetable.

When Burr, accompanied by the lovely and brilliant Theodosia, descended the Ohio a second time, he opened his heart to the enthralled and moonstruck couple. The grand design was to

follow in the footsteps of Cortes. Colonel Burr was to be crowned Emperor Aaron the First. Theodosia would inherit the Mexican throne. Burr doubted the propriety of allowing Joseph Allston to rule as Theodosia's husband. The pompous and somewhat dull Carolina rice planter declaimed: "I will win (the crown) by a better title—by my deeds in council and in field." Margaret Blennerhassett would be a Lady in Waiting to the Empress Theodosia, whom she adored; and, as for Harman, why not make him Ambassador to the Court of St. James?

For a brief time, the fates allowed the harmless Harman and his attractive wife to play with their dolls and divide the honorific posts in Burr's imaginary empire. The tragedy of it was that no man was less fitted for the role of Conquistador. Harman Blennerhassett was so blind that he could scarcely distinguish a man from a horse at ten paces and, as the straightforward gardener, Peter Taylor, testified at Burr's trial, he had "every kind of sense, but common sense."

The aftermath was a series of crushing blows for this rather reflective, agreeable, weak and scholarly personage. Harman went through the ordeal of an indictment for treason. Acquitted, he was unable to return to his island or else too timid or too ashamed to do so. What little spirit he had was broken. In 1811, he attempted to blackmail Joseph Allston, who was by then Governor of South Carolina, threatening to publish a book proving the latter's treason. Allston simply ignored the demand for \$15,000 and Blennerhassett either never wrote the book or was at heart too decent to print it. The subtitle of this unwritten Blennerhassett book charged the following with complicity in the Burr plot: Thomas Jefferson, Albert Gallatin, Joseph Allston, Daniel Clark, James Wilkinson, Andrew Jackson and William Henry Harrison. This was quite a dragnet. It included three American Presidents!

While Burr was having barges built at Blennerhassett's Island, alarm was spreading throughout the country. Jefferson had already received several denunciations of Burr. For several months, he had ignored them. Then, on November 25, 1806, a bombshell burst. A courier arrived with a dispatch from General James Wilkinson at Natchitoches denouncing the conspiracy. Jefferson at once called the Cabinet to a special meeting.

Wilkinson—Savior of America

The letter from Wilkinson to President Jefferson was a most extraordinary document—in every way worthy of the leviathan

of rascality. It began by warning Jefferson that "a numerous and powerful association", extending throughout the United States, planned "to levy and rendezvous eight or ten thousand men in New Orleans, at a very near period, and from thence, with the cooperation of a naval armament, to carry an expedition against Vera Cruz." The infantry force would move down the Ohio-Mississippi with powerful contingents from Tennessee—Andrew Jackson's state. As for sea units, "the maritime cooperation will depend on a British squadron from the West Indies, under ostensible command of American masters." The vanguard would reach New Orleans in December; the army would set sail for Mexico two months later.

Thus far the report was a more or less faithful copy of the mosaic of bombast and lies which Burr had sent Wilkinson on July 29th as a means of infusing a modicum of determination in the portly General.

After he had finished paraphrasing the Burr cipher letter, Wilkinson was on his own. He involved himself immediately in palpable contradictions. The General told Jefferson he did not know "under what authority this enterprise has been projected." A few paragraphs later, he said that he did know, but wouldn't tell: ". . . the magnitude of the enterprise, the desperation of the plan, and the stupendous consequences with which it seems pregnant, stagger my belief . . . and it is for this reason that I shall forbear to commit names." One wonders how a man as inept as this could have hornswoggled four American Presidents!

Wilkinson was obsessed by the awful fear that the man who stood behind Colonel Burr might be none other than Thomas Jefferson. If that were true, his denunciatory letter was a colossal political mistake. "I am informed you connive at the combination," he wrote the President tactlessly. Then he immediately repudiated the idea as unthinkable.

The General was perplexed and bewildered, but he was still a hero. He had decided to make a compromise with Spain, withdraw his "little band" of troops to New Orleans to defend it to the last "against usurpation and violence." Then, in a postscript, a new thought entered his head. "Should Spain be disposed to war seriously with us, might not some plan be adopted to correct the delirium of the associates and by a suitable appeal to their patriotism to engage them in the service of their country. I merely offer the suggestion as a possible expedient to prevent the horrors of a civil contest. . ."

He had shrewdly left lines of retreat open. He had not named Burr as the arch conspirator. If Jefferson were the hidden mover of the machinery, all the President had to do was order Wilkinson to provoke war with Spain and recruit Burr's contingents. And that would have the inestimable advantage of subordinating Burr to Wilkinson.

What else was behind this rigmarole? To penetrate General Wilkinson's mind is like peeling an onion. Layer upon layer of lies and deceptions are removed, but in the center there is nothing. The lies were the man.

That summer, the General had found himself in an uncomfortable predicament. In July Spanish forces had crossed the Sabine River into disputed territory and Wilkinson had been given peremptory orders to oust them. It was evidently hoped that a military clash would ensue and provide a justification for the conquest of Mexico.

In his reports, Wilkinson brandished his sword like a drunken Shakespearean actor and breathed fire like a papier-mache Chinese dragon. But he was in fact quite loath to precipitate a war with Spain—the country from which he had already received \$38,000 in traitor's pay and to which he had once secretly sworn allegiance. Accordingly, instead of fighting, he negotiated with the Spanish commander in the most amicable manner possible. On November 5th, he concluded the Neutral Ground Treaty, by which both armies retired from the disputed area. He then reported to Jefferson that he had forced the Spaniards to withdraw beyond the Sabine, *neglecting to add that he had retired his own troops from soil which he had been categorically ordered to defend*. His letter denouncing Burr justified this act of cowardice and insubordination on the theory that all his forces were needed for the defense of New Orleans.

Yrujo believed that Wilkinson had remained loyal to Burr as long as the object of the plot was solely treason against the United States, but that he boggled against an invasion of Spanish territory. He summarized Wilkinson's motives in a penetrating dispatch to Foreign Minister Cevallos on January 28, 1807—at a time when the Burr conspiracy had already collapsed:

"According to appearances, Spain has saved the United States from the separation of the Union which menaced them. This would have taken place if Wilkinson had entered cordially into the views of Burr,—which was to be expected, because Wilkinson detests this government, and the separation of the Western

States has been his favorite plan. The evil has come from the foolish and pertinacious perseverance with which Burr has persisted in carrying out a wild project against Mexico. Wilkinson is entirely devoted to us. He enjoys a considerable pension from the King. . . Doubtless he foresaw from the first that the improbability of success . . . would leave him like the dog in the fable with the piece of meat in his mouth; that is, that he would lose the honorable employment he holds (i.e. as senior American General) and the generous pension he enjoys from the King. These considerations, secret in their nature, he could not explain to Burr; and when the latter persisted in an idea so fatal to Wilkinson's interests, nothing remained but to take the course adopted. By this means he assures his pension; and will allege his conduct on this occasion as an extraordinary service, either for getting it increased, or for some generous compensation. . . In such an alternative, he has acted as was to be expected; that is, he has sacrificed Burr in order to obtain, on the ruins of Burr's reputation, the advantages I have pointed out."

This devastating analysis was inaccurate only in one respect. The General was no longer receiving a pension from the Spanish Crown. Yrujo was unaware of this, but it did not materially change the situation. As the sequel will show Wilkinson hoped that Spain would again put him on her official payroll.

The General had been slow to denounce his fellow plotters. A month earlier before Wilkinson's dispatch to Jefferson, Erich Bollmann—a man famous throughout the United States for his attempted rescue of Lafayette from an Austrian dungeon and consequent banishment from his native land—had arrived in New Orleans as one of Burr's chief agents. This Dr. Bollmann was the best of Burr's little band. He stood head and shoulders above crooks such as Swartwout, trigger-quick young men on the make like Van Ness, the machine politicians from Tammany and the windbags and Indian killers of the turbulent frontier. Young, shaggy, heavy-set, Bollmann had a jaw that spelled courage; his deep-set, intelligent and withdrawn eyes revealed the conspirative crusader. He was a professional fighter for liberalism and his battleground was the world.

Meanwhile denunciations of Burr were piling up on the escri-toire of the gangly philosopher-executive. On October 22nd, Jefferson held a Cabinet meeting to discuss the situation. It was resolved to send a fleet to New Orleans and warn all loyal western officials to arrest Burr the minute he committed an overt act

of treason. Three days later, the mails came from the West with no disturbing information about Burr. All the prior decisions were rescinded at a Cabinet meeting on October 25th. The mouse of decision that crept out of the mountain of talk was to send one John Graham, Secretary of Orleans Territory, to investigate Burr's movements!

A month later—on November 25th—the mails brought the bombshell of denunciation from Wilkinson. The Cabinet met again. A proclamation was issued, charging unidentified "sundry persons" with conspiracy to attack the possessions of the King of Spain and ordering all men and property engaged in this enterprise detained and seized. All military and civil officials in the affected country were alerted to arrest the conspirators and, if possible, to stop any armada before it passed Fort Massac on the Ohio. Although General Wilkinson had been repeatedly denounced to the President as a Spanish agent, the orders vested sweeping powers in him.

Debacle, Arrest, Flight

From the outset, Aaron Burr had been dogged by bad luck. He had relied on the British and then Pitt had died. He had leaned on Wilkinson without knowing of the latter's intimate relationship to Spain and his pecuniary interest in committing a double betrayal. The third stroke of misfortune was a bad year for rice in South Carolina. Burr's Croesus son-in-law, Joseph Allston, was financially strapped. The expedition was delayed weeks behind schedule while Burr resorted to every possible expedient to raise the money he needed. But it was too late.

He was haled before a Kentucky grand jury on November 12th on charges of conspiracy to filibuster, defended by Henry Clay and vindicated by a partisan judge backed by a cheering courtroom mob. The legal net closed a second time on December 2nd. Again, Henry Clay for the defense. Hostile witnesses mysteriously disappeared. Aaron Burr was vindicated.

Andrew Jackson played a curious role. He was heart and soul for Aaron Burr and worked industriously in his behalf. "I love my country and Government—I hate the Dons" was his creed. Burr was organizing the venture closest to Jackson's heart—the conquest of Mexico. Then, suddenly, in mid-November of 1806, Jackson became uneasy. On the 12th, he wrote a secret letter to Governor Claiborne in New Orleans, bristling with intimate details of the Burr cabal.

"I fear treachery has become the order of the day," he warned melodramatically. He predicted "an attack from quarters you do not at present expect." Claiborne should keep "a watchful eye" on Wilkinson. "I fear there is something rotten in the state of Denmark. . . Beware of the month of December. . . Profit by it, and the ides of March remember."

A month after this lurid communication had been sent, Andrew Jackson requested and obtained from Burr a formal denial before witnesses of any treasonable designs against the United States. Thus reassured, he continued to assist in Burr's preparations with vigor and enthusiasm, even allowing his own nephew to join the expedition. Henry Adams suggests that Jackson was playing a double role and that the letter to Claiborne was a form of personal life insurance in case Burr's insurrection miscarried. Adair and Blennerhassett both thought him implicated up to his neck. It seems more probable that Jackson suspected treason, then, like so many others, was convinced by Burr's almost incredible personal magnetism.

A mob, acting under cover of law, had attacked Blennerhassett Island, looted, burned and savagely wrecked the undefended estate. Meanwhile, Burr, Harman Blennerhassett and the rest of the small band of adventurers were proceeding down the Ohio in a few barges. Jefferson's proclamation against the conspirators was strangely slow in its westward journey and the great expeditionary force that was to seize New Orleans and conquer Mexico—in all, about sixty men, most of them adolescents—slipped safely past Fort Massac.

The slothful, evasive and hitherto almost inert General Wilkinson now moved with terrifying rapidity. Like a large tropical snake, which had appeared somnolent and gorged, he became instantaneously active and pounced on his prey. Wilkinson had decided on his role. He was to be the savior of his country.

He began with a deluge of threats, warnings, forebodings, imprecations and expressions of his ardent desire to immolate himself on the funeral pyre. "This is indeed a deep, dark, and widespread conspiracy, embracing the young and the old . . . the exotic of yesterday, the opulent and the needy . . . I gasconade not when I tell you that in such a cause I shall glory to give my life in the service of my country. . . With my handful of veterans, however gallant, it is improbable I shall be able to withstand such a disparity of numbers." (This to Jefferson on November 12th.) Meanwhile, to Governor Claiborne—honest, courageous, incom-

petent, a bewildered man in the wrong spot: "You are surrounded by dangers of which you dream not, and the destruction of the American government is seriously menaced. The storm will probably burst in New Orleans, where I shall meet it and triumph or perish!"

Claiborne was besieged by Cassandras. In this sultry, dime-novel atmosphere, he let himself be wheedled and bullied into permitting Wilkinson to declare martial law. Without warning, the General arrested Bollmann, Swartwout and Ogden—Burr's chief lieutenants in New Orleans. As military guards led them to the bomb ketch, Aetna, where they were to be held in close confinement, Bollmann muttered that if he had had 48 hours more time Wilkinson would be in jail and the city in the hands of Burr men.

The conspiracy had been stifled without a battle. The civil courts claimed jurisdiction over the arrested men, but Wilkinson remained adamant. He probably knew that at least two New Orleans judges were members of the Burr cabal.

On January 10, 1807, Burr and his army of five dozen school-boys reached the mouth of the Bayou Pierre. Burr went ashore and found newspapers carrying a decoded version of his secret letter to Wilkinson outlining the strategy of the military operation. Burr now knew that his lifelong friend and comrade in arms had sold him out. The game was finished.

With his usual capacity for sizing up situations swiftly, Burr realized that New Orleans had become a death trap. Wilkinson wielded full powers of martial law. If Burr fell into his hands, he would have him shot without ceremony, thus destroying the main evidence of his own complicity. Accordingly, Burr had his men jettison their arms, then crossed the river and surrendered to Acting Governor Cowles Meade of Mississippi Territory. He talked to the Governor in such a wild way that the latter thought he was insane.

Burr was safely out of Wilkinson's jurisdiction. He was haled before a grand jury, defended himself and was promptly exonerated. The jury took Burr's side, attacked the Government for "the late military expedition" and lashed out at Wilkinson for his "military arrests without warning." The militia who had arrested Burr wanted him to lead them against Mexico. Judge Adams, when he viewed the prisoner, burst into lyric and unjudicial song. Burr's eyes, he rhapsodized, "scintillate with the most tremulous and tearful sensibility—they roll with the celerity and phrensy of poetic fervour, and beam with the most vivid

and piercing rays of genius." While a reluctant resident of this place, Burr plunged into a passionate affair with the reigning belle of the region, whose sentiments were doubtless no less poetic than those of the judge.

Meanwhile, a man called Walter Burling rode through Spanish lines, armed with a letter from General Wilkinson, then turned southwards toward Mexico City. Burling arrived dusty and tired in the capital and immediately presented the letter to the Viceroy. **It was a request for money.**

The General "lays great stress on the measures which he has taken at the risk of his life, fame, and fortune in order to save . . . this kingdom from the attacks of the insurgents," the Viceroy reported to his Government. "He finally comes to what I had anticipated, the question of payment for his services. He asks for \$85,000 in one sum, and \$26,000 in another. But, not content with this, he says he considers it just and equitable to be reimbursed for those sums he has been obliged to spend in order to sustain the cause of government, order and humanity."

His Excellency burned the letter as Wilkinson had requested. He then turned to Burling and assured him of Spain's gratitude for General Wilkinson's zeal in the service of the Crown. However, the Viceroy had not for one moment been alarmed over Burr's expedition against Mexico. Under the circumstances, it was impossible to pay General Wilkinson the sums he requested.

While his agent, Burling, was engaged in this impudent effort to extort huge sums from the Spanish authorities, Wilkinson turned his attention to the disposition of Aaron Burr. The presiding judge had disregarded the grand jury's verdict and was holding Burr bound over to the court. Wilkinson had meanwhile smuggled parties of army officers, in mufti and armed "with dirks and pistols", across the territorial line to "cut off" Burr. He offered five thousand dollars for this service. A dead Burr, he felt, would necessarily be a silent one.

Disguised as a bateau man, wearing a dirty white felt hat, Burr plunged into the tangle of woods and bayous to escape assassination by Wilkinson's condottieri. The fifty year-old Vice President stopped at the house of his lovely mistress, Madeline Price, to say good-bye, then rode toward the coast, where he hoped to find a ship that could take him to safety. Two weeks later, he was recognized, placed under military arrest and brought on horseback to Richmond, Virginia, to stand trial for treason.

THE BURR TREASON TRIAL

"In substance Jefferson said that if Marshall should suffer Burr to escape, Marshall himself should be removed from office."—Henry Adams.

At the House of Delegates in Richmond, Virginia, the stage was set and the actors were assembling for the most dramatic political trial in American history. This trial was to involve almost every great name in the nation's political life.

Perhaps the most striking figure of all was the prisoner—dapper, immaculate, cool, self-confident and intrepid. An observer would never guess that this former Vice President of the United States was fighting a desperate, uphill battle for his life and that President Jefferson had already publicly prejudged his case.

A young Virginia law student—twenty years old, almost six and a half feet tall and the focus of moonstruck female eyes—was unable to find a seat in the courtroom. He pushed his way through the sweating crowds of farmers and, by standing on the big lock of the courtroom door, managed to watch the proceedings.

His name was Winfield Scott. In a few years, caught in the whirlpool of war, he was to show a quality of strategic genius equal to that of the greatest American commanders. Scott was to accomplish what Burr had merely dreamed of. In thirty years time, he would lead an expeditionary force from Vera Cruz up the sierra into Mexico City. Where Burr had planned to assume dictatorship over Mexico by force and guile, Winfield Scott was to have it freely offered him by the defeated Mexican leaders who feared the alternative of anarchy and civil war. And Scott was to turn the offer down.

The frail prisoner made a tremendous impression on the king-size future Lieutenant General. "There he stood," Scott after-

wards recalled, "in the hands of power, on the brink of danger, as composed, as immovable, as one of Canova's living marbles."

Others were moved to a strange, rhapsodic worship of the prisoner. Burr's remarkably large, luminous eyes, like those of Hitler, seem to have exerted an almost hypnotic effect. He spoke slowly, articulating clearly, without raising his voice, without any show of emotion or eloquence. Yet those who attended the trial were to repeat his words and sentences verbatim half a century later.

The judge before whom the case was tried was an awkward, slipshod Virginian who sometimes carried cherries in his pockets and spat out the pits as he shuffled to and from the courtroom. He was kindly, fun-loving and informal—in appearance a typical Virginia farmer of the better sort. There was nothing remarkable about his regular features, crowned with greying hair, except that the lines about his jaw were unusually firm and his deep-set eyes showed the concentrated essence of intelligence.

The judge was John Marshall, Chief Justice of the United States Supreme Court, and it was a bottomless misfortune for the Administration that his judicial duties brought him to Richmond. Marshall was Jefferson's most implacable enemy. He was also a statesman who was slowly building a strong national government with the mortar and brick of judicial decision.

He was no great repository of legal lore. Citations were sprinkled through his opinions with the infrequency of oases in the Sahara. He found the business of burrowing in law libraries for texts and precedents irksome and tedious. Out of sheer laziness, Marshall thought out problems himself instead of dredging the English tomes to find out what other judges had said. This was easy for him since he was one of the greatest reasoners on legal matters which the world had ever seen.

Marshall immediately nominated John Randolph as foreman of the grand jury. This Randolph was an hysterical genius with a shrill, babyish voice and a scorpion tongue. He suffered from headaches, insomnia and a lamentably obvious glandular deficiency. Though hardly a man at all physiologically speaking, he was a breakneck rider, a quick-tempered duellist and a politician who had led the Jeffersonian majority in the House with the methods of a Simon Legree. He had now broken with Jefferson and, since moderation was utterly foreign to his character, he thought there was no duplicity or crime of which his former chief was incapable.

The most notable figure at the bar was Luther Martin—"the Bulldog of Federalism". Gross, homely, with fish-like eyes and a down-drawn mouth, Martin was such a prodigious drunkard that he towered above all his contemporaries in an age notorious for inebriety. Fueling himself with brandy while the court was in session, he delivered magnificently eloquent harangues, lashed at the prosecution with questions and interpolations, and seized every possible occasion to attack the character and motives of the President of the United States. "Brandy bottle" Martin was the chief luminary in the defense of Aaron Burr. He had immense admiration for his client and, before the trial was over, fell hopelessly in love with Burr's gifted daughter, Theodosia.

The prosecution contained the best legal talent of the Republican Party, but all were overshadowed by the absent, directing force, which studied the trial records, gave orders from Washington, used every possible device to ensure conviction. Thomas Jefferson, who had been almost languid while the conspiracy unfolded was by now thoroughly aroused and in the battle. The President had personally entered into one of the great struggles of his career. His enemy was not Burr, but the judge who stood behind him. The issue was the political destruction of John Marshall and the bridling of the power of the judiciary.

The parade of witnesses included doddering fools and illiterate farmhands. There was a procession of military heroes and epauletted traitors and imbeciles. The unspeakable Wilkinson strutted before the Court. Between sessions, the alcoholic William Eaton roared drunkenly from one Richmond tavern to the next, a living caricature of his past. The Navy—Cinderella of the Jefferson Administration—was represented on the witness stand by Truxton, Preble and Decatur—three immortals of American sea warfare.

Thousands of farmers had streamed in from the countryside to see the trial. They wore homespun or corduroy trousers, held up by "galluses", deerskin coats over red woolen shirts. Their hair hung loose or was roughly tied up with string in disorderly queues. They spat tobacco juice into the sand boxes, which were inadequate as to both size and number, and, in consequence, the walls and floor of the court room were soon stained and slimy.

These men believed implicitly in Burr's guilt; they had come to see him hanged. Only a handful dared to disagree with the crowd. Among these was Andrew Jackson, who had by now completely recovered from his momentary distrust of Burr. This "tall, lank, uncouth-looking personage, with long locks of hair

hanging over his face, and a queue down his back tied in an eel-skin," could be seen loudly proclaiming Burr's innocence from the steps of a grocery store to an angry, glowering crowd.

Preliminary Skirmishes

While the farmers streamed in toward Richmond for the spectacle, Thomas Jefferson submitted a special message to Congress on January 22, 1807, which stated that the Burr conspiracy had had two objectives:—to sever the West from the Union and to invade Mexico. The President said he had a "voluminous mass" of information on the plot, but this consisted chiefly of "rumors, conjectures, and suspicions", making it extremely difficult "to sift out the real facts." From all this, he drew the extraordinary conclusion that Burr's "guilt is placed beyond question." As a result of Jefferson's proclamations, the people throughout the United States were convinced, in advance of hearing evidence, that Burr was a traitor. It became extremely difficult to recruit a jury which had not already prejudged the case.

The Federalists were quick to turn this episode to their advantage. There could scarcely be a more wanton exercise of official impropriety, they trumpeted, than for an American President to usurp the function of the courts and seek to snatch from a man, whose life was at stake, the right of trial by an impartial jury. The Federalists were to flay Jefferson with this whip again and again during the course of the Burr trial.

Then, on February 21st, Chief Justice Marshall delivered the opinion of the Supreme Court on an application for the writ of habeas corpus by two of Burr's colleagues—Swartwout and Bollmann. This opinion was a scathing rebuke to the President.

These men had been seized in New Orleans for treason allegedly committed there and then dragged by military force to Washington for trial. Were there no federal tribunals in New Orleans? Marshall asked caustically. Or were American citizens to be seized by the military and brought for trial to "any place which the general might select, and to which he might direct them to be carried?" Such a doctrine would be suitable in a despotism, but not in a republic governed by the laws and the Constitution.

If he had said this much, it would have been overwhelming enough. But Marshall was blessed and damned with insatiable intellectual curiosity. He dug to the roots of all questions and weighed and tested them to disclose every applicable principle of law. He worried ideas like a terrier with a bone.

"As there is no crime which can more excite and agitate the passions of men than treason, no charge demands more from the tribunal before which it is made a deliberate and temperate inquiry." After this characteristic appeal for tolerance and dispassion, Marshall added that the Constitution had specified treason in clear and exact words so that this paramount crime could not be imputed to "offenses of minor importance."

After a lengthy discussion of the nature of treason, Marshall asked whether a man had to be physically present in a treasonable assemblage to be judged guilty of treason. This issue was not particularly relevant to the matter before him. Yet he gave a momentous opinion which was to rise and haunt him again and again during the Burr trial:

"If a body of men be actually assembled for the purpose of affecting by force a treasonable purpose; all those who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered as traitors."

When the Jeffersonian attorneys read this paragraph, they may well have shouted with joy. It seemed to fit the noose securely around Aaron Burr's neck. The alleged overt act of treason had occurred at Blennerhassett's Island in Virginia. After Marshall's opinion in the Bollmann case, how could Burr plead in extenuation that he had been hundreds of miles away at the time the riot occurred?

Trial at Richmond

On March 26th, Burr was brought to Richmond under military guard—pale, worn, in dirty and frayed clothes. His attorneys immediately asked for his discharge, protesting that the purpose of the expedition had been merely to join in an attack on Spain with which country we were already half at war. This was not treason, but patriotism.

Mr. Justice Marshall delivered another of his momentous opinions. According to Blackstone, a prisoner could be discharged only when the suspicion against him was "wholly groundless". But surely this did not mean that "the hand of malignity may grasp any individual against whom its hate may be directed . . . charge him with some secret crime and put him on the proof of his innocence." This was an adder sting at Thomas Jefferson to be followed immediately by a second injection of venom. Treason was levying war. It was raising and assembling an army. It was, therefore, "an act of public notoriety. It must exist in the view

of the world, or it cannot exist at all." Five months had elapsed since this supposed treason occurred. Why was it not already proved? Marshall demanded insistently. He then concluded. Burr would be held for misdemeanor, not treason. He would be let out on bail.

Marshall's conduct of the Burr trial enraged the President. The Chief Justice sometimes acted as if the President of the United States were in the dock and Aaron Burr the public prosecutor. He had good reason to be annoyed. Marshall had been a "midnight judge"—i.e., he was one of those deserving Federalist politicians who had been given a lifetime post in the judiciary by the Adams Administration on the last day of its official life. And, while never a regular party man, Marshall was—after Hamilton's death—the very brain and will of the opposition party to Jeffersonism.

Throughout the trial, the Justice's sympathies were obviously with Burr. At one point in the proceedings, Marshall "gazed at him, for a long time without appearing conscious that he was doing so, with an expression of sympathy & sorrow as strong as the human countenance can exhibit without *palpable* emotion." To climax matters, the judge committed the gross impropriety of dining with his prisoner. Marshall was a convivial and jocose person—a man who had enjoyed his congressional campaign because it gave him an excuse for frolicking and dancing around camp fires; he was a lover of good talk and the temperate pleasures of good society. Still the picture of a judge feasting with the man he was trying was hardly calculated to inspire confidence in his impartiality.

Had matters reached a point in the United States, Jefferson wondered, where there was one law for republicans and another for the enemies of the Republic? Was it justice to convict an ignorant hothead like Fries of treason for rescuing farmers from the custody of a marshal—to call this "levying war" against the United States—and then to refuse to indict Burr who had plotted insurrection and murder in broad daylight for over two years? Jefferson thought not.

The Burr trial is shot through with apparent incongruities.

Jefferson urges a government strong enough to crush insurrectionary conspiracies before they threaten the government's very existence. This is the same Jefferson who, a decade earlier, upheld the right of secession in the face of tyrannical laws in the Virginia and Kentucky Resolutions. It is the same Jefferson who

fought insistently for the Bill of Rights, who feared governmental tyranny all his life and who perhaps did more to define and protect civil rights than any other American.

Marshall, on the other hand, is for a narrow definition of treason—one under which men can carry conspiracies against the state to great lengths with impunity. He stands for what the Constitution says and legally he is on firm ground. Yet this Marshall is the lifelong advocate of strong government. He is dexterously creating a centralized nation by elaborating the implied powers in the Constitution. He hates secession, rebellion, direct action by groups without legal authority. He instinctively distrusts democracy and believes that the foundation of freedom is not the popular will, but the law.

Was it merely a question of whose ox was being gored? This was part of the issue, but it was far broader. Liberty and democracy may have seemed synonymous to the Jeffersonians; they emphatically did not to the Federalists. Marshall believed that an electoral majority was just as capable of stifling the freedom of the citizen as an Athenian tyrant. The only prophylactic was the law. The executors of the law were the courts. And once these courts became—as Jefferson wanted them to become—mere removable instruments of ephemeral majorities, the Republic would be on the toboggan slide toward anarchy mitigated by despotism.

If the shield of freedom was the Constitution and if this shield was needed in order to protect minorities from the majority, then the arbiters of that Constitution must be absolutely independent of popular or governmental pressure.

These are the underlying premises of Marshall's stand in the Burr trial. In this light, his decisions have an historic meaning which they could never possess were they mere maneuvers in an unprincipled factional struggle.

The Role of Martyr

The grand jury was finally chosen. Burr successfully challenged such obviously partisan figures as Senator Giles—Jefferson's chief agent in the Upper House—but he soon saw that it was impossible to fill a panel with men who had not already convinced themselves of his guilt. The grand jury consisted of fourteen Republicans and two Federalists.

Burr rose in his own defense to summarize. Nearly a year had passed since his alleged crime. The Government admitted it lacked enough evidence to warrant his indictment for treason. There-

fore, he was to be imprisoned without evidence. Calmly, but with tense emotion, Burr alluded to "the vast disproportion of means which exists between it (the Government) and the accused." He added: "No government is so high as to be beyond the reach of criticism."

Burr's friends "had been every where seized by the military authority" and unlawfully imprisoned. They had been forced to testify against him. His papers had been confiscated. Post offices had been broken into by government officials and the mails robbed. It was for less outrageous conduct than this that Americans had resisted "European despotisms". And yet, with all these violent efforts, what had been proved against him? Where was this alleged civil war. "There was, to be sure, a most terrible war in the newspapers; but no where else."

The defense strategy was clear. The cry of tyranny and persecution was hurled against the Government; the prisoner was pictured as an underdog—a man who stood alone against the huge and implacable machinery of the state. All this was calculated to arouse among the people the almost instinctive American fear of governmental oppression, to create in their minds the belief that the rights of all citizens, and not merely those of Aaron Burr, were in jeopardy.

To carry out this strategy, Burr consistently depicted Jefferson—the author of the Declaration of Independence—as a tyrant, a hypocrite, a man drunk with power. To do this effectively, he had to retain the initiative.

More than this was necessary. Burr asserted his own innocence calmly, persistently, persuasively, without qualification, in a manner so emphatic that mere reiteration seemed to carry the stigmata of truth. He was, of course, a believer in the theory of the great lie. Burr understood the psychological theory that if one adheres to a prevarication with enough firmness, many people will be convinced of its truth simply because they lack such firmness themselves and make the flattering assumption that all men are equally defective.

Burr played this role with admirable skill. Even his letters to Theodosia implied in every line that he was an innocent victim. And on his death bed, twenty-nine years later, he was to assert blandly that he had never had hostile intentions against the United States. "I would as soon have thought of taking possession of the moon and informing my friends that I intended to divide it among them."

On the motion for Burr's incarceration, the Government drove its herd of witnesses to the Blennerhassett Island affair through the court house. The grand jury was twice dismissed so that, as Washington Irving maliciously put it, "they might go home, see their wives, get their clothes washed, and flog their negroes."

Then, one day, Burr tossed a hand grenade into the court room. He said the Government had attempted to infer his guilt from his flight in Mississippi. He had fled because there was a government order out to have him killed. He wished to submit this order as evidence, but it was in the possession of Thomas Jefferson. "Hence, I feel it necessary . . . to call upon (the court) to issue a subpoena to the President of the United States, with a clause, requiring him to produce certain papers; or in other words, to issue the subpoena *duces tecum*."

Was the President to be dragged into court at the demand of a man accused of treason? The lawyers locked in furious argument. The choleric Luther Martin demanded angrily whether an accused man was to be denied "witnesses in his behalf". Such a thing was unheard of in a free country. Was Thomas Jefferson a monarch? No, he was only "a servant of the people." And this President "has assumed to himself the knowledge of the Supreme Being himself, and pretended to search the heart of my highly respected friend. He has proclaimed him a traitor. . . He has let slip the dogs of war, the hell-hounds of persecution, to hunt down my friend."

The Burrrites had found a magnificent issue. It appealed to the naive democratic sentiment of the period. The President was not better than anybody else. Didn't he have the same duties and obligations as other men?

Marshall gave his opinion. The language of the Constitution, the law and "immemorial usage"—all these combined to entitle "any person, charged with a crime . . . to compel the attendance of his witnesses." The only argument against the power to subpoena the President was that he might have other and more important duties. But these duties, Marshall continued, were "not unremitting"—in other words, the Presidency was a part-time job!

When Mr. Jefferson read this, he was displeased. "If he alludes to our annual retirement from the seat of government, during the sickly season," he wrote Hay, then Marshall should be informed that the President did not spend his summers farming at Monticello, but took his official papers with him.

Marshall issued this unprecedented subpoena duces tecum on the President. There was a lengthy argument—the upshot of which was that Jefferson disdained to comply. He regarded the court order as an attack on the independence of the executive branch of government. And here he stood on solid constitutional ground. As to fetching documents for John Marshall, he would reserve “the necessary right of the President of the U. S. to decide, independently of all other authority, what papers, coming to him as President, the public interests permit to be communicated. . .” As to his personal appearance, was he to abandon the affairs of 6 million people in the interests of one? Was he to “abandon major duties to perform lesser ones?” The notion was preposterous.

The Mammoth of Iniquity

In late June, the Government's star witness, whose evidence was supposed to hang Burr, at last arrived in Richmond. “Wilkinson strutted into the Court, and . . . stood for a moment, swelling like a turkey cock,” Washington Irving wrote. Then Burr, who had previously ignored his existence, suddenly “looked him full in the face with one of his piercing regards, swept his eye over his whole person from head to foot” and quietly resumed his conversation with counsel.

This is not the way it appeared to Wilkinson. “I saluted the Bench,” he reported to Jefferson, “& in spite of myself my Eyes darted a flash of indignation at the little Traitor, on whom they continued fixed until I was called to the Book. . . This Lyon hearted Eagle Eyed Hero, sinking under the weight of conscious guilt, with haggard Eye, made an Effort to meet the indignant salutation of outraged Honor, but it was in vain, his audacity failed Him, He averted his face. . .”

Wilkinson was excoriated by Jackson, master of the coarsest language of the frontier. Swartwout, whom he had betrayed, challenged him to a duel. When the General refused to fight, Swartwout accurately described him in the public press as a perjurer, forger, coward and traitor. If he had any shreds of reputation left, Wilkinson now lost them. His cowardice before Swartwout seemed unforgivable to the hot-tempered, punctilious Virginians.

Although all but two of the grand jury were members of the Jeffersonian party, they refused to indict Wilkinson for misprision of treason by the narrow vote of 9 to 7. “The mammoth of

iniquity escaped," John Randolph snorted, "not that any man pretended to think him innocent, but upon certain wire-drawn distinctions that I will not pester you with. Wilkinson is the only man I ever saw who was from the bark to the very core a villain. . . Perhaps you never saw human nature in so degraded a situation as in the person of Wilkinson before the grand jury, and yet this man stands on the very summit and pinnacle of executive favor." Wilkinson, he thought, was "the most finished scoundrel that ever lived; a ream of paper would not contain all the proofs."

The "wire-drawn distinctions", which saved Wilkinson, were in reality substantial. The alleged overt act of treason had occurred at Blennerhassett's Island on December 13, 1806. Since Wilkinson had denounced the Burr conspiracy to the President two months earlier, he could not by any stretch of the imagination be indicted as an accomplice.

The sanctimonious Wilkinson was thunderstruck to find himself execrated and a social leper. "Merciful God, what a Spectacle did I behold," he wrote Jefferson, "Integrity & Truth perverted & trampled under foot by turpitude & Guilt, Patriotism appaled & Usurpation triumphant."

The grand jury indicted Aaron Burr for treason and he was promptly put in jail. The next day he was removed to Luther Martin's house and assigned a room which was equipped with iron bars and guarded by seven men. He was moved again, to a three-room apartment, where he held court, receiving presents from his admirers of "oranges, lemons, pineapples, raspberries, apricots, cream, butter, ice and some ordinary articles."

Months earlier, Burr had written Theodosia, who was fluctuating between moods of bleak despair and frenzied anger against Aaron's tormentors, telling her that all democracies throughout the course of human history had engaged in "unrelenting persecution" of men of "virtue . . . independence and . . . talents" such as himself.

Now that a true bill had been brought in, he needed Theodosia by his side. But there must be "no agitations, no complaints, no fears or anxieties on the road, or I renounce thee." He wrote her again on July 24th, apparently reconciled to the conviction that he would be sentenced to hang.

"I want an independent and discerning witness to my conduct and that of the government. The scenes which have passed and those about to be transacted will exceed all reasonable credibility, and will hereafter be deemed fables, unless attested by very high

authority." In other words, Theodosia was to write the official biography. He assures her that he knows how to behave when facing death: "I should never invite any one, much less those dear to me, to witness my disgrace. I may be immured in dungeons, chained, murdered in legal form, but I cannot be humiliated or disgraced."

The government brought Wilkinson to the stand again to repeat his testimony to the grand jury. Truxton, the naval hero, tartly denied that Burr had ever proposed treason to him against the Republic. The liquor-swilling General William Eaton—complete in Turkish sash and huge white hat—appeared on the stand bursting to tell his dramatic story of a conspiracy to assassinate the President. Marshall brought him to heel with a peremptory demand that he testify to the treason charged in the indictment and not to some other treason. After telling his life story and reciting his grievances against the Government, Eaton concluded: "concerning any overt act, which goes to prove Aaron Burr guilty of treason I know nothing. . . . But concerning Colonel Burr's expressions of treasonable intentions, I know much."

The men who had utterly damning testimony against Burr, such as Minister Anthony Merry and the Marquis de Casa Yrujo, were, of course, absent. What they could have told was locked in their governments' secret archives, to be revealed many decades later. The prosecution had to rely on minnows—that had been swimming in shallow water where they received only some of the faint reverberations of the conspiracy.

A procession of gardeners, grooms, laborers and businessmen—some moronic, others possessed of shrewd, earthy intelligence—told of the antics at Blennerhassett's Island where Aaron had been Emperor of Mexico and Harman had been Ambassador to London.

The gist of the supposed overt act of treason was this: When the expeditionary party was ready to leave the Island for the great adventure, a certain General Tupper of the Ohio militia laid "his hands upon Blennerhassett and said, 'your body is in my hands in the name of the commonwealth.'" Immediately, "seven or eight muskets were levelled" at this intrepid soldier. He expressed fervent hopes that the owners of these muskets would not shoot, but these hopes seemed doomed to disappointment. General Tupper was evidently the sort of military man who prefers parades to battles. At the first sign of resistance, he changed

his tune, allowed the Blennerhassett party to leave and went so far as to wish them Godspeed.

This episode, the Government claimed, constituted levying war on the United States. After the Blennerhassett story had been narrated, the defense moved that the Court allow no further evidence since no overt act of treason had been proved which implicated Colonel Burr. If the fact could not be demonstrated, corroborative evidence was clearly inadmissible.

Wickham, for the defense, went to the root of the legal issue. Burr had been hundreds of miles from Blennerhassett's Island at the time the near-riot occurred. According to the English Common Law, he could be considered "constructively" present. The British lawyers reasoned that, if a man was a willing participant in a treasonable conspiracy, all the deeds of the conspirators could be attributed to him. But this, said Wickham, was the very doctrine of tyranny which Americans, in ratifying the Constitution, had forever banished from the Republic.

Young William Wirt arose for the Government and delivered a brilliant address which American schoolboys were forced to recite in rhetoric classes for the next half century. This oration was rich with tropical prose. It revealed Aaron Burr as Lucifer, seducing the innocent Blennerhassett from his island paradise. Was it the intent of the Constitution, Wirt asked, to establish a law of treason under which dupes and mere instruments should hang, while the principals escaped scot free? He held that the conspiracy and the overt act were an integral whole. Burr, as the directing element in the plot, was guilty of the clash just as if he had actually been present. To reason otherwise, would enable a man to set in motion "the whole mechanism of treason", then depart from the scene, allow his agents to carry the plan into action and escape punishment.

On August 31st, Marshall delivered his opinion. It was one of the longest he ever rendered and certainly the most scholarly. Marshall was moving warily, protecting himself at every point. The threat of impeachment hung over his head if he acquitted Burr. Not only his personal career, but the fate of the American judiciary, was at stake.

This Marshallian decision has been frequently regarded as the merest legalistic hair-splitting to serve an obvious factional purpose. Actually, the reasoning is clear and, one would think, unassailable. It must be remembered that Burr was being tried on

the evidence available to the Government—evidence which was faulty and inconclusive. Neither Jefferson nor Marshall was aware of his disloyal proposals to the English and Spanish Ministers.

The first question was whether an overt act of treason had been committed at Blennerhassett's Island. Marshall said that his opinion in the Bollmann Case had been wrongly interpreted to mean that "any assemblage whatever for a treasonable purpose, whether in force or not in force, whether in a condition to use violence or not in that condition, is a levying of war." Now this was entirely wrong. The Constitution said "levy war". The treasonable gathering, therefore, must be more than "a secret, furtive assemblage without the appearance of force." Unless this conclave was "a military assemblage in a condition to make war," the charge of treason could not stand.

This was not only clear, but sufficient. If there had been no overt act of treason, it made no difference whether Burr was present or absent. He was innocent in either case.

Marshall's doctrine on this point may appear shocking to modern readers. It seems to open the flood gates to treasonable conspiracies. Nevertheless, his view on this point is unassailable law. Even the British Common Law understood "*levy guerre*" to mean just that—an armed assemblage in force prepared to take military action against the King. The English judges punished conspiracies under the treason of "encompassing or imagining the death of our lord the king," but this had been deliberately omitted from the American Constitution.

Now both sides conceded that Burr had not been at Blennerhassett's Island. Did this absolve him from guilt in any crime of treason which might have been committed there? Of course, if Burr had been on his way there to join the rioters or if he had been stationed nearby in order to cooperate, he could be considered as having actually been present. But this was not the case.

Did this mean that a man could plan an act of treason, procure the armed men and then escape punishment merely because he controlled events from a distance? Not at all, Marshall conceded. But, if this were Burr's crime, then he should have been charged with it. He should have been indicted for procuring a treasonable assemblage, not for forming part of it.

It will be answered, Marshall anticipated, that "the advisement or procurement of treason is a secret transaction." He conceded this fact. Then came the crushing answer: "the difficulty of proving a fact will not justify conviction without proof."

He closed with an allusion to the scarcely veiled threats of the prosecution that he would be impeached if he decided in favor of the prisoner.

"That this Court dare not usurp power is true," the Chief Justice declared; "that this Court does not shrink from its duty is not less true. . . No man is desirous of becoming the peculiar object of calumny; no man, might he let the bitter cup pass from him without self-reproach, would drain it to the bottom; but if he has no choice . . . if there is no alternative presented to him but a dereliction of duty or the opprobrium of those who are denominated the world—he merits the contempt as well as the indignation of his country who can hesitate which to embrace. . ."

These words reveal the stature of the man. The jury returned quickly after this charge with a left-handed verdict of acquittal: "Aaron Burr is not proved to be guilty under this indictment by any evidence submitted to us." This was the old Scottish verdict of "not proven"—something unknown and illegitimate in American law.

Burr was immediately re-indicted for misdemeanor—the new charge being a filibustering expedition against Mexico. The case went badly for the Government. The weight of evidence was in favor of Burr's public story that he intended to invade Mexico only if the United States declared war. Again, the jury exonerated him.

Jefferson drafted a message to Congress which clearly hinted at the need for impeaching the Chief Justice of the Supreme Court: "The framers of the Constitution certainly supposed they had guarded, as well their government against destruction by treason, as their citizens against oppression under pretence of it. . ." Comparing the Fries conviction with the Burr acquittal, Jefferson suspected that neither aim had been achieved.

Marshall was not impeached, but on November 3rd, satirical posters appeared in Baltimore inviting the public to attend the execution of:

"Chief Justice M. for a repetition of his X. Y. Z. tricks, which are said to be much aggravated by his *felonins* (sic) capers in open Court. . .

"His Quid Majesty (Burr) charged with the trifling fault of wishing to divide the Union. . .

"B(lennerhassett), the chemist, convicted of conspiracy to destroy the tone of the public Fiddle;

"And lastly, but not least, *Lawyer* Brandy-Bottle (Luther

Martin) for a false, scandalous, malicious Prophecy, that, before six months, 'Aaron Burr would divide the Union.'"

Fifers played the Rogues March as a vast huzzaing crowd, accompanied by two troops of cavalry, marched through Baltimore's streets drawing two carts, containing effigies of the condemned men, to the place of execution. The dummies of Aaron Burr, John Marshall, Luther Martin and Harman Blennerhassett were hanged by the neck until pronounced dead by the mock public executioner.

European Flight

Aaron Burr had been repeatedly acquitted, but an Ohio indictment still hung over his head and Jefferson seemed as implacable as the Furies. During his moods of exaltation at the trial, he had been drunk with the delusion that the treason charge was merely a brief interruption to his plans. In another six months, he would be master of Mexico. But now he was despondent, inert, almost lifeless. He spent a month in New York with his beloved Theodosia, living undercover. They used the alias Edwards.

They parted for the last time and Burr went to Europe—broken, penniless, into exile. Here he was to spend four years of wandering—England, France, Scandinavia and the Rhineland. They are illuminating years as far as his character is concerned.

The detailed course of his daily life abroad is recorded in the *Private Journal* he wrote for his own amusement and that of Theodosia. Her letters to him show that he must have sent her this diary in fragments.

The Journal was published about a century ago by Burr's biographer, Matthew Davis, in a sadly mutilated and expurgated form designed to make Burr's character attractive in a period of general prudishness. More recently, the original *Private Journal* was published in an edition of 250 copies, most of which repose in the rare book rooms of public libraries.

One of the many interesting things about the *Private Journal* is that it deals almost entirely with people, not ideas. In England, Burr was intimate with the philosopher, Jeremy Bentham, but if any meeting or clash of minds occurred, this vast, dull work ignores it. The *Journal* is a record of happenings and almost every sentence begins with the first person singular. His most minute doings are recorded:—when he got up in the morning, where he ate, what it cost him, what houses he visited. Burr shows no ability to grasp the character of people and no real interest in

them. They appear only as objects, as projections of himself. He suffers increasingly from insomnia and, again and again, there is the entry—"j'ai bu trop"—"I drank too much."

The *Journal* is inevitably written in cipher. This one would expect from a man who resorted to secrecy from some internal necessity, even where there was no need for it. The code Burr evolved consisted of abbreviations and a large number of words picked from foreign languages. In Sweden, he learns to say *broed* and *mjolk* and uses them for years thereafter instead of bread and milk. Burr has only the most rudimentary and inaccurate command of foreign tongues. Even his French is sadly deficient. But he parades his scraps of ill-digested learning before the admiring Theodosia. For purposes of concealment, his cipher is absurd.

Most writers have skipped hurriedly with averted eyes over Burr's amours in Europe. One writer has tinted these affairs with glamor by alluding to the lovely Swedish countess and the German princess who shared his bed. Others have stated baldly that the *Journal* is incredibly scabrous and have expressed horror at the thought that a middle-aged man would confide such matters in his daughter—particularly when the daughter was a woman of the intelligence and moral fiber of Theodosia.

There were a few countesses. But most of the amours were with chambermaids and whores. They are worth a few paragraphs because they shed an interesting light on Burr's character.

Here are a few random entries from the *Journal* with a bowdlerized translation in brackets:

"Sed. par a laid vir. Ent'd. X'd 2. Mauv. 1 R. D." (Seduced by an ugly virago. Had intercourse twice. Bad. One Swedish dollar.)

"XXX with 2 avants: 1, 15; l'aut 22; 1½ d." (Had intercourse with two adventuresses: one 15, the other 22. One and a half Swedish dollars.)

". . . went out to see Doug.; out, but consoled self with la maitr. de mais. Encore not being satisfactory, roved an hour y ca mou. p. Gamp fully. 2 j. U. Home at 9 quite tranquil." (Went out to see Doug. He was out, but consoled myself with his wife. She was unsatisfactory, so I roved an hour. This pleased me a great deal as I picked up two young women. Home at nine quite tranquil.)

Burr at this time was about fifty-five. He had reached an age where most men, if they still pick up women, have at least outgrown the need to boast about it. Burr, however, was in many ways a perpetual adolescent. The main purpose of his *Private*

Journal was to convince his daughter of his continuing sexual prowess.

Was Burr the "great lover" that he is reputed to be? Or was his sexual athleticism an effort to reassure himself of his own prowess? Whatever the answer, it is interesting that his most frequent adjective in describing an affair is "mauv.", or bad, and that he seldom had more than one sexual encounter with the same woman. Moreover, he describes his affairs in a peculiarly tedious fashion.

The *Private Journal* is a candid record of degeneration and emotional bankruptcy, written without shame. Burr had been a fastidious man and his mistresses, in former times, included some of the most attractive women in America. Here in Europe, he descends into the slums to pick drabs off the streets—females described as "ugly . . . old . . . fat . . . bad"—the flotsam of poverty, women prematurely scarred by toil and disease.

Why did Burr report these somewhat sordid matters to the adoring Theodosia—a woman who was obviously in love with him? Historians are shocked by his use of barroom language in the *Journal* destined for his daughter's eyes. Perhaps the trouble is that they have tried to find a conventional, prettified father-daughter relationship instead of something more complex and more interesting.

In Europe, he was poor in a literal sense. He was often despised, shunned, persecuted, hounded. He would dine on prunes, vermicelli and barley water. There was the day when he had no coffee because he could not afford the coal to heat it. There was the time when he grubbed in a churchyard for berries to eat. Finally, a day came when he had to sell the presents he had bought for Theodosia and her son. When he did this, he felt ashamed. Except for this one incident Burr describes this slow horror of cold poverty—a poverty which meant freezing in attics, doing without dinner and spending his last pennies on the wine and 14 year-old girls which made life bearable—with humor and resilience.

Disintegration of a Genius

Theodosia wrote her "guardian angel" letters which showed her fear that he was frittering away his life. Even now, with all of his grandiose projects shattered, a shabby, impoverished prowler through European slums, Burr was still a God.

"I witness your extraordinary fortitude with new wonder at every new misfortune," Theodosia wrote in a mood of emotional

exaltation. "Often, after reflecting on this subject, you seem to me so superior, so elevated above all other men; I contemplate you with such a strange mixture of humility, admiration, reverence, love and pride, that very little superstition would be necessary to make me worship you as a superior being, such enthusiasm does your character excite in me. When I afterwards revert to myself, how insignificant do my best qualities appear. My vanity would be greater if I had not been placed so near you; and yet my pride is our relationship. I had rather not live than not be the daughter of such a man."

How remarkable that Burr could still inspire this amount of adulation in one of the most accomplished women of her time. Meanwhile, unsound plans were breeding in his brain like rabbits. New ways of producing vinegar, canal construction, merino sheep breeding, these and dozens of other schemes attracted his attention and absorbed him briefly, almost as a rich child is fascinated for a few minutes with a new toy and then, already jaded, throws it away.

The dream of betraying his country and conquering Mexico still haunted him. He tried to see Talleyrand, but the latter suggested he look at the portrait on his wall. It was a likeness of Alexander Hamilton, the man Burr had killed. He had a more cordial reception from Joseph Fouché. Napoleon's sinister secret police chief. He tried still other channels.

Through the researches of Dr. Isaac Cox, the contents of Burr's proposals to Napoleon have been brought to light. This plan was sheer hallucination, an eagle flight from the earth of reality.

The people of the United States were restless; they were ready to rally under the leadership of one man. That one man was Aaron Burr. Starting with this fantastic premise, he outlined one of the most bizarre military projects ever committed to paper.

A volunteer force of 500 European troops was to fall on the Bahamas and wrest them from the British. Then they would take Florida. Armies would be raised to march North and liberate Canada—a country French to the core and panting for freedom. From Canada, the armies would wheel westward and southward. They would follow the Great Lakes and the Mississippi. Upper and Lower Louisiana would be wrenched from American hands. After that Mexico and the Spanish dominions!

This phantasy found its way swiftly into dusty archives. After all, Burr was a spent man, a political bankrupt. His program was the nightmare stuff of paranoia.

The Last Disaster

In 1812, the forgetful and charitable United States Government allowed the aging exile to return. It was as if the Fates had waited for this moment. Two paralyzing blows were to descend on Aaron Burr's head like lightning bolts. By comparison, the ordeal of the treason trial and the years of loneliness and semi-starvation, of snubs and rebuffs, of slow descent into the morass of the European urban underworld were as nothing.

"The world is a blank. I have lost my boy," Theodosia wrote in anguish. "Gampy", the grandson, was dead—the boy on whom Theodosia had lavished her love and Burr his hopes. His daughter left by packet to join him in New York. The ship was caught in a violent storm off Hatteras and disappeared without trace. Death bed confessions of pirates and a maze of local rumor indicate, but do not prove, that it was overhauled by wreckers and that its passengers and crew may have been put to death.

Burr waited anxiously for news. There was a time finally when he saw the truth. He wrote simply: "I am severed from the human race."

He lived twenty-six years longer, a dapper, brilliant, cynical, charming old man whose dreams had turned to dust. He was a successful lawyer, but because of popular odium had to allow others to argue his briefs in court. Except for the remnants of his "little band", the illegitimate children he supported, the derelict Luther Martin who lived on his charity and the inevitable women, Burr was lonely, an outcast. "Andrew Jackson dreads me in my decrepitude," he once remarked more in wonder than complaint. "In the Blennerhassett case he was my general, Calhoun and McDuffie were my associates, but not a word has escaped my lips till now." An inquisitive lady wanted to know what he had really planned to do in Mexico. "I'd have made it a heaven for women, and you should have been there to enjoy it," he replied.

Just as he had written Napoleon that the American people were waiting for him to liberate them, so now he assured everyone that he had never had any hostile intentions toward the United States. He retained that marvellous facility of thrusting completely from his mind any aspect of his life that he did not care to remember. Was that the secret of his superlative ability to convince men of things that were patently false?

Perhaps so. He was able to move swiftly from reality to hallu-

ination and back again. There had been some indications of insanity:—his wild schemes, his peculiar behavior in the weeks preceding the duel with Alexander Hamilton, whatever it was that he said to Governor Meade Cowles when he surrendered to him, his illusion at Richmond that the march to Mexico was only momentarily interrupted.

When he was seventy-seven, Burr married Madame Jumel, who had once been a glamorous woman of the town and, according to rumor, flesh of contention between Burr and Hamilton. In this contest also, it was said that Burr had won.

The marriage was not a success. Burr squandered Widow Jumel's money and, in addition, was caught *in flagrante* with a certain Jane McManus who, when found in this compromising position, exclaimed: "Oh la! Mercy save us." Burr's last distinction was to be divorced for adultery at the age of eighty.

The decree was granted on the day of his death. Ministers of many creeds made his last days uncomfortable. They pestered the dying man with theological questions and competed furiously for the honor of converting this arch-sinner to their particular brand of Christianity. Burr was too feeble by now to send them away. When a peculiarly persistent saver of souls asked him whether he believed in the Deity, in grace and in redemption, the old man turned to him with a faint smile:

"On that matter I am coy."

Conclusion

Aaron Burr was without doubt America's most brilliant traitor. His public tragedy—overshadowed to be sure by the crushing blow of Theodosia's death—was to have been born in the wrong place at the right time.

He was cut from the same mold as another great armed intellectual of the period—Napoleon Bonaparte. The very conception of national allegiance was foreign to Burr, as it was to Napoleon. He viewed the world from a solipsistic perspective. It was a stage for a single actor in which all other human beings played minor and supporting roles. Although Burr had been shaped by the European Enlightenment, he was not a democrat. And, unfortunately for him, there was no room in America for benevolent despots.

This was probably the chief reason for his failures. He could win over men of every class and character to become his utterly

devoted adherents. But it was not enough. In the last analysis, Burr stood for nothing except himself. And this was a poor platform for a revolutionary movement.

Had he become Emperor of Mexico, history might have judged Aaron Burr differently. There was no doubt that he was a good administrator and leader. He was tolerant of other men's ideas. He believed that women were men's equals and that they should be given the same educational opportunities. Burr was a born teacher. He might have brought Mexico good government, internal peace, enlightenment, education and religious and political tolerance.

The Burr trial revealed the incredible weakness in the American doctrine of treason embodied in the Constitution. Even if all that we know now about Burr's treason had been provable at that time, it is doubtful that he could legally have been convicted.

He plotted civil war against the United States, but he did not actually levy it. As Marshall pointed out, the measly handful of adventurers at Blennerhassett's Island could scarcely be considered a military force capable of waging war.

But when Burr went to the English Minister with a request for military aid in dismembering his country, was that not treason? Later, when he urged Napoleon's officials to invade the American West, was this not "aid and comfort" to the enemy?

Rightly or wrongly, it was not. Aid and comfort, according to the Constitution, must be given to an actual enemy—a nation with which we are at war. And neither England nor France was in this position.

Few actions can be more reprehensible than going to a foreign government with the request that it invade one's own, for this means, at the very least, bringing down war and ruin on one's compatriots. Yet through a peculiar omission, the Constitution left this heinous crime outside the scope of treason. This circumstance may become highly relevant in future years.

TREASON IN THE WAR OF 1812

"The federal government was at the last gasp of existence. But six months later and it was no more."—Joseph Hopkinson.

"P . . . and I called on the President. He looks miserably shattered and woe-begone. In short he looked heart-broken. His mind is full of the New England sedition. He introduced the subject and continued to press it, painful as it obviously was to him."—William Wirt.

The treasonable conspiracy of the New England Federalists in the War of 1812 was an audacious, widespread and calculated attempt to cripple the Federal Government in wartime and destroy the nation. It came within a hair's breadth of success.

By 1814, New England had virtually seceded from the Union. The key New England states refused to furnish men or money for the conduct of the "iniquitous" war. While the battle-weary American Army, totalling less than 28,000 effectives, was being eroded by combat, Massachusetts withheld 70,000 well-armed, well-trained militia in order to enforce secession and, if necessary, wage civil war. The Federalists withheld credit from the Government, sabotaged subscriptions to war loans and drained specie from the crisis-strangled banks of the Middle Atlantic and Southern states.

Largely as a result of this well-planned and widely ramified conspiracy, the credit of the United States was bankrupted by 1814 and its armies were dissolving. The nation's capital had been burned by the British and the mouth of the Mississippi seemed about to fall into enemy hands. The United States had been forced to its knees and sober observers predicted that in six more months of war it would disintegrate.

The compelling motive of the Federalist traitors, who had helped dynamite the war effort was hatred of democracy or, as

they called it, "government by the worst". The conspirators were mostly bankers, merchants and lawyers—men skilled in practical affairs, astute, cunning and resolute, but without breadth of vision. Armed with an unshakable conviction of the righteousness of their cause, they had no qualms about establishing subterranean communications channels with the English Government and serving as an openly British faction during wartime.

For twenty-two years—between 1793 and 1815—the nascent American republic was tossed to and fro on the tides of a dynastic struggle for European hegemony. The protagonists were an England glaciating into Tory reaction and a France rapidly running the course from revolution to military dictatorship. It was obvious to the more reflective leaders of the American parties that the new nation had little or nothing to learn from either of these Old World regimes.

To a superficial observer, this may not have appeared to be the case. The manners of the American people were uncouth and their ignorance was only exceeded by their pretensions. The ramshackle American cities, grandiose only in the imagination of real estate speculators, the impoverished social and intellectual life, the frequently ridiculous spectacle which Congress provided of bigotry, boorishness and consummate incompetence—all these had been the butt of peripatetic European wits.

Yet, as Jefferson had discerned during his years as American Minister to France, the common people of the United States were at least a generation ahead of those of Western Europe in their economic status, their independence and their political sophistication. Representatives of the British aristocracy jibed at Congress, but they might have been hard put to it to explain how a nation of mountebanks had created the Constitution and solved the basic power conflicts which that instrument had left unanswered without civil war or revolution. The aristocratic British envoy, George Rose, with the myopia of his breed, thought it necessary to report to Foreign Secretary Canning that Congress contained one tailor, one weaver, six or seven tavern keepers, one butcher, one glazier, one curer of hams and several schoolmasters and itinerant Baptist preachers. Henry Adams' tart comment was: "The most aristocratic American of the twentieth century will probably agree with the most extreme socialist in admitting that Congress, in 1808, might with advantage have doubled its proportion of tailors, butchers, and swindlers, if by doing so it could have lessened the number of its conspirators."

This essentially extraneous European dynastic struggle provided a powerful fertilizer for the nursery beds of domestic treason. By the onset of the Napoleonic era, enthusiasm for France had virtually disappeared from the ranks of the democratic-republican party. The Federalists, however, remained ardent champions of the British cause. Acting in concert with the English Government, they resisted every Administration measure to retaliate with measures short of war for English affronts. Once war was declared, they opposed and sabotaged it. Their avowed strategy was to precipitate the military defeat of the United States, thus dissolving the republic and establishing an independent New England Confederacy under English protection.

A main cohesive element within the New England band of Federalists was an attitude of panic and hysteria toward the French Revolution. A measure of this emotional temperature is a speech of Fisher Ames, one of the most scholarly men of the day and a parliamentary orator who was unsurpassed by any of his contemporaries.

"Our days are made heavy with the pressure of anxiety," he declaimed, "and our nights restless with visions of horror. We listen to the clank of chains, and overhear the whispers of assassins. We mark the barbarous dissonance of mingled rage and triumph in the yell of an infuriated mob; we see the dismal glare of their burnings, and scent the loathsome steam of human victims offered in sacrifice."

To Senator Timothy Pickering of Massachusetts, President Jefferson was "a Parisian revolutionary monster." Urbane Gouverneur Morris thought democracy the "child of squinting envy and self-tormenting spleen!" Alexander Hamilton diagnosed it as "our real disease" and the sagacious George Cabot held "democracy in its natural operation to be the government of the worst."

Peculiarities of New England

There were salient economic and social differences between New England and the rest of the nation. In 1808, Timothy Pickering threatened the secession of New England and spoke of "those States whose farms are on the ocean and whose harvests are gathered on every sea." There was a natural and inherent alliance between such mercantile states as Massachusetts, which depended for their livelihood on free access to the ports of the world, and British maritime power. New England had unbounded respect for the English fleet—"that thin grey line of ships which

Napoleon never saw, but which stood between him and the conquest of the world." In "her secure and haughty sway of the seas England imposed a yoke on neutrals" which the merchants of Massachusetts and Connecticut cheerfully bore in the belief that their pocketbooks were more important than the prestige and majesty of their Government.

The nub of the New England conspiracy was a small group of merchants and lawyers which had first banded together in Essex County and was known as the Essex Junto. "These resolute sons of granite and ice" believed that an organized and militant minority could direct the masses, for the excellent reason that only the minority knew where it was going.

In 1800, there were 45,000 voters in Massachusetts under the rigorous property requirements for the franchise. Of these, about 20,000 were Jeffersonians. But the narrow Federalist majority according to Henry Adams, "included nearly every one in the professional and mercantile classes, and represented the wealth, social position and education of the Commonwealth; but its strength lay in the Congregational churches and in the cordial union between the clergy, the magistracy, the bench and bar, and respectable society throughout the State." Unlike the rest of the nation, New England society was an admirably integrated phalanx, the character of which derived from the theocratic regime of the Puritans.

Jefferson, whose nature was curiously feminine, touchy and, at times, withdrawn from reality, detested New England, resented its merciless attitude toward his Administration and unfortunately tended to caricature rather than understand it. He referred to the Federalists as monarchists and bigots and compared them bitterly to the aristocrats of the Virginia tidewater with whom he had wrestled victoriously during the political battles of his young manhood.

Cabot and Pickering

As early as 1804, the harsh, self-righteous Federalist Senator from Massachusetts, Timothy Pickering, had entered into secret discussions with the British Minister looking toward English military aid in the event of secession by New England. For this, he was tactfully, but firmly, reprimanded by the brilliant, lethargic political leader of the faction, George Cabot. "A separation at some period not very remote may probably take place," Cabot

conceded, but nothing should be attempted until war broke out with England and the Federal Government disintegrated under the strain.

For the next ten years, Cabot forced the Federalist Party to hew to this line—a line which was far more realistic than the precipitate treasonable adventures which Pickering and his henchmen advocated. This Cabot was a man of “invincible indolence.” John Church Hamilton, the son of Alexander, considered him “one of those rare men who, without ambition, without effort . . . control and become the oracles of communities.”

Tall, gracious, a person of great dignity, whose handsome face was so serene it sometimes appeared smug, Cabot was no orator, no fire-eater. In his brief foray into politics, he had been elected Senator and had preoccupied himself almost exclusively with such humdrum but vitally important matters as the tariff and fiscal policy. As a young man, he had left Harvard in time to escape public censure for “idle Behaviour.” His family sent him to sea as a cabin boy as punishment for his apparently incurable lack of discipline or purpose. At eighteen, George Cabot became a captain. Soon he was sailing forty privateers and piling up the profits from contraband trade during the Revolutionary War in Spanish banks. While still a young man, he founded the Essex Junto which was to serve as the spur of treason during a critical decade of American history. In his forty-fourth year, Cabot retired from both business and politics with a fortune, but continued to direct several banks and insurance companies.

To a large extent, the will and strategy of this remarkable man shaped the Federalist conspiracy to destroy the United States between 1804 and 1814. Cabot had the infinite patience to hold back the plotters from decisive revolutionary action until the situation had ripened into rottenness, until the American Government was dissolving before his eyes, its credit bankrupt, its armies dwindled to pitiful proportions and its territory seemingly about to be rent from the Union.

And then, at this culminating crisis, when everything that he had waited for had come to pass, Cabot stifled the movement for New England independence which he had nurtured. Sympathetic biographers have ascribed this extraordinary *volte face* to patriotism. Other motives perhaps weighed more heavily in Cabot's mind. The genius of his political leadership consisted essentially in knowing his own limitations, in realizing that leaders can enforce their policies only when the *Zeitgeist* is on their side.

Realizing that the temper of the nation was inherently democratic, he doubted whether any permanent advantage could be gained by secession.

There was also a more personal factor at work. Cabot seems to have considered action of *any sort* as a disagreeable necessity. Contemporaries speak of his being dragged to the Hartford Convention—the climax of his career—like a bull to the slaughter pens. This invincible slothfulness, which was not so much sheer inertia as a philosophical distaste for abandoning his preferred role as an observer of life, was one of the accidents of history which saved the American Republic.

For several years, the British Navy had been in the habit of overhauling American merchantmen on the high seas, lining up their crews and kidnapping sailors—on the grounds that they were English deserters—for service on His Majesty's vessels. Thousands of Americans had been impressed and hurled in the maelstrom of a war which was none of their concern. In the summer of 1807, a British commander had the temerity to demand that an American frigate, the *Chesapeake*, submit to search. When the American naval commander refused, the British opened fire on his ship, crippled it and forced him to haul down the flag.

War fever swept the country. There was scarcely a nation on earth which would have been willing to permit foreign men-of-war to search its fleet units at will. The American Minister to England, James Monroe, demanded an apology for the *Chesapeake* outrage, but none was forthcoming. The British Government published Orders in Council which closed all European ports from Trieste to Copenhagen to American vessels. Jefferson retaliated in December 1807 with the Embargo Act, prohibiting any vessel—American or foreign—from leaving United States ports to engage in international trade.

In this severe crisis, George Henry Rose arrived in the United States as British envoy, his mission being not to reach an amicable understanding, but to terrorize the Government with a display of British arrogance and power. He was a dignified, intelligent aristocrat whose inbred superciliousness and aplomb were calculated to overawe a government of "tavern keepers".

Rose was subtle and inflexible. He had no concessions to propose. He demanded that Jefferson withdraw the embargo and, as a culminating impertinence, requested that the United States disavow the actions of the commanding officer on the *Chesapeake*—in other words, established the precedent that every American

naval officer should submit with alacrity and courtesy to British boarding parties.

Within 48 hours of the British envoy's arrival, the dihard, congenital mischief-maker, Pickering, attached himself to Rose like a barnacle, was captivated by his charm and delighted by his unconcealed contempt for the United States. After the breakdown of his negotiations, Rose began to cultivate Pickering assiduously and lean on him for advice on how to circumvent American policy and interests.

Pickering urged Rose to dissuade his government from a declaration of war. Agreeing that the British had been sorely provoked, he feared that the American people "would necessarily rally round (the Government) at the first moment and at the instant of danger." His counter-plan was "to turn their whole animosity . . . against their own Government, and produce an entire change in the politics of the country"—in other words, secession and rebellion.

With the two countries close to the brink of war, Pickering was made the sole contact, for conspiratorial reasons, between the Essex Junto and the British envoy. Now that Rose was about to depart for his own country, Pickering arranged to have a nephew of his in London act as a letter drop, or, in more elegant language, to serve as "the medium of whatever epistolary intercourse may take place between you and me."

No man in America knew better than Timothy Pickering that what he was doing was criminal. When he had served as Secretary of State—a post from which President Adams fired him for disloyalty—a Quaker, called George Logan, had tried amateur diplomacy between the United States and France in the interests of peace. Pickering had countered by getting Congress to pass the so-called Logan Act. This law, which is still on the statute books, makes it a crime, punishable by up to three years' imprisonment and \$5,000 fine, for a private American citizen to correspond with foreign officials with the purpose of influencing their negotiations with the United States or defeating American foreign policy.

Opposition to the Embargo

While Pickering was fawning on Minister Rose and perfecting his secret channels for disloyal communication, the Federalist minority in Congress became frantically pro-British. Merchants in Philadelphia unblushingly petitioned the House to patch up

outstanding disputes with England, upon which "the safety of their property so materially depends." Similar importuning requests were made by other business groups which had not yet acquired enough sophistication to represent their pecuniary interests in the guise of patriotism.

On hearing of the Embargo Act, scholarly Fisher Ames croaked about impending disaster. He "could not suppress some tears." Childless himself, Ames felt "he should not weep or even sigh to see a people carry chains." This lugubrious and scholarly Cassandra was on his death bed. He would issue no more warnings.

The embargo "struck New England like a thunderbolt." The resilient and resourceful people of the region soon found means of circumventing it. Swindlers and weaklings in the Massachusetts Government had wangled permits for enormous grain shipments from the Middle Atlantic States to feed their barren and rocky land. The excess was being smuggled to foreign ports in defiance of the Embargo Act. A British spy reported from northern Vermont that "the roads are covered with sleighs and the whole country seems employed in conveying their produce beyond the line of separation," i.e. selling it as contraband to Canada.

In this region, an armed band of smugglers launched an organized attack on the troops guarding the frontier and enforcing the embargo. Some of their number were haled before the Vermont Circuit Court to stand trial for treason against the United States by levying war. The judge, however, held that their crime was merely riot and directed a verdict of acquittal. The gleam of common sense that illuminated the decision in *U. S. v. Hoxie* had been sadly lacking in the earlier Fries affair.

On Lake Champlain, there was another minor insurrection. Local farmers built a lumber raft half a mile long and mounted a ball-proof fort on top of it. The surplus food production of the entire region—some \$300,000 worth of wheat, pork and beef—was loaded on the raft and poled to Canada. When militia were sent out to halt the smugglers, they were repelled by five hundred armed men guarding the convoy. At Newburyport, mobs prevented the customs inspector from detaining a vessel about to sail. At Oswego, there was near rebellion.

"I did not expect a crop of so sudden and rank growth of fraud and open opposition by force could have grown up in the United States," Jefferson wrote sorrowfully to Gallatin on August

11, 1808. A week later, he predicted "that the Federalists may attempt insurrection."

New England burst out in a paroxysm of hatred and frenzy reminiscent of the witchcraft spasms of a previous century. During this period of insanity, the spokesman for the region was Pickering, that bigotted, righteous mediocrity who burned inwardly with the intense fires of frustrated ambition. A rash of town resolutions, verging on treason, spread through New England. Bath wanted to set up "a committee of safety and correspondence"—a device of 1776, ominous when directed against a democracy edging toward war. Pickering's own county had the impudence to threaten all who enforced the Embargo Act. The citizens of Wells accused the Government of "cringing sycophancy" toward Napoleon. Gloucester thought President Jefferson had turned "all our naval forces and all our militia" over to an agent of Bonaparte. The little town of Alfred in Maine wrote pathetically:

"We are the poor inhabitants of a small town, rendered poorer by the wayward, inconsistent policy of the general government. . . But oppression did sever us from the British Empire; and what a long and continued repetition of similar acts of the government of the United States would effect, God only knows!"

The forthright and caustic Josiah Quincy, who had contempt for Jefferson as "a dish of skim-milk curdling at the head of our nation," told the Congress: "I am satisfied that no insult, however gross, offered to us by either France or Great Britain, could force this majority into the declaration of war. To use a strong but common expression, it could not be kicked into such a declaration." This stung because there was truth in his words.

"Envious of every superior and impatient of obscurity," as John Adams put the matter, Pickering hankered for secession in the bizarre belief that he could be elected President of a New England Confederation. In December 1808, he proposed a convention of the New England states to protest the Embargo Act, declare it unconstitutional and refuse to enforce it. This open bid for secession was endorsed by all the responsible leaders of the Federalist Party. In doing so, these so-called nationalists stood unabashed on the theoretic ground of Jefferson's Kentucky Resolutions: the states were the sole arbiters of the Constitution; they had the right to nullify laws they considered tyrannical and to withdraw from the Union at their pleasure.

The Two-Edged Blade

This was a conflict of bewildering paradoxes. Federalist treason was a clear class manifestation. It was a revolutionary movement by powerfully entrenched mercantile and financial interests, controlling by narrow margins the state governments in areas where severe property restrictions on the franchise prevailed. And yet, although New England opposed both the embargo and the war with a persistence never since seen in any American foreign conflict, she was the only part of the nation which benefitted from either. During the period of the embargo, the grain-exporting Middle Atlantic States were hard hit, while the economy of the South—based on staple shipments to Europe and burdened with the fixed costs of maintaining slave labor—was virtually shattered. "No episode in American history," Henry Adams wrote, "was more touching than the generous devotion with which Virginia clung to the embargo, and drained the poison which her own President [Jefferson] held obstinately to her lips."

By contrast, New England, whose farms were the oceans, thrived under this punishment. Maritime trade was kept alive by smuggling. Infant industries grew like bamboo shoots in the jungle. In two years of embargo, New England cotton spindles increased from 8,000 to 80,000. A wool industry sprang up overnight. Soap making, iron nails, shoe factories, hatters producing 1,500,000 hats per annum—these were among the almost instantaneous byproducts of import curtailment. And these benefits flowed preponderantly to that part of the Union which was best educated, technologically most adept, used to the ways of trade, inventive and supplied with abundant capital. New England thrived to such an extent that in 1813 when the General Government was virtually bankrupt, the banks were suspending and the Army unpaid, the Connecticut *Herald* could report the regional economic picture in six words: "Wheels roll, spindles whirl, shuttles fly."

The vast prosperity with which the war and the embargo enriched New England did not decrease the scope of the treasonable movement, but enhanced it. Similarly, the destitute South drank the hemlock without wavering in her patriotism. The final irony was that the program of peace at any price, which New England finally effectuated with the threat of secession, brought her only hardship and economic crisis, the crashing of her unsound infant industries and the permanent loss of her economic

hegemony. Those who believe that wars are caused and continued by those who profit from them might ponder these facts.

Jefferson hated war and hoped that the embargo would prove an effective substitute. For a moment, it appeared as if British power were being slowly driven to its knees by the inexorable economic pressures imposed. Approximately a third of England's exports went to the United States in normal times and these, except for smuggling, had disappeared. Imports of foodstuffs and industrial raw materials were dangerously curtailed. The price of wheat doubled, bringing hunger to the serfs of the factory system. Spindles and looms were idle. Colonial plantations, dependent on New England shipping, left their slaves without the common necessities of life. In Yorkshire, unemployed and hungry English workers rioted; in Jamaica, there were slave uprisings.

But more than this was required to shake the solid roots of British power. Neither Negroes nor laborers enjoyed the franchise or counted for more than ciphers in the British system. One has only to reread Cobbett or Charles Dickens to recall the depths of suffering and misery to which the mass of the English people sank in that period: the prevalence of child labor of the most inhuman and relentless sort, the use of women for heavy work in the mines, the suppression of a disfranchised people by a penal code more ruthless than that which had prevailed in the Dark Ages.

According to Colin Clark, the per capita real income of the British people declined by an estimated 57% between 1688 and 1800, reducing the standard of life to the contemporary level of the Chinese coolie. Even a slight addition of hardship was enough to goad a desperate people to revolutionary measures, but being without the shadow of political or economic power their rebellious attempts could be of little practical consequence. The living standards of the British laboring class, which the embargo most drastically affected, were comparable, not to those of Northern labor in the United States, but to those of the Southern slaves.

In 1808, Wellington's Peninsular Campaign opened up Spanish produce to the beleaguered English island and destroyed any hope that a trade boycott could force Britain to adopt a conciliatory policy. Moreover, Southern planters faced ruin after two unexportable harvests. A general dearth of all the hitherto imported necessities spread over the United States. Confronted by these harsh realities and uncomfortably aware that English aid to the Spanish popular revolution had made her appear as a

liberator, President Jefferson repealed the Embargo on March 1, 1809. But the plots of the New England Federalists had been the main factor forcing his hand. In utter exasperation, he wrote: "The opposition has in one quarter amounted almost to rebellion and treason."

John Henry, British Spy

During those years of turbulent sedition, a blustering, importunate Irishman, named John Henry, was acting as a British espionage agent in Boston. Emigrating to America, he had been commissioned as an artillery officer under Adams and lost his appointment under Jefferson. He had then tried to get a judgeship, but was rejected as "a mere adventurer" without any legal training. With this unblemished record of fiascos, Henry went to Boston as a spy and was royally received by the leaders of the Federalist coterie.

After sending various political reports to his employers, he returned to England to squeeze £32,000 out of the Government for his services. When this preposterous demand was rejected, he returned to Canada with a letter of recommendation to the Governor General. On board ship, there was another malcontent and rolling stone—the so-called Count Edward de Crillon, a gentleman who wore the ribbon of the Legion of Honor, claimed to be the son of a duke, and stated that he was travelling westward only because of a personal feud with Napoleon.

These two entered into a business partnership. The Count de Crillon appeared at the French Legation in Washington, charmed the Minister and was promptly presented at the White House. For the tidy sum of \$125,000, he agreed to sell John Henry's packet of secret reports.

During the early months of 1812, he was wined and dined by President Madison and Secretary Monroe and slowly softened to the point where he parted with the documents for only \$50,000. John Henry was to receive part of the money and the Count's estate at St. Martial as additional compensation.

On March 9th, President Madison published this dossier as evidence of British perfidy. He charged England with employing a spy on American soil "in fomenting disaffection . . . for the purpose of . . . destroying the Union and forming the eastern parts thereof into a political connection with Great Britain."

The Federalist Congressmen passed a few uneasy hours.

Scrutiny of the papers, however, revealed that they implicated nobody except Henry himself. No Americans were named as accomplices. While the Federalists had been on intimate terms with Henry, the papers provided no evidence that they had known his true role.

These sensational documents proved to be a cruel boomerang. The letters were merely copies. They contained asterisks, indicating that incriminating material had been omitted. In reality, the asterisks had been added by Count de Crillon to tantalize Madison.

After testifying before a Senate Committee, Count de Crillon found that he had to leave for France immediately. Napoleon required assistance in the conquest of Russia. After he had decamped, breathing fire and patriotism, it turned out that this intimate of Madison and Monroe and frequent White House guest was a magnificent impostor. No Count Edward de Crillon had ever existed. The estate of St. Martial, which he had turned over to John Henry, was located in Cloud Cuckoo Land and the drafts which the latter had been given were drawn on entirely imaginary personages.

It was a clean sweep. The Count de Crillon had swindled one of England's most important spies, made an ass of his own Minister, testified convincingly before a Committee of the Senate, left a President and a future President of the United States with redder faces than either normally possessed and skillfully separated \$50,000 from one of the most parsimonious administrations in American history.

The Unwanted War

After five years of arrogance, effrontery and violation of neutral trading rights, the United States finally declared war on England. While it can scarcely be doubted that the reasons for resorting to arms were sufficient, British policy in 1812 was considerably less defiant than it had been four years previously and America had nothing tangible to gain from the conflict.

The American Army consisted of ten skeleton regiments, scattered along vast, exposed frontiers. The only fortress that was considered at all formidable was Detroit and this anchor of the Great Lakes position was held by only 120 soldiers. As to the old officers, they "had very generally sunk into either sloth, ignorance or habits of intemperate drinking," according to the stern tee-

totaler, Winfield Scott. Since Federalists were rigorously excluded from officers' commissions, New England was represented by "coarse and ignorant men". In the other states, Scott thought, most of the officers were "swaggerers, dependants, decayed gentlemen, and others 'fit for nothing else'. . ."

Thirteen regiments of regulars were to be enlisted for the conquest of Canada, 50,000 volunteers were to be recruited and 100,000 state militia mustered into the service of the United States. Despite generous bounties and the promise of a quarter section of land for each soldier at the end of the War, only 4,000 Americans enlisted in the first three months of recruiting. New England towns offered subsidies to raise soldiers. Lexington granted a bounty of \$6 and pay of \$10 a month. In consequence, patriotism burned with such an intense flame that a draft was necessary to decide who should have to stay at home. But where pecuniary incentives were meagre, the War was unpopular.

Three new England states refused to turn over militia to the Secretary of War. Roger Griswold, an extremist with an incisive mind, a man whose Congressional career had been distinguished by brawls on the floor of the House and who had gone to the British Minister with Pickering eight years before to propose treason, sat in the Governor's chair in Connecticut. Governor Griswold pointed out that the Constitution specified only three purposes for which the President could call on the states for militia: to repel invasion, to suppress insurrection, and to enforce the laws. No state had been invaded—yet. There was no insurrection. What laws had been broken? On these fine-spun and technically unassailable grounds, he held the transfer of militia to the Federal Government unconstitutional and refused to obey the order. Massachusetts and Rhode Island followed suit, adding the further point that it was also unconstitutional to order militia to serve under officers not appointed by the state governments.

These Governors were all Federalists. To a greater or lesser extent, all were tarred with the brush of treason. Their constitutional reasoning may have been unassailable, but it put the nation in a strait-jacket.

Furious rioting broke out—for and against the war. Baltimore—a new, swift-growing city—was populated by "many of the roughest characters in America, fit only for privateersmen or pirates." Jacob Wagner, formerly second-in-command in the State Department, edited a scurrilous anti-war journal which stopped at no canard to cripple the Government. Well-organized

mobs destroyed Wagner's printing plant, but he continued to circulate the paper from a Baltimore address. Some twenty courageous friends volunteered to defend the Baltimore house against lynch law. Among them were General "Light Horse" Harry Lee and General Lingan, both distinguished soldiers of the Revolutionary War.

The brutish mob rose a second time, pelted the house with stones, smashed in the door and brought up a cannon to blow the building and its contents to bits. The Mayor then arrived on the scene, induced the volunteer garrison of twenty to surrender and the rioters to disperse. The mob instantly gutted the house. The next evening, crowds stormed the jail where the twenty were confined on the absurd charge of having killed a few rioters while defending their property. A butcher clubbed nine of the volunteer defenders into insensibility. Their bodies were piled at the foot of the jail steps. The crowd beat them with sticks, gashed their flesh with knives, poured candle grease into their eyes, then applied fire to their flesh to be sure they were dead. When the assassins had finished, General Lingan was dead and "Light Horse" Harry Lee was crippled for life. It is a disgraceful fact that the Republican press, which had itself been the victim of the judicial terrorism of the Alien and Sedition laws, either praised this ghoulish outburst or else remained silent.

There was violence on the other side. In Boston, pro-war Congressmen had their houses stoned; non-Federalist judges were hustled through the streets. An American privateer was sunk at Providence; recruiting offices were mobbed at Litchfield; a vessel in American custody was burned at New Haven.

Governor Strong of Massachusetts had the gall to proclaim a public fast to mourn war with "the nation from which we are descended." Throughout New England, the authorities connived at fraud to prevent patriotic Americans from enlisting. Fictitious claims of debts would be brought against the volunteers and the latter then jailed, pending payment, as property of the bail. The Massachusetts House of Representatives issued a proclamation to the people, urging them to oppose the war in "loud and deep" tones and to obstruct the President's efforts to raise an army. "Let there be no volunteers except for defensive war."

Sympathy with the enemy verged swiftly toward treason. Stephen Decatur, a naval hero of the Barbary Wars, lay off New London with a naval squadron, hemmed in by a cordon of British warships. In December 1813, the nation was shocked by pub-

lication of Decatur's despatch to the Secretary of the Navy:

"Some few nights since, the weather promised an opportunity for this squadron to get to sea, and it was said on shore that we intended to make the attempt. In the course of the evening two blue lights were burned on both the points at the harbor's mouth as signals to the enemy; and there is not a doubt but that they have, by signals and otherwise, instantaneous information of our movements."

At the beginning of 1814, New England stood at a crossroads. The Federalists had swept the elections on the riptide of sedition: Half of the Party wanted to end the War at all costs, but the other half was ready to desert its leaders as soon as overt acts of treason were committed. In this difficult position, the leaders of Massachusetts Federalism devoted their main efforts to rhetoric—a field in which they obviously excelled. Governor Strong, who was on intimate terms with the Deity, predicted that "the whole weight of guilt and wretchedness" would bear down on President Madison's narrow shoulders. The Massachusetts Senate tactfully expressed the hope that James Madison would roast through the eons with Beelzebub turning the spit.

Bull-headed, boorish and blundering as he was, Timothy Pickering had enough sense to realize that it is dangerous for traitors to stand still. Immediate secession "would be a real blessing," he pointed out. The first step was the usual New England practice of getting the towns to frame resolutions. Under Noah Webster, the dictionary man, Amherst resolved in lucid, fatless prose to take all lawful steps "to put an end to this hopeless war." Pickering's constituents at Newbury bleated about their sacred rights and their alleged readiness to spill their blood on the earth in resisting oppression. This resolution was notable in that it contained an undisguised appeal to violence.

The pulpit was almost unanimous in proclaiming the iniquity of the American cause and the righteousness of the British. At Dedham, a minister identified Jefferson with Jeroboam who made Israel walk in sin. Madison was Nadab, the son of Jeroboam, who walked in his father's ways.

Strangulation Tactics

Men of the intellectual calibre of George Cabot were not prone to waste their time in the sort of fulminations which occupied Pickering, Quincy and the other demagogues. Cabot had a clear

understanding of the economic mainsprings of war. From the first, his strategy had been to dissolve the sinews of the Government so that the act of revolution would be a ritual rather than a contest.

The quiet campaign among the moneyed interests of Boston was so effective that when the Treasury offered a \$10 million war loan in 1814 (the Government needed \$40 million, but knew it couldn't raise it), Boston brokers advertised that the names of subscribers would be kept secret. This was perhaps the culminating incident of national humiliation. The Government of the United States was considered to be a beggar of such incorrigible vices that no decent citizen cared to give it alms in public. The *Boston Gazette* of April 14, 1814, announced that "any man who lends his money to the government at the present time will forfeit all claim to common honesty and common courtesy among all true friends to the country." One might only ask, which country? England or the United States?

Having won the people of New England to the banner of treason by the most effective of all propaganda means, the reiteration of a single theme, the Federalists proposed to withhold from the Government the two things then most essential for the successful waging of warfare:—money and men.

In July 1814, the Treasury launched a microscopic \$6 million flotation. Only \$2.5 million was taken up and even this was sold at eighty! On August 24th, the British forces entered Washington and burned it, the American commanders disgracing themselves by cowardice and ineptitude. That month, the tottering banks of Baltimore and Philadelphia suspended specie payments. On September 1st, New York followed and thereafter no bank outside New England was able to meet its obligations except by printing its own evidences of debt. Baltimore money sold in Boston at a 30% discount; New York notes were 20% off par.

By contrast, the New England banks were liquid and well-backed by bullion in their vaults. The energetic, capable and imaginative people of this peculiar region had taken advantage of the suspension of foreign trade to build industries overnight with the gossamer of native ingenuity and were now clothing the rest of the nation, supplying its liquor, its soap, its ironware and a hundred other items. Since the prostrate and less imaginative Southern and Middle Atlantic states had little to offer in return, New England drained specie from the rest of the nation.

Massachusetts sat on the nation's purse. And the philosopher-

presidents of Virginia, although they constituted the most brilliant dynasty of American history, were originally farmers and somewhat ill-equipped to cope with the intricacies of war finance or to devise the draconian expedients which the crisis demanded. New England not only monopolized most of the hard coin, but refused to lend it to prosecute a war which the pulpit had declared iniquitous.

The manpower situation was equally critical. The war was being waged in July 1814 with 27,010 effectives. In the next three months, less than 4,500 civilians could be induced to join the colors and these were offset by desertions and enlistment expirations. The Government was bankrupt to a point where it could not even pay the measly bounties due the recruits.

In New England and elsewhere, state governments competed with the United States Army by offering higher bounties to militiamen. The latter were supposed only to defend the frontiers of their states against the foreign enemy. They were unruly and led by politician-officers. The Maine militia had offered only token resistance to a British invading force and had then become contented subjects of the Crown. Regular army officers, such as Major General Jacob Brown, choked with fury at the complacency of a nation which allowed a handful of battle-weary soldiers to fight its campaigns, without reward, without relief, without respite and without reinforcement:

"A gallant little band," Brown wrote to the War Secretary, "struggling with the enemies of their country, and devoting their lives for its honor and safety, left by that country to struggle alone, and that within sight and hearing."

During the entire war, the Massachusetts militia remained aloof. In the middle of 1814, the Federalists had 70,000 soldiers under arms in that peaceful and prosperous state. These troops were well-armed, well-drilled and well-fed. They were sleek and fat with garrison life. And they were neutrals. The calculated policy of the Federalist politicians, and of the Essex Junto in particular, was to allow the United States Army—less than half the numerical strength of the Massachusetts militia—to be chewed to pieces in the unequal contest with the enemy. Every death of an American soldier changed the balance of power slightly in favor of the New England traitors.

Washington had been burned in August. The Government was prostrate, its financial power emasculated. A British Army was advancing on Lake Champlain, but a disloyal Vermont Gov-

ernor found sound reasons for not throwing his militia into the breach. New Orleans was threatened by an imposing British force and the New England Federalists predicted that it would fall. In the next session of Congress, they announced exultantly, there would be no western representatives. Their plan was to await this catastrophe with folded hands and then demand Madison's resignation on the hypocritical ground that he had not adequately defended the port.

Treachery in Hartford

The decisive moment which George Cabot had predicted would come was now at hand. As early as 1804, he had said that "a war with Great Britain manifestly provoked by our rulers" offered the only chance for New England to secede from a nation poisoned by democracy. Cabot's policy of masterly inaction had been justified by the course of events. The abscess of democracy was about to burst. Events now moved with dizzying acceleration.

The militia of Massachusetts and Connecticut were withdrawn from United States Army control and placed under the exclusive authority of the state-appointed Federalist politicians. The ineffable Governor Strong of Massachusetts issued a proclamation on October 1814, charging the Federal Government with wasting the state's money and neglecting its defenses.

Pickering promulgated a frankly insurrectionary appeal from Washington on October 12th. The Government had abandoned Massachusetts "except for taxing us." The state must keep within its frontiers "the revenues indispensable to maintain the force necessary for our protection against the foreign enemy and the still greater evil in prospect,—domestic tyranny." The tyrant was, of course, James Madison. What the proclamation really meant was that Massachusetts should impound all customs revenues and use them to ready the 70,000 militia for civil war.

In these dark months, the end seemed in sight. The secession of New England was an accomplished fact. All that remained was the formal proclamation. "This great fabric seems nodding and tottering to its fall," Representative Zebulon R. Shipherd of New York lamented in December. A month later, Senator Christopher Gore characterized Administration measures as "the spasms of a dying government." The distinguished Joseph Hopkinson of Philadelphia was to reminisce later in the House about a time when the state was "at the last gasp of its existence." Another

six months of war, he thought, and it would have been in its death convulsions.

Even the wonderful resilience of the President was shaken. William Wirt called at the White House in October and found Madison "miserably shattered and woe-begone . . . heartbroken. His mind is full of New England sedition." And this was a measure of the disaster. Cold, dapper, homely, passionless, lacking in either magnetism or executive ability, the President had the saving virtues of an extraordinarily penetrating and wide-ranging mind and his indomitable optimism. Now even Madison appeared defeated.

On October 17th, the Massachusetts legislature issued an invitation to the New England states to convene at Hartford "to lay the foundation for a radical reform in the national compact." This Hartford Convention would provide a meeting ground in which the New England states could consider their grievances against "their rulers". This assemblage was not only unconstitutional. In its context, it was treason.

Although the people of Massachusetts and Connecticut were now following the extremist faction under Pickering, Cabot was elected the head of his state's delegation. On arrival at Hartford, he was made permanent chairman of the sessions. He had been "most reluctantly dragged in like a conscript to the duty of a delegate." The direct action men, under Pickering, opposed him.

"Why can't you and I let the world ruin itself in its own way?" Cabot asked. Pickering was incapable of understanding the meaning of the question. Grim, boorish and inflexible, he conceived of life as "*a probationary state, a school of discipline and instruction . . . for admission into the assembly of the saints and the angels. . .*"

When a young man asked Cabot what he intended to accomplish at Hartford, the latter answered quickly: "to keep you young hot-heads from getting into mischief."

The Convention resolutions reflected the urbane leadership of this utterly bored individual, who had again found to his annoyance that he was obliged to go through a brief period of political activity. "A severance of the Union by one or more States against the will of the rest, and especially in time of war, can be justified only by absolute necessity," Cabot wrote. Then came the grievances: A Virginia dynasty dominated the nation's affairs. There was too much politics in government. Judges had been removed without cause. New states had been admitted to

the Union, thus radically altering the balance of power between New England and the South. Hostility had been shown toward Great Britain. "Malcontents" from Europe were allowed to enter the United States in droves. A "visionary and superficial" attitude was being displayed toward commerce.

If these grievances seemed the product of a one-cell mind, the proposed constitutional amendments showed even less sign of creative vigor. They were not wise; they were emphatically not revolutionary. Each state should defend its own frontiers with its own militia, Cabot thought. Representation and taxes should be apportioned among the various states without counting slaves. A two-thirds majority of both houses should be required to admit new states, declare war or embargo trade. Naturalized citizens should be forever ineligible to hold public office. No President should be allowed to run for a second term, nor should any state be privileged to elect two Presidents in successive terms.

These proposals, which had the germ of the Know Nothing movement in them, were indicative of the decline in intellectual vigor of the Federalist faction since Alexander Hamilton's death and John Marshall's elevation to the Supreme Court. Cabot's genius was the art of manipulating men and the understanding of the possible—but it was nothing more than that.

"Honest Tim" Pickering gnashed his teeth when he saw the spaniel that Cabot had whelped. A delegation from the Hartford Convention proceeded to Washington to demand enactment of these picayune, small-calibre products of its sterile constitutional thinking. En route, they heard bells ringing in celebration of Andrew Jackson's decisive victory at New Orleans. On the heels of this celebration came news that the American negotiators at Ghent had won peace without concession or sacrifice. The sheepish plenipotentiaries of one of the most dangerous treasonable conspiracies in American history were received with hoots and jeers. For years afterwards, whenever New England asked for anything on the floor of Congress, the answer was: "Why don't you call another Hartford Convention?"

War of Paradoxes

The War of 1812 demonstrated conclusively that the theory of states' rights—first espoused by the Jeffersonians, then by the office-hungry Federalists—was incompatible with a viable nation. After 1815, no responsible American politician questioned

the right of Congress to admit new states to the Union. Except for the expanding institution of chattel slavery, the country assumed a more uniform democratic complexion. The hopes of George Cabot and his followers that democratic government would plunge through the fires of anarchy and foreign wars toward Napoleonic militarism and, in this violent course, demonstrate to the people at large that they, in the mass, were unfit to rule had been decisively shattered. Even under an almost impotent government, incompetent Congresses and a military leadership attainted with treason, the democratic regime had survived. The Federalist Party was buried among the ruins of its theories.

The War President—James Madison—had been one of the chief authors of the Constitution and perhaps its greatest interpreter. Although he faced a more dangerous treasonable movement than any of his predecessors had had to cope with, he arrested no civilians for seditious utterance and neither suspended civil rights nor prosecuted the leading New England traitors. This compound of doctrinaire liberalism and administrative anemia was carried to such absurd lengths that the United States almost committed suicide in 1815. Yet the tolerant, passionless Madison was fiercely assailed as a tyrant and dictator who flouted the Constitution on every possible occasion.

"No European nation," Henry Adams believed, "could have conducted a war, as the people of America conducted the war of 1812. . . . In politics, the divergence of America from Europe perpetuated itself in the popular instinct for peaceful methods. The Union took shape originally on the general lines that divided the civil from the military elements of the British constitution. The party of Jefferson and Gallatin was founded on dislike of every function of government necessary in a military system."

Ironically enough, the Federalists, who a decade earlier had been the most outright advocates of a strong, centralized state, talked the language of parochial sovereignty and secession in the 1812 crisis. Thus they forfeited their claim to the designation of Nationalists and sacrificed their main constructive contribution to the American system to the exigencies of intrigue.

To the contemporary reader, perhaps the most curious aspect of this rather inglorious period in American history will be the fact that the architects of treason were neither prosecuted nor hanged. Were New England political leaders, such as George Cabot, Roger Griswold, Caleb Strong, Josiah Quincy and

Timothy Pickering, in fact and under the law traitors to the United States?

These men had supported England, an enemy of their country. They had given it "aid and comfort" through a deep-laid conspiracy to deprive the United States, while at war, of the men and funds necessary for the prosecution of that war. They had plotted secession and rebellion, intending to form an alliance with the enemy once their plots succeeded. In short, they were allies of England, engaged in stabbing the United States in the back.

Under the Constitution, however, they were probably not traitors, for they had not "adhered" to the enemy in the specific sense of carrying out British orders during the period of hostilities. The legal nature of adherence is a shadow area which offers loopholes by which a national betrayal of the most flagrant sort may escape the penalties of treason.

To the conservative statesmen of the early years of the American nation, the death sentences imposed on agrarian rebels, such as Mitchell, Weigel and Fries, seemed necessary on the grounds that the authority of the laws had to be asserted against anarchy and mob rule. Respect for order was deeply engrained, but the sense of patriotism was defective. To send a man such as Pickering to the gallows for negotiating with a foreign power to betray his country would have seemed repugnant to the educated class of the period.

Today, the dominant attitude is almost completely reversed and this reversal is chiefly a consequence of the rapid advance of democratic outlooks. No court would today convict a John Fries of treason or sedition. Few courts would permit a Timothy Pickering to escape stern punishment for seditious conspiracy and breach of the Espionage Act. The Department of Justice, in its brief before the Supreme Court on the treason case, *Cramer v. United States* (1944), expressed the contemporary view with great clarity:

"The controversies which have engaged the courts as to the types of conduct constituting treason have revolved around domestic disturbances, calling for careful balancing of the conflicting interests in individual freedom and civil liberties, on the one hand, and stability of government on the other. In this area restrictive definition of the crime may well be dictated by the spirit of the Constitution.

"But when the crime is actual adherence and giving aid and comfort to the external enemies of the United States, the area of controversy is necessarily more limited. . . . Allegiance is the strongest and most fundamental obligation of an American citizen, and its planned, deliberate betrayal to an enemy at war with America is the gravest breach of that obligation which an American citizen can commit."

Where the treason is rebellion, the courts must weigh the conflicting social ideals of national security and the right of the individual to political dissent. But where the treason is aid and comfort to an enemy power, no such balance need be struck. There is nothing in the Constitution which gives an American citizen the right to enjoy the benefits of allegiance to his country and simultaneously to betray it.

THE DORR WAR

"Better men have been worse treated than I have been, though not often in a better cause."—Thomas Wilson Dorr at his trial for treason.

Thomas Wilson Dorr gave his life for the principle of manhood suffrage and paid the penalty for that crusade as a traitor to the State or Rhode Island. The law may have fine teeth, but they do not always rend the wicked.

In the summer of 1844, Dorr stood before the Supreme Judicial Court of Rhode Island which was trying him for treason—a heavy-set man in his late thirties with the massive forehead of a philosopher. He spoke these words in his defense:

"The sun will not rise upon any recantation by me of the truths of '76 or of any one of the sound principles of American freedom.

"The servants of a righteous cause may fail or fall in the defense of it. It may go down; but all the truth that it contains is indestructible, and will be treasured up by the great mass of our countrymen."

The jury had been handpicked from a venire of Dorr's political enemies. One of their number had expressed the hope before the trial began that he would be permitted to act as the defendant's executioner and "shoot him as he would a serpent." Out of a sense of decorum, the jury stayed out for two hours before returning with its verdict of guilty.

"Listen, Thomas Wilson Dorr," the Presiding Judge declared, "to the sentence of the Court, which is that you be imprisoned in the State's Prison at Providence for the term of your natural life, and there kept at hard labor, in separate confinement."

Before the walls of silence closed around him, Thomas Dorr addressed the Court:

"Better men have been worse treated than I have been, though not often in a better cause."

Then he added: "The process of this court does not reach the man within."

The battle in which Thomas Dorr lost his life was for manhood suffrage. By 1841, this had been substantially achieved in all states of the Union except Rhode Island, where over half of the adult males were disfranchised and 1,800 voters could form a controlling majority among 108,000 citizens. Whereas the other states were governed by their Constitutions, the paramount law in Rhode Island was the Royal Charter of 1663, handed down by King Charles II. Only freeholders were permitted to sue for recovery of debt or redress of grievances.

Surely, it was a strange anomaly that this denial of democracy should occur in the state founded by Roger Williams on the revolutionary principle that: "The very Common-weales, Bodies of People . . . have fundamentally in themselves the Root of Power, to set up what Government and Governors they shall agree upon." The non-conformist society created by Williams had been regarded with horror throughout the Colonial period and known to the orthodox as "Rogues' Island".

The historic roots of the fight for the suffrage in Rhode Island trace to the forward surge of New England industry during the years of Jefferson's Embargo and the War of 1812. In the first half of the nineteenth century, the small state was swiftly being urbanized. The mill hands who swarmed into the textile factories were largely of immigrant stock. By 1850, 24,000 of Rhode Island's 147,000 inhabitants were foreign born—two-thirds of them Irish.

The struggle over the franchise brought varied social forces and long-standing prejudices into prominence. The tenacious effort of an aristocratic faction to maintain political power in its own hands was backed by the rural population—Anglo-Saxon, native-born, Protestant and conservative. Those that wanted change were the city dwellers. Here there was a strong Catholic element. As a general rule, the towns were Democratic and the countryside Whig. The disfranchised, exploited mass in the cotton-textile towns was part of the still powerful, but waning, current of Jacksonian radicalism.

There had been agitation and protest over the issue sporadically—in 1777, 1797, 1811, 1817 and 1820-23. A Committee of the Rhode Island Assembly reported against a petition for manhood suffrage in 1829, observing that democracy had been the curse of every nation which adopted it. Their ancestors, the members

of the Committee boasted, had had the wisdom to confine the vote "to the sound part of the community, the substantial freeholders of the State." By implication, this principle remained unmolested by the cankerous hand of change.

But the issue could not be downed by a mere reiteration of the political principles of the Essex Junto. The census was working in favor of democracy, transforming a rural into an industrial society. Thus, in 1840, 47,000 of Rhode Island's 108,000-odd inhabitants were urban—44 percent of the total. Ten years later, the state was 56 percent urban. It was in this decade of transition that the conflict flared toward open insurrection and civil war.

Thomas Wilson Dorr

The man who was to lead the democratic forces of Rhode Island was the son of a wealthy manufacturer and of assured social position. Schooled at Phillips Exeter, he entered Harvard at fourteen, graduated second in his class, and then studied law for two years under the eminent Chancellor Kent in New York. "It is presumed," one of his biographers writes, "that no young man, ever before or since, ever came to the bar of Rhode Island better qualified or with more flattering prospects."

There was nothing in this impeccable background to indicate that Thomas Dorr would become a revolutionary and, according to the law, a traitor. The incongruity was in fact so vast that it perplexed a Congressional Select Committee which investigated the Dorr War at a time when its leader was rotting in a Rhode Island prison.

"His native state has seldom produced a man favored with brighter faculties or adorned with purer virtues," the Committee found. Why had a man of this stamp led a revolutionary movement? The Committee surveyed the various possible reasons. Love of power? Standing head and shoulder above his contemporaries, Thomas Dorr could have had the highest office in the State without deserting the ruling, conservative faction. Avarice or the desire for plunder? Even his meanest enemies conceded that he was honest, the Committee replied, adding wryly that the Governorship of Rhode Island carried a salary of only \$400 a year. "What other obvious intention could he have had," the Report concluded, "but to assert and vindicate the great principle of popular sovereignty?"

Biographer Dan King explains Dorr's decision to lead the forces of democracy in these terms: "He looked abroad among man-

kind and surveyed the great inequality which every where obtained. . . He beheld one class, by the mere accident of wealth or position control and oppress those who were less fortunate. . ."

In 1834, the twenty-nine year-old Dorr published an *Address to the People of Rhode Island* on the white-hot issue of suffrage. This document was notable because it contained full-blown the theory upon which Dorr was to justify his treason: "When the American States severed the political tie which formerly bound them to Great Britain, all obligation to acknowledge obedience to a British charter as a constitution of government was, of course, dissolved; and the people of each State were left free and sovereign. . . The sovereignty of the King of England passed, not to the Government and Company of Rhode Island, but to the people at large, who fought the battle of the Revolution, and to their descendants."

This ingenious constitutional theory served Dorr's swiftly clarifying political purposes. With one stroke of the pen, he had exorcised the legality of the state government. With sovereignty back in the hands of the people, Dorr believed that the administration of power belonged to whatever group succeeded in winning a majority by the process of petition. There was also a deeper purpose. Once one assumed that the state authorities were mere agencies of usurpation, armed rebellion against them could be waged without committing treason.

But the orderly processes of social existence are incompatible with such cobweb doctrines. If Dorr were right, Rhode Island had been without a legal government since 1776. Its ratification of the Constitution had been illegal and it was therefore not part of the United States, but rather an enclave of the primordial society envisaged by Rousseau as antecedent to the social contract. Myriad other consequences followed, all equally silly.

Dorr's first foray was premature. Despite his great gifts, he was not as yet trusted. Having started out as a good Whig, properly repelled by the buckskin financial theories of President Andrew Jackson, he soon showed the cloven hoof of the reformer. He broke party lines by defending Abolitionists against governmental persecution and simultaneously alienated the Jacksonian radicals by lashing out at the spoils system.

Six years later, with the suffrage crisis again moving toward a head, Dorr issued a manifesto which contained a strategy of action. Primary meetings were to be held in each county and town, all male adult whites being privileged to vote. Delegates from the

primary meetings would then assemble in State Convention. If the tally showed that the total vote cast exceeded that of the previous general election for Congressional representatives, then the Convention should proclaim itself the reigning sovereign body of the state.

This daring appeal for peaceful revolution evoked resounding support throughout Rhode Island. Suffrage associations were formed in Providence and throughout the smaller towns. Borrowing the techniques of the hurly-burly "Tippecanoe and Tyler Too" presidential campaign of 1840—in which a superannuated Virginia gentleman had been swept into the White House in a log cabin afloat on an ocean of hard cider—Dorr used torchlight parades, banners and whirlwind methods. "Worth Makes the Man, but Sand and Gravel Make the Voter" was one of his favorite slogans. Others were "Virtue, Patriotism and Intelligence versus \$1³⁴ Worth of Dirt" and "Liberty Shall Be Restored to the People." There was also the ominous phrase, borrowed from the stormy eve of the American Revolution—"Peaceably if We Can. Forceably if We Must." While town meetings cheered suffrage speakers, *The New Age*, organ of the franchise movement, hammered away against aristocracy and privilege.

In December 1841, some 14,000 Rhode Island citizens voted in extra-legal gatherings for the Dorr program. A month later, the so-called People's Convention assembled and drafted a Constitution for the state.

"A curious spectacle," the Providence *Journal* commented, "... a number of men assembled for the avowed purpose of overthrowing the Government under which they live . . . proceeding without opposition and without hindrance." Fearful of the rising power of the suffrage movement, the legally constituted State Assembly drafted a Freeholders' Constitution designed to appease the Dorrites. In every respect but one, the State Assembly had knuckled under to Dorr's militant program. He had demanded the suffrage for all white males over twenty-one without regard to property qualification. The Freeholders' Constitution conceded this, but added the word "native". Naturalized citizens would be allowed to vote only three years after acquisition of citizenship and on proof that they held \$1³⁴ worth of real estate as freehold over and above encumbrances.

This meant nothing less than the disfranchisement of the foreign-born industrial workers of the mill towns. It was in essence anti-Catholic and anti-Irish—an ugly outcropping of bigotry

that was to crystallize a decade later in the Know Nothing movement.

A more adroit leader than Dorr would have compromised. Under the terms of the Freeholders' Constitution, the Dorrites could easily have taken political power in the state and thereafter enfranchised the foreign-born by constitutional amendment. To continue resistance was to fall into a prepared trap. The conservatives had conceded just enough to ensure mass desertions from the Dorr camp, thus transforming it into a minority faction.

But Dorr was a perfectionist. His beacon was justice, not expediency. It was this adamant component of character that now made him rush headlong toward tragedy. Without it, he would have been merely one of many reformers. With it, he was to reach heroic stature.

Although his followers wavered, Dorr came out inflexibly against the Freeholders' Constitution. Governor Samuel Ward King could now make a solid stand. His Assembly hastily enacted a repressive statute, which became known as the *Algerine Law* from a Dorrite comment: "The *Dey* of Algiers had his *day*; and Rhode Island is the last place in which the arbitrary doctrines of this ex-potentate can be revived with success or impunity."

The law provided that meetings for any unauthorized purpose were illegal, that those who served as moderators or chairmen at such meetings or became candidates for office by their authority were subject to fine and imprisonment, and that men who assumed state offices by authority of the so-called People's Conventions were traitors and should suffer life imprisonment at hard labor.

"All offences under this act," the statute read, "shall be triable before the Supreme Judicial Court only." Prisoners need not be tried in the county where their crimes had been committed, but could be taken before a jury anywhere in the state.

This hard blow was struck on the eve of the state-wide poll on the Freeholders' Constitution. Intimidated and vacillating, the Dorrites nonetheless rallied their forces and by a narrow margin defeated this half-way reform measure.

The state was now moving irresistibly toward an armed test. Governor King sent representatives to Washington to plead with President Tyler for Federal intervention, but the Chief Executor replied that the Constitution forbade him to meddle in the internal affairs of a sovereign state until insurrection actually broke out.

If that should occur, he added, he would know his duty and would not shrink from it.

Striding Toward Civil War

In April 1842, 6,500 Rhode Islanders braved imprisonment under the repressive Algerine Law and, in rump assemblies, voted unanimously for Thomas Wilson Dorr as State Governor. Simultaneously, 7,000 voters in the official elections gave a majority to Governor King.

Huge crowds thronged the streets of Providence on May 3rd. Militia companies led the inaugural parade to an unfinished iron foundry where pseudo-Governor Dorr delivered his inaugural address. Here his Free Legislature met for two days, repealed the Algerine Law, drafted an address informing Congress and the State Governors of the upheaval in Rhode Island and demanded that all state papers and funds be turned over to it. It then adjourned—officially until July, actually until eternity.

In this sprawling industrial center, the Dorrites were entrenched and the people were behind them. Meanwhile Governor King celebrated a more quiet inaugural in tradition-mellowed Newport. Fear gripped the conservatives and new and more frantic messages deluged President Tyler. But the Chief Executive again refused to throw his political future into the Rhode Island cauldron. He insisted that the Constitution required him to remain passive until an insurrection broke out on such a massive scale that local posses were unable to quell it.

Dorr also went to Washington for official support, but was cold-shouldered. "Southern men had become imbittered against him and his cause by being told that it was wholly an anti-slavery movement," biographer King explains. "This was false; not a particle of abolitionism was mingled in the controversy." The Dorrites were also plagued by the invariant legend which is always glued to revolutionary causes by their conservative opponents: The commander of a murderous horde, Dorr's real purpose was to loot the banks, burn down the city of Providence and "ravish its fair inhabitants." This last notion was peculiarly ludicrous as applied to Dorr—a chaste man who seems to have had no interest in the pleasures of the flesh.

The little state had now become a focus of the nationwide party struggle. The Whigs frothed with denunciations of the Dorrites as "Anarchists" and "Levellers." Meanwhile, the Democrats hailed Dorr as a crusader against English tyranny. And

since the Rhode Island Charter which he opposed had been granted by a British monarch, the ghost of George III was challenged to single combat at Tammany torchlight meetings.

On his return from Washington in May 1842, Dorr visited New York, addressing a great mass meeting sponsored by William Cullen Bryant and others. The *New York Post* and the *Plebeian* staunchly supported his cause. At another rally, a resolution was carried to take all necessary action "in view of the threatened interference of the United States Government to put down the free people of Rhode Island." If this meant what it said, Tammany was challenging the United States to civil war!

The hard core of fighting support came from the Barnburners, the radical wing of the New York Democracy, and from Mike Walsh's Spartan Band in particular. This Walsh was a picturesque, brawling figure, a raucous, rollicking pioneer in radical labor organization with a scabrous tongue and an incandescent rage at social injustice. With his Spartan mob, he would take over Tammany meetings and harangue the crowd. The laboring people, Mike ranted, don't want "milk and water men to represent them . . . men who are a mere connecting link between the animal and vegetable kingdom . . . that are not lascivious, because they have not got stamina enough in their composition to keep their back-bone straight." A ruffian ward politician living by the slogan "Vote early and vote often", Mike Walsh was something of a socialist as well. "No man devoid of all other means of support but that which his own labor affords him, can be a freeman under the present state of society," he believed. His machine included such disreputable characters as George Wilkes, described by Arthur Schlesinger, Jr., as a printer of pornographic books and "fancy man of Kate Ridegely who ran a bawdy house in Duane Street." Wilkes in later years was to champion the Paris Commune and its short-lived proletarian dictatorship.

After his triumphal reception by the Tammany Chiefs at the Bowery Theatre, Dorr embarked for Rhode Island, accompanied by Mike Walsh and twenty strongarm boys from the Spartan Band—incongruous company for the Harvard lawyer and New England aristocrat.

While he had been seeking support in Washington and New York, two members of the Rhode Island People's Legislature were arrested for treason. Dozens of suffragists were seized and thrown in jail. A cloud of fear hung over the movement and the rumor was spreading that Dorr had fled.

A thousand cheering suffragists greeted his return. Dorr waved a sword and told his followers that when the hour struck, he would know what to do with it. He informed them that the New York Barnburners had pledged 5,000 men to come to the support of the Rhode Island people whenever they were needed. There was some truth in this even though the armed forces of the Barnburners were more figments of alcoholic oratory than hard facts. Levi D. Slamm, one of the leaders of the Journeymen Locksmiths, had pledged a steamboat to convey an army of 1,000 trade union men to the Rhode Island battle line. Another veteran of the Loco-foco movement, Alexander Ming, Jr., had promised the services of his military company.

The uneasy equilibrium was swiftly breaking down. The day after Dorr's return, May 17th, the stores in Providence pulled down their shutters, the factories closed, peaceful people kept off the streets. Governor King had ordered the militia in the Providence area alerted and under arms.

Against the advice of his followers, Dorr decided to retaliate by seizing the arms at the Providence Arsenal in the grand style of the Shays Rebellion. This decision has been criticized and it was certainly foolhardy. But the alternative was to leave the initiative to the enemy.

On the morning of May 17th, Dorr ordered his pro-suffrage militia companies to converge on Providence and rendezvous at his headquarters. He sent bands to seize two field pieces of Revolutionary War vintage from the Town Hall lot and drag them back to his command post. In weak-kneed haste, his men forgot to take shot or small-arms ammunition.

The attack was scheduled for 2 a. m. on the following day. The suffragists called on the arsenal to surrender in the name of Governor Dorr, but the garrison commander replied haughtily: "I know no such name."

Dorr then gave the order to open fire and storm the building. Twice powder flashes flared in the night, but there was no explosion or recoil. Saboteurs or cowards among the suffragists had capped the touchholes or filled them with wet powder.

Since Dorr's partisans lacked the stuff of soldiers, the night attack had been a fatal blunder. In the darkness, the men had been able to melt away, stumbling in panic from their posts. By the time the attack on the Arsenal was ordered, the original force of 500 had dwindled to less than half that number. At eight o'clock on the morning of May 18th, Dorr had only 50 armed followers left.

He returned to headquarters to find that the senators and congressmen of his "government" had resigned in an epidemic of fear. Having no choice, Dorr fled to Connecticut to resume the struggle under more favorable conditions.

"Why is Suffrage Governor Dorr tossed to and fro like a Shuttlecock?", the *New York American* quipped. "Because he is not a battle-Dorr," it replied.

Minor Reign of Terror

All resistance was now over. Yet martial law was maintained in the little state until August 8th. Under the Algerine Law, ministers who had merely attended Dorr meetings were arrested, trussed up with ropes and ridden on hay wagons to the nearest jail where they were incarcerated without arrest warrants or evidence.

Biographer King describes this period as "a barbarous infernalism." The suffragist father, he continues somewhat melodramatically, "sees his home desecrated and plundered, and his books and papers scattered in the street—when his wife and daughter are dragged from their beds and closets with scarcely a garment upon them, submitted to the taunts and jeers of vile men . . . and the merciless bayonet is made to penetrate the bosom of the innocent female . . . when the young mother, as she clasps the tender innocent to her bosom, trembles lest some brutish soldier should violate her sacred retirement . . . and when magistrates and clergymen approve of all these things . . . a tragedy is enacted which no language can describe or pencil paint. . . We stand aghast at the spectacle; it is a triumph of malice, and carnival of devils."

The final episode in the Dorr war was the battle of Chepatchet. Having received a handful of Barnburner reinforcements, Dorr decided to hold a military council in Rhode Island. The rumor of his arrival spread and soon 200 suffragists were assembled in the village of Chepatchet to join him. Although a treason indictment and a \$5,000 reward hung over his head, he crossed the state line and immediately ordered trenches dug and parapets constructed on Acote's Hill. This was strong medicine for the Dorr-ites and by morning, his force had evaporated to fifty men.

Hearing of this massive military assemblage, Governor King reacted characteristically—with panic. He marshalled 3,000 men in Providence, including a company of Carbineers from New York, armed with six-barreled Colt rifles, and a company of Sea Fencibles equipped with a Paixham 32-pounder.

This formidable army converged on Chepachet and, on the morning of June 27th, a breathless nation was told of the ensuing battle. Military Orders from the headquarters of Colonel William W. Brown read:

"The village of Chepachet and fort of the insurgents were stormed at quarter before 8 o'clock this morning, and taken with about one hundred prisoners by Colonel Brown; none killed and none wounded."

The facts were less sanguinary. Twelve hours before, Dorr had acceded to the majority's desire to abandon the struggle. The hill was abandoned and the remaining fifty men returned either to their Rhode Island homes or to the safety of Connecticut soil. Not satisfied with the glory of having stormed an undefended hill at the bayonet point, Colonel Brown's army debouched on the village with the cry: "God damn 'em, shoot 'em down!" About 130 Chepachet yokels were placed under military arrest and marched sixteen miles to Providence, their hands pinioned behind their backs. This provided a triumphal entry for the army of law and order.

About three hundred people were arrested under martial law, their homes ransacked without warrants, and the offenders thrown into improvised prison cells bearing an uncomfortable resemblance to the Black Hole of Calcutta.

Dorr on Trial for Treason

A year and a half later, Dorr returned to Rhode Island in the mistaken belief that passions had died down. He was immediately arrested and put on trial for treason before the Supreme Judicial Court at Newport.

The Court emphasized the need for "haste". When Dorr asked that compulsory processes be served on his witnesses, as he was too poor to pay them, the judges refused. The jury was chosen from a packed panel. All of its members belonged to the opposition political faction and several had expressed strong prejudice against the defendant.

Dorr's defense rested on four main points. First, he claimed that "treason is an offence against the United States only." This was nonsense. The states can and do define the crime of treason, though in later years they have had the good sense not to prosecute. Moreover, the rigid stipulations covering the crime of treason in the Constitution apply to betrayal of the United States only.

He claimed, second, that under the Common Law and the American Constitution the Court had no right to try him in Newport, when all the alleged overt acts had occurred in Providence.

He also maintained that since he had been the legal Governor of the state at the time, his acts had been lawful under a valid People's Constitution. Finally, he insisted that the charges against him did not constitute treason.

The Court refused to allow argument on the legality of Dorr's assumption of the governorship and the question before the jury therefore boiled down to whether or not Dorr had committed acts defined as treason under the Algerine Act. It was obvious that he had and he was convicted.

In the summer of 1844, Dorr started to serve his life sentence of solitary confinement at hard labor. The following year, the Rhode Island Assembly ordered him released on the condition that he take an oath of allegiance to the state constitution, but Dorr stalwartly refused to do so. Liberation societies were then formed all over Rhode Island. Their candidates were elected and Dorr was unconditionally freed.

He had not yet reached forty when the prison gates had clanged shut behind him. Although he served only twenty months, it was enough to destroy him both mentally and physically. Despite the slow growth of the Auburn system, prison conditions throughout the United States were unspeakably bad in the 1840's. Rhode Island, which applied solitary confinement "in the crudest possible manner", lagged behind most of the other states. The cells in the Providence jail were tiny walled cubicles, filthy and vermin-ridden. Dorr believed in regular physical exercise and had finally won a long fight for the privilege of walking in the corridor. Even so, when he at last emerged his friends thought that jail had "wrought fearful changes in his physical system." He survived for almost ten years, lingering on in a lethargic and disinterested state, contributing nothing to public affairs. In 1854, Rhode Island annulled the Supreme Court verdict against him by act of the Legislature, but by then the 49 year-old Thomas Wilson Dorr was already at the point of death.

The Political Battle

The Dorr War had become a major national issue. In 1845, the New Hampshire Legislature officially declared that Rhode Island had "trampled upon the constitution of the United States, by

denying him the right to be tried by an *impartial jury*, in the vicinage in which the crime was alleged to have been committed, and by refusing to him the right of introducing testimony tending to establish his innocence. . . ." New Hampshire cited the Sixth Amendment to the Constitution.

Maine was equally forthright. "In the people resides full and plenary power to institute government, 'to alter, reform, or to fully change the same. . .'" The trial of Thomas Wilson Dorr had been "unjust, illegal, malignant and tyrannical."

A Select Committee of the Congress went even further. It praised the moderation of Dorr's followers, pointing out that not "a single life was taken, or private property violated, by the suffrage party or any individual attached to it."

The lesson which the Select Committee drew from this affair was crystal clear:

"The people of Rhode Island, in common with the whole body of the American people, confided in the assurance contained in the Declaration of Independence, that they had a right to alter or abolish existing forms of government and institute other forms in their place."

The issue, however, was not that simple. Windy Jacksonian radicals had reduced the entire complex of constitutional democracy to the dogma that any majority had the right to change or overturn government as it pleased. But the Dorr War had again shown that without a recognized arbitrament at law, factions which each claimed to represent a majority would ultimately have to settle the issue by force. The doctrine of primitive democracy thus dissolved into that of unmitigated anarchy. A perhaps even more important point was that a democratic system which provided no bulwark for the basic rights of minorities would sooner or later solidify into dictatorship. These points would have been self-evident to the generation of Jefferson and Madison, but they were beyond the ken of the Jacksonians. As the frontier surged into national politics, the level of political philosophy sank.

A shoemaker with the distinguished name of Martin Luther was victimized under the Algerine Law for having been an active Dorr stalwart. He brought suit for recovery and the case went to the Supreme Court. The issue was the broad one of the legality of the Dorr regime. Speaking for the defendant, Daniel Webster urged the necessity of "some authentic mode of ascertaining the will of the people, else all is anarchy. It resolves itself into the law

of the strongest. . ." Chief Justice Roger B. Taney, a former henchman of Andrew Jackson and a strong advocate of states' rights, evaded this issue with the dictum that the Supreme Court had no power to decide the legality of a state government. The test was *de facto* control. By that yardstick plaintiff Luther lost.

Dorr won the battle for the ballot in his state at the cost of his own life. Without Dorr's leadership, the establishment of manhood suffrage might have been postponed for decades. And yet, after all this has been said, the fact remains that Dorr's doctrines, consistently applied, must lead to the downfall of any free society. Although his blow was directed merely at the State of Rhode Island, he was, as the Constitution defines the word, a traitor.

MEXICAN WAR TRAITORS

"Are Catholic Irishmen to be the destroyers of Catholic temples, the murderers of Catholic priests, and the founders of heretical rites in this pious country?"—Mexican propaganda appeal to American troops to desert.

Treason against the United States during the Mexican War was a phenomenon of paradoxes. Then, as never before or since, the intellectual leaders of American society branded the war as wicked aggression by the United States. Fearing that American victory would extend the frontiers of the slave power to the tropics, several of them hoped and prayed for their country's defeat. The anti-war speeches of men such as Charles Sumner, Theodore Parker, James Russell Lowell, Henry Thoreau and Abraham Lincoln would have been punished as sedition in most countries.

The principal result of this outcry by the Northern intellectuals was to bury the Whig Party and usher in a decade of pro-slavery Presidents. Moreover, the actual treason committed against the United States during the conflict had no relation to the soul searchings and moral excoriations of the New England thinkers. Insofar as they had any political complexion at all, the traitors were Democrats—adherents of the war party. They had no objections whatsoever to the extension of slavery to the Equator or even to the Tropic of Capricorn. They hated Negroes and Abolitionists with furious impartiality. The mainspring of their treason was not political, but religious.

The Mexican War was one of the cheapest armed struggles in American history. From the strict standpoint of national self-interest, it was perhaps the most clearly justified. And of all our wars, it was one of the most generally misunderstood. It was also the only American foreign conflict in which troops deserted in order to take up arms against their country as an organized combat unit.

With slavery the backbone of the cotton economy and cotton the life-blood of the South, a type of society began to emerge which seemed incompatible with the American system of government. On the floor of Congress, the voice of the South loudly demanded the suppression of all ideas, all discussion and all writings which jeopardized its peculiar institution. "If the question of slavery be longer *discussed* in any shape, they [the Southern states] will instantly secede from the Union," a Georgia editor threatened as early as 1833.

Intellectual leaders of the new South—men such as John C. Calhoun and the sociologist, George Fitzhugh—had developed an aristocratic theory of society, the basis of which was chattel slavery. One writer expressed the view that "the division of mankind into grades . . . constitutes the very soul of civilization; and the more numerous those grades are, in a country, the more highly civilized may we expect to find it."

Fitzhugh praised Southern society because it was static, because its soil withered all intellectual stirrings of criticism, all movements of change. Alice Felt Tyler in her excellent study of American reformers and rebels, *Freedom's Ferment*, quotes a typical Fitzhugh outburst: "Why have you Bloomer's and Woman's Rights men, and strongminded women, and Mormons, and anti-renters, and 'vote myself a farm' men, Millerites, and Spiritual Rappers, and Shakers and Widow Wakemanites, and agrarians, and Grahamites, and a thousand other superstitious and infidel isms at the North? Why is there faith in nothing, speculation about everything?"

At the same time, Fitzhugh believed that the Southern slave economy was the realization of the socialist utopia of Fourier which so beguiled the Northern intelligentsia of the day. And there was a great deal in this. The Southern economy was authoritarian, hierarchic and static. It rewarded its members according to status, rather than productivity. It provided security at a bare minimum level. Its organization was molecular and every bit as incompetent as the Phalanxes, which men who should have known better were attempting to establish at Brook Farm and elsewhere.

The new Southern leaders had uprooted the living tree of Jeffersonian thought. They had rejected democracy, belief in the inalienable civil rights of the individual, faith in the doctrine of equal opportunity. But they had conveniently retained the dead branches—the semi-anarchistic theories of states' rights, which

seemed appropriate to a non-articulated society, and the blind opposition to industrial development and urbanization.

Obsessed by the fear of servile insurrection, envious of the rapid growth of the more dynamic North and West, sensitive about the squalor, ignorance and poverty which characterized their part of the country, the Southern leaders had degenerated into irrational defenders of the *status quo*. They drew a compensatory picture of their way of life as a serene aristocracy in which culture flowed from leisure. In their more fervent moments, they compared this aristocratic flowering with Athens under Pericles or rural England of the eighteenth century.

While the nostalgic image of Southern society as an island of leisure, good manners and cultural delights has been perpetuated in historical novels, the reality was somewhat different. The New Englander of the mid-nineteenth century regarded the Southern pretensions to aristocracy as absurd. He believed that one could search in vain among the uncouth, hard-drinking gentry of the bayous and tidewater for even second-class playwrights and essayists, that good conversation was virtually unknown, that manners were chronically gross and bucolic and that one would be lucky to encounter a host who understood the difference between the functions of the knife and the fork. Most of the planters lived in conditions which, to the Northerner, appeared brutish. There was no academic freedom in Southern colleges. Their educational standards were so low that the wealthier Southern youths habitually went North to complete their training. Between 1840 and 1860, a period of educational development in the nation as a whole, the number of Southern institutions of higher education actually declined.

Henry Adams wrote scathingly of the Southern mind of 1856. The Virginian, he thought, "was simple beyond analysis; so simple that even the simple New England student could not realize him. No one could know enough to know how ignorant he was; how childlike; how helpless before the relative complexity of a school. As an animal, the Southerner appeared to have every advantage, but even as an animal he steadily lost ground.

". . . Strictly, the Southerner had no mind; he had temperament. He was not a scholar; he had no intellectual training; he could not analyze an idea, and he could not even conceive of admitting two; but in life one could get along very well without ideas, if one only had the social instinct." (*The Education of Henry Adams*, 1918, pp. 57-8).

Opposition to the Mexican War

Most Northern anti-slavery men believed that the peculiar institution of the South could be contained or destroyed by peaceful means. The annexation of Texas and the war with Mexico which followed it exploded this complacent viewpoint. The war seemed to presage an indefinite expansion of the slave regime into the American tropics, where new slave states would be carved from annexed soil. The balance of power in Congress and the Senate would thus be overturned and the free society of the North reduced to an impotent minority. Until the outbreak of the Mexican War, the South was on the defensive. It was losing ground economically, socially and culturally. Facing defeat in the peaceful competition between two incompatible types of social organization, the South now seemed to be appealing to foreign conquest to reverse the trend.

To Northern intellectuals the implication was clear: the Mexican War was the unvarnished result of a conspiracy by pro-slavery politicians to undermine the leadership of the North in the affairs of the Union. Such an interpretation was incredibly naive. It misinterpreted the nationwide drive for westward expansion as a slaveholders' cabal. It involved imputing low and unworthy motives to James K. Polk, a near-great American President, pre-eminent in the war leadership. Moreover, it rested on a misreading of stubborn geographical, economic, social and cultural facts.

The area conquered in the Mexican War was not well adapted to slavery. Of the territories wrested from the feeble hands of Mexico—Arizona, Utah, Nevada, California and New Mexico—not one was to dedicate itself primarily to plantation crops. Although the United States ended the war in a position to annex Mexico as a whole and, despite the fact that Mexican political leaders pleaded with General Winfield Scott to accept a dictatorship over their country, the border republic was left sovereign and independent. The State of Yucatan, a region ideally suited for slave agriculture, sent emissaries to Washington who begged for incorporation into the United States. The white minority on that peninsula was threatened with extermination at the hands of insurgent Mayan peons. Although the plight of the Yucatecans was desperate, Congress refused to annex the area.

These developments were to prove conclusively that the im-

elling national force behind the war had been the thirst for virgin lands suitable for the westward-moving pioneer hordes. Where the fate of areas which were already densely settled and possessed an organized agriculture was at stake, the United States consistently refused to accept sovereignty.

The fact that the Northern intellectuals had spawned a hobgoblin did not make their opposition to the war any the less fervent. They attacked it with a vehemence and unanimity which no other American foreign conflict has evoked. In thunderous tones the anti-slavery minister, Theodore Parker, called for militant community assistance to pacifists and conscientious objectors:

"Men will call us traitors, what then? That hurt nobody in '76. We are a rebellious nation; our whole history is treason; our blood was attainted before we were born; our creeds are infidelity to the mother church; our constitution treason to our fatherland. What of that? Though all the governors of the world bid us commit treason against man, and set the example, let us never submit. Let God only be a master to control our conscience."

Parker was sounding a characteristic New England chord. The non-conformist tradition of the region had consistently stressed the sovereignty of the individual conscience over that of the state. In an area which retained much of its original theocratic mold, it seemed evident that ministers of the gospel could readily perceive God's intentions, whereas mere Presidents might speak the words of Mammon. This movement toward civil disobedience, however, was also a measure of the gathering centrifugal forces which were threatening to tear the nation asunder. The New England tendency toward secession had remained intact, though during long periods it had been submerged from view. Throughout the changing party battles of the last fifty years, the one element of consistency had been hatred of the South and fear of Southern domination. Originating as an aristocratic faction, advocating a strongly centralized Federal Government closely allied with Britain, it had remained conservative but turned in 1812 to advocacy of states' rights and secession. Now it was to re-emerge as an anti-slavery faction which set up the law of God against the authority of the nation.

In his *Biglow Papers*, James Russell Lowell advised young Americans that if they were seduced into the Army by "strutting" sergeants they should desert or mutiny rather than

fight. Getting "nimepunce a day for killin' folks comes kind o' low fer murder," Lowell's rustic philosopher, Bridofredom Sawin, declared in wretched doggerel.

Henry Thoreau watched ants grappling in a death battle. "The dark carbuncles of the sufferer's eyes shone with ferocity such as war only could excite." Meditating about the Mexican adventure, Thoreau concluded: "When a sixth of the population of a nation which has undertaken to be a refuge of liberty are slaves, and a whole country is unjustly overrun and conquered by [a] foreign army and subjected to military law, I think it not too soon for honest men to rebel and revolutionize." Thoreau refused to pay taxes to maintain slavery or "powder monkeys." He was promptly jailed.

Emerson's keen mind was not for a moment taken in by the theory that this was a mere slaveholders' plot against the nation's welfare. The people, he admitted, "have given their will a deed." For Americans, the inevitable victory would be "the arsenic which brings them down in turn. Mexico will poison us." William Cullen Bryant "detested" the war, but thought open opposition inexpedient. Walt Whitman, the lover of inchoate forces, the worshipper of all large and powerful things, saw the struggle as "manifest destiny."

As for the politicians, Daniel Webster was eely, eloquent and equivocal; he waited alertly for the weathervane of public opinion to shift decisively. Younger and less experienced men seized boldly on unpopular positions. Charles Sumner had visions of blood deluging the nation in retribution for "the most wicked act in our history." This future intransigent of radical Republicanism during the Civil War believed any war to be "inconsistent with true grandeur" since "the whole earth is the sepulchre of the Lord." Horace Greeley castigated the conflict as "a curse and source of infinite calamities." Senator Tom Corwin stood up on the Senate floor and made the electrifying statement which was to drive him from public life as a near-traitor: "If I were a Mexican, I would tell you . . . 'we will greet you with bloody hands and welcome you to hospitable graves.'" This colorful but unwise declamation unloosed a torrent of anger throughout the nation. An effigy of Corwin was made from the foulest imaginable materials, stuffed into a Mexican uniform and ceremoniously hanged. Tearfully, Corwin was to complain to friends that Daniel Webster had put the seditious words into his mouth in order to test the political winds.

A new Congressman—Abraham Lincoln of Illinois—also lost his seat with an anti-war speech. In his command of the English language as a weapon of extraordinary force and subtlety, Lincoln's remarks placed him a full head above the veteran orators of the Senate—those long-established masters of the windy sentence and the flatulent phrase, whose baroque fulminations tried the mnemonic patience of generations of American schoolboys for decades to come. But Lincoln's observations were unpopular, one-sided and almost wholly untrue.

He thought the President "deeply conscious of being in the wrong" and believed that Polk felt "the blood of this war, like the blood of Abel crying to Heaven against him." The President's message could be likened to "the half-insane mumblings of a fever-dream" and, as for his motives, Lincoln wavered between the conflicting theories of sinister and secret purposes and mere mental befuddlement. In this unfortunate speech, Lincoln promulgated a raw frontier theory of democracy utterly at variance with the Constitution, a theory which oscillated between squatter sovereignty and the defense of force as the sole justification of government:

"Any people, anywhere," he said, "being inclined and having the power have the right to rise up and shake off the existing government, and form a new one that suits them better. This is a most valuable, a most sacred right—a right which we hope and believe is to liberate the world. Nor is this right confined to cases in which the whole people of an existing government may choose to exercise it.

"Any portion of such people that can may revolutionize and make their own of so much of the territory as they inhabit. More than this, a majority of such people may revolutionize, putting down a minority, intermingled near or about them, who may oppose the movement."

This was an outright justification of secession. More than this, it denied that a minority had any rights whatsoever within a democracy. It suggested that the sole yardstick of justice was force. The intellectually mature Lincoln of the war years sloughed off this crude theory. For obvious reasons, the sentences just quoted are one of the favorite items in the scanty Americana of the Communist Party of the United States.

Newspapers in New England and New York scourged the war effort and openly prayed for Mexican victory. The *New Hampshire Statesman* asked all Americans to remain aloof from the

struggle and thus bring it swiftly to an end. The *New York Tribune* declared that our people were robbers and that the Polk Administration had established the laws of Hell. The *Boston Daily Chronotype* said that any truly patriotic American would wish to join the Mexican Army and sweep Scott's and Taylor's forces into the next world.

Treason in the American Army

The avalanche of disloyalty which confronted President Polk in 1847 could not stop the brilliant advance of Winfield Scott's armies over the almost impassible Mexican sierra. Yet the avalanche ground on. Almost three thousand Unitarian ministers signed a petition 108-feet long urging that the troops be withdrawn and that "atonement" be made to Mexico. Peace resolutions multiplied like rabbits in the New England towns.

The number of deserters testified to the impact of this constant reiteration that American soldiers were fighting in an unworthy cause, that they were criminals and assassins and that all true patriots wished them defeated and slaughtered. Seldom has an army so brilliantly led and so uniformly victorious been afflicted to such an extent with the dry rot of demoralization. Some 31,000 regulars and 59,000 volunteers served with the American Army in the Mexican War. The enemy succeeded in killing only 1,530 of these 90,000 men. By contrast, 6,750 soldiers—7½ per cent of the entire force—deserted. The bulk of these truants simply went home to tend to their farms and families. A large number left the army in Mexico, some to become bandits, others to disappear into the Mexican hinterland, and still others to take up arms against their country. Those in the last group were unmitigated traitors.

The Mexican Government realized at once that it could appeal most successfully to the American forces on the basis of religion. Even before the actual declaration of war, General Zachary Taylor's Army was deluged with enemy propaganda. Appeals aimed especially at the foreign-born alleged that Europe unanimously disapproved the American "attack" on Mexico and urged that the true purpose of the Polk Administration was to eradicate the Catholic faith.

Understandably, the group most swayed by these appeals was the Irish. Living at the bottom of the economic and social pyramid, the Irish in the Northern cities had only a minor stake

in their adopted country, and their precarious position was reflected in the common belief that they comprised the core of America's criminal and mobster element. Although the United States was supposed to be a land of religious freedom, their Catholic faith was subject to the most scurrilous attacks. In the 1830's, an entire literature of anti-Catholic pornography had developed and this was avidly read. Alleged nuns confessed to having been repeatedly violated by priests who stole into their quarters through underground tunnels. The illegitimate offspring were supposedly buried in the convent vaults. Especially notorious in this connection was Maria Monk's *Azeful Disclosures of the Hotel Dieu Nunnery of Montreal*, 1836. Public faith in her disclosures was not shaken by the fact that Maria Monk had never been either a Catholic or the inmate of a convent, nor by the inability of investigators to discover the secret tunnel she described. When the authoress continued to produce illegitimate children after her supposed escape from the Hotel Dieu, however, skepticism raised its head.

The so-called American Party, which Horace Greeley was to brand for life as the Know Nothing Movement, urged that immigrants be deprived of some of the most cherished privileges of American citizens. Know Nothing mobs attacked and razed Catholic convents and churches in the Northern cities. Under these circumstances, it is not remarkable that the patriotism of Irish-Americans was often less than perfect.

The Irish deserters in the Mexican War were almost certainly not influenced by the protests of the anti-slavery intellectuals. The Irish at the time were largely uneducated. Moreover, they hated Negroes and Abolitionists and feared that the anti-slavery movement would bring swarms of free Negroes into the North to compete for the worst-paid jobs. "How the Irish rushed en masse to the polls of our State only seven years ago," Horace Greeley exclaimed in 1854, "to vote down the right of colored men to the elective franchise! No other class of citizens was so zealous, so unanimous in its hostility to Equal Suffrage without regard to color. 'Would you have your daughter marry a naygur?' was their standing flout at the champions of democracy. . ."

The Mexicans sent a British subject, named Sinnott, into the United States to win over General Zachary Taylor's Irish troops.

As the two hostile armies were about to lock horns, attractive Mexican Loreleis paraded on the far side of the Rio Grande and beckoned to the American troops to come over. Deserters were

welcomed with offers of wealth and land in Mexico. Captured American dragoons were allowed to return to their own lines with stories of excellent treatment received at the hands of the enemy. The more unstable elements in the American Army began to cross the river. At one time, it was rumored that the entire Seventh Infantry was about to desert and the Mexicans joked that General Zachary Taylor himself was waiting his chance to swim the river and switch sides.

After the fight at Monterrey, Taylor became worried over the rising curve of desertion. At Buena Vista, American assault forces encountered deadly artillery fire from a new unit—a unit which knew how to fight. When the engagement was over, information received from prisoners revealed that the artillery group was the San Patricio or St. Patrick Company and that it had been recruited entirely from Catholic deserters.

At Jalapa, an appeal was broadcast to the American Army: "Are Catholic Irishmen to be the destroyers of Catholic temples, the murderers of Catholic priests, and the founders of heretical rites in this pious country?" From 200 to 300 troops went over to the enemy.

As General Winfield Scott's forces swept up from Vera Cruz, the Mexican leaders tended to rely more on encouraging desertion than on organizing resistance. Their army was led by corrupt generals and manned by miserable peasant conscripts who had no conception of the issues of the war and even less desire to fight. The Mexicans were no match for the American forces—aside from Mexican demoralization, there was General Scott's decisive preponderance in artillery.

At the bloody battle of Chiribusco, about 260 deserters, most of them members of the San Patricio Company, fought gallantly. Knowing that they faced death if captured, these men threatened to kill the Mexican commander when he tried to run up a white flag. Despite their bitter, last-ditch resistance, Chiribusco fell. Some of the San Patricio turncoats managed to fight their way through American lines to Mexico City, but eighty were captured and tried by military courts.

The almost unanimous feeling of the American Army was that the Irish deserters be executed forthwith. General Scott demurred. He said that he would rather die than be guilty of injustice in the matter. While fifty were finally executed, approximately fifteen who had joined the Mexican Army before the American

declaration of war were branded with the letter 'D' and released; the rest were acquitted.

General Scott's conduct was characteristic of this brilliant, cultured and humane commander. As a matter of law, however, the San Patricio deserters who escaped military execution should have been remanded to the civil courts to stand trial for treason. In serving with a hostile army against the United States, they had been flagrantly guilty of "adhering" to America's enemies, "giving them aid and comfort."

The only question was whether they owed allegiance to the United States. Those who were citizens obviously did. It was also clearly established at both British and American law that a resident foreigner owes a temporary allegiance to the country where he is domiciled in return for the protection it gives him. This temporary allegiance ceases only when he leaves the country and removes his "family and effects." All of the San Patricio men were therefore traitors except those who were aliens, had no family or effects in the United States and had enlisted with the enemy while on Mexican soil.

The movements of treason and sedition during the Mexican War were utterly futile. The bravery of the San Patricio Company exerted no influence on the military outcome. While the vehement anti-war agitation in the North aroused broad public sympathy at the time, once the war was over and the rich prizes of the Southwest and California were firmly in American hands the men who had stood alone against the conflict were discredited. The disintegration of the Whig Party dates from the Mexican conflict. Its opposition to the War helped place the Democratic Party in the saddle from 1852 until 1860. The equilibrium between slave and free states was thus destroyed and a decade of pro-slavery Administrations created a situation so intolerable that it could be resolved only by civil war.

MORMON REBELLION

"I am sworn, if driven to extremity, to utterly lay waste, in the name of Israel's God."—Brigham Young.

"This is rebellion against the Government to which you owe allegiance, it is levying war against the United States. . . ."—President James Buchanan to the citizens of Utah Territory.

The Mormon movement is a unique and puzzling phenomenon in American history. Although Mormonism once seemed to run counter to every basic element in the American faith, it drove deep tap roots into the national soil. For half a century it survived as a state within the state, as a chosen people within a polyglot nation. In the midst of harsh and seldom relenting persecution, it grew and thrived. Humorless, arid and often self-contradictory, Mormonism nevertheless provided the sort of total faith which most men in most periods of history have needed. In Mark Twain's opinion, the Book of Mormon was "chloroform in print." He added that if Joseph Smith, the Messiah of Mormonism, wrote the Book himself, "keeping awake while he did it" was a miracle.

And yet this strange creed attracted men of vast ability, of deep psychological insight, of boldness, of imagination and of indomitable will. Brigham Young, the iron organizer of the Mormon state, was a man whose genius for leadership has seldom been surpassed in American history.

The plain fact is, however, that the founders of Mormonism in Utah were unquestionably guilty of treason against the United States. They levied an army, declared martial law in Utah Territory, prepared to repel an American expeditionary force, raided its supply depots, attempted to starve it out in the desert, and carried out the first scorched earth program in American history.

This treason was an inescapable consequence of the original

position of the Mormon community as an enclave within an alien state. The Church was not concerned either with overthrowing the Government of the United States or with aiding its foreign enemies. But it was concerned with maintaining its own integrity. The Mormons were determined to preserve their faith and the theocratic rule that stemmed from it. The story of American-Mormon relations is the rearguard struggle of a brilliantly organized communist system to survive intact within a circumambient sea of individualism. During the heroic period of Mormon history, the "gentiles" used violence and persecution in their efforts to break down the Chinese Wall which Mormonism had built around its theocratic society. These efforts failed. Like the giant, Antaeus, the Church sprang to its feet strengthened after each encounter. Where force failed, the mole of economic development succeeded. The erosive stress of the surging growth of American capitalism on its frontiers eventually disintegrated Mormonism as a totalitarian system and transformed it into a merely religious movement.

Joseph Smith, the Prophet of Mormonism, grew to young manhood in the "burnt-over district" of Western New York—an area swept by orgiastic religious revivals and bizarre faiths. During the 1830's, entire communities poured out for great campfire meetings at which itinerant evangelists talked of hell and damnation. At one such meeting, a preacher boasted, over 500 people had "the jerks"—that is, they writhed on the ground, hopping about like frogs and wriggling their heads so that no man could doubt but that the spirit was in them. Some barked and ran on all fours, growling, yelping and gnashing their teeth. Others were possessed with "the holy laugh." Suddenly, little children would start speaking "with tongues" and they would be held aloft so that the multitude could hear the word of God. Some of the participants in these orgies ended them in Dionysian fashion in the woods. Others went stark mad.

Joseph Smith came from a long line of men and women who had had the spirit in them. His grandfather, Asahel, had had fits and was known as "Crooked Neck" Smith; another grandfather used to see lights and hear voices; his parents pored over the Bible, saw visions and became convinced that all established churches were the work of the Devil. The Smiths were poverty-stricken and incompetent farmers. Joseph grew up ragged, unkempt, lazy and without definite occupation. A priest, who had known Joseph when he was an adolescent, once had the

temerity to tell Brigham Young that the Prophet had been "a mean man, a liar, money-digger, gambler, and a whoremaster." The thing he did best was "money digging." In return for a small cash consideration from some gullible yokel, he would use a twig of witchhazel to divine where treasure lay buried.

One night, the Angel Moroni, "his countenance truly like lightning", came to Joseph in a vision to tell him that a book of revelations, printed on gold plates, lay buried on a nearby hill. The Angel had come to the right man. Nobody in those parts was more skillful at getting gold out of the ground. Joseph went to the hill at night and is supposed to have encountered a heavily bearded apparition there. Its throat had been cut from ear to ear and its blood was spilling on the ground. Joseph saw at once that this was a Spanish pirate—or perhaps its ghost. He ignored it and disinterred the new Gospel.

Working behind a screen in a friend's house, Joseph Smith then translated the writing on these golden plates from "reformed Egyptian" into unreformed English. He published the work as the Book of Mormon and was launched on his life career as a Messiah.

This gospel told about the vicissitudes of various Hebrew tribes, which got lost about 600 B. C., came to America and went through a long series of struggles and internecine conflicts in the course of which the true faith died. Although these tribes were cut off from the Old World considerably prior to the Christian era, the Book of Mormon referred to the New Testament 298 times and quoted Shakespeare.

Derivations and Social Protest

As Bernard De Voto points out in his brilliant critique of Mormonism, *The Centennial of Mormonism*, the philosophical luggage of the new faith was borrowed from the eccentric non-conformist and utopian movements which were sprouting throughout the United States in the third and fourth decades of the nineteenth century. There was Alexander Campbell who had started a sect based on literal interpretation of the Bible and on belief in the second coming of Jesus. A man called Noyes had discovered that men could be saints on this earth. There were the Shakers, the Millerites and other odd manifestations of religiosity. At the same time, colonies of utopian communists, advocating beehive organizations of society ruled by status and authority, were beguiling New England intellectuals. Mormonism was a

witches' cauldron into which all these eccentric doctrines were tossed and then boiled down to a uniform intellectual insipidity. The new religion was able to turn even the copper coinage of indigenous nonconformist theology to dross.

From the beginning, Mormonism was a movement of the poor, the frustrated, those flung off from the spokes of the accelerating wheel of social and economic development. It was a movement of revolt. In a sense, it traced its lineage back to the devil worship and the secret bands of communistic friars of the Middle Ages.

Mormonism offered the virtues of community life as against the harsh, "devil take the hindmost" doctrine of emergent industrialism. Farmers who had tired of the nerve-wracking cycle of land speculation, overborrowing and bankruptcy, then moving on to try one's luck elsewhere, embraced Mormonism because it held forth security and gave a social purpose to toil. The underdog received the priceless spiritual solace of belonging to an elite band which knew the truth, lived in God's ways and was practically guaranteed eternal life in the hereafter. Mass feelings of resentment and envy were transformed by the knowledge that the proud and mighty of the earth would be cast into hell fire.

The Mormon faith founded communities and grew. It lived in a tense, oscillating and ambivalent relationship with the frontier. As De Voto points out, it grew in, out of, and in spite of this matrix. The frontier provided the early Mormon converts. It furnished the persecution which hardened and stimulated the faith. And finally, the ultimate Mormon refuge of Utah was carved from the frontier soil of mountain and desert.

Wherever the Mormons went, they encountered savage persecution. Where there were Mormons, the mob formed. It stole, burned, devastated and killed. The root cause of this vehement friction was that the Mormons stood diametrically opposed to the dominant principle of individualism which shaped frontier society. The Mormon communities were from the outset authoritarian and communist. Under Joseph Smith, the dictatorship was directly spiritual in origin. The Prophet enjoyed almost daily visitations from the Almighty and his angelic hosts. These heavenly spirits guided him even in the most mundane and picayune matters. The Lord was deeply interested in everything "pertaining to my boarding house", in which Joseph Smith was to reside in the flesh and Jehovah in the spirit. As to financial matters, God commanded through his servant, Joseph Smith, that trustees "shall not be permitted to receive any man as a stockholder in this

house, except the same shall pay his stock into their hands at the time he receives stock." The Lord left little scope for individual initiative.

The Mormons voted as a bloc, using their franchise to wring political concessions from both parties. Their economic enterprises were communal. They organized banks which they called "anti-banking societies"—and they engaged in large-scale land speculation. Gentile businessmen were thrust into losing competition with monopolistic enterprises backed by the entire Mormon community. To make matters worse, the heathen soon discovered that the Mormons worked harder and got more done than they did.

In 1838, the Mormons were hounded out of Missouri in an outburst of riots, arson and lynch law. Local citizens engaged enthusiastically in this merciless epidemic of murder. When one of the mobsters was asked to spare the life of a small Mormon boy, he replied tersely: "Nits will make lice."

In retaliation against the persecution to which they were increasingly subjected, the Mormons set up a secret execution corps under a leader whom they christened Captain Farnot. These brawny and bearded killers were first known as the Daughters of Zion, the reference being to Micah IV, 13: "Arise and thresh, O daughter of Zion: for I will make thine horn iron and I will make thine hoofs brass: and thou shalt beat in pieces many people. . . ."

The incongruity of this feminine name occurred even to the somewhat humorless Mormons and they rechristened the group the Big Fan: "And I will fan them with a fan in the gates of the land; I will bereave *them* of children, I will destroy my people, *since* they return not from their ways." (Jeremiah XV, 7.)

But the names by which this somewhat sinister organization went down into history were the Avenging Angels and the Sons of Dan: "Dan shall be a serpent by the way, an adder in the path, that biteth the horse heels, so the rider shall fall backward." (Genesis XLIX, 17.) The Mormons loved the Old Testament with its continuous threats of smitings, witherings, pestilence and sudden death. The Sons of Dan survived as an organization through the successive migrations and was firmly established in Utah. Here this unsheathed sword of the faith carried out orders for the castration or execution of truants from the Church.

Friction between Mormons and Gentiles plunged Daviess County, Missouri, into a minor civil war. Joseph Smith and other

Mormon leaders were charged with treason. The Commanding General of the Missouri militia was ordered to arrest these men. He interpreted his orders somewhat liberally:

"You will take Joseph Smith and the other prisoners into the public square of Far West, and shoot them at 9 o'clock tomorrow morning," he instructed his second-in-command, Brigadier General Alexander W. Doniphan. Fortunately for Mormonism, General Doniphan was no assassin. "It is cold-blooded murder," he replied. "I will not obey your order . . . and if you execute these men, I will hold you responsible before an earthly tribunal, so help me God."

The Mormons fled to Illinois, where they were at first received with sympathy as persecuted refugees. They took with them bitter memories and implacable hatred of all Missourians. In Mormon history, citizens of that state are designated simply as "Pukes" and there are many lurid accounts of how participants in the mob actions against the chosen people met Old Testament deaths: "eaten with worms—a large black headed kind of maggot . . . crawling out of . . . mouth and nose . . . literally rotted alive."

Founding of Nauvoo

In Illinois, Joseph Smith founded the all-Mormon city of Nauvoo on the Mississippi and set to work to build a temple there according to specifications which came directly from the Lord. By 1840 Nauvoo was more populous than Chicago and one of the largest cities in the West.

The Mormons held the balance of power in Illinois politics. Joseph Smith threw the Mormon vote to the Whigs in return for almost absolute Mormon autonomy over the Nauvoo region. The city was chartered, permitted to pass all laws not in conflict with the State or Federal Constitution, and authorized to appoint a court. The Nauvoo Legion, consisting of several thousand Mormon militia was also legalized.

Joseph Smith had himself appointed Lieutenant General and Commander in Chief of the Legion. The fact that the only other American to hold this exalted rank had been George Washington pleased him immensely.

The Prophet was now nearing forty. He was a handsome giant—six feet two inches tall, weighing 210 pounds and childishly proud of his great physical strength. Unlike other saints and messiahs, he wrestled not with demons but with his disciples.

Josiah Quincy, son of the disloyal New England politician of

the War of 1812 and fourth consecutive bearer of that name, describes Joseph Smith at Nauvoo in his charming book, *Figures of the Past*:

"‘And now come with me,’ said the prophet, ‘and I will show you the curiosities.’ So saying he led the way to a lower room, where sat a venerable and respectable-looking lady. ‘This is my mother, gentlemen. The curiosities we shall see belong to her. . .’ There were some pine presses fixed against the wall of the room. These receptacles Smith opened, and disclosed four human bodies, shrunk and black with age. ‘These are mummies,’ said the exhibitor. ‘I want you to look at that little runt of a fellow over there. He was a great man in his day. Why, that was Pharoah Necho, King of Egypt!’ Some parchments inscribed with hieroglyphics were then offered us. . . ‘Here we have the earliest account of the Creation, from which Moses composed the First Book of Genesis.’ The parchment last referred to showed a rude drawing of a man and woman, and a serpent walking upon a pair of legs. I ventured to doubt the propriety of providing the reptile in question with this unusual means of locomotion. ‘Why, that’s as plain as a pike-staff,’ was the rejoinder. ‘Before the Fall snakes always went about on legs, just like chickens. They were deprived of them, in punishment for their agency in the ruin of man. . .’ Monarchs, patriarchs, and parchments were very well in their way; but this was clearly the nineteenth century, when prophets must get a living and provide for their relations. ‘Gentlemen,’ said this *bourgeois* Mohammed, as he closed the cabinets, ‘those who see these curiosities generally pay my mother a quarter of a dollar.’ ”

Smith enjoyed being a prophet. Governor Ford of Illinois recalled that he “dressed like a dandy, and at times drank like a sailor and swore like a pirate.” When he had nothing better to do, he wrote long, bombastic, accusatory letters to the President of the United States in which he would quote from a variety of extinct or imaginary languages. On Nauvoo Legion parade days, Smith frequently imbibed to excess. He once preached after such an escapade: “Brethren and sisters, I got drunk last week and fell in the ditch . . . I am awfully sorry, but I felt very good.”

To his shrewd but childlike mind, all things seemed possible. In 1844, he ran for the Presidency of the United States on a platform which included liberating all prisoners (“blessing them as they go”), reducing the pay of Congressmen to two dollars a day and board (“more than the farmer gets, and he lives honestly”)

and sending all lawyers to preach the gospel to the poor ("without purse or scrip").

Several months before the presidential elections, a mob murdered Joseph Smith, thus rescuing the Mormon Church from schism and disintegration, providing it with an analogy to the Crucifixion and propelling it westward in one of the most remarkable migrations in American history. And yet to the outward eye it seemed that Joseph Smith had scaled the heights and realized the American dream in a manner that made Horatio Alger's heroes appear drab failures. At thirty-eight, the once ragged money-digger was a Messiah, the undisputed spiritual leader of 12,000 not particularly intelligent souls, the mayor of the largest city in Illinois with authority to enact his fancies into law and to convict transgressors in his own court. He had a private army; he was a Lieutenant General, a candidate for President of the United States, a philologist who spoke incomprehensible tongues and, in the minds of his followers, a lineal descendant of the Biblical Joseph. His coat of many colors was the gaudy uniform which went with his military title. Resembling the Old Testament patriarchs, whom he admired, rather than the bloodless masochists and stylites who succeeded them, this second Joseph drank himself into a stupor when he felt like it, wrestled on the lawns with itinerant Bible thumpers and indulged himself in the evenings with the twenty-six women whom he had married polygamously and secretly. Perhaps nobody ever had a better time being a prophet.

The Church was nevertheless ripping apart at the seams: the faithful were chafing; heresy was germinating. Smith was an indifferent administrator and, even though aided by God, an incompetent director of Mormon business ventures. His paranoid tendencies became increasingly obvious as success in attainable ambitions forced him to bark for the moon. Each bold, forward step on the road to power further antagonized the surrounding gentile community.

The incident which led to the destruction of Nauvoo was utterly unimportant. A Church member named William Law believed the Prophet was trying to seduce his wife. He retaliated by printing a sheet called the *Nauvoo Expositor*, which attacked Smith and other Elders for importing female converts from Europe for their sexual gratification. The little paper launched a broadside against the esoteric doctrine of polygamy, against the combination of political and spiritual power in the same hands,

and against alleged misappropriation of Church funds by the Prophet.

Joseph Smith, Mayor of Nauvoo, forthwith ordered the press destroyed, the type piled and all copies of the obnoxious publication burned. Thereupon Lieutenant General Joseph Smith, Commander of the Nauvoo Legion, directed that the Mayor's edict be obeyed. Finally Joseph Smith, the individual, led a raiding party, wrecked the *Expositor's* printing plant and knocked down a schismatic with a mighty blow under the ear.

The Illinois courts investigated. Joseph Smith retaliated by placing the city of Nauvoo under martial law. The Prophet was therefore indicted for treason by levying war against the State of Illinois. In proceeding drastically against the Mormon enclave after its conclusive demonstration that it neither intended to permit freedom of the press nor to govern in accordance with the Constitution, the state authorities appear to have been abundantly justified. Both Illinois political parties, however, had been willing to give the Mormon hierarchy dictatorial powers within their enclave in return for the Mormon vote.

Smith seems to have had a premonition of his fate. He was preparing to flee to the Rockies rather than surrender to the Court, when his associates reminded him he had duties as a leader. "If my life is of no value to my friends, it is of none to myself," he replied with dignity.

The inhabitants of Illinois were, as their Governor put it, "hard cases." Like most frontier societies, they had more than their share of hard-drinking, shiftless fellows, who were ready for anything from horse-stealing to murder which could enliven their dull existence or better their economic condition. Many of these people had come up from the Piedmont—rough, uncouth, uneducated, suspicious and quick to insist at the muzzle of a gun that strangers conform to their prejudices. They had lynched the Presbyterian minister, Elijah Lovejoy, because he opposed slavery and they were prepared to use violence against any group which prodded the exposed nerves of their bigotry. Before the Court at Carthage could try Joseph Smith, the mob stormed the jail and lynched him.

A reign of terror broke out against the Mormon communities. Night-riders and barn-burners harried the chosen people, burning their properties, throwing the Saints into the river and killing indiscriminately. The Church was leaderless with its back against the wall. There was no choice but to move and move quickly.

The gentile pack was yelping at their heels. The shiftless mass of eye-gougers, loungers and ne'er-do-wells—"the shrewd, wild boys about town", as Lincoln characterized them a few years later—had tasted blood. More responsible elements in Illinois society also saw the advantage in encouraging violence. Hustled out of Illinois, the Mormons would have to sacrifice the farms, houses and stock which they had built up with their sweat and labor.

Brigham Young

With disaster imminent for the faithful, Brigham Young returned from England, where he had been spreading the Mormon gospel and recruiting emigrants, and assumed leadership over the bewildered flock. No visionary angels appeared before this Vermont-born glazier and painter. He was no discoverer of sacred books and buried treasure. An outwardly undramatic man, cast in Roundhead and Nonconformist mold, Brigham Young had a consuming sense of his mission, but none of the showy adolescent conceit of his predecessor. He conceived of religion as organization, action, construction—in short, salvation by work. Without any formal education, he had an almost unerring grasp of the mainsprings of the mass mind. He had an extraordinarily long view of things. He proved a brilliant planner and executive. Although a saner man than Joseph Smith, he was more of a fanatic. Brigham Young was one of those fortunately rare individuals who was ready to destroy and kill without hesitation in the service of an ideal.

Lenin once said that America had produced but one great Marxist leader—Daniel De Leon. In terms of a considerably broader and more significant category, one can say that Brigham Young was the only successful organizer of a totalitarian system in the history of the United States.* With genius coupled with indomitable courage, Brigham Young did not hesitate in choosing the desert as the most propitious area for Mormon settlement—a desert completely untamed, about which hardly anything was known, where the problems of settlement, agriculture and organization of community life were as yet unsolved. When

*The most successful attacks on the dominant American philosophy of liberal democracy have been based on the Bible and, throughout European history, a strong totalitarian strand has been woven from heterodox interpretations of Christianity. In more recent times, a large sector of American intellectuals has played truant simultaneously to Christianity and to liberal democracy.

he brought his people through toil and suffering from the wreckage of Nauvoo, across the Great Plains, over the blood-soaked Donner Trail and, at last, into the promised land, what they found was not a country flowing with milk and honey but hideous alkaline plains, waterless, drab, swarming with millions of crickets. Brigham Young did not apologize. He had taken his people to hard country because there they could keep their faith.

This was a wise decision. In the lush lands of the Pacific littoral, the Mormons would again have been submerged by the westward thrust of pioneer settlement. They would again have had to face the choices of assimilation, emigration or extermination. But here, in the hard, repellent desert, the chosen people were able to protect themselves, at least until Brigham's death in 1877, against the surging ocean of surrounding paganism.

The driving impetus of the trek, according to Brigham Young's admission, was "to get away from Christians." Yet even while they were on the march, the Mexican War was gathering a new empire under the Stars and Stripes. The Mormon party which left for Utah by sea came into San Francisco Bay to see the American flag floating over the town. Throwing his hat violently on the desk, Brannan, the leader of the expedition, shouted "There's that damn rag again!"

The Mormon Totalitarian System

Brigham Young was the first American to solve the problems of desert agriculture. His cohorts occupied the narrow valleys, the watered grasslands and the passes that led through the mountain chains. Their proposed state of Deseret contained Utah, Nevada, about half of California and Arizona and parts of Oregon, Idaho, Wyoming, Colorado and New Mexico. It even had its own Pacific ports.

Throughout this huge area, the Mormons proposed to establish a theocratic society which owed only nominal allegiance to the United States. The growing friction between two social systems, at bottom utterly incompatible, was to result in armed conflict and constitute treason. Bernard De Voto was the first critic to adumbrate the comparison between Mormonism and the more modern faiths of Nazism and Communism. His parallel deviates in some respects from the paragraphs which follow.

Like other totalitarian systems, the Mormon rejected the liberal and democratic tradition: "We are in a land of liberty," Brigham Young once preached, "and our fathers have taught us—especially

in America, that every man and woman and every child old enough to speak, argue, read, reflect, etc., must have minds of their own and not listen to anybody else. They are taught to shape their own opinions, and not depend on others to direct their thoughts, words, or actions. That system of teaching reminds me of the old saying, 'Every man for himself and the Devil for them all.' Such views . . . must be checked in this people. . ." As for those who went against orders, Brigham said: "Let such men remember that they are not wanted in our midst. Let such leave their carcasses where they do their work. We do not want our burial grounds polluted with such hypocrites."

While the Constitution of the proposed State of Deseret contained a Bill of Rights, there was little democracy. Elections consisted of sustaining the leaders by a show of hands. Authority was vested not in the people but in the Twelve Apostles and the elders of the Church.

The essence of a totalitarian system, as the adjective implies, is that it provides an all-encompassing creed and manner of life. For the fanatic believer, it cuts out the cancer of personal guilt; it eliminates the harrowing sensations of doubt; it makes the path for man clear and unambiguous.

To achieve this unity within a society, it must be walled off from the macrocosm—the outside world of diversity and dissension—the world which, through doubt and struggle, goes through the travail of creative thought. Such ingrown systems build their own Chinese Wall, generally using much the same sort of mortar.

Like the contemporary Soviet Communists, the Mormons glorified in their persecution by the unrighteous. While the persecution was real enough, they further stimulated it by a policy which increasingly set them apart and added to resentment. Having done all this, they exaggerated the hatred and villainy of the gentiles around them. For example, an elaborate mythology was created around the Mormon Battalion, which operated with the American Army in the Mexican War. The gentile officers of this courageous, touchy and recalcitrant detachment appear in Mormon histories as drunkards, scoundrels and sadists, while the Army doctor who tended its members is accused of poisoning them with arsenic.

Cultural isolation from the general Western tradition of science and aesthetic creation was achieved in part through a rigorous Church censorship on books, plays and other media of communication. Brigham Young expressed contempt for academic

learning which did not lead to the glorification of the Mormon faith, contribute to the wholesome pleasures of the Saints or teach people how to solve practical problems. To cut off his community still more completely, he had a Mormon alphabet invented and attempted unsuccessfully to introduce it throughout the Utah school system.

These measures of self-imposed community isolation are, of course, useless to the totalitarian system unless it also succeeds in satisfying the basic needs and urges of its flock. Mormonism offered absolute salvation and everlasting life to those who believed in and lived by the one true creed. This was a far more precious gift than the ever-receding utopia on earth of Marxism or the wine of world conquest served up to the Nazi elite. In both Communism and Mormonism there was a chosen element, separated by a vast gulf from the rest of mankind—an element hounded, persecuted and villified, glorying in its sufferings, but rising ever above them, for it alone could grasp the truth of life. The Mormon communicant, like the contemporary Communist, had to suffer torture or death unflinchingly for his faith. This faith was universal. It could save all men, and the task of widening the circle of salvation rested on the shoulders of the elite.

The Mormons—like the Catholic Church—understood the advantages of indoctrinating children. Their intricate educational and propaganda system began at the age of three and continued from cradle to priesthood. The ritual ascent within the Mormon hierarchy consisted of an infinitude of small steps upward toward sainthood. Thus ambition and the hunger for power were channeled within the confining banks of the theocracy.

Economic competition tends to make the individual an independent and self-acting unit. The Mormon answer to this threat was an audacious and comprehensive communistic organization of their economy. The hard problems of conquering the desert and of simultaneously providing homes, farmlands and occupations for the hordes of arriving neophytes made this type of controlled economy appropriate to the environment and probably necessary.

Whether it feeds on myths or on positive accomplishments, no messianic totalitarian system can be static. The Mormon system grew by accomplishing the economic projects assigned by the leadership. A swift tempo of expansion was necessary to absorb the immigrant converts, over half of whom came from England. They were recruited largely from the industrial and rural poor—the cast-offs of British capitalism. While English social condi-

tions had much improved since the time of Jefferson, living standards had not advanced above the level prevailing at the close of the seventeenth century and even the hardship of Utah seemed preferable to the slums of the textile cities or the hovels of the rural poor. These immigrants were, to a very large extent, uneducated, credulous and habituated to obedience. A large proportion of them were female. In 1870, Utah was the only frontier territory where the sex ratio was approximately one to one. Some 35 per cent of its inhabitants were foreign-born. In comparison with the rest of the West, it was a land of young people.

Planning and immigration created an immediate dynamism. The Mormon eschatology provided an ultimate and universal goal. The Mormons were bystanders who watched the gentile world rush toward its destruction. While Mormon historians stress the contribution of the Saints to the Northern cause in the Civil War, the facts are that they supplied 93 men, who served for three months guarding telegraph installations several thousand miles from the active theatre of war. This unimpressive contribution was not due to pacifism. The Mormons anticipated, as the "carpetbag" Governor, Stephen S. Harding, put the matter in August, 1862, that "the United States as a Nation is to be destroyed, that the Gentiles will continue to fight each other until they are exhausted, and then the Saints are to step in and quietly enjoy possession of the land, and also what is left of the ruined cities and desolate fields; and that Zion will be built up, not here in the valleys of the mountains, but the great center of their power and glory is to be in Missouri where the Saints under the head of their prophet were expelled many years since."

The central problem in all such power frameworks is to maintain the cell walls intact between the microcosmic elite society and the invading macrocosm. This is principally an act of faith, not of force: the life created within the closed system must satisfy basic human urges to an extent which makes the membership averse to change. The barriers must be so steep that the individual who crosses over into the enemy camp feels that he has taken an irrevocable decision and has committed the unforgivable sin. Those who recant and turn apostate must wander ever afterwards through the world in search of their lost mental and emotional security. To make apostacy unpopular, totalitarian systems tend to create a framework of morals, daily life, social relationships, emotional satisfactions and intellectual habits which involve, as Nietzsche aptly phrased it, "a transvaluation of all values."

But even so there will be backsliders, renegades and traitors. Some of these will seek to desert the microcosm physically. Others will passively corrode the faith by non-compliance with their duties. Still others will challenge the faith from within and question the infallibility of the leadership. These last are the most dangerous since doubt stimulates thought and thinking can become epidemic.

In an unfree system, no real distinction can be drawn between disloyal and dangerous thoughts and overt criminal actions. To question the creed is to undermine society. During a period of crisis and wavering in Utah, Brigham evolved the fearful doctrine of blood atonement for sins:

"I know when you hear my brethren telling you about cutting people off from the earth, that you consider it is strong doctrine; but it is to save them, not to destroy them. . .

" . . . I have had men come to me and offer their lives to atone for their sins.

"I have seen scores and hundreds of people for whom there would have been a chance (in the last resurrection there will be) if their lives had been taken and their blood spilled upon the ground as a smoking incense to the Almighty, but who are now angels to the devil. . . *I have known a great many men who have left this Church for whom there is no chance whatever for exaltation, but if their blood had been spilled, it would have been better for them.* The wickedness and ignorance of the nations forbids this principle's being in full force, but the time will come when the law of God will be in full force.

"This is loving our neighbor as ourselves. . ." (Author's italics.)

Mormon Polygamy and Gentile Fury

In 1852, the Mormons publicly proclaimed the hitherto secret doctrine of polygamy. No action could have been better calculated to arouse a nation-wide outburst of prurient curiosity and righteous indignation. "Among the fastnesses of the Rocky Mountains," a writer declared in the *Atlantic Monthly*, "there is a community which blends the voluptuousness of Bagdad with the economy of Cape Cod. . ." Secret rites were practiced. The Mormon elders were "priests of Isis and Osiris." The 1856 platform of the nascent Republican Party urged Congress "to prohibit in the territories those twin relics of barbarism—polygamy and slavery." For four decades, scribblers described the horrors of white slavery among the Mormons. Plans were drawn up by

apparently responsible officials to rescue Mormon womanhood from its horrible fate. When they were at last in a position to effectuate a rescue, they found to their consternation that the plural wives had no desire to be freed.

Mormon ploygamy did not directly affect the Gentiles, nor did it interfere with their welfare or freedom. If they had regarded it as merely a loathsome practice, they might have felt contempt for the Mormons, but the violence of the Gentile reaction was a measure of the secret attractiveness of the Mormon "sin."

If one follows Dr. Kinsey's thinking in *Sexual Behavior in the Human Male*, the Gentile attitude was merely another manifestation of the habitual indignation of the undersexed toward the normally virile, an indignation which Kinsey believes lies at the root of our code of sexual crimes. In this context, it is interesting that the Mormon hierarchy—obviously not an instance of the alleged domination of society by erotic defectives—punished certain transgressions savagely. Brigham Young, for instance, tried to re-establish the Biblical penalty of death for adulterers. This, however, was not Puritanism, but rather an understandable effort at self-defense by the comparatively aged husbands of plural wives.

The crusade against Mormon polygamy resulted in a Federal statute outlawing plural marriages. Most Mormons refused to obey a law which sought, as they put it, to transform their wives into concubines and their children into bastards.

Polygamy seems to have arisen initially among the Mormons merely because of the abnormal virility of the Prophet, Joseph Smith. This does not, however, explain why Brigham Young promulgated the doctrine publicly eight years after Smith's death at the certain cost of stirring up a wasp's nest of anti-Mormon prejudice. The possible motives behind this decision are interesting.

Plural marriages enabled single women to enter family groups under male leadership—virtually a necessity under the hard conditions of desert pioneering. The institution was a strong incentive to conversion. Any female, however unattractive, could look forward to being "sealed" in marriage in Utah, protected, provided with a home, given the part-time services of a man and the opportunity for motherhood.

But there were also more deep-seated reasons. Nothing was better calculated to cut the Mormon community off from the gentile environment. Isolation was what the Church wanted and

isolation presupposed antagonism. Without plural marriages, Mormonism, as a separate way of life, might have been dissolved by the American environment a generation earlier.

This practice—"as dull and heaven knows as laborious an institution as humanity has ever evolved," in De Voto's opinion—by no means transformed Mormon life into a wild and continuous bacchanalian orgy. The costumes of the Mormons were drab, their life was gray and their amusements were insipid. On Sundays, the flock was assembled to hear Brigham Young or some other Church dignitary fulminate against immodesty in female attire, rail against vanities and vice and excoriate Mormon womanhood for its timid efforts to borrow the alluring artifices of the "whory" Gentiles.

The Mormons went to great lengths to prove that their multiple marriages had no relationship to sexual passion, but constituted a duty imposed upon them by the Lord. They considered the outside world sinful and licentious and believed that they alone were pure. There is, however, no more reason to accept Mormon protestations of Puritanism at face value than the similarly motivated rationalizations of the Gentiles toward polygamy.

Plural marriages rounded out the framework of the Mormon authoritarian control system. When considered in this light, the audacity of the doctrine is breath-taking. Contemporary totalitarian systems apportion pecuniary rewards, status and honors; they manufacture social approval; they impose ideas and creeds; they give or withhold freedom. They use these incentives to make the subject serve the ends of the dictatorship. But none of them has dared to assume direct control over a process as intimate, powerful and fraught with explosive potentialities as man's gratification of his sexual desires.

The Mormon Elders perceived the strategic importance of this power and had the courage to use it. In a lecture to Mormon missionaries departing for England, Elder Heber Kimball warned against their cohabiting or marrying women of their own choosing: "I have said that you have no business to make a selection of any of these sheep . . . or make any covenant with them, until they are brought home and placed in the fold, and then if you want a sheep or two, ask the shepherd for them. . . Why? Because they are his sheep—mark it. . . I would rather have my head laid upon a block, and severed from my shoulders than ever make a proposal to any woman living upon the earth

and marry her, unless I had permission from the chief shepherd. *That tells it.*"

If the Mormon leadership had actually believed that cohabitation was purely for procreative ends and that sexual passion had been sublimated by the Saints, it would not have insisted so strenuously on retaining its power to give or withhold women. The old men generally reaped the rewards of plural wives because they were successful, able to support them and tried in the Mormon crucible. These dignitaries often had to be cajoled into embarking on an activity which had become by now more irksome than enjoyable. Discussing the "sealing" of young wives to men of sixty, Heber Kimball painted an attractive picture:

"I have noticed that a man who has but one wife, and is inclined to that doctrine, soon begins to wither and dry up, while a man who goes into plurality looks fresh, young and sprightly. . . I do not know what we should do if we had only one wife a piece."

Beginnings of Treason

The promulgation of the doctrine of polygamy was a powerful contributory cause to the clash between the authoritarian Mormon state and the nation. But the conflict would have been inevitable even without it.

The insignificant Millard Fillmore had vaulted from the Vice Presidency into the White House upon the untimely death of President Zachary Taylor. Fillmore named Brigham Young Territorial Governor of Utah with a coalition cabinet of Mormons and Gentiles. A certain Judge Brocchus, sent out by the Federal Government, had the temerity to warn the Mormon leaders not to make disloyal statements in public.* "If I had but crooked my little finger, he would have been used up," Brigham Young remarked, presumably in order to demonstrate his tolerance to the Gentile world. Brocchus was hustled out of Utah, but new "carpetbag" officials replaced him. There was Judge Drummond—"full of pox from the crown of his head to the point of its beginning", in the elegant language of Heber Kimball. Some of these officials were charged by the Mormons with taking "unhallowed liberties with the females"—a very popular accusation among the righteous Saints. Non-Mormon cabinet officials were

*A Mormon leader, Daniel H. Wells, had described the United States as "a stink in our nostrils." On the death of the President, Brigham had preached: "Zachary Taylor is dead and gone to hell, and I am glad of it."

illegally ordered "placed in custody" by Brigham's Legislature. Governor Young shocked the nation by describing Utah Territory as "free, sovereign and independent."

In 1856, a deputy in the Land Office was severely beaten, allegedly by William A. Hickman, the most notorious killer among Brigham's Avenging Angels. That month, the Gentile Secretary of State for Utah was murdered. The act was probably the work of Indians but, in view of Brigham's recent doctrinal discovery that those who opposed the dictatorship of the Mormon Church should be saved by having their blood spilled upon the ground, the Gentiles may be forgiven for ascribing the act to the Avenging Angels.

Judge Drummond resigned his post and returned to Washington. In March 1856, he submitted six charges to the United States Attorney General:

"(1) That Brigham Young is absolute dictator of Utah.

"(2) That male members of the Church are bound to Young by secret oaths.

"(3) That a group of men have been set apart as 'destroying angels' to take the lives and property of those who question Young's authority.

"(4) That Federal officials are insulted, harassed and annoyed, and have no redress; that they are forced to listen to Mormons condemning the Government.

"(5) That records of the court have been destroyed with the knowledge and approval of Young.

"(6) That laws are administered differently against Gentiles and against the Mormons."

(It will be noted that Judge Drummond made no reference to polygamy. He was no ascetic. In fact, he had enraged the Mormons by bringing "his harlot" to Utah and keeping her in the courtroom while he presided over cases.)

In substance, these charges were true. Only a President derelict in his duties could have ignored them. Under these circumstances, the Administration of President Buchanan decided to remove the Mormon officials and install a territorial government prepared to enforce the laws under the Constitution. The Mormon legend of persecution by the Democratic Administrations of Pierce and Buchanan does not stand examination. Young had been installed as Governor. Many of the officials sent out to Utah had arrived sympathetic, or at least tolerant, toward Mormonism. If they had been disabused by events, the blame rested on the Saints. These

officials eventually discovered that the Mormons recognized no categories other than adherents, pliant camp followers and outright enemies.

Fundamentally, the Mormons had learned little from their persecutions in Missouri and Illinois. They could not conceive of any middle ground between rule and slavery. When given power, they abused it. When compelled to share power, they set to work to undermine their colleagues.

The Nauvoo disaster, however, was not repeated in Utah. The nation was plunging toward Civil War, and in comparison with the all-engrossing issue of slavery, Mormon authoritarianism was a picayune problem. The Saints were strongly entrenched in desert country which nobody coveted. They were numerous and well-armed. They were under brilliant and determined leadership, whereas a feeble, devious, vacillating politician sat in the White House.

The "Utah War"

In June 1857, President Buchanan directed an expeditionary force of 2,600 men to proceed from Fort Leavenworth to Utah to install non-Mormon officials in the Territory. Eventually, 5,300 men, or about 40 per cent of the entire standing army, was deployed in subduing these recalcitrant polygamists. Under Secretary of War John B. Floyd, military procurement was honeycombed with corruption. One contractor made a profit of \$170,000 merely from flour sales for the so-called Utah War.

On learning about the expeditionary force, Jedediah Grant, second-in-command of the Mormon hierarchy, jeered: "If we were to establish a whorehouse on every corner of our streets, as in nearly all other states outside of Utah . . . we should doubtless then be considered good fellows." Kimball said he had enough wives to whip the whole American Army and suggested the invasion might be for the best as the Mormons would be able to take over the Army supplies and oxen.

The Mormons in the outlying and indefensible settlements were forthwith ordered to abandon them and move to southern Utah. The able-bodied men from these outposts joined the Nauvoo Legion, comprising about 2,000 troops.

In his capacity as Territorial Governor, Brigham Young issued in mid-September a proclamation which was unadulterated treason. It began with the announcement: "We are invaded by a hostile force who are evidently assailing us to accomplish our

overthrow and destruction." The order continued: "Forbid all armed forces of every description, from coming into this territory under any pretense whatever." The forces of the Territory were to hold themselves in instant readiness to repel invasion. Martial law was declared throughout Utah and no person was allowed to enter, leave or traverse it without a permit.

Young issued instructions to put to the torch all buildings on the line of march of the invading force. The Mormons burned the grass in advance of the American troops in order to weaken their animals and thus force them either to die in the desert or retreat. Raiding parties of the Nauvoo Legion burned three supply trains, destroying enough foodstuffs in one operation to keep the Army fed in winter quarters for two months. But except for the Mountain Meadows Massacre, there was no killing. Young had decided, for the time being at least, on a harassing, guerrilla operation, designed to stall the invaders. After they had frozen and starved through the winter, he could plan his next move.

President Buchanan issued a clear, unemotional proclamation which began: "Fellow citizens of Utah, this is rebellion against the Government to which you owe allegiance; it is levying war against the United States, and involves you in the guilt of treason. Persistence in it will bring you to condign punishment, to ruin, and to shame; for it is mere madness to suppose that with your limited resources you can successfully resist the force of this great and powerful nation." As if he were writing for children, Buchanan patiently explained: "You have settled upon territory which lies geographically in the heart of the Union. The land you live upon was purchased by the United States and paid for out of their Treasury; the proprietary title to it is in them, and not in you." The President thought this "the first rebellion which has existed in our territories." He believed that "humanity itself requires that we should put it down in such a manner that it shall be the last." Within less than four years, Buchanan's own War Secretary was to become one of the leaders of a far greater rebellion.

In Brigham Young's opinion, "the President has no more regard for the Constitution and laws of the United States and the welfare of her legal citizens than he has for the constitution, laws and subjects of the kingdom of Beelzebub."

Young planned to burn down Salt Lake City and withdraw the flock into the southern wilderness: "... when the time comes to burn and lay waste our improvements, if any man undertakes

to shield his, he will be sheared down. . . Now the faint-hearted can go in peace; but should that time come, they must not interfere. Before I will suffer what I have in times gone by, there shall not be one building, nor one foot of lumber, nor a stick, nor a tree, nor a particle of grass and hay, that will burn, left in reach of our enemies. I am sworn, if driven to extremity, to utterly lay waste, in the name of Israel's God."

When envoys from the Army warned the Mormon leader that they were outnumbered and would inevitably be destroyed, Brigham replied: "It is now the Kingdom of God and the Kingdom of the Devil."

Thirty thousand Mormons, with all their movable belongings, trekked southwards into the bleak hills and empty desert for a protracted last stand. They intended to make "a Moscow of Utah and a Potter's Field of every canyon." That volatile substance, popular sympathy, swung to the side of this embattled people, fighting for their faith under an indomitable leader.

"Squaw Killer" Albert Sidney Johnston, in command of the army of invasion, soon to meet death with the Confederate Army at Shiloh, wanted to carry the war forward, but the newly-appointed Territorial Governor, Alfred Cumming, counselled negotiation. He had a promise from President Buchanan that the Mormon leaders would be pardoned if they recognized his authority. Brigham Young met him, having previously expressed the hope that "the feeling of the people would be cold enough to freeze peaches." This Cumming was tolerant, understanding, a good diplomat. He succeeded in convincing Young that the soldiery had no intention of laying waste the country. Once this deep-seated fear, born of the mob violence of Missouri and the murders in Carthage and Nauvoo had been dispelled, the battle was more than half won. Young agreed to recognize Cumming as Governor of Utah. The American army of invasion marched through a now-deserted Salt Lake City.

President Buchanan issued a general amnesty and the practically bloodless "Utah War" was over. It had cost \$15 million. It had demonstrated the colossal incompetence and venality of an Army Supply Department which provided the officers with more epaulettes than they needed and forgot to give the men blankets, coats, stockings or boots. But more than this had been accomplished. Despite Brigham Young's indomitable courage and his tactical skill—qualities which gave him a 'moral' victory in the encounter—he had recoiled from a decisive test of strength. In

the final showdown, the protection of Jehovah did not tip the scales against the field artillery. As a sovereign power within the United States, Mormonism had been crushed. For the next generation, the conflict was to take the form of attrition with the Mormons slowly surrendering those tenets which prevented their assimilation within the United States and gradually succumbing to Gentile economic and cultural encroachment.

The "Utah War" was known as Buchanan's Blunder. The President was subjected to ridicule, both at home and abroad. Yet it is difficult to see what other course would have been wiser. Failure to send an expeditionary force of massive strength into Utah Territory would have encouraged Mormon separatism and, while postponing the crisis, would have made it eventually harder to resolve. Nor can the compromise arrangements be criticized. To have laid waste Utah and hanged the traitorous leaders of Mormonism would have given the Church a new harvest of martyrs and increased its intransigence. The expedition, while inglorious, costly, badly planned and miserably equipped, seems to have been unavoidable.

The Mountain Meadows Massacre

Thanks to the refusal of the Administration to try the Mormon leaders for treason, when the full story of the conflict was unearthed the Mormons appeared not as martyrs but as murderers.

While the American expeditionary force was being readied for Utah service, the Saints heard that 136 emigrants were on their way from Arkansas to California via Utah. There were reports that many of these people were 'Pukes' and Illinoisians and that a few of them had been among the mob which had murdered the Prophet. An order went out to give them no assistance and no food.

At this period, the Mormons were passing through a difficult transitional period. There had been years of blight and bad harvest. Morals were going to pieces. At one meeting, when Brigham Young asked all brethren who had committed adultery since joining the Church to rise, three-quarters of the congregation stood up. The Mormon community contained, Young decided, "the greatest and smoothest liars in the world, the cunningest and most adroit thieves, and any other shade of character you can mention."

He launched a reformation movement and with it went the

gruesome doctrine of blood atonement. Young men who refused to give up their girls to the aged elite of the Mormon hierarchy were castrated by the Sons of Dan. According to an apostate leader of the Saints "this was done for a double purpose: first, it gave a perfect revenge, and next, it left the poor victim a living example to others of the dangers of disobeying counsel and not living as ordered by the Priesthood." The fanatical Jedediah Grant said it was time to "unsheathe the sword." Bill Hickman scalped and slew at the behest of the hierarchy, boasting that he feared no living man and feared ghosts even less.

Brigham Young had issued orders that the 136 pioneers from Arkansas be allowed to pass through Utah, but the order did not reach the subordinate echelons of the organization in time. The Mormon leaders of the Southern District decided that the party should be destroyed. The work of execution was assigned to John D. Lee.

On September 3, 1857, the emigrant column of men, women and children reached Mountain Meadows, a plain surrounded by mountains. A party of real Indians and of Mormons disguised as Indians opened fire from ambush, killing and wounding twenty of them. For four days, the pioneers writhed with thirst while those who attempted to approach a nearby stream for water were cut down by Mormon fire. The emigrants showed a flag of truce from a covered wagon and Lee accepted their surrender with a promise of protection and escort to the nearest Mormon community. Once they had captured the emigrants' arms, however, the Mormons massacred the men, women and wounded. They killed those children who were old enough to describe what had happened and spirited the rest into Mormon families.

Lee's elastic conscience was not troubled over this act of treachery and murder. Wilfred Woodruff, a Mormon dignitary, wrote in his Journal shortly after the massacre: "Brother Lee said that he did not think there was a drop of innocent blood in their camp, for he had two of the children in his house, and he could not get but one to kneel down in prayer time, and the other would laugh at her for doing it, and they would swear like pirates."

But the fact that he had acted counter to Brigham Young's wishes bothered the assassin. Lee travelled for ten days to report to the Mormon President. When he had narrated the entire story of the massacre, Young "wept like a child . . . in bitter anguish." He thought it was "the most unfortunate affair that ever befell the Church." He was afraid of "treachery among the brethren that

were there." Lee was ordered never to breathe a word about the affair— not even to such a trusted elder as Heber Kimball.

"If only men had been killed," Brigham Young added, "I would not have cared so much; but the killing of the women and children is the sin of it."

That night, the Mormon President went "right to God" with his problem. The Lord answered him. "I have evidence from God," Brigham told Lee the next morning, "that . . . the action was a righteous one and well-intended. The brethren acted from pure motives. The only trouble is . . . they were a little ahead of time."

Thus after soul searching the man who believed in spilling the blood of sinners on the earth as a means of saving them had found reasons to justify killing children in a good cause. Brigham Young and John D. Lee remained good friends for years afterwards. The President gave the assassin two more wives as a token of Mormon esteem. In his capacity as Superintendent of Indian Affairs for Utah Territory, Young sent the United States Government a false report in which he laid the blame for the massacre on the Indians. He thus became an accomplice after the fact to a sordid act of murder.

For seventeen years, the Mormons—"the smoothest liars in the world" as Brigham Young had characterized them—managed to hide the truth about this massacre. Then, in 1874, an investigation under Judge Cradlebaugh unearthed the facts. President Young promptly cast his friend John D. Lee to the wolves, expelling him from the Church and allowing his wives to abandon him if they chose. Eleven did so forthwith. Lee was brought to trial in 1875, but the Mormon jury could not reach a verdict. Nation-wide horror at the facts exposed and the growing belief that justice was impossible in Utah induced the Church to let its trigger man die. A second jury convicted John D. Lee, who, after writing his sensational book *Mormonism Exposed*, was shot at the scene of the massacre.

The treason of Brigham Young and his coadjutors was a clear case of levying war. This treason was not an individual act of adventurism, but a logical consequence of the Mormon effort to build within the boundaries of the United States the type of society which they believed God had ordained. Like the similar but far thornier problem of the Confederacy, it posed the ques-

tion of how to cope with treason effectively when the traitors voice the beliefs of entire regions and sub-nations.

Even Hitler conceded (in *Mein Kampf*) that violence alone will never succeed in shattering a strong ideology. If the 70-odd indictments for treason which Judge Delaney R. Eckles had prepared against Brigham Young and other Mormon leaders in 1858 had been allowed to ripen into trials, convictions and hangings, the hierarchy might have gone down into history as martyrs. Had the rigors of the law been applied to Utah, that area would have offered smouldering opposition to United States authority as long as the Mormon creed survived.

With the exception of the emotional crusade against polygamy, the course actually pursued by the United States was politically expedient. Sufficient force was applied to restrain Mormon separatism and Mormon authoritarianism. The basic problem hinged on the clash between different philosophies of life. Only time and closer cultural communication could settle this. Mormonism as an anti-democratic enclave within American democracy eventually disappeared in the ensuing but peaceful conflict of ideologies. Mormonism as a church and a faith survived to make continuing constructive contributions to American life.

In a democracy, the only traitors likely to receive condign punishment are those who abjectly fail. When their plans are visionary and unrealistic, when the things they stand for awaken no chords of sympathy in the masses of the people, when they are bunglers and incompetents—in short, when they are not dangerous—it is safe to hang them.

JOHN BROWN—ARMED PROPHET

"I see a book kissed, which I suppose to be the Bible, or at least the New Testament, which teaches me that all things whatsoever I would that men should do to me, I should do even so to them. It teaches, further, to remember them that are in bonds as bound with them. I endeavored to act on that instruction. I say I am yet too young to understand that God is any respecter of persons."—John Brown in his speech to the Court when convicted of treason.

Together with his small and devoted band of raiders, John Brown was the only man ever executed in the United States for the crime of treason.

He lived like a Hebrew prophet, fought like Spartacus and died like Jesus, surviving after death as the legendary personification of stern and uncompromising truth. His mission was to bring moral conscience to a nation and unflinching purpose to an army. He died on the gallows too soon to see that army or to realize the full magnitude of his achievement.

He is one of the most paradoxical figures in American history. At the age of fifty-five, this respectable wool merchant, land speculator and pillar of religion crossed some private Rubicon to emerge as a guerrilla warrior, an outlaw and a professional revolutionary. When he took this step, Brown had no practical experience in combat and only the most rudimentary knowledge of warfare. Despite these seemingly insuperable handicaps, he went into the bloody cauldron of Kansas and emerged as a legend.

When the cap was put over his head and the noose slipped around his neck on December 16, 1859, John Brown felt that he had accomplished his "greatest or principal object." No other pri-

vate citizen in the entire course of American history ever gave such a massive impetus to the drift of events toward war. His attack on Harper's Ferry was "a firebell in the night"—to use Jefferson's phrase—which roused the slumbering North to the iniquity of slavery and the need for its destruction.

Paradoxically, John Brown's victory was a refutation of the theory of political action which he had consistently espoused all his life. To use a phrase borrowed from anarchist doctrine, he was "a propagandist of the deed"—he thought that a decisive act of violence was necessary to rouse the lethargic masses and force men to choose sides.

In Kansas, he carried out a massacre of slavery sympathizers in order to polarize the Northern and Southern camps and to drive the undeclared conflict of his time toward full-scale civil war. This misfired. The moderate leaders of the Free State forces pushed John Brown aside, relied on legal measures and brought Kansas peacefully into the Union as a non-slave area.

At Harper's Ferry, John Brown made his second and greatest attempt "to hurry up the fight." Setting up a base of operations in the Appalachians, he planned to unleash hit-and-run raids on Southern communities, expropriating arms, freeing and recruiting Negro slaves into a rapidly expanding guerrilla army. This open sore on the borderland between slave and free soil was to spread southward. The fire of war was to be lit along the entire Mason and Dixon Line. Here again he failed. His raid at Harper's Ferry was smashed and his men were dispersed, killed or captured.

What if he had succeeded? The result—either in Kansas or in Virginia—would have been a heavy blow to the anti-slavery cause. In the late 1850's as at no other time in American history, the Federal Government was in the grip of a pro-slavery cabal. The full force and prestige of the Government would have been marshalled against the insurrectionaries. There can be little doubt that the North, as a whole, would have rallied behind the Government on the issues of stifling treason, suppressing rebellion and preserving the Union. In this process, the radical Northern leaders would have been painted as instigators of treason, the nascent Republican Party would have received a terrible setback, and the growing hold of the Abolitionists on Northern public opinion would have been broken.

There can hardly be any doubt about this. The sequence of later events proves it. When the Civil War finally broke out some years later, the issue which roused the North to battle was preser-

vation of the Union, not abolition of slavery. Even so, anti-Negro draft riots flared up in Northern cities and treason on a vast and ramified scale spread through the Middle West. It was not until 1863 that Lincoln judged the situation ripe for the Emancipation Proclamation.

John Brown's strategy was the naive one of trying to force events. Lincoln's was that of relying upon the logic of the struggle itself—an implacable logic which gradually and silently drove the masses to reluctant acceptance of more and more radical measures. If John Brown had had any measure of success in what he attempted to do, he would have isolated the abolitionists from the people as a whole and thus condemned to defeat not only the vanguard but the cause.

What is remembered about John Brown is not his life but his death. He had wanted to be a warrior, but he became a martyr. Although contemptuous of those who merely talked against slavery, he stirred the nation with his words and hardly scratched its surface with his sword.

In the last days of his life, John Brown gained a deep understanding of the role he was destined to play. He saw that the spilling of his blood was to be the most necessary thing in his life. With the gallows facing him, Brown was importuned to flee by Northern sympathizers who had worked out detailed plans for a rescue. The guerrilla leader steadfastly refused. He went to the gallows "fully persuaded that I am worth inconceivably more to *hang* than for any other purpose."

Bleeding Kansas

In 1852, the most machine-rigged convention in American history nominated the innocuous Franklin Pierce of New Hampshire for President on the Democratic ticket. This Pierce was gay, effervescent, friendly—a man of superficial kindness and boyish charm. He possessed a quick and brilliant mind which darted over the surface of ideas, impressing everyone with its acrobatic qualities and felicity of expression. He was glib, without an original thought, deeply religious and haunted by knowledge of his own inadequacy. If there had been any greatness in him, he would have been a tragic figure; as it was, he was merely pathetic.

Pierce had retired from the Senate previously because of the embarrassment he caused himself by excessive drinking. His wife and his close friend, Nathaniel Hawthorne, reacted to the news

of his nomination for the Presidency with the exclamation, "Poor Frank." Once in the White House, he exuded charm and made promises to politicians which he had no intention of keeping, simply because he wanted to be liked.

Being an appallingly weak man, Pierce appointed a strong cabinet. The Warwicks of his Administration were Caleb Cushing and Jefferson Davis, both rabidly pro-Southern. Cushing was a Northern politician of infinite versatility who on all occasions espoused the interests of slavery. He was a man whom nobody trusted, whose real intentions nobody perceived and whose moral convictions, if he had any, were systematically sacrificed to his personal ambitions. Jefferson Davis was a cold, somewhat inhuman Army officer of conspicuous ability. His mind was powerful, but large enough for only one obsession. That obsession was the extension of chattel slavery.

This sinister duet was soon given the Kansas situation to handle. Kansas and Nebraska were both north of the Missouri Compromise line and, as such, would have been brought into the Union as free territories if that arrangement had still been in effect. Under pressure from Southern party bosses, Senator Stephen A. Douglas of Illinois, the so-called Little Giant, forced through a proposal that the areas be organized slave or free as their inhabitants should decide. For all practical purposes this principle of squatter sovereignty was an invitation to civil war.

Kansas was to be the battleground in which the momentous issue would be settled once and for all: Was the West to be open or closed to slavery?

Border Ruffians spilled across the Missouri frontier—"rough, coarse, sneering, swaggering, dare-devil looking fellows as ever swung upon a gallows," thought Dr. J. V. C. Smith, a peripatetic Boston minister. They came as armed mobs, recruited by incendiary Missouri pro-slavery leaders. Their raids on frontier settlements imperilled the lives and property of Free Soilers.

Five of John Brown's sons went to Kansas in the Spring of 1855, driven westward by drought at home, the lure of fertile grassland waiting for the plow and the desire to strike a massive blow against slavery. Like their father, they had been Abolitionists as long as they could remember. In every Brown homestead, there had been a secret closet in the barn where runaway slaves could hide. Once John Brown had solemnly assembled the children and asked them to dedicate their lives to "break the jaws of the wicked and pluck the spoil from his teeth." They had sworn the

oath. Now they had gone to Kansas to make good on it. Soon their father was to follow them.

John Brown, the Man

Brown was deeply religious with little formal education. His prose style, his imagery, his manner of life all derived from the Old Testament. The power of his personality, immediately felt by all who dealt with him, was that of a man who never doubted that he was doing God's work. Although inflexible in conviction, he was a drifter according to the standards of practical life. He had taken up farming, sheep-herding, wool-grading and commission merchandizing. Once he had been a well-to-do Boston merchant, travelling to Europe to handle his own export business but in this, as in most ventures, John Brown had failed. Yet he was able to win men over, to dominate them, to stamp an indelible imprint on their minds and characters. He was capable in all tangible, physical, material matters—such as judging wool specimens—but in the simple abstractions of profit-and-loss and operating margins, he was utterly helpless.

Although the physical Brown plunged from one unprosperous venture into another, the course of the inner man had long since been set. Sharply at odds with the main branch of the Abolitionist movement—the followers of William Lloyd Garrison—Brown believed that the solvent of slavery must be blood. As early as 1851, he had organized free Negroes in Springfield, Massachusetts, into a military group, calling it the United States League of Gileadites. This corps was to rescue runaway slaves from the hands of Federal officials by striking suddenly, hitting hard, leaving neutrals alone. "Make clean work of your enemies," Brown insisted, and above all "shoot to kill." Traitors to the organization "must die."

By 1854, John Brown had decided that his "greatest or principal object" was to organize slave revolt in Southern territory. According to the reminiscences of his daughter, Annie, he had already decided, for reasons which he never divulged, that the first blow would probably be launched against Harper's Ferry.

In appearance, John Brown was sinewy and weather-beaten. His head was disproportionately small for his rangy body. With his fierce, clouded eyes and jutting, beak-like nose, he resembled a carnivorous bird. To Frederick Douglass, the man was the exemplar of "stern truth, solid purpose, and rigid economy." Ralph Waldo Emerson thought him "so transparent that all men see

him through. He is a man to make friends wherever on earth courage and integrity are esteemed. . . .”

This was one side of the medal. On occasion, Brown could be devious, as in his explanations of the Pottawatomie massacre, or else by a sheer act of will banish from his mind all facts and impressions which conflicted with his single-minded conception of his personal mission. To a Kansas fellow-fighter, George B. Gill, he was “very superstitious, very selfish and very intolerant;” a man of “immense egoism” who “could not brook a rival. . . . He was iron and had neither sympathy nor feeling for the timid and weak of will.” Gill added: “Brown’s memory will never be as sacred a thing to me as the memory of some of those who fell with him, for there were some of these whose aspirations were only for others, whose dreams and hopes and loves never centered on self. . . .”

A Nation Aroused

When John Brown arrived in Kansas, the Territory seemed firmly held by the pro-slavery faction. It had been opened for settlement in July 1854 and territorial elections were held in November. About a thousand Missourians crossed the border in wagons, lubricated with whiskey and armed with bowie knives and revolvers. They cast 1,729 fraudulent ballots, set up a slaveholders’ legislature and ousted the handful of elected Free State representatives. This legislature, born in violence and fraud, proceeded to enact a Black Code that would have done credit to eighteenth century Haiti. To give slaves literature which advised them to rise or conspire was made punishable by death. Merely possessing printed matter which maintained that slavery was not lawful in the Territory carried a minimum sentence of five years’ hard labor.

In the following year, a new election was held. Again the marauding army of Missouri Border Ruffians—“hairy-faced . . . dirty . . . eyes whiskey-red, and the teeth the color of a walnut”, according to a critical Northern observer—reeled into the Kansas villages, intimidated the settlers, stuffed the ballot boxes and made a mockery of the franchise. “No arguments against abolition papers but Missouri river, bonfire and hemp rope,” a Missouri meeting exulted after this second great electoral victory.

The tide, however, was beginning to turn. The Missouri rabble controlled Kansas during the first year of the struggle because it was closer to the theatre of action. By 1855, the New England

Emigrant Aid Society was sending small bands of anti-slavery settlers into the district equipped with Sharpe's rifles or, as they were euphemistically called, Beecher's Bibles--the allusion being to a sermon on slavery and the best way of combatting it by the eminent New England divine, Henry Ward Beecher.

The issue was being resolved by larger forces. Kansas soil was not well suited for slave-labor crops, hemp being the noteworthy exception. Southern planters hesitated to bring their Negroes into an area which would probably decide for freedom and thus by one stroke emancipate them. The main tide of immigration was spilling over from the Midwest and this mass, largely unpolitical, interested only in farming homesteads and living in peace, was being driven toward anti-slavery action by the rabid violence of the Southern element.

The Free State forces repudiated the bogus legislature and organized themselves into a political party. Under the leadership of Dr. Charles Robinson, the agent of the New England Emigrant Aid Society, they formed a dual government of Kansas, based on the principle of preserving the American right to democratic elections free from intimidation, mob action and murder. John Brown and a small minority split off from the main body of Free State forces, since the latter had committed itself to "stringent laws excluding all negroes, bond and free, from the Territory." Two separate elections were held for the Kansas Territory Representative to Congress. The slavery element polled 2,721 votes, of which a Congressional Committee found at least 857 to have been fraudulent. In subsequent elections boycotted by the Southerners, the Free Soil candidate registered 2,849 votes. Thus, by the end of 1855, the tide had already turned toward freedom. The only weapon remaining for the Southerners was blind force.

If the Government of the United States had been in the hands of a President of even average integrity and courage, the Kansas issue could now have been settled. Faced with a situation in which an armed minority had invaded the state, set up a rump government through a pseudo-election in which most of the votes cast were illegal and passed laws which flouted the Constitution, it is difficult to see how any American Chief Executive could have hesitated. This emergency cried for the President to establish an impartial Federal authority in Kansas, investigate the frauds and hold new and fair elections under appropriate safeguards.

Unfortunately, the President of the United States was Franklin Pierce. He believed in slavery. His great design was a vigorous

expansion of American frontiers southward into the Caribbean and over the Latin American mainland. For this last objective, he needed the unwavering support of the South. On the advice of Caleb Cushing, President Pierce delivered a special message to Congress on January 24, 1856, in which he blamed the Kansas violence exclusively on the anti-slavery emigrant aid groups, upheld the rump government and warned the Free State elements that their action in electing Robinson as Governor was "of revolutionary character" and verged on "treasonable insurrection."

The agents of the Pierce Administration in Kansas now attempted to stamp out The Free Soil Movement as treason to the United States.

Judge Samuel D. Lecompte, a blustering ignoramus whom Pierce had sent to Kansas to intimidate the anti-slavery forces, harangued a grand jury in support of the edicts of the pro-slavery legislature. He declared that all who "resist these laws, resist the power and authority of the United States and are therefore guilty of high treason." Actual resistance need not be proved. If "combinations have been formed for the purpose of resisting them . . . then must you find bills for *constructive treason*."

Chief Justice John Marshall had forever banished the doctrine of constructive treason from American soil in his famous opinion in the Burr case. The Constitution repudiated it. But in this time of rending faction and national fission, the law was sharpened to the exigencies of party struggle.

As Lecompte's captive grand jury convened, the Free Soil leader, Dr. Charles Robinson, who headed the dual Government of Kansas Territory, was headed East to expose the lawless conditions in the embattled area. Robinson was yanked off a steamboat and imprisoned for resisting arrest even though no indictment had yet been found against him. He was kept in Leavenworth for four months awaiting trial as a traitor. Other Free Soil leaders were in flight or in hiding. Losing all sense of restraint, the grand jury under Judge Lecompte demanded that all Free Soil newspapers be suppressed as public nuisances and that the Free State Hotel in Lawrence be demolished.

Factional violence, egged on by the Federal judiciary in Kansas and supported tacitly by the sinister clique that dominated the Administration in Washington, now ran rampant. A United States Marshal raised a posse, which included a "swearing, whiskey-drinking, ruffianly horde" of some 750 Missourians and marched on the Free State Town of Lawrence. Although armed and able

to fight, the Northerners decided against any act of resistance which would precipitate full-scale civil war. Under a red banner with the legend 'Southern Rights', the raging mob wrecked the presses of the Lawrence newspapers, turned artillery on the Free State Hotel and demolished it, then set fires in the city. The South exulted over this triumph of evil passion, but the nation as a whole was stirred to fury. While midnight assassination raged through Kansas, the stream of Northern immigrants dedicated to fight for freedom began to seem more and more like a torrent. Meetings throughout the nation vowed to avenge Lawrence.

Murder on the Pottawatomie

Brown and his small band were too late to relieve Lawrence. Heartsick, they came together the morning after the disaster, all of them expecting to be butchered by the power-drunk Border Ruffians. "We have got to defend our families and our neighbors as best we can," John Brown said. "Something is going to be done now." What had to be done was "some radical retaliatory measure—some killing."

Until this point, when John Brown had counselled taking the offensive and fighting fire with fire, others had talked him down. But now, that the Free Soil forces in Kansas were being hunted and burned out of their settlements, there seemed need for a man who could make the South understand that violence was an axe with two edges.

With four of his sons and two other men, John Brown moved down by nightfall through the timber and then across cleared land toward Pottawatomie Creek. Here there was a small settlement of pro-slavery forces known as Dutch Henry's Crossing.

The three Sherman boys—Dutch Henry, Dutch Pete and Dutch Bill—lived there. Once they had tried to beat a Free Soil man with an axe handle and on another occasion they had threatened the Brown family with extermination. The Doyle family, an ignorant lot of poor whites who had come up from Tennessee and were under the thumb of Dutch Bill, also lived there—as did a pro-slavery politician called Allen Wilkinson, described by neighbors as "the most evil looking man" they ever saw. Brown believed Dutch Henry's Crossing a good place to begin vengeance.

It was an ugly business. Brown's party pounded at the door of the Doyle cabin. When Doyle opened it, they took him and two of his sons outside. Mrs. Doyle begged in tears that a younger

son be allowed to live and her request was granted. The three Doyles were shot, hacked down with two-edged swords and left dead in the grass where they fell. There was no intentional mutilation, but it was dark, the swords made no noise, and the avenging party had more work to do before the sleeping settlement was roused. The next day Mrs. Doyle found the bodies. "Fear of myself and the remaining children induced me to leave the home where we had been living. I left all and went to the State of Missouri."

Brown and his men went to Wilkinson's house, dragged him from a sick bed, cut his throat and threw him on a pile of dead brush. Next they wakened Dutch Bill, cut off his hand, cracked open his skull and left him dead in the creek.

John Brown did not kill any of these men personally, but his sons did and their father stood by and watched. He wanted to be able to say afterwards that he had shed no blood in Kansas. The Pottawatomie Massacre, as it was called, aroused an outcry of horror throughout the South, but the Northern newspapers either did not report the story or else garbled the facts so as to lay the blood-bath on the Border Ruffians. It was not until Salmon Brown's confession, published in 1935, that any member of the Brown family admitted publicly to having organized and carried out the murders.

If the truth about Pottawatomie had been published in the Northern newspapers at the time, the nationwide surge of moral indignation over the raid at Lawrence might have broken up in confusion, doubt and division. Within the immediate area of simmering civil war, however, the impact was different. The moderate anti-slavery leader, Charles Robinson, commented afterwards: "I never had much doubt that Captain Brown was the author of the blow at Pottawatomie, for the reason that he was the only man who comprehended the situation, and saw the absolute necessity of some such blow and had the nerve to strike it." Others justified the killings as a means of preventing the people on Pottawatomie Creek from lynching their Northern neighbors.

Even the most sympathetic biographers of John Brown have covered their eyes in horror at this monstrous deed. Thus to the late Oswald Garrison Villard, whose book on the Abolitionist warrior is definitive, the massacre was a moral enormity which irreparably stains an otherwise pure spirit.

The crux of the moral issue, however, would seem to be

whether or not Kansas was in a state of civil war. John Brown believed it was. He considered that killing was necessary as a military act. An almost total breakdown of Constitutional rights had occurred in Kansas; the courts were being transformed into agencies of legalized murder; United States Marshals were using their office to arm mobs and give them license to burn and destroy. At least part of the blood-guilt of Pottawatomie would seem to lie at the door of Franklin Pierce, the President who had either forgotten or never understood his oath to uphold the Constitution.

We feel emotional revulsion toward Brown's act largely because he was physically present while the victims were hacked to pieces and their wives pleaded for mercy. If he had ordered the killing from a distance, the reaction of his biographers would doubtless have been more favorable. A political leader is allowed to order blood spilled, but not to wallow in it.

The Return of Order

The massacre on the Pottawatomie occurred on May 24, 1856. For the next few months, John Brown was an outlaw. An "army" of two hundred and fifty men marched on Osawatimie to capture him, burning and looting on the way. The veteran guerrilla leader recruited one-tenth that number of Free Soil volunteers, raided the enemy camp at dawn and took its commanding officer prisoner.

The situation was swiftly deteriorating. Partisan armed forces marched back and forth across Kansas, fighting, burning and taking reprisals. Outnumbered at the Marais des Cygnes, Brown took up a defensive station and fought desperately against superior fire-power. This time he was beaten; his little band was dispersed with heavy losses.

Throughout the North, the talk was of Lawrence. The Kansas Free Soilers were seen as martyrs to the unrestrained violence of a rabble armed by rump authority. Mass meetings throughout the country raised funds to equip immigrants with Sharpe's rifles. But contingents of colonists were stopped on the Missouri River by pro-Southern authorities, disarmed and turned back. An overland route was opened up through Iowa, called Lane's Trail in honor of one of the Free Soil leaders. Four hundred anti-slavery fighters moved down this trail into Kansas in a single contingent.

The precipitating factor in the situation proved to be the Presidential campaign. The vacillating Kansas Governor, Wilson

Shannon, lost his nerve and resigned. After a brief interregnum, President Pierce appointed a young giant, John White Geary of Pennsylvania, to sit in the Governor's chair. With the stink of Kansas blood and corruption in the nostrils of the nation, Geary came to the Territory "carrying a Presidential candidate on his shoulders." Six feet five and a half inches tall, inured to military command, a figure of great dignity and power, Geary had the qualities needed to restore order. He entered the Territory obsessed with the novel idea "That, in order to do any good, I must rise superior to all partisan consideration, and be in simple truth the governor of the entire people."

He ended the reign of terror. For the first time, settlers could live as Americans in the blood-soaked Territory. No longer would their barns be burned and their children murdered because of their opinions. Since the population of Kansas was overwhelmingly Free Soil, the restoration of peace meant that the larger battle had also been decided.

John Brown left Kansas. Although the fight had been won without him, he was now a legendary figure. He grew the patriarchal beard which posterity was to associate with him as a permanent feature. Thus disguised, he returned to Kansas in late 1858, using the alias Shubel Morgan. But the war in Kansas was over; it had degenerated into sporadic raids in which political and mercenary motives could hardly be differentiated.

Brown's men raided the homes of pro-Southern settlers and liberated a handful of slaves. In this venture, a man called David Cruise was murdered in his home and miscellaneous property confiscated. The raid over, Brown's men fled North. At 4:30 one morning, John Brown, disguised by his "waving, milk-white goatee", roused Allan Pinkerton from deep slumbers and induced him to take charge of the liberated Negroes and smuggle them from Chicago into Canada. (In a year's time, this Pinkerton was to head the Secret Service of the Army of the Potomac.)

The Virginia Plan

A few months before the Cruise affair, Brown had held meetings to talk about the Harper's Ferry operation that had so long been in the back of his mind. He declared that "God had created him to be the deliverer of slaves the same as Moses had delivered the children of Israel."

The plan was a simple one. He would hit Harper's Ferry without warning, at nightfall, with a handful of resolute men. In the

first blow, they would liberate about two hundred Negroes. With half of them, they would strike at the Federal Arsenal, take the weapons they needed and destroy the rest. The remaining slaves would be organized in small raiding parties to attack the plantations at night and liberate more Negroes. They would then retire into the Appalachians and establish a secure base of operations, from which they would sally out again and again—raiding, burning, liberating.

John Brown was vastly certain of his judgment, confident that God led him forward by the hand. Ill-informed on large issues, his political calculations were sometimes fatuous. He thought the result of this border war might be the secession of the Southern States. A Northern Federation—the old dream of the New England Federalists of 1812—could be established. Perhaps there would be European intervention to put down slavery on American soil.

For this grand design, a Constitution was necessary. At Springdale, Iowa, the “legislators” had met in the village schoolhouse to discuss everything from guerrilla tactics to spiritualism. One of the solons had to be severely censured for “hugging girls in Springdale legislature.” There was a bigger meeting in Chatham, Canada. Here twelve white guerrilla-fighters and thirty-four Negroes approved the “Provisional Constitution and Ordinances of the People of the United States” drafted by Brown.

Viewed as the constitutional framework for governing a few hundred or even a few thousand illiterate Negro plantation hands fighting for their lives in the mountains, this document was sheer paranoia. In the words of Hermann von Holst, one of Brown’s most sympathetic biographers, it was a “piece of insanity, in the literal sense of the word.”

But the Chatham Constitution had another purpose. It was intended to give men about to commit treason a sense of legal and moral justification which would inspire them to a steadfast and constant courage. Briefly, its central thought was that the existence of slavery meant a state of general and lawless violence. Slavery was war itself. Brown’s Constitution was to be the rock of freedom within order.

John Brown’s wealthy New England backers took no part in the proceedings at Springdale and Chatham. Reluctantly, with uneasy doubts, they secretly raised money among their friends to support the Harper’s Ferry operation. In talking to a friend, Gerrit Smith, a financier of anti-slavery causes, explained:

"You see how it is; our dear old friend has made up his mind to this course, and cannot be turned from it. We cannot give him up to die alone; we must support him. I will raise so many hundred dollars for him; you must lay the case before your friends in Massachusetts, and ask them to do as much. I see no other way."

The Military Problem

In the late summer of 1859, John Brown and twenty-one men were living at the Kennedy Farm, a ramshackle log-cabin structure in Maryland within a few hours ride of Harper's Ferry. Here they waited long, harrowing weeks while arms were brought up to the farm secretly on mule-back. Most of the men knew they were going to die and the waiting made the knowledge almost unbearable. Twice, the iron-willed Brown had to put down mutinous outbursts. Then, at last, on Sunday, October 16, 1859, the Commander-in-Chief of the Provisional Army ordered: "Men, get on your arms; we will proceed to the Ferry."

Harper's Ferry, the target of John Brown's raid, lies on the border of Virginia and Maryland. It is on a hilly spit of land and the town itself tumbles down a steep slope to the water. The finger of land is almost surrounded by water—the Shenandoah on the South, the Potomac on the North and the two joining in turbulent water where the land-spit ends. These rivers are broad and swift; they move over boulders and weave between sand bars. Beyond the Shenandoah, steep rock cliffs rise suddenly and the Potomac bank is a precipitous rock escarpment. Although today it is soiled and soot-caked by coal railroads that scar its beauty, the juncture of the Potomac and Shenandoah is still, as Thomas Jefferson noted, "one of the most stupendous scenes in nature . . . worth a voyage across the Atlantic. . . ." Its rock escarpments, Jefferson continued, are "monuments of war between earth and mountains which must have shaken the earth itself to its centre."

At the time of the raid, Harper's Ferry could be reached in one of three ways—down the sloping spit from Bolivar Heights, the commanding eminence of the land finger; over a rail and vehicular bridge across the Shenandoah, and by a similar covered bridge spanning the Potomac.

From a military standpoint, in short, the town was a mouse-trap. Once the enemy controlled three points, nobody inside it could possibly escape. Moreover, riflemen in position on Bolivar Heights or on either of the escarpments rising sheer from the far banks of the two rivers could pick off raiders moving within

Harper's Ferry, while protecting themselves behind tree and boulder cover.

Villard considers that John Brown's choice of Harper's Ferry as a target was a cardinal military blunder. This judgment seems unwarranted. The military problem was to deliver a paralyzing hit-and-run blow, then withdraw in an orderly fashion across the Potomac Bridge and proceed toward the hideout in Maryland. In Harper's Ferry, John Brown had to do the following things:—seal off its communications with the rest of the world, seize the Federal Arsenal, liberate slaves and arm them with Arsenal rifles, take hostages from among the more eminent citizens, overpower all local resistance, prevent reinforcements from arriving, and hold open the line of retreat.

There is much to be said for the selection of Harper's Ferry from a military standpoint. By controlling the two bridges and Bolivar Heights, Brown could prevent news of the raid from leaking out to surrounding communities until his work was done and he was ready to withdraw. Second, the main sources of danger were Charlestown and Martinsburg—two large neighboring towns with excellent militia units. If warned, these militia could be expected to spill down the wedge between the two rivers, attacking Bolivar Heights. Brown could count on fighting a delaying action on this narrow terrain, while he withdrew across into Maryland and destroyed the bridge behind him. Pursuit forces would then be obliged to cross the Potomac in boats—a time-consuming operation. Moreover, Harper's Ferry was then part of Virginia. And it was certain that the Virginia militia would not be able to pursue the raiders into Maryland until the matter had been cleared by the two state governors.

Politically, however, the choice was an egregious blunder. The 3,000 inhabitants of Harper's Ferry were largely railroad and arsenal mechanics—originally from Springfield, Massachusetts. Theirs was blood that John Brown could only shed with reluctance. Since the town was too far north for plantation agriculture, most of the local slaves were house servants, well-treated and reasonably content with their lot. They were poor fuel for the torch of revolution.

The Raiders

At about 10:30 on the night of October 16, John Brown's men crossed the bridge over the Potomac. Stevens and Kagi, Brown's two heroic lieutenants, drew guns on the watchman and told him

he was a prisoner. At first, the latter thought it a huge joke. He knew some of the raiders. They had been reconnoitering Harper's Ferry and were by now familiar figures in the town.

The next step was to cut the telegraph wires before anyone had time to give the alarm. Speed and skill accomplished the job. Before midnight, the few civilian guards at the Arsenal were put under arrest and the Armory was under the command of the insurgents.

Now Brown made a characteristically spectacular move. He sent a raiding party five miles beyond Bolivar Heights, thus dangerously splitting his tiny force, to the home of Colonel Lewis W. Washington, great-grandnephew of the Father of his Country. This dignitary was taken prisoner and conducted to the Arsenal. To add to the symbolism, the leader of the raiding party made Colonel Washington hand over the sword which Frederick the Great had given to his illustrious ancestor. This sword was presented, on John Brown's explicit instructions, to Osborn Perry Anderson, a Negro member of the raiding party.

At 1:25 on the morning of October 18th, a train came into Harper's Ferry from the West, Baltimore bound. This was a wind-fall. It could have been derailed on the Shenandoah Bridge, thus blocking that avenue of potential assault. Alternately, it could have been used to convey John Brown's force over the Potomac and back into Maryland.

The train was stopped and a highly respected free Negro killed in the process. The killing was a mistake. Brown's parting instructions to his men had been: "And now, gentlemen, let me impress this one thing on your minds; you all know how dear life is to you, and how dear your lives are to your friends; and in remembering that, consider that the lives of others are as dear to them as yours are to you: do not, therefore, take the life of anyone if you can possibly avoid it. . . ."

Finally, toward dawn, *Brown let the train proceed to Baltimore*. Consequently, by ten o'clock that morning, telegrams had gone out to President Buchanan, Governor Wise of Virginia and the Commanding Officer of the Maryland First Light Division in Baltimore, stating that an insurrection was raging at Harper's Ferry and that 150 men held the Arsenal.

Brown's men pleaded with him to pull back into Maryland during the early hours of the morning, but he was adamant. He wanted to liberate slaves but none had yet joined his banner. By noon, it was too late. In Charlestown, eight miles away, two com-

panies of "Jefferson Guards", a ragged militia of farmers and townspeople with squirrel guns and meager ammunition, heard of the doings at the Ferry and formed in march columns. Their commander deployed one of his companies toward Bolivar Heights and occupied this ground dominating the land route of escape. With the other company, he crossed the Potomac by rowboat and then marched into Harper's Ferry over the Potomac Bridge. John Brown's line of communications back to his Maryland base had been severed and there was nothing he could do about it. To try to storm his way along a covered bridge held by riflemen would, of course, have been suicide.

A few hours later, another company of raw Virginia volunteers slashed behind the Arsenal and bottled up Brown's men. The rest was suffering, endurance and slow death. They fought on in the Arsenal until dawn the next morning with the wounded and dying around them. They had ordered breakfast at the Harper's Ferry Hotel on the morning of the 18th, but had left it untouched, fearing poison. For two and a half days, Brown's men had had no food.

Meanwhile, militia companies from all over Virginia were converging on Harper's Ferry, trapping the dozen or so unwounded guerrilla fighters and their thirty or forty hostages in the dust-filled Engine House of the Arsenal.

Among those still living on the last day of fighting were Jeremiah G. Anderson, 27, and Dauphin Thompson, 21. When a hostage told these two that they were committing treason against the United States, the boys turned to John Brown:

"Are we committing treason against our country by being here?"

"Certainly," the leader replied.

"If that is so, we don't want to fight any more," the boys said. "We thought we came to liberate the slaves and did not know that that was committing treason."

But it was too late for hesitation or legal doubts. At daybreak, Anderson and Thompson were to die, spitted on the bayonets of a Marine assault force.

The militia forces at Harper's Ferry had swollen to such proportions that they cluttered up the streets and were in each other's way. About midnight a company of United States Marines arrived. Its commander took over control of operations and prepared for a final dawn assault. It was fitting that this commander should have been Brevet Colonel Robert E. Lee. He named as his alternate

a young cavalry officer, who was also to win indelible military fame, First Lieutenant J. E. B. Stuart.

Lee called on John Brown to surrender and received a resounding refusal. With a detail of twelve Marines, Lieutenant Israel Green stormed the Engine House and resistance ceased. Of the band of seventeen white men and five Negroes, nine were dead, one was dying of wounds, while seven had left Harper's Ferry and were making their way back to the Maryland hideout. John Brown, Aaron Stevens (his principal lieutenant), and three others—two of them Negroes—were captured.

Later, in the course of questioning by the press, the two wounded leaders—John Brown and Aaron D. Stevens—lay on "miserable shakedowns", the blood and dirt forming clots on their skin, their clothes ragged, their bodies exhausted from the almost unendurable strain of two days of continuous combat. Colonel Lee courteously explained to them that if they found the mass interview with the press painful or tiring, he would be happy to exclude all visitors. Brown replied that, on the contrary, he was "glad to make himself and his motives understood."

"Do you consider this a religious movement?" a bystander asked.

"It is, in my opinion, the greatest service a man can render to God," was the retort. Brown then added: "I pity the poor in bondage that have none to help them: that is why I am here; not to gratify any personal animosity, revenge or vindictive spirit. It is my sympathy with the oppressed and the wronged, that are as good as you and as precious in the sight of God."

Jeb Stuart turned to him and said:

"The wages of sin is death."

"I would not have made such a remark to you if you had been a prisoner and wounded in my hand," John Brown answered.

When a man in the crowd called him a "robber", Brown shook his head: "You are the robbers."

Governor Wise of Virginia interrupted: "Mr. Brown, the silver of your hair is reddened by the blood of crime, and it is meet that you should eschew these hard illusions and think upon eternity. . . ."

John Brown retorted with magnificent serenity: "Governor, I have, from all appearances, not more than fifteen or twenty years the start of you in the journey to that eternity of which you kindly warn me; and whether my tenure here shall be fifteen months, or fifteen days, or fifteen hours, I am equally prepared to

go. There is an eternity behind and an eternity before, and the little speck in the centre, however long, is but comparatively a minute. The difference between your tenure and mine is trifling and I want to therefore tell you to be prepared; I am prepared. You all have a heavy responsibility, and it behooves you to prepare more than it does me."

Governor Wise was to stand like a rock against all efforts to commute Brown's sentence of death for the crime of treason. But he had no illusions that he was dealing with a man of small proportions. Three days after the firing had ceased at Harper's Ferry, the Governor discussed John Brown before a Richmond crowd:

"And they are themselves mistaken who take him to be a madman. He is a bundle of the best nerves I ever saw cut and thrust and bleeding and in bonds. He is a man of clear head, of courage, fortitude and simple ingenuousness. He is cool, collected and indomitable, and it is but just to him to say that he was humane to his prisoners . . . he inspired me with great trust in his integrity as a man of truth. . . . His men, too, who survive, except the free negroes with him, are like him."

This appraisal, from an implacable enemy, was a generous one. As for the slur against the free Negroes, it perhaps applied justly to Shields Green, who was thought a coward by men who had been in the Engine House during the fight. The other Negro prisoner, John Anthony Copeland, Jr., however, was made of entirely different stuff. According to the trial judge, Richard Parker, a Virginian, Copeland was "the prisoner who impressed me best. . . . He had been educated, and there was a dignity about him that I could not help liking. He was always manly." The Prosecutor, Andrew Hunter, also a Virginian, thought him "the cleverest of all the prisoners . . . and behaved better than any of them. If I had had the power and could have concluded to pardon any man among them, he was the man I would have picked out."

Trial and Conviction

The temper of Governor Henry A. Wise was mercurial; his manner bombastic; his intelligence penetrating, and his ambitions limitless. He now proceeded to make a series of political blunders.

Should John Brown be tried for treason against the United States or treason against the Commonwealth of Virginia? He had attacked a Federal Arsenal. He had done this as part of a long-range plan to set up a free guerrilla state on American soil. The

evidence of this intent was the Provisional Constitution and Ordinances of the People of the United States—the document which John Brown had drawn up at Chatham. This paper was in the hands of the prosecution. On legal grounds, the decision seemed automatic. His object had been national in scope and it amounted to treason against the United States. How could he be guilty of betraying Virginia when he was neither a citizen nor a resident of that state and hence owed it no allegiance? This point was to elude both the Courts and the Governor. The issue was finally settled on purely political grounds.

On November 7th, District Attorney Hunter announced in Court that John Brown's chief adjutant, Stevens, would be remanded to the Federal Courts to answer a charge of treason against the United States. This seemed smart politics. Let the Buchanan Administration dip its hands in the blood of the insurgents and thus commit itself even more irrevocably to the pro-slavery cause. Northern criticisms of the inevitable conviction would be somewhat allayed if the decision were shared by a Federal Court. But more immediate factors influenced Governor Wise's plastic and combative mind. Suddenly put in the lime-light by the Brown affair, he thirsted for even higher office. If Stevens were turned over to the Federal authorities, there would be local resentment of what would seem a shirking of duty, a confession of inability to maintain order within the Dominion, a kowtowing to northern criticism. Governor Wise changed his mind and had all of the raiders tried for crimes against the State.

John Brown was put on trial for the three separate capital offenses of treason, murder and inciting slaves to insurrection. These were charged in the same indictment and there was to be but one trial.

The North was deeply shocked to learn that Brown was to be forced to defend his life in court within a week of capture, while still suffering from serious wounds, without having had time to prepare his defense or summon his witnesses. It seemed that this helpless man was being hurried to the gallows by a community frantic with fear and frenzied from blood.

There were peculiarities of Virginia legal procedure which partially palliated this indecent haste, but which did not make it necessary. No Virginian Jury could conceivably have not been aflame with prejudice. The District Attorney bent all efforts to hurry the trial forward. The trial judge, Richard Parker, may have been fair, but he was also stern and implacable. A new law-

yer for the defense, who had just taken over the case, asked for an extra day to prepare his case, explaining that he had worked all night until he fell senseless from exhaustion. Judge Parker denied the motion. John Brown requested "a very short delay" to recover from his back and kidney wounds so that he would "be able at least to listen to my trial, and hear what questions are asked of the citizens, and what their answers are." Although the prisoner was so ill that he had to attend the trial on a litter, Judge Parker refused his request.

On the other hand, John Brown was assigned distinguished counsel and the *New York Tribune* reported that visiting attorneys from the North were "profuse in praises" of Judge Parker's "candor and integrity." Certainly the proceeding was a far cry from the Virginia trial of Nat Turner, the slave insurrectionary of 1831 who had been brought into the courtroom dazed and addled by torture and whose corpse after execution had been rendered into grease.

The indictment charged John Brown and his associates *inter alia* with "not having the fear of God before their eyes, but being moved and seduced by malignant counsel of other evil and traitorous persons and the instigations of the devil. . . ." A 21-year-old Massachusetts attorney with practically no experience was sent down to Charlestown by Northern friends to report any confidential messages John Brown wanted transmitted and to send "an accurate and detailed account of the military situation . . . the number and distribution of troops, the location and defences of the jail, and nature of the approaches to the town and jail, the opportunities for a sudden attack . . . and all other particulars that might enable friends to consult as to some plan of attempt at rescue." To his horror, this youthful lawyer-spy found himself for a brief period responsible for the defense in one of the great political trials of American history.

"My memory don't serve me: my health is insufficient, although improving," the wounded prisoner told the Court. "There are mitigating circumstances that I would urge in our favor, if a fair trial is to be allowed us: but if we are to be forced with a mere form—a trial for execution—you might spare yourselves that trouble. I am ready for my fate . . . I ask again to be excused from the mockery of a trial. . . . I have now little further to ask, other than that I may not be foolishly insulted only as cowardly barbarians insult those who fall into their power."

There was to be no insult. The proceedings were swift and

stern, but dignified. After deliberating for three-quarters of an hour, the jury found Brown guilty of murder, treason and conspiring with slaves to rebel. Upon being asked whether he had anything to say on why sentence of death should not be passed upon him, the insurgent leader replied with the grandeur and strength of an Old Testament prophet:

"I deny everything but what I have all along admitted; of a design on my part to free slaves. I intended certainly to have made a clean thing of that matter, as I did last winter, when I went into Missouri and there took slaves without the snapping of a gun on either side, and finally leaving them in Canada. I designed to have done the same thing again on a larger scale. That was all I intended. I never did intend murder, or treason, or the destruction of property, or to excite or incite slaves to rebellion, or to make insurrection. . . .

"Had I interfered in the manner which I admit . . . in behalf of the rich, the powerful, the intelligent, the so-called great . . . it would have been all right. Every man in this Court would have deemed it an act worthy of reward rather than punishment.

"This Court acknowledges, too, as I suppose, the validity of the law of God. I see a book kissed, which I suppose to be the Bible, or at least the New Testament, which teaches me that all things whatsoever I would that men should do to me, I should do even so to them. It teaches, further, to remember them that are in bonds as bound with them. I endeavored to act up to that instruction. I say I am yet too young to understand that God is any respecter of persons. I believe that to have interfered as I have done, as I have always freely admitted I have done, in behalf of his despised poor, I did no wrong, but right. Now, if it is deemed necessary that I should forfeit my life for the furtherance of the ends of justice, and mingle my blood further with the blood of my children and with the blood of millions in this slave country whose rights are disregarded by wicked, cruel, and unjust enactments, I say, let it be done.

"Let me say one word further. I feel entirely satisfied with the treatment I have received on my trial. Considering all the circumstances, it has been more generous than I expected. But I feel no consciousness of guilt. . . .

"Let me say, also, in regard to the statements made by some of those who were connected with me, I hear it has been stated by some of them that I have induced them to join me. But the contrary is true. I do not say this to injure them, but as regretting

their weakness. Not one but joined me of his own accord, and the greater part of their own expense. A number of them I never saw, and never had a word of conversation with, till the day they came to me, and that was for the purpose I have stated.

"Now I have done."

Death and Transfiguration

During the six weeks of life that remained to him, the figure of John Brown emerged before the nation in all its clear and gigantic outline. Within the very brief interval remaining to him, John Brown was transformed from a mere guerrilla leader into the conscience of the free world—a conscience stern, inflexible, unswerving from truth and duty, marvellously without rancor toward those who were to kill him.

The indecently hurried trial had become a total victory for the aged, wounded, ill-educated but eloquent insurgent. From the cot where he lay, John Brown spoke words which burned into the conscience of the nation. Facing certain death, he could be as impersonal as history itself. Like Socrates and Jesus, he forgave his persecutors, but not the evils which drove them to persecution.

As for his intrepid associates, they too were sentenced to death. Two of the men who had escaped were captured or extradicted and also hanged. In all, seven of the raiders met death on the gallows. Two of them were Negroes. The Court held that their race made them legally incapable of committing treason against the Commonwealth of Virginia. They were executed nonetheless on the remaining counts of murder and incitement to insurrection.

There was even a minority voice in the South which pleaded with Governor Wise for mercy. "If old John Brown is executed," a Kentucky paper commented, "there will be thousands to dip their handkerchiefs in his blood." Politicians told Wise not to turn Abolitionists into martyrs, but the Governor was obdurate. Apparently he didn't realize that by committing Brown to confinement as a lunatic, he might rob the insurrectionary of half his impact on the nation's mind.

There were also Northerners who failed to understand the meaning of the tragedy and wanted a happy ending. Plans for rescue were incubated in the heat of moral indignation. Lysander Spooner, a Boston Abolitionist, devised a scheme of signal audacity. It was nothing less than the kidnapping of Governor Wise. For ten or fifteen thousand dollars, he told fellow Bostonian

backers of the secret war on slavery, he could buy and man a tug which could outrun any vessel in Virginia waters. Armed men would infiltrate into the Governor's mansion at Richmond, seize Wise, hustle him in disguise to the tug and hold him as a hostage for John Brown's life.

Some of the New Englanders doubted that this brilliant coup could be carried out and were dismayed at the disastrous consequences of a fiasco. The money was not forthcoming and the plan was therefore stillborn. Had it been carried out, it would almost certainly not have saved John Brown's life. The adventurers would have been obliged to kill their hostage and the death of Wise would have distorted the moral meaning of the Harper's Ferry tragedy and given the other side a martyr of its own.

There were other rescue efforts, all of which John Brown sternly rejected. A Kansas Free State fighter named Charles Lenhart enrolled as a prison guard for the sole purpose of liberating some of the men.

After a week's work with a borrowed knife, two of the imprisoned raiders, Coppoc and Cook, sawed off their shackles and dug a concealed hole through the cell wall. At the night set for the escape, Cook refused to go, fearing that his brother-in-law and sister, who were in Charlestown for a last visit, would be implicated. The gallant Coppoc was unwilling to escape alone. They tried it on the following night, but Lenhart was not on guard and the two prisoners were caught by a sentry. Twelve hours later, they marched with John Brown and two others to the gallows "with the most unflinching firmness."

As he left his cell for the last time, John Brown handed a bystander his wonderfully prophetic last message:

"I, John Brown, am now quite *certain* that the crimes of this *guilty land*: will never be purged *away*; but with Blood. I had *as I now think*: vainly flattered myself that without *very much* bloodshed; it might be done."

While he was in prison, somebody had brought him a copy of the *New York Herald* in which the Abolitionist divine, Henry Ward Beecher, had written: "Let no man pray that Brown be spared. Let Virginia make him a martyr. Now, he has only blundered. His soul was noble; his work miserable. But a cord and a gibbet would redeem all that, and round up Brown's failure with a heroic success."

After reading this somewhat cold-blooded appraisal, John Brown had written on the printed page a single word—"Good."

LINCOLN AND MARTIAL LAW

"... the people of the United States are no longer living under a government of laws; but every citizen holds life, liberty and property at the will and pleasure of the army officer in whose military district he may happen to be found."—Chief Justice Roger B. Taney.

Between 1861 and 1865, the American republic passed through the hardest ordeal of its history. Blood was shed on a scale which the world had not seen since the religious conflicts of seventeenth century Europe. Cities were burned, rich farmlands devastated, an economic system and a pattern of life uprooted. The conflict was both sectional and ideological—the ultimate stake being whether the nation would survive and grow as a continental republic or be fragmented into small and bickering political entities through the mitosis of secession. Even the most cursory examination of the comparative course of American and European development during the last hundred years serves to reveal the momentous importance of this issue.

Was secession a right or was it treason? This whole constitutional problem now had to be settled finally with the unanswerable logic of fire and battle. A derivative issue was whether the conflict was insurrection or civil war? Lincoln turned his extraordinarily acute mind to the many constitutional issues of the struggle. The logic of the Northern position required him to treat, in theory at least, half of a nation in arms as a band of traitors. And this raised problems and difficulties which pervaded all phases of the conflict.

Could such a war be fought within the framework of the Constitution? Was the Constitution "an iron chain girdling a living tree which could have no further growth except by bursting its ligature?" Or was it an infinitely plastic instrument adjustable to the exigencies of national crises? Throughout the years of war,

this problem perplexed Lincoln. "Must a government, of necessity," he asked, "be too strong for the liberties of its own people, or too weak to maintain its own existence?" After much pondering, Lincoln assumed war powers, suspended habeas corpus throughout the United States, sanctioned wholesale military arrests and the detention of politically obnoxious persons against whom no crimes could be charged. He did these things believing the nation could survive in no other way and that the Constitution authorized presidential suspension of civil rights wherever the alternative was the suicide of constitutional democracy itself. His appraisal of the fifth column threat was possibly exaggerated; the methods he used to suppress it may have been self-defeating; his conception of the President's constitutional powers during wartime was certainly wrong. When peace had been restored, the Supreme Court held that Lincoln had usurped authority which no American Chief Executive can possess.

No one today believes that Lincoln acted from a love of dictatorial power. Perhaps no American statesman had a greater innate tolerance of ideas he detested, a larger compassion and sense of tragedy. And in later American wars, where the danger from within was far less, two Presidents sanctioned departures from the American liberal tradition which were harder to justify.

Perhaps no nation ever passed through an upheaval comparable to the American Civil War with less persecution as its aftermath. While the reconstruction period which followed it was bitter, the wounds of war were eventually healed and the roots of treason blasted without the use of gallows and execution squads. The nation had narrowly escaped a reversion to the archaic Jeffersonian conception of parochial sovereignty which meant, in its final implications, balkanization. Yet no man was hanged for betraying his country. The leaders of the defeated Confederacy returned, with only a few exceptions, unmolested to their homes. While they were temporarily incapacitated from holding public office under either the national or the state governments, they were not hounded down, imprisoned or hanged. Despite radical Republican efforts to impose quasi-permanent military occupation on the beaten South, the forces of moderation soon asserted themselves as the dominant voice of the nation.

And this voice, speaking for humanity, for tolerance of the adversary, for compassion rather than rancor, was strongly heard even during the heat of the conflict. Horace Greeley knew of no worse use to which a man could be put than hanging him.

Lincoln expressed the postbellum goal in terms of striving "with malice toward none . . . to bind up the nation's wounds . . . to do all which may achieve and cherish a just and lasting peace among ourselves, and with all nations." This American record stood in sharp contrast to the blood purges which have periodically swept over Europe in the wake of her ideological conflicts.

Rebellion or Treason?

"Are not these rebels, red-handed and black-hearted, as bad as pirates?" a Republican fire-eater demanded in the House of Representatives. "When this rebellion shall have ceased, the parties guilty as chief traitors shall be punished." Senator Lyman Trumbull was even more violent on the subject: "When the rebellion is put down in Eastern Virginia, it is to be put down by driving into exile, or killing upon the battlefield, or hanging upon the gallows, the traitors who would overthrow and oppress Western Virginia."

Was the United States waging war against an enemy power or suppressing an insurrection? From the Federal Government's standpoint, there could be only one possible answer to this question: the Confederates were insurgents and therefore traitors. Wars can be waged only against *de jure* or *de facto* governments. Abraham Lincoln and his Cabinet were in no mood to concede that the Confederacy constituted anything more than "a pretended government". To act otherwise would be to admit—at least as far as public opinion was concerned—that the Southern States had had the right to secede and form a new government under the Constitution. And if they had possessed that right, the President had been wrong in raising an army and marching it into Southern territory in advance of a declaration of war by Congress. If the Confederacy were a legitimate government, the European powers would be within their rights in according it belligerent status—a contingency which the United States wished at all costs to avoid. Thus Secretary of State Seward vehemently protested the British proclamation of neutrality in 1861 and scornfully repudiated Napoleon Third's offer to mediate between the two American regimes. The doctrine which the Government consistently advanced was that the rebellion was purely an internal matter. In proclaiming their neutrality toward the United States and the Confederacy, the European states were in-

directly giving aid to bands of pirates and traitors in arms against the nation to which they owed allegiance.

The American Constitution had been coy over the cardinal issue of principle involved. Was the Federal Government the product of a compact among sovereign states, from which each could withdraw at will and to which they had delegated only certain specified powers of government? Or was it a paramount power—a sovereignty which superseded the states, reducing them to mere residuary bodies with internal governing functions—a Union permanent and indissoluble?

The framers of the Constitution had been aware of the vast implications of this issue, but, in view of the political cleavages of the day, they had been unable to face it squarely. The Constitution, as ratified, had been a compromise between the advocates of local sovereignty who feared strong government—the Jeffersonians, agrarians and democrats—and the commercial and urban partisans of a powerful nation-state, the nucleus of what was later to become the Federalist Party.

During the next seventy years, the increasing articulation of the nation, the rise of industries, the outward radiation of railroads and the shift of power toward the industrialized and urban areas eliminated the states' rights conception of the Constitution as a possible solution. The Convention of 1787 had probably been well-advised in leaving this question to be settled by history; but in doing so it had forced its solution by war.

The legal and constitutional issue of the Civil War had been raised with wonderful prescience at the time. "Brandy Bottle" Luther Martin, later to distinguish himself as Aaron Burr's defense counsel, had attended the 1787 Convention as a delegate and then argued against ratification of the Constitution in his native state of Maryland. The issue on which Martin boggled was the failure of the Constitution to draw a demarcation line between treason to states and treason to the United States as a whole.

"By the principles of the American Revolution," he declared, "arbitrary power may and ought to be resisted, even by arms if necessary. The time may come, when it shall be the duty of a State . . . to have recourse to the sword; in which case, the proposed form of government declares, that the State and every of its citizens who act under its authority are guilty of a direct act of treason; . . . they must tamely and passively yield to despotism,

or their citizens must oppose it at the hazard of the halter. . . ." The residents of a state which seceded from the Federal Government and took up arms against it, he pointed out, would be traitors under the Constitution regardless of what they did, since "if they obey the authority of their State government, they will be guilty of treason against the United States; if they join the general government, they will be guilty of treason against their own State."

This was exactly the dilemma that arose. In official eyes, the Confederates were rebels against the sovereignty of the American Government to which they owed unqualified allegiance. Being rebels, they were also traitors. The Virginia recruit who marched in butternut-dyed homespun with the Confederate armies betrayed his country, while the Virginia Unionist who took to the hills to battle for the United States was guilty of treason against his state. This predicament afflicted all Southerners, but did not apply in the North. There a citizen's duty to his state coincided with his obligation to his country. By any standard, Northern supporters of the war were loyal and Northern Copperheads were traitors.

The Supreme Court endorsed the doctrine that the Confederates were guilty of treason. The Southerners, it held, "claim to be in arms to establish their liberty and independence in order to become a sovereign state, while the sovereign party treats them as insurgents and rebels who owe allegiance and should be punished with death for their treason." While the Confederates were all traitors at law, their contest was considered to be a war and, due to convenience and humanity, their status as belligerents was tacitly recognized by the United States Government. A thoroughly consistent application of the theory of insurrection would have meant the suspension of the rules of civilized warfare and indictment of all captured prisoners of war as traitors. But this was undesirable and impractical. It would have led to massive reprisals against Northern prisoners.

As James G. Randall shows in his standard work *Constitutional Problems Under Lincoln*, belligerency was conceded in practice, but it was conceded *ex gratia*. The North reserved the right to proceed against the Confederates as traitors at its convenience. The Supreme Court put the matter adroitly in the Prize Cases: "The law of nations . . . contains no such anomalous doctrine as . . . that insurgents who have risen in rebellion against their sovereign . . . are not *enemies* because they are *traitors*; and a war

levied on the Government by traitors in order to dismember and destroy it, is not a *war* because it is an 'insurrection'."

The Treason Act of 1862

The Treason Statute of 1790 made death the sole punishment for convicted traitors. Yet it was obviously impractical to hang all participants in the rebellion. Capital punishment, it was thought, should be reserved for the chief leaders and instigators, with milder penalties imposed on the lesser fry. Accordingly, the Treason Act of 1862 was passed, providing that any traitor "shall suffer death . . . or, at the discretion of the court, he shall be imprisoned for not less than five years, and fined not less than ten thousand dollars." These Civil War penalties for treason, which are more lenient than those of any other nation, remain in force today. In addition, Congress passed a Conspiracies Act against plotting "to overthrow the Government of the United States or levy war against them." A minority in the House opposed this on the grounds that the definition of treason in the Constitution and the safeguards surrounding the trial and conviction of traitors would be nullified if Congress assumed the power to create new crimes "kindred to treason". And finally, to complete its arsenal of legal powers, Congress decided that a man might be convicted of taking part in insurrection—which is obviously treason—and be punished merely by having his slaves liberated.

The prosecutions began considerably before the legal net had been adjusted to separate the sharks from the minnows. The Confederate privateer, *Petrel*, was captured while travelling on a hostile mission with letters of marque issued by Jefferson Davis. The United States naturally denied that Davis had any shadow of authority to issue such letters and therefore indicted the crew of 36 men before the Federal Circuit Court at Philadelphia for treason and piracy. Robert Cooper Grier, a sane and intelligent judge, had no stomach for these vindictive proceedings. The trial record is a monument to this rare quality of commonsense in high places:

"Justice Grier: I do not intend to try any more of these cases. I shall leave them to my brother Cadwallader. I have other business to attend to, and do not mean to be delayed here from day to day in trying charges against a few unfortunate men out of half a million that are in arms against the government. Why

should this difference be made between men captured on land and on the sea?

"Mr. Earle: These are privateers.

"Justice Grier: But why make a difference between those taken on land and on water? Why not try all those taken on land and hang them? That might do with a mere insurrection; but when it comes to civil war, the laws of war must be observed, or you will lay it open to the most horrid reactions that can possibly be thought of; hundreds of thousand of men will be sacrificed upon mere brutal rage . . . I will not sit on another case."

Nevertheless, four of these seamen were convicted of treason. Attorney General Edward Bates requested that "for political reasons", the whole business be dropped. Judgment was suspended and eventually all of the convicted men on the *Petrel* were released.

As the war dragged through blood and blundering to its final issue, the spirit of malignancy grew. Grant's bullheaded and much criticized campaign in the Wilderness caused a heavy toll in dead and mutilated. Bereaved families often found it hard to take a dispassionate view of the conflict. But the climactic episode, which touched off a nationwide spasm of hatred, was the assassination of Lincoln. Thus by 1865, the law of treason—which had been sparingly applied during the early part of the struggle—became a weapon of wholesale punishment in the hands of superpatriotic attorneys and vengeful juries.

As Randall points out, there were in the latter part of 1865 more than 1,900 indictments for treason on the dockets of Eastern Tennessee alone. Maryland authorities thought that every man who left the state to enroll in the Confederate Armies should be held as a traitor and a muster roll of 4,000 potential victims was submitted to a grand jury for indictment. Among the civilian politicians there were men who said—and perhaps seriously believed—that the gallows should be used to complete the job that the Union Armies had left unfinished.

What sort of men proposed this bloody and insane solution? At moments of great tension and anger, some of the best of them. Shortly after Lincoln's assassination, President Johnson said: "treason must be made odious . . . traitors must be punished." Attorney General Bates believed it would be "a dire calamity . . . if many whom the sword has spared the law would spare also." Even the humane and cultured Charles Sumner thought "the tallest poppies must drop."

And in Congress, there were bigots and extremists—men to whom hate was a gospel and persecution a sovereign remedy for deep-seated social and regional cleavages. These exponents of vengeance and force were welled upwards from the depths by popular anger against the South. In the strange light of the immediate postbellum crisis, bigotry sometimes passed for policy and fanaticism for strength.

The mass treason indictments, however, were not brought to the trial stage. The Government's strategy was to intimidate the rebel mass by the mere existence of the law, while proceeding cautiously toward the trial of one or two outstanding leaders of the rebellion as traitors. This seemed like an almost bloodless way of making it plain to the South that treason against the United States can be a dangerous business, but it was an objectionable procedure from the standpoint of either law or justice. Several million men were technically traitors and, by the law, they could have been hanged. Since this was obviously nonsense, a vast and dangerous discretionary power fell into the hands of the Attorney General's Office—the power to decide which of these millions, all of them supposedly guilty of the same crime, should be indicted and brought to trial. Whenever a whole people violates a law and the Executive Branch of Government arbitrarily chooses its victims from among them, the safeguards of fair and independent courts and trial by due process tend to become irrelevant.

The Case of Jefferson Davis

The Attorney General was busy curbing the prosecutory zeal of subordinates and state attorneys. "Dismiss all conspiracy cases in Missouri" was a typical 1866 order. Why make martyrs? But, at the same time, Attorney General Bates thought it would be salutary to prosecute a few of the most "pestilential fellows" and, to Northern eyes, none was more pestilential than the ex-President of the Confederate States of America. On May 2, 1865, President Johnson issued a proclamation for the arrest of Jefferson Davis, charging him on flimsy evidence with complicity in Lincoln's murder.

He was captured a week later and confined in Fortress Monroe. The Confederate leader made much of the alleged harshness and cruelty of his imprisonment, but, as a matter of fact, his only serious complaint was that he was kept in chains for a brief period.

Emphasis on his sufferings, however, was part of his political defense.

A period of indecision and dallying followed his arrest. Should Davis be indicted for treason or for murder? Should he be tried before a military or a civilian court? The former would be more certain to hang him, but the procedure might leave a stench behind it.

A year after his arrest, Jefferson Davis was indicted for treason in the United States Circuit Court at Richmond. He was admitted to \$100,000 bail and one of the men who posted it was Horace Greeley. This cocksure, dogmatic Vermont jack of all trades, who had risen in such a mercurial manner to the position of the most intellectually challenging newspaper editor in the nation, had played a somewhat shaded role throughout the Civil War. He had been vacillating and a defeatist. Lacking the political sagacity and the stamina needed to ride a durable crisis, he had nevertheless not hesitated to bombard Lincoln with bad advice and ill-considered reproaches. He had worried himself into appeasement and skirted on the borders of Copperhead treason. In short, at that time he had seemed a useless, fluttering character without any consistent direction.

Here at Richmond, he showed that he still had enough courage to defy popular prejudice. When the Union League Club proposed to kick Horace Greeley out for his assistance to Jefferson Davis, the former retorted effectively:

"I arraign you as narrow-minded blockheads, who would like to be useful to a great and good cause, but don't know how. Your attempt to base a great, enduring party on the heat and wrath necessarily engendered by a bloody civil war is as though you should plant a colony on an iceberg which had somehow drifted into a tropical ocean."

For two years, the moles in the Attorney General's Office gathered evidence against Davis. Three years after his arrest, Davis was re-indicted for treason and the indictment was a tedious history of the Civil War in legal jargon. Again and again, the Government pleaded that the case could not be brought to trial because the prosecution had not had time to gather the evidence. The whole affair stank of the miasmas of high-level politics, the dominant odors being divided counsel and professional cowardice.

A curious thing about the case was that Davis was being indicted under the old treason law of 1790 which carried the

mandatory death penalty. This made it doubly hard to count on a jury conviction. On the other hand, the Government felt that Davis' crime was so great that any sentence less than death would be indefensible.

Why the three years delay? Davis was charged with leading a rebellion against the United States. That fact was as plain as daylight and, had the Government wanted to, it could have brought him to trial within a week of his arrest. In fact, the years of procrastination were sufficient reason to quash the proceedings, since the Constitution guarantees every citizen a speedy trial.

R. H. Dana, one of the Government's trial attorneys, wrote a letter in 1868 which was forwarded to President Johnson. He proposed that the case be dropped. There was no legal issue to be settled, Dana thought, as the Supreme Court had already ruled that the Confederate rebellion had been treason by levying war. No useful purpose would be served by hanging Davis four years after Appomattox. It was doubtful that a Southern jury would convict and an acquittal would be disastrous to government prestige. President Johnson took Dana's advice and issued a general pardon to all participants in the rebellion on Christmas Day 1868. The military leaders of the Confederacy were not touched by treason indictments since most of them had been covered by the surrender terms negotiated by Grant and other Union commanders.

The War Against Sedition

During the long Civil War, the South and a large minority in the North considered Lincoln a tyrant. They felt that the civil liberties guaranteed in the Constitution were being snuffed out one by one. They believed this to be part of a long-range plan for the establishment of a presidential dictatorship in the United States.

It was true that the gangly Chief Executive had moved at a bewilderingly swift pace and with a cavalier disregard for constitutional niceties. His purpose was to safeguard the rear against treason. As it seemed to him, the sequence of events had placed him in the dilemma of using powers which he possibly did not possess or else risking the destruction of the Union.

On April 12, 1861, the girdle of guns with which General Pierre Gustave Toutant Beauregard had ringed Fort Sumter opened fire

and began to pound that federal post to pieces. It was only three months later that Congress assembled and declared the South to be in a state of insurrection.

Between April and July, Lincoln assumed "war powers". As the conflict developed, their scope and impact on the daily life of American citizens progressively increased. The most important of these powers was the right to suspend the habeas corpus privilege at will and to proclaim martial law in any part of the Union. These, by themselves, were sufficient to dig the grave of American constitutional liberty. Habeas corpus is the right of a prisoner to demand that he be either charged with a specific crime or else freed. Without this privilege, men can be imprisoned indefinitely at the whim of a judge, general or President. The substitution of military for civil law gave the President complete power over the lives and freedom of the people. Properly speaking, martial law is no law at all. It is a series of punitive regulations drawn up by the President as Commander in Chief of the armed forces which he can change at his pleasure.

While these powers were latent with enormous potentialities for evil, they were applied, on the whole, with discretion and good sense. The tempering hand of Lincoln was always there to restrain rash generals with a propensity for getting drunk on their authority. His practice was defined clearly in a letter to General John McAllister Schofield:

"You will only arrest individuals and suppress assemblies or newspapers when they may be working palpable injury to the military in your charge, and in no other case will you interfere with the expression of opinion in any form or allow it to be interfered with violently by others. In this you have a discretion to exercise with great caution, calmness and forbearance."

At least twenty-one American newspapers were suppressed; some for "disloyal and incendiary statements"; others for the more serious crime of publishing military information of value to the enemy. These suppressions were generally temporary and resorted to only after substantial provocation. A few editors were arrested by the military without specific charges being levelled against them and the Postmaster General denied mailing privileges to those papers he thought disloyal.

With great hesitancy and inner struggle, Lincoln had ordered a limited suspension of the habeas corpus privilege in 1861. This applied only to the line from Washington to Philadelphia—a strategically vital region of dubious loyalty. Wholesale military

arrests were ordered by the State Department. In addition to performing his other duties, Secretary William H. Seward found time to recruit an army of spies and political police agents. Little judgment was shown in making arrests. Since the prisoners were simply detained without any intention of bringing them to trial, there was no need to collect evidence against them or even to find out whether or not they were guilty.

In early 1862, the business of arresting persons suspected of disloyalty was transferred to the War Department and in September of the same year Lincoln ordered by presidential proclamation that all rebels, disloyal persons and draft resisters be subject to martial law and military trial. During the last three years of the Civil War, 13,535 civilians were arrested and thrown into military prisons. The total of arbitrary arrests and confinements has been placed as high as 38,000.

The Constitutional Battle

The Constitution says: "The privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it."

Now it was obvious that the South was in rebellion. But did the Constitution mean that the existence of an insurrection in one part of the country authorized the President to suspend habeas corpus everywhere in the country? Or was this dangerous and explosive power of suspension meant to be confined to those areas where rebellion had already dissolved the governmental machinery and the civil courts? There was a second, and perhaps less basic, question: Under the Constitution, who had the power to decide whether or not "the public safety" warranted the suspension—the President or the Congress?

Chief Justice Roger B. Taney of the Supreme Court—the aged Jacksonian radical who had helped precipitate the Civil War by deciding in his notorious Dred Scott opinion that slaves were property and not citizens—struck the first blow. A man called Merryman—a lieutenant in a pro-Confederate drill company in the nominally loyal state of Maryland—was picked up by the military and thrown into Fort McHenry. At that point, Taney, who was riding circuit in Maryland, served a writ of habeas corpus on the Commanding General, i.e. a demand that he produce "the body" of Merryman in court. When the General ignored this, Taney tried to serve him with a writ of attachment

for contempt of court, but, lacking a private army, was unable to do so.

His next move was to render an opinion. The authority to suspend the writ of habeas corpus, Taney declared, was vested in Congress, not the President. That was the tradition of the English Common Law. Moreover, the original draft of the clause in the Federal Convention of 1787 had specifically assigned this function to the legislature. The final formulation was indefinite, not because of any evidence of doubt in the minds of the framers as to where the power should properly lie, but as a result of the labors of the Committee on Style. Moreover, Marshall, the supreme authority, had said in *ex parte Bollmann*: "If . . . the public safety should require the suspension, it is for the legislature to say so." From all this, Taney concluded that Lincoln's action had been one of usurpation. He urged the President to rescind the obnoxious orders. Otherwise, Taney feared, "the people of the United States are no longer living under a government of laws; but every citizen holds life, liberty and property at the will and pleasure of the army officer in whose military district he may happen to be found."

Lincoln's reply was persuasive. The Constitution vested emergency powers in the President. While Congress had the sole authority to *declare* war, it lay on the President's shoulders to decide whether the country had been invaded or insurrection had broken out. And it was his duty, as Commander in Chief, to take all measures necessary to repel these threats. The suspension of habeas corpus was an emergency weapon to frustrate invasion or rebellion and such emergency powers rest in the President's hands.

All Lincoln actually said was that the Constitution gave him power to act swiftly in these matters to defend the nation's existence. The decision he took might be overruled by Congress. Enthusiastic publicists of unlimited executive power, such as Horace Binney, went further. They elaborated a theory that Congress had no power to ratify or revoke a presidential suspension of habeas corpus. And this doctrine was clearly contrary to the whole framework of checks and balances within which the Constitution had been erected. If the President had the sole power to decide when habeas corpus could be suspended and if neither the courts nor the Congress could review his exercise of that power, there was no constitutional way to prevent him from establishing a dictatorship by fiat.

On one level, these debates were merely factional maneuvering by groups with divergent views as to the course which the war should take. But this was also a struggle over the characteristics of the society within which future generations of Americans would live, over the range and limitations of individual freedom, over the exact whereabouts of the winding demarcation line between the claims of civil rights and those of national security. Lincoln took up his pen to state his beliefs to a group of prominent appeasers—the conservative New York Central crowd which ran matters at Albany and kept control of the Democratic Party out of the hands of the early, disreputable, blatantly traitorous element under Fernando Wood. On June 12, 1863, Lincoln published a letter he had written to Erastus Corning, the railroad millionaire and banker. This letter expressed his blunt views on the constitutional issues of the war and what it boiled down to was that constitutional safeguards were suspended and necessity was king.

He complimented these concealed Copperheads ironically for having pledged “to support me in every constitutional and lawful measure to suppress the rebellion” and then added: “I have not knowingly employed, nor shall knowingly employ, any other” than constitutional devices.

Lincoln thought that the civil courts were incapable of coping with the political arrests necessary in a time of insurrection. Peacetime arrests were “directed at the small percentage of ordinary and continuous perpetration of crime”, while the problem in civil war was to curb “sudden and extensive uprisings against the government, which, at most, will succeed or fail in no great length of time.” The political crisis requires imprisonment of men “not so much for what has been done, as for what probably would be done. . . . In such cases the purposes of men are much more easily understood than in cases of ordinary crime.”

Then Lincoln added an extraordinarily loose and dangerous definition of what constitutes treasonable utterance in time of war: “The man who stands by and says nothing when the peril of his government is discussed, cannot be misunderstood. If not hindered, he is sure to help the enemy; much more if he talks ambiguously—talks for his country with ‘buts’ and ‘ifs’ and ‘ands’.” (The late President Roosevelt presumably borrowed from this source in his well-known “yes-but” speech—an attack on political independents who refused to endorse all of his program without qualification.)

What Lincoln was saying in his disarming way was that in this crisis anyone who disagreed with the justice of the Northern cause, in fact, anyone who gave hint of such disagreement by silence when the government was criticized, was an enemy of his country and should be treated as such. And, while he was appearing to make the obvious point that the Constitution is an elastic thing, which grants the Government larger powers in wartime than in time of peace, he was actually going far beyond this to state that all criticism could legitimately be stifled. In this, he was appealing to necessity which, throughout history, has been the mother of despotism.

When he sat down to write this letter, Lincoln may or may not have remembered what he had said during the Mexican War. He had then called the President of the United States "a bewildered, confounded, and miserably perplexed man. . . His mind, taxed beyond its power, is running hither and thither, like some tortured creature on a burning surface, finding no position on which it can settle down and be at ease. . ." And he had gone beyond this to insinuate that President Polk was "half-insane"—a sordid man with a twisted conscience who, in order to escape public scrutiny of his official misconduct, had plunged the nation into an unjust and aggressive war, "fixing the public gaze on the exceeding brightness of military glory—that attractive rainbow that rises in showers of blood—that serpent's eye that charms to destroy. . ."

The Lincoln who had said these things in 1848 would have been deemed disloyal according to the Lincolnian standard of 1863. Nor would he have stood alone in this "disloyalty." Daniel Webster had described the Mexican conflict as "a most unnecessary and therefore a most unjustifiable war." Henry Clay had opposed continuing the war and asserted the right of even the most humble American citizen to join him openly in that opposition. In the intemperate view of Senator Charles Sumner, it was "an enormity born of slavery. . . Base in object, atrocious in beginning, immoral in all its influences, vainly prodigal of treasure and life; it is a war of infamy which must blot the pages of our history." The right to criticize the conduct of a war, to oppose the principles for which it was being fought and to use all lawful political means available to convince the public that it should be brought to a swift termination—these had hitherto been considered in America as self-evident corollaries of the Bill of Rights.

Lincoln's letter to Erastus Corning continued: "Under cover of 'liberty of speech,' 'liberty of the press,' and '*habeas corpus*,' they [the Copperheads] hoped to keep on foot amongst us a most efficient corps of spies, informers, suppliers, and aiders and abettors of their cause in a thousand ways. . ." These men could not be handled by the civil courts, Lincoln thought, because there was no assurance that juries would convict them! "Must I shoot a simple-minded soldier boy who deserts," he asked rhetorically, "while I must not touch a hair of a wily agitator who induces him to desert? This is none the less injurious when effected by getting a father, or brother, or friend into a public meeting, and there working upon his feelings till he is persuaded to write the soldier boy that he is fighting in a bad cause. . . I think that, in such a case, to silence the agitator and save the boy is not only constitutional, but withal a great mercy."

What he was stating here was that any man who believed the war wrong and said so should be subject to military arrest unless he had first established that nobody within range of his voice was in any way related to a member of the armed forces. This was dangerous doctrine coming from an American President. In wartime, Lincoln believed, he should have the sole discretionary power—effectuated through the military arm—to imprison those people whose words, thoughts, action or inaction appeared in his personal judgment to indicate disloyalty. The fact that he was by temperament averse to every harsh measure, tolerant and humane made his use of these powers palatable, but could not reconcile their existence with the American liberal tradition.

He closed this letter, which is such a strange compound of persuasiveness, logic and sophistry, with a memorable statement of his personal faith in the viability of a free society:

"Nor am I able to appreciate the danger apprehended . . . that the American people will by means of military arrests during the rebellion lose the right of public discussion, the liberty of speech and of the press, the law of evidence, trial by jury, and *habeas corpus* throughout the indefinite peaceful future which I trust lies before them, any more than I am able to believe that a man could contract so strong an appetite for emetics during temporary illness as to persist in feeding upon them during the remainder of his healthful life."

It was true that, as long as Lincoln occupied the White House, American liberties would not be permanently stifled. But there

would be other wars and other Presidents. And this doctrine that the Constitution hibernated in time of national crisis had to be weighed against the future as well as the present.

In practice, the Government proceeded with much more caution than might have been expected in suspending vital democratic traditions. Congress expelled those Southern members who abandoned their duties and took up arms on the Confederate side, but in 1861 refused to exclude Senator Powell of Kentucky who had publicly demanded that the United States armies withdraw from Southern soil and that the Confederacy be recognized. Senator Bright was expelled, but his crime was outright treason—offering a military invention to Jefferson Davis' government. The Test Oaths Act was passed in 1862, requiring office holders, including Congressmen and Senators, to swear before taking up their posts that they had never participated in insurrection against the United States or given aid and comfort to its enemies. But in practice, this act was applied with remarkable leniency. An office holder was ousted for having gone armed to a Confederate outpost and betrayed the hiding place of a Union soldier. The Copperhead congressmen who were swept into the House in 1864, however, were allowed to retain their seats. Mere utterance was not considered sufficient ground for exclusion, nor was moral turpitude. Thus, when Representative Connor of Texas was charged with having flogged Negro troops under his command and then bribed them not to testify before a court martial, James Garfield asked whether there was anything in the Constitution which prohibited a moral monster from taking his seat in Congress. The House decided that there was not.

Freedom in Wartime

It was clear that the Constitution authorized suspension of *habeas corpus*, and therefore the application of martial law, "in case of rebellion or invasion (where) the public safety may require it." There was no doubt as to the existence of the rebellion. Nor was there doubt that within the war zones, in areas where powerful conspiratorial movements were successfully dissolving governmental authority, military arrests on a sweeping scale were both constitutional and necessary.

But Lincoln had gone farther. He had applied martial law to specific types of offenses wherever they occurred in American territory. He had done this because of two far-reaching considerations. First, he believed that his principal task was to prevent peo-

ple from committing political crimes, not to punish them for what they had already done. And this raised the question of whether the Constitution had ever contemplated giving the President power to deprive men of their freedom on mere suspicion in areas not menaced by military invasion. His second consideration was an even more dubious one. He was frank to admit his fear of the juries in Northern territory. "Again," he said, "a jury frequently had at least one member more ready to hang the panel than to hang the traitor." The answer to this observation was that, if there were a mathematical certainty that juries would convict any men whom the Government chose to arrest, the jury system would serve no useful purpose.

On the great issue of freedom of speech, Lincoln seems to have been strangely unperceptive. There is, of course, no absolute right to utter what one pleases either in wartime or in peacetime. No man is free to shout 'fire' in a crowded theatre. He is not free to advocate arson, assassination or insurrection in such a way and under such circumstances that his words are calculated to bring these crimes about. In any advanced society, the leaders operate with words. They do not manipulate physical things, but move other people through speech and writing. And this obviously does not enable them to avoid responsibility for criminal acts by appealing to the free speech amendment.

No nation has ever extended an absolute protection to utterance and writing. Even the American Constitution merely prevents Congress from passing laws "abridging"—or lessening—the right of freedom of speech. Nowhere does the Constitution state that this freedom is absolute.

Lincoln's approach to this issue ignored most of the shadings. "Spies, informers, suppliers, and aiders and abettors" of the Confederacy were seeking to shield themselves from punishment by appealing to the free speech amendment. Therefore, Lincoln reasoned, they must be handled by military tribunals. This was a most curious conclusion. Did the Constitution extend protection to spies, to traitors, to men who conspired to foment desertion from the armed forces? And, if it did not, why were the civil courts incapable of handling cases of this sort? They were to do so effectively in future American wars.

Lincoln had lumped together men guilty of clearly criminal activities with those who merely expressed opinions against the war with no discernible intent to instigate illegal action. And he had added to this broad category the men who talked "ambiguously"

and gave him only lukewarm support. Given this indiscriminating conception of what constituted disloyalty, the military tribunals were a necessary method of combatting it. The Government wished to imprison people whom the courts had no right to convict since they had committed no crimes and were protected by the Constitution.

The Case of Milligan

Finally, the Supreme Court spoke out on these matters. When it did so, it administered a stinging, though posthumous, rebuke to the Great Emancipator.

Federal agents had been working inside the underground Indiana fifth column—the Sons of Liberty. In October 1864, four of the leaders of this organization—among them one Lambdin P. Milligan—were arrested and charged with “conspiracy, affording aid and comfort to rebels, inciting insurrection. . .” They had planned, according to the Government, to free rebel prisoners of war and, with their armed aid, set off a pro-Confederate rebellion in Indiana. On December 18, 1864, a military commission found them guilty of treason and sentenced them to hang. Lincoln loathed the business of signing execution orders and allowed the papers to accumulate dust on his desk. When Lincoln was murdered; his successor promptly signed the necessary documents, and the hanging was scheduled for May 19, 1865. Meanwhile, one of the prisoners had made a successful jail break and a second had had the death sentence commuted to life imprisonment at hard labor.

The execution of the remaining two was postponed. Then, sixty-three hours before the time set for the hanging, the prisoners were reprieved by telegraphic order and sentenced to life imprisonment.

An appeal was taken to the Supreme Court. The question at issue was not the guilt of the men—on the evidence, they were traitors—but the lawfulness of the military tribunal which had sentenced them. As the majority of the Court put it: “If there was law to justify this military trial, it is not our province to interfere; if there was not then it is our duty to declare the nullity of the whole proceedings.”

The issue before the Court was momentous and many Americans were anxious over its verdict. “If the Supreme Court should decide that military commissions are *lawful*,” Lincoln’s Attorney General, Bates, thought, “I predict that the judges who give

opinion that way will go down to posterity with their characters as black as that of Lord Chief Justice Saunders. . . .”

By a five to four decision, the Court repudiated the Lincolnian conception of the suspension of constitutional safeguards during wartime:

“Martial law cannot arise from a *threatened* invasion. The necessity must be actual and present; the invasion real, such as effectively closes the courts and deposes the civil administration. . . . Martial law can never exist where the courts are open, and in the proper and unobstructed exercise of their jurisdiction. It is . . . confined to the locality of actual war.”

This decision invalidated the proceedings against Milligan. It stripped from future Presidents the power to suspend the civil rights of American citizens everywhere in the nation on the grounds that rebellion existed in one part of the nation. J. I. C. Hare, the authority on American Constitutional law, summarized the impact of the Court’s opinion as follows:

“The question whether the principle of Magna Carta as declared in the Petition of Right, vindicated by the Declaration of Independence, and guaranteed by the Constitution . . . shall give place . . . to the methods which have been despotically introduced (in) Europe, arose in *Ex parte Milligan*, where the wavering balance fortunately inclined to the side of freedom. . . .”

All of the judges held that the military tribunal had no shadow of authority. Four judges considered that it would have been lawful had it been authorized by Congress; the majority believed that its mere existence under the circumstances prevailing in Indiana in 1864 was in violation of the Constitution. This majority, moreover, sharply repudiated Lincoln’s more general view that the Constitution could be stretched like a rubber band to justify dictatorial measures in time of crisis:

“The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers . . . all classes. . . . No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or depotism, but the theory of necessity on which it is based is false; for the government, within the Constitution, has all the powers granted to it which are necessary to preserve its existence.”

As long as the war was in progress, the Supreme Court had taken no action to end the usurpations by military tribunals or to

free men arrested unlawfully. Like Hegel's owl of Minerva, it had waited until the need for decision had passed before giving its verdict. This approach, which on a superficial view of things might appear cowardly, had certain compensatory advantages. The Court spoke at a time when the public, being no longer swayed by war passions, was prepared to accept its judgment as final. And this uncompromising assertion of the validity of the constitutional rights of the citizen, whether in war or in peace, was to influence future American Presidents who might otherwise have been tempted to resort to expedient measures incompatible with the Bill of Rights.

COPPERHEAD CABALS

"I do further promise that I will, at all times, if needs be, take up arms in the cause of the oppressed—in *my country first of all*—against any Monarch, Prince, Potentate or Government usurped, which may be found . . . waging war against a people . . . who are endeavoring to establish . . . a Government for themselves of their own free choice. . ."—The Copperhead Oath.

The Copperhead conspirators constituted the Confederate fifth column in the North during the Civil War. This is a neglected and absorbing chapter of American history—the record of a hidden war carried on persistently and relentlessly within the heart of the Union camp. The struggle was a forecast of the manifold techniques of totalitarian treason. It was a war of propaganda and of lies, a war for slavery and disunion flying the banner of civil liberties, an open war of words and political manipulation combined with a subterranean struggle of direct action and revolutionary conspiracy.

The upheaval against the draft in New York City in 1863, the Molly Maguire murders in the anthracite coalfields, the efforts to detach the Middle West and establish an independent Northwest Confederacy, Captain Hines' bold attempt to free 5,000 Confederate prisoners at Camp Douglas and take Chicago by coup d'état, the arming of guerrilla bands of Union deserters and the ill-planned attempt to set New York on fire—all these episodes were thrusts by the submerged mass of the Copperhead iceberg.

This sinister, well-organized, many-facetted conspiracy struck at the flanks and rear of the Republic and caused long nights of worry and soul searching in the White House. After calling on President Lincoln during the black winter of 1862—the winter of Northern defeats, disillusion and dissension—Senator Charles Sumner wrote to a friend:

"These are dark hours. . . The President tells me that he now

fears 'the fire in the rear'—meaning the Democracy, especially at the Northwest—more than our military chances."

A slickly varnished Marxist interpretation of the Civil War has been echoed in so many books that it has gained considerably more credence than it deserves. According to this theory, the war was at bottom an economic battle to the death between Northern industrial capitalism and Southern agrarian feudalism, in which the one element that wanted to carry the war to the end, freeing the Negro both politically and economically, was Northern industrial labor.

The most cursory glance at the roots of the Copperhead movement reveals an entirely different picture. The Confederate faction in the Northern states consisted essentially of a single grouping—the poor and the unskilled. Basically, it was a fighting alliance between the poor farmers who had thrust upward from the Piedmont into the Ohio Valley and immigrant workers from the slums of the Atlantic Seaboard cities.

The anatomy of the Copperhead movement is dissected by Wood Gray in *The Hidden Civil War*, a work of sound scholarship and absorbing interest on which I have drawn heavily. The heart of the disloyal movement, Gray shows, was in the Midwestern states: Ohio, Indiana, Michigan, Illinois and Wisconsin. About 40 per cent of these Middle Westerners were of Southern stock. They had pioneered over the Appalachian barrier, butchering the soil wherever they settled, again and again being driven westward by the consequences of their wretched farming methods. These mountain people were crude, violent, hardy and inured to a self-sufficient and isolated life. They were Jeffersonians and Jacksonians. They held few slaves and had no use for the Negro. As they debouched into the midwest, they settled in fairly homogeneous areas, choosing the forest lands, rather than the richer grasslands, because they needed timber with which to build their homes.

Soil fertility in this region is determined by the course of glacial movements which swiftly pulverized rock into topsoil and created the rich earth of the Corn Belt. By and large, these Southerners moved into land which had not been touched by the soil-creating icesheets. Maps of agricultural wealth per capita show that the Southern immigrants were concentrated in the more impoverished counties.

These men were the rural backbone of the Copperhead movement. They were Democrats. They were Southern in origin and

sympathy. While they held few slaves, they violently opposed emancipation because they feared that a torrent of free Negro labor would flow North and compete with them.

In the Northern cities, the pro-Confederate element was the unskilled foreign born. Of eight million inhabitants of the Middle West in 1860, 320,000 had been born in Ireland and 585,000 in Germany. In New York City, more than half of the 400,000 foreign born had been driven by potato famine, poverty and oppression from the Emerald Isle. They were poor; they were unskilled; they were underpaid and exploited. They had been the chief butt of the bigotted Know Nothing movement and, in many states, this thoroughly un-American movement had switched wholehog to the Republican Party. They were Democrats because they wanted their Roman Catholic faith protected and because Democratic political machines in the Northern cities represented the laboring groups. And above all, the Irish feared the swarming of free Negroes into the North after the War—for this could only result in a more fierce competition for the worst paid jobs, in a lowering of wages and in a further degradation of their social status.

The problem was not wholly economic. These Irishmen had come to America with the same hopes for freedom and justice as the immigrants of other lands. Perhaps the salient difference was they had not developed in their homeland those habits of loyalty to the state which more fortunately situated immigrant groups possessed. For in Ireland the people had been in chronic war against an alien government—the result of invasion and the instrument of oppression.

Their role in the Copperhead movement was considerable. Cartoonists of the day symbolized this disloyal movement as Irish stew. Draft riots and killings in the anthracite coalfields were the work of the Molly Maguires, a terrorist organization confined to men of the Irish race and Catholic faith. They played an all too prominent part in the frenzied draft riots in New York City, where roaring, drunken mobs clubbed Negro girls to death. When the burnings, lootings and lynchings were over, Lincoln quipped that the man needed to restore order in New York was General Kilpatrick.

The religious leaders of the Irish-Americans were, of course, disturbed over this outcropping of armed resistance to government on such a large scale. On the fourth day of the New York riots, Archbishop Hughes fearlessly addressed the mob:

"When these so-called riots are over, and the blame is justly layed on Irish Catholics, I wish you to tell me in what country I could claim to be born? (Voice: "Ireland".) Yes, but what shall I say if these stories be true? Ireland that never committed a single act of cruelty until she was oppressed. Ireland that has been the mother of heroes and poets, but never of cowards."

The traitorous movement which infected virtually all of the Northern cities and the Northern farming communities was, however, a much larger and more menacing thing than the flaring resentment of ill-treated immigrant groups. It was compounded of many factors, but poverty and ignorance bulked largest. Conscription was rightly hated for a man could buy exemption from military service for \$300. It was, many Northerners believed, "a rich man's war, but a poor man's fight." Fear of the northward flow of free Negroes provided an economic incentive to sedition. The organizational link between the Southern people and the Northern poor was that curious and somewhat illogical amalgam, which has nonetheless survived unchanged throughout most of American history—the Democratic Party.

Clement Vallandigham

After the first round of war, Clement Vallandigham emerged as the pre-eminent political organizer of the pro-Confederate forces in the North. Of Huguenot and Scotch-Irish extraction, he had trained for the ministry and combined the gift of tongues with a scorching fire of fanaticism that never subsided. He had had a brilliant beginning as lawyer, newspaper editor and Congressman, but even during the period of Southern ascendancy under Presidents Pierce and Buchanan his uncompromising defense of slavery blocked his political future. And this made him bitter. He charged the abolitionists with having sentenced him to "ten years of exclusion from office and honor at that period of life when honors are sweetest."

When the guns blazed at Sumter, Vallandigham realized that his hour had come. In this historic moment, which he may have sensed as a last and desperate opportunity to seize power and fame, Vallandigham decided to throw caution aside.

In appearance, the Copperhead leader was tall, dignified, be-wiskered. The photographs show a handsome head with broad, high forehead. The first impression of wisdom and strength, is vitiated, however, by the bitter lines of his mouth, the angry

tenseness of his stance and remarkable eyes which protrude too much and stare at the world in restlessness and hatred. He was an accomplished orator with the gift of rotund phrase and the cunning needed to sense and evoke all latent popular hatred and fears. He played the role of the man who stands alone against the torrent and he rang all the changes on this theme. But the notes were slightly false. Sandburg says charitably that he was a man of "shaded sincerity"; one could also say that he was a man whose ideas derived from his frustrations.

Vallandigham did not stand alone in his frenetic opposition to the Union cause. Even while the war clouds were forming, a substantial part of the Midwestern press threatened treason. The *Joliet Signal* offered to "tumble into the river . . . the Black Republican artillery company at Pittsfield . . . making ready to . . . subdue the Southern people."

The *Detroit Free Press* fumed: ". . . if troops shall be raised in the North to march against the people of the South, *a fire in the rear will be opened upon such troops which will either stop their march altogether, or wonderfully accelerate it.*"

Branded traitors by loyal Northern opinion, Vallandigham and the Copperheads were strangely sensitive to this charge. They answered it, not with a refutation, but with a counterattack. The Ohio Copperhead leader seems to have realized instinctively the profound political truth that Hitler understood so well: a dynamic, growing mass movement cannot afford to stand on the defensive.

The answer was to point to Lincoln's violations of the Constitution, to his usurpation of powers which he did not lawfully possess. Was it treason "to circulate petitions for a compromise . . . to object to squads of military visiting private houses, and . . . make search and seizure . . . to question the infallibility of the President . . . to talk of hard times . . . to say that this war might have been avoided. . ."

As early as April 1861, Vallandigham had the courage to declare publicly that his position was "well known, *and will be adhered to the end.*" He thought "the sober second thought of the people" would dissipate this "fleeting public madness".

The strategy of the Midwestern Copperheads crystallized during the first months of conflict. "We are in favor of forming a central Republic composed of the middle and conservative States as a breakwater against the ultraisms of the extremes," an Indiana mass meeting resolved in early 1861. The Midwestern states were to secede and form a Northwest Confederacy. This third Republic

would be launched ostensibly as a neutral, seeking peace by compromise and understanding. In reality, its sponsors were wholehearted partisans of the Confederate cause.

The logical way to bring this about was for the Democratic Party to capture the key offices in the five key Midwestern states. As an immediate objective, this was plainly impossible. The holiday phase of war fever struck the Middle West in the first year of conflict. The response to the draft was enthusiastic. Privates were paid \$20 a month in the Army as against \$14 with board and washing for the heavy chores of farm labor. The war was a lark. Thus far there had been little fighting and the great crops of corpses had not yet been harvested.

The tide turned toward the Copperheads in mid-1862. On July 3, in a burst of overconfidence, Lincoln asked the state governors for 50,000 more men to end the war in two weeks. But the first smashing blows toward the Tennessee River were followed by stalemate and the debacle at Second Bull Run. A seismic wave of defeatism and disgust spread over the country in the wake of military mismanagement and inertia.

In September, Lincoln chose a period of military reverses to announce his unpopular Emancipation Proclamation. This was a pill which could have been forced down in the heavy wine of victory, but, coming in late 1862, it was a rallying cry for appeasers, defeatists and traitors throughout the North. A labor mass meeting in Quincy thought that emancipation was a plot "to ride down and crush out the free white workingmen of Illinois." They warned that "to bring free negro labor into competition with white labor" would mean provoking them to legal resistance and, if this failed, to those measures which "shall seem to us most expedient."

The 1862 elections were a sweeping victory for the Democratic Party in the key states of Ohio, Indiana and Illinois. Vallandigham, representing the extremist wing of the Party, carried on an underground struggle against Seymour for national leadership and transformation of the Democracy into an outright organizing force for submission to the South or regional secession from the Union.

Terrorist Operations

Meanwhile, groups of direct actionists were sprouting throughout the Midwest. The Knights of the Golden Circle, a filibuster-

ing society formed originally in 1854 to conquer Mexico and absorb a vast tropical area for the soil-devouring cotton economy, now turned its efforts toward terrorist operations on behalf of the Confederate cause. The tree of treason may have poisoned roots, but the tree nonetheless often thrives, and the hitherto insignificant Knights expanded throughout the nation like a Jinn released from its bottle. By mid-1862, Government agents reported 10,000 Knights in Indiana alone. The members of this organization pledged "our lives, our property, and our sacred honor" to "maintain constitutional liberty." Harping on the slogans of the American Revolution, they proclaimed that "resistance to tyrants is obedience to God." In accordance with the tradition of American lodge organizations, members took an oath never to betray the secrets of the order "even unto death by torture." This Copperhead oath also contained a pledge to "take up arms in the cause of the oppressed—in *my country first of all*. . ." And it was clear on further reading that the oppressed were the Southern slaveowners, the oppressor was Abraham Lincoln and that the oath was a forthright pledge to commit treason against the United States by levying war.

The propaganda of the Copperheads was designed to encourage resistance to the draft, stimulate mass desertion from the Union Armies and ready the civilian population for revolutionary action. They protested with telling effect against Lincoln's unconstitutional measures, against the imposition of military rule over areas not in rebellion and against the suspension of the Bill of Rights. This came with bad grace from men like Vallandigham, who had urged wholesale jailing of Abolitionists in the pre-war epoch, but the appeal struck a dominant chord in the American heart. The Copperheads also argued that the Midwest was naturally linked to the South by the Mississippi artery (appealing in this matter to a pre-railroad phase of American development now superseded) and they urged that the two great regions had a common interest and a joint cause.

And, as all traitors and defeatists have said everywhere, they claimed that the enemy was invincible and that the boys of the Midwest were marching toward open graves. Flagrant prejudice against the Negro was universally roused: " . . a large majority of the men will not make very good fighters for niggers. . . They think that a white man is as good as a nigger, and can see no reason why *they* should be shot for the benefit of niggers and

Abolitionists." Thus the Ashland, Ohio, *Union* in 1862, as quoted by Wood Gray.

The bright aura of pacifism was painted over these questionable transactions. It was easy for an outright Confederate partisan to talk about the horrors of war, to urge that white Americans should not kill each other, to propose that the troops everywhere be retired within the frontiers of their several states. And to the unperspicacious it was not quite clear that this was tantamount to recognizing the right of secession, to surrendering totally to the South, and to creating a precedent for disunion which might in future decades utterly fragment the Republic.

The Copperheads did more than talk. Arms were bought privately in the East and distributed among their followers. Mass desertion was encouraged and some of the deserters, together with the more bold Copperhead elements, formed little bands which waged guerrilla war in parts of the old Northwest. For the active and daring, there was always the business of organizing the escape of Confederate prisoners of war. Seditious propaganda seeped into the Army. Wholesale surrenders to the Southern forces occurred in some battle units. The prisoners would then be sent North on parole where they were so mutinous that General Lew Wallace asked that no more of them be routed to Chicago. Incendiary fires broke out in various barracks. There were many other of the myriad, by themselves unimportant, symptoms of a rising insurrectionary tide.

The Copperheads were operating on two levels. The obvious pre-requisite to seceding the Northwest was to transform the Democratic Party *as a whole* in these states into an instrument of treasonable revolutionary action. At the same time, the hard core of implacable opposition to the war had to be consolidated, tested in the fire and set boldly into motion, so that through audacious minor coups it would gain followers and radiate its daring to the more timid elements of the disloyal movement.

And this was dangerous business. For revolutionary action not only hardens the minds of its secret supporters, but it crystallizes counter movements. In the American scene, the appeal to violence against the democracy at large has generally, sooner or later, caused a massive recoil. As Gray puts it, the disloyal movement "got squarely in the way of one of the most effective epithets in American history—'Copperhead'." This word has a sting to it. For the copperhead is not only a deadly snake, but strikes secretly from concealment. It is possible that the word originated because the

Copperheads cut the figure of the Goddess of Liberty from the penny as a protest against Lincoln's repressive measures—but this was not the meaning that history remembered.

They were also called "Butternuts", and this derisive name had more social meaning. It referred to the fact that the poor and uneducated pioneers—who had come from the Piedmont to the Midwest with axe and gun—homespun their clothes and dyed them with local nuts. At the pro-Southern meetings, the men would sometimes pin the two halves of a butternut to their jackets. Like most American political groups, they were proud to be known as the party of the common man.

Vallandigham's Arrest

"Treason is everywhere bold, defiant—& active, *with impunity*," a correspondent wrote Congressman Washburne of Illinois, "... if we cannot *speedily* secure victories by our arms—peace *must* be made to secure us anything!"

Lincoln was fighting a many-fronted war. Often what was clearly inexpedient in one situation had to be done for other and overriding reasons. On March 3, 1863, the unpopular business of conscription was turned over directly to the Federal Government instead of being handled by the state authorities. This sharpened the cleavage. The Copperheads now clashed directly with the Provost Marshal's department, rather than with locally elected officials. And a provision was written into the draft act by which any American could make his cowardice respectable on payment of \$300. In addition to being an iniquitous measure, which equated dollars with blood and exempted the well-to-do from the obligation to defend their country, it seemed to prove everything that the Copperheads had been saying about the class character of the conflict.

By now these "showers of blood" which Lincoln had talked about on the floor of the House twenty years earlier were becoming deluges. The flow was swollen by every skirmish and encounter, by every Northern victory so joyously celebrated. The filling of draft quotas became increasingly difficult. In 1864, Governor Brough feared that up to 15,000 soldiers might be needed to enforce conscription in Ohio alone. In Indiana the previous year, the Knights of the Golden Circle had murdered enrollment officers. Throughout the Midwest, mobs rose to pelt with bricks, mangle or lynch the officials entrusted with the job of getting them to fight. The timid went to the woods to hide

from the draft. The more violent took up arms and joined guerrilla bands of draft dodgers.

Lincoln meanwhile was throwing a little army of police agents into the festering area of Copperhead activity. The Government was getting tougher. General Ambrose Burnside came into Ohio as zone commander, touchy over criticism, smarting from his defeat at Fredericksburg. On April 13, he issued his famous General Order #38 against seditious utterance. "The habit of declaring sympathy for the enemy will not be allowed." Two weeks later, a Democratic mass meeting took place at Mount Vernon with Vallandigham the main orator. The two Army intelligence officers who took notes were disturbed at the large number of hickory poles, butternut badges and copper Liberty Heads. Vallandigham gave a harsh and probably treasonable speech, if one can judge from the fragmentary scribbling of Burnside's plain clothes agents.

He was seized in bed at half past two one morning and haled before a military tribunal for violating an order of a Major General which had no shadow of legal authority. Although he protested the legality of the proceedings, he was sentenced to confinement for the duration.

Lincoln now found himself snared in a mesh woven by a loyal subordinate who had proved as incompetent in administrative matters as in battle. He was caught between two fires:—the radical Republicans who wanted Vallandigham hanged and the temporary alliance of liberals and Copperheads who wished him released. He extricated himself with the superb political guile which characterized so many of his decisions. After removing himself from the immediate dispute by declaring that he did not know whether he would "have ordered the arrest of Mr. Vallandigham" if he had been in Burnside's shoes, he changed the sentence to deportation to Confederate territory.

There was no conceivable theory by which this punishment could be considered legal. But it was a brilliant stroke. Vallandigham, who had posed as a martyr, was placed in a position of ridicule and indignity. The Government was saying at the same time that Vallandigham was a mere flea on the body of the nation, that he was incapable of harming it, and that it mattered very little where he went. And the sting behind the decision was the exposure of Vallandigham's double dealing. He was now being exiled to where he belonged. The Government was telling him to show his true colors and join the rebellion openly.

Vallandigham left Confederate territory for Canada as quickly as possible. He averted his cheek from Southern kisses of political death. He found it hard to maintain his hero role in this somewhat absurd predicament, but did manage to write his wife: "I am as calm and unmoved as ever. Bear it all like a woman—a heroine."

The New York Insurrection

After the great victories at Gettysburg and Vicksburg, the Union Armies in July 1863 were at long last bursting through the Confederate carapace of steel. And yet the nation was tired, war-weary and sullen. Voluntary enlistment had virtually stopped. In March, a nation-wide conscription act had been approved and in July an attempt was made to apply it in New York.

At this juncture, in the words of Carl Sandburg, "the dignity and majesty of the United States Government was challenged, upset, smeared with insult, and threatened with the disorders and violence of revolution, in the largest city in the United States."

The drawings took place on Saturday, July 11, before a good-humored crowd. But when the names were published in the newspapers, the people discovered that the draftees were almost entirely mechanics and laborers. During Sunday, the Ninth Congressional District, which was staunchly Democratic and working-class, seethed with bitterness and resentment. The draft was class legislation. There was no justice in allowing the well-to-do to buy their way out of military service. Democratic politicians scurried through the slums, arousing lurking hatreds of the Negro and telling the people that conscription was un-American and against the Constitution. And for those who read the Democratic newspapers, this War had been deliberately engineered by "evil-minded men to accomplish their ends." Their generals were incompetent; their President was a tyrant; their cause was bad, and their country wasn't worth fighting for.

But the hard reality of the matter was that one-fifth of these names—representing 1,200 men—had to be drawn blindfold from the revolving drums. These men would fight, hunger and scratch lice and ticks from their aching bodies as they slept uneasily in open fields. Some of them would be ripped apart by Confederate shells and others would die in ill-equipped field hospitals before they had had time to do more than begin to live.

Yet all this had to be done. As usual, Lincoln put the matter

well: "We are contending with an enemy, who, as I understand, drives every able-bodied man he can reach into his ranks, very much as a butcher drives bullocks into a slaughter-pen. No time is wasted, no argument is used. This produces an army which will now turn upon our victorious soldiers, already in the field, if they shall not be sustained by recruits, as they should be. . ."

On Monday morning, the workers on the Second and Sixth Avenue street railways downed tools against this iniquitous decision that some of their members would have to fight for their country. A mob of about a thousand sullen workmen gathered in front of the Provost Marshal's office, where the draft wheel was turning. They hurled bricks through the windows, then smashed their way inside, poured turpentine on the floors and burned down the building. When the Police Superintendent arrived, the mob mauled and nearly killed him. A little detachment of soldiers—recruited from the convalescent wounded—who bravely tried to restore order were overpowered and their arms seized.

The mob milled through the streets, setting fire to buildings, threatening to hang Horace Greeley "and send him straight to hell", shouting "to hell with the draft." Eagerly joined by hoodlums and criminals, they burst into the weinstubes and saloons and, when refused free liquor, replied with the torch. They sacked the Mayor's home, burned down a ferryhouse, dry-goods stores, shops and factories, wrecked dockyards, rail lines and streetcar tracks, and left a widening swath of havoc, flames and death.

This swelling, seething, bestial mass now turned on the Negroes. They dragged colored waiters from the hotels and strung them up on the lamp posts. Some thirty Negroes were hunted down, shot, stoned, trampled, hanged or burned to death while hanging. "Small mobs (are) chasing isolated negroes as hounds would chase a fox," an official reported to War Secretary Stanton.

There was a Colored Orphan Asylum on Fifth Avenue, which sheltered several hundred children, and the berserk mob turned its fury on this haven for the underprivileged. A badly outnumbered cordon of policemen defended the orphanage long enough for the children to escape, then the mob swarmed through, smashed up the furniture, set the building on fire and, finding one small Negro girl who had hidden terrified under a bed, pulled her out and beat her to death. The Negro residents of New York fled from this reign of terror to New Jersey.

Governor Seymour of New York, a national leader of the Democratic Party, who played a skulking role in this affair, addressed the murderers as "my friends" and tried to coax and flatter them into some semblance of decency.

There was a serious political purpose behind this ugly saturnalia of blood. All transportation in New York was paralyzed by general strike. Barricades were thrown up on 29th Street and on First and Ninth Avenues between 14th and 42nd Streets. The mob stole carbines from a factory and made two headlong, unsuccessful assaults on the State arsenal. The armed multitude lashed out at the Treasury Building, the gas works, the shipyards, the factories at work on war materiel.

This was more than the animal rage of the dregs and flotsam of a great city. The riots had erupted at a time when all available troops had been despatched from New York to Gettysburg. The violence of the mass had snowballed toward insurrection with terrifying speed, indicating that somewhere behind this sea of wrath there was a directing intelligence. The objectives chosen—other than Negro children and Protestant churches—also indicated the presence of a leadership determined first to paralyze, then to seize the city. The rioters had turned on the only available armed force—some 2,000 policemen—and had attempted to annihilate it in street battles. They had isolated the city momentarily from the rest of the nation by systematically cutting all transport arteries and telecommunications links. They had sought to smash up and destroy the key production units of value to the Northern war effort. They had struck at the arsenals and the arms factories in order to weld the mob into an improvised army.

Eight hundred troops, some of them brought hurriedly from West Point, were thrown into the battle. Gunboats patrolled the East River to protect the harbor works and, if necessary, open fire on the mobs. On the fourth day of bloodshed, the troops—having already overrun the barricades—broke into the houses which the insurgents were using as strongpoints and killed them there.

When "the storm in the streets" had subsided, there were a thousand corpses in New York—the large majority of them rioters—and about \$5 million of property lay in ruins. Nineteen of the mob were convicted and sent to prison. Although the attempted uprising had seemed treason by levying war, none paid the penalty as a traitor.

Small draft riots also flared in Troy and Boston, but were

swiftly quenched. In the Pennsylvania coalfields, Molly Maguire mobs held up trains carrying conscripts to military installations. These Molly Maguires were a secret organization of terrorists—banned by the Catholic Church. Before the Civil War, they had concentrated on “hating out” of the mining camps Welsh, English and German coaldiggers and on deporting obnoxious mine superintendents in a vertical direction. Now they busied themselves with obstructing the draft.

Midwestern Uprising

In mid-1863, a new fifth column organization sprang up in the Middle West—the Order of American Knights. Unlike the older Knights of the Golden Circle, the OAK was centralized and had been created for action. In February 1864, a military department was set up within the OAK—a momentous decision. A few days later, the name of the organization was changed to the Sons of Liberty—an obvious device to exploit the symbolism of the American Revolutionary War. Watching the situation from his listening post in Canada, Vallandigham secretly joined the new treasonable group and agreed to accept the post of Supreme Commander.

In early 1864, the Confederacy was being pulverized by the armies of Sherman and Grant. There seemed to be two possible Confederate strategies in the Midwest. One involved—indeed necessitated—avoiding anything that smacked of treason: the election of a Democratic, peace-at-any-price President. The second course was to organize a succession of insurrectionary hammer blows against the Northern rear: to force secession of the Middle West by a bold coup, or, failing this, to at least draw Union regiments from the front to stamp out the fires of rebellion in the supposedly loyal states.

There can be little doubt that the first strategy was the proper one. But the attractiveness of audacious, offensive action during a period of slow defeat is often irresistible. The decision, therefore, was to combine the two, inherently incompatible procedures. For leadership of the underground activities of the Copperhead movement, a new type of director was required—an intrepid, resourceful organizer of military operations against the rear.

Captain Thomas Hines

In March 1864, Captain Thomas H. Hines was appointed by

the Confederate Government to take charge of all insurrectionary and seditious activity in the Middle West. This was a splendid choice. Hines looked incongruously young beneath his sweeping, walrus mustache—almost like a boy acting the part of a middle-aged man in a school play. Discounting the somewhat comic appearance created by his extraordinarily large and laterally pointed ears, one noticed the deep-set, slanted, almost Mongolian eyes and their remarkable quality of hardness and practical intelligence.

Hines knew the Midwest. He had been up through the country with Morgan's Raiders and had learned that, as a fighting force, the Copperheads weren't worth the powder required to blow them to hell. He had masterminded Morgan's escape from Ohio Penitentiary after his capture, had helped Morgan flee southwards and had allowed himself to be captured by Northern troops rather than permit his commanding officer to fall into their hands. After a second escape, he wandered in a leisurely manner through Northern territory, observing the situation.

In May, President Jefferson Davis appointed his Secretary of the Interior, Jacob Thompson, to take charge of revolutionary activities in the North, but Hines remained the driving force.

The plan was to arm the Sons of Liberty, train them as a fighting force and launch an insurrection throughout the Middle West at a prearranged hour. The signal was to be the return of Vallandigham to Ohio and the arrest of the "martyr" by the Northern military. In Canada, Jacob Thompson turned over \$500,000 to Sons of Liberty officials to be used for the purchase, transport and distribution of weapons among the Copperheads. The scrupulously legalistic Vallandigham knew about and approved this transaction but was careful not to receive the funds personally.

Hines evidently realized that this grandiose scheme stood on the borderline of impossibility. He knew as a soldier the unreliability of a civilian organization in an operation on this scale—particularly if the campaign is to be offensive in character.

Vallandigham returned in mid-June, but, instead of being arrested, he was ignored. The Copperhead uprising was postponed until the Democratic National Convention assembled in Chicago. Meanwhile, Government agents infiltrated the Kentucky Sons of Liberty and leaders of the organization were arrested. Copperhead bigwigs in other states were now shying away from talk of armed uprising.

When the Democratic Convention finally met in late August, Hines and a detachment of seventy former Confederate soldiers

arrived in Chicago in plain clothes. Local Copperheads were to organize and equip two regiments of pro-Southern men. Leaders of the Sons of Liberty promised to have 50,000 of their followers in the city. This was more than enough for a revolution if the Copperheads would actually fight.

The grand design was to liberate Confederate prisoners of war in camps sprinkled throughout the Middle West. At Camp Douglas, Chicago, there were 6,000 battle-hard veterans behind wire and elsewhere there were 11,000 more. This would form the hard core of an army.

Heavy shipments of arms were directed to various assembly points in the Middle West. Preparations were made for an uprising in Indianapolis, but this was practically an open conspiracy. Late in August, Governor Morton of Indiana ordered a raid on the offices of the Grand Commander of the Sons of Liberty. Four hundred revolvers and 135,000 rounds were discovered in crates marked "Sunday school books". The ringleaders were arrested, tried and convicted of treason before a military tribunal.

Hines found that the Chicago Copperheads were spiritless, afraid to affiliate openly with Confederate representatives. "We leave for Chicago to-night to do our best but with heavy hearts and drooping hope," he reported. He told key men within the great prison yards at Camp Douglas to prepare for a sudden blow from the outside against the thin fringe of guards. But Copperhead courage was oozing. The promised revolutionary horde was hard to find anywhere in Chicago. The butternut boys from the backwoods were there en masse, to be sure, but the most they would do was talk treason as they swilled and brawled in the saloons.

After the arrest of the Indian Copperhead leaders, the evidence of the great conspiracy to subvert the Middle West was publicized. Vacillating Copperheads now drew in their fangs and scurried for cover. The Democratic Convention tried on the new costumes of loyalty. Spokesmen for the Sons of Liberty were howled down on the Convention floor. The extremist faction, led by Vallandigham, was routed in its fight for control over the Party. General George McClellan—the one time Commander in Chief of the Union Armies whom Lincoln thought "had the slows"—was nominated for the Presidency of the United States on a platform that was neither peace nor war and that might have been drafted by the Delphic Oracle.

Hines, with about twenty men, stayed on in Illinois throughout

the fall of 1864, hiding in the homes of rebel sympathizers and making swift disruptive raids at night—burning government depots and setting fires in steamboats. But he was seeking bigger game.

Eight to nine thousand Confederate prisoners were by now crowded into the unsanitary and loathsome Camp Douglas. The guard had been reduced to 800 men, of whom only 250 were simultaneously on duty. Only this handful of soldiers and a twelve-foot wooden fence separated the prisoners of war from their freedom.

Hines decided to liberate these prisoners during the wild confusion of the election night of 1864. He had recruited a few dozen reliable men from the boldest Copperhead elements and had been reinforced by Confederates from Canada. By cutting the telegraph wires and destroying the railroad tracks radiating outward from Chicago, he hoped to prevent United States Army detachments from arriving on the scene before he had time to arm his 8,000 liberated prisoners and ready them for battle.

Tipped off in advance, Federal detectives engineered a fraudulent jail break from Camp Douglas and the supposed escaped prisoner of war managed to insinuate himself into the conspiracy and discover its secrets. More than a hundred of Hines men were arrested. The house in which he was staying was surrounded by soldiers, but Hines went to his hostess' bedroom and hid in the box springs, the lady pretending to be desperately ill. Later, a female visitor arrived and Hines left openly by the front door as her escort. After this third escape, the young saboteur and terrorist wandered around the North, looking for things that might be blown up or minor insurrections that might be organized.

But he soon convinced himself that the war was already lost and returned to the South to become in later years Chief Justice of the Supreme Court of Kentucky. Wood Gray, the historian, rescued this gallant figure from oblivion.

Setting Fire to New York

The organization under Colonel Thompson had planned a brilliant celebration of Lincoln's second election. In addition to liberating the Camp Douglas prisoners, Thompson thought it would be a good idea to choose this occasion to burn down New York. As the phosphorus was not ready in time, the pyrotechnic display had to be postponed for seventeen days.

The conspirators were young Confederate officers, smarting because of Sherman's burning of Atlanta and anxious to retaliate. Had it been successful, their plan would have caused the fiery death of women and children, trapped in hotels and crowded theatres. It would have accomplished no useful military purpose and would have meant harsher treatment for the defeated South. But these Confederate officers had drunk the unbearable bitterness of defeat and wanted to strike out blindly and irrationally. They knew that their plan resembled murder more closely than civilized war and afterwards did not attempt to justify it. The world in 1865 had not yet reached that high moral vantage point from which the wholesale and indiscriminate roasting of cities from the air seemed an entirely legitimate procedure.

On November 25, 1864, the torch was applied to the great northern metropolis. A Confederate officer in plain clothes registered at one of the large hotels, placed phosphorus with a turpentine starter in his room, locked the door behind him and proceeded to the next hotel on the same errand. Fires broke out almost simultaneously in eleven hotels; flames shot up at Barnum's Museum, and at the Winter Garden, where an audience of three thousand was breathlessly watching Edwin Booth in the role of Julius Caesar, the cry of fire stopped the play. Only Booth's presence of mind prevented the transformation of literary into actual tragedy.

The fires in the hotels fizzled and smouldered. They were quickly put out and the only life lost in this irresponsible plan was that of a Confederate officer who hanged for it. Safe in Canada, Jacob Thompson drew the following moral lesson:

"Their reliance on Greek fire has proved a misfortune. It cannot be depended on as an agent in such work. I have no faith whatever in it and no attempt shall be made under my general directions with any such material."

Thus, during the first phase of the war, the years of Northern reverses, reliance on propaganda and political manipulation was the chief weapon of the disunionists. They used every argument in the arsenal—appealing to class and racial antagonism, to fear of free Negro competition, to hatred of tyranny, to the charge that Lincoln was a dictator—to encourage desertion, to spread war weariness, to engineer a peaceful transfer of power to the faction of appeasement. Given a leadership more cunning, more

energetic and more keenly aware of the strategy of demoralization, they might perhaps have succeeded. But they were opposed by a grandmaster of the art of political maneuver and "trimming"—a man who knew all the gambits and who could move with ruthlessness and determination after he had wrestled with his conscience and decided that ruthlessness was needed.

The second phase of the Copperhead conspiracy was the period of Confederate defeat. In a now hopeless situation, the technicians of murder and sabotage assumed control. They were men assigned to the task by the Confederate Government. They had much to learn about the Middle West and their tendency was to appraise plans in terms of concrete results rather than intangible psychological impacts. These new leaders, however, were more honest and attractive figures than Janus-faced experts in the war of lies of the Vallandigham stamp.

But these tactics of desperation were self-defeating. The plots were exposed and thwarted. Even had they succeeded, they could not have reversed the military decision. The direct actionists, through their rash plans, helped unite the North behind Lincoln's leadership, contributing to a decisive Republican victory in the 1864 elections. They also placed the brand mark of treason on the Democratic Party.

Each of the first three wars which the United States waged under the Constitution led to the eclipse of a major political party. In the War of 1812, the New England Federalists became so enmeshed in treachery that their party disappeared forever from the American scene. A period of one-party government followed. The Mexican War was an equally violently partisan affair and those who opposed it came close to sedition—Abraham Lincoln among them. With the end of the war, the Whigs disappeared as a serious political force. A twelve year period of Democratic ascendancy followed in which the dragon's teeth of the Civil War were seeded. And in this civil conflict of 1861-65, a similar result occurred. The Republican Party held the Presidency for forty out of the next forty-eight years. The Democrats, despite their base of power in the solid South, were repudiated again and again as the faction of disunion, of disloyalty, of Copperhead thrusts at the nation's jugular.

In the three wars which succeeded the Civil War and in the quasi-war with Soviet Russia, no major American party would assume a Copperhead role, for history had shown that this was a sure road to political suicide. In succeeding conflicts, the pattern

would change. Only small minority groups with little to lose would dare to oppose war openly once it had been declared. Any massive opposition to war from powerful groups would move with far greater circumspection and subterfuge. It would seek to distort the course, strategy and goals of the conflict under the guise of patriotism.

TREASON IN WORLD WAR I

"Insurgents are like conquerors; they must go forward. The moment they are stopped they are lost"—The Duke of Wellington.

The few treason cases of World War I were of minor significance. The period marked a turning point in the character of the crime. During the previous century, the nation had been consolidated and strengthened to a point where treason by insurrection had become obsolete. Few fanatics would be foolhardy enough to seek to overthrow the nation by armed uprising.

Treason, accordingly, had become an almost purely war phenomenon. Until 1917, American wars had been fought largely for tangible issues of national interest. In 1812, neutral trading rights were at the forefront of the struggle. The Mexican conflict rounded out a nation. The Spanish-American War gave America a Caribbean foothold. In 1917, however, the United States participated in a conflict, the material issues of which lay outside the sphere of its interests. A century-long tradition of non-involvement in European affairs was reversed and America was plunged into the maelstrom of Old World ideological and power conflicts. Traitors, henceforth, tended to consist either of imperfectly assimilated members of the foreign-born or of servants of the various forces striving for mastery in Europe. Their perspectives were not primarily American. The military defeat of the United States may have been an essential step toward their goal, but this was not the goal itself. The new traitors were not men who acted on their own judgment to revolutionize the character of this country, but agents of a foreign state or of a world revolutionary movement which radiated from it.

World War I was a transitional phase in this development because the conflict was still primarily dynastic and national, although it did have certain ideological overtones. The bulk of the

traitors and near-traitors were simply German-Americans who considered their loyalty to the Kaiser primary. While the Irish Nationalists formed an interesting exception, their adherence to Germany was merely a temporary means to the liberation of their original homeland. When we move on to the next world conflict involving America, treason assumes the more dangerous form of service to a movement with the global aim of destroying democracy.

German-American Sabotage

Between 1914 and 1917, a small group of German cloak and dagger men helped change the course of world history.

The German conspirators operating in the United States had one compelling purpose—to shortcircuit the flow of munitions to the Allies until the Kaiser's armies could deliver a knockout blow in the West. Although they worked with daring, genius and cunning, they failed in their task. No handful of terrorists and plotters, however capable, could bring a great industrial power such as the United States to its knees. At most, the German saboteurs may have succeeded in destroying \$200,000,000 of war materiel, ships, plants and high explosives.

The plotters did succeed, however, in stirring up a mass psychosis of fear and hatred in the United States which accelerated America's entry into the conflict. "It is plain enough how we were forced into the war," President Woodrow Wilson said in his 1917 Flag Day Address. "The military masters of Germany denied us the right to be neutral. They filled our unsuspecting communities with vicious spies and conspirators. . . . They sought by violence to destroy our industries and arrest our commerce." Thus, the German conspirators helped bring about the very event they most dreaded.

The irony of this situation has been pointed out in Tolstoy's *War and Peace*. None of the human actors intended the results which they accomplished. The German terrorists and saboteurs wanted the Fatherland to win, but they helped bring about its downfall. A man of charismatic pretensions wanted to be the savior of democracy in Europe; but Woodrow Wilson instead helped to create an economic waste land in Central and Eastern Europe, out of which later emerged both Soviet Communism and German Nazism.

From the standpoint of treason against the United States, the

actions of Germans and German-Americans in this country are of scant interest.* Their motivations were uncomplicated. They were nationalists who considered that their allegiance to Germany was primary. They were, as Theodore Roosevelt put the matter, "hyphenated Americans."

This chapter deals, therefore, with a less known aspect of allegedly treasonable activity—the role of Irish nationalist extremists in America during wartime. These men had no desire to betray the United States. Their purpose was the understandable and, under normal conditions, entirely lawful one of winning freedom for the island from which their ancestors had come. However, the accomplishment of this purpose necessarily involved cooperation with the German General Staff. It presupposed the military defeat of Great Britain. Once the United States had entered the war, the implementation of this purpose verged on treason.

The heart of the struggle was not in America, but in Ireland. And the narrative becomes unintelligible if we attempt to present it in purely American terms. The scene of operations shifts back and forth between Ireland, Germany, England and the United States. In a sense, it might as well begin in the Congo as anywhere else.

Irish-American Plots

In 1901, hypersensitive, handsome Roger Casement conducted a probing investigation of a tropical inferno—the rubber plantations of the Belgian Congo. His subsequent report gained him a worldwide reputation and blasted that of a razor-brained scoundrel, Leopold II, King of the Belgians. A similar drama was meanwhile unfolding on the upper reaches of the Amazon, where another empire of native slaves had been made into an equatorial abattoir. Roger Casement turned out another report, the civilized world was again scandalized, and the atrocities of the Putumayo were brought to an end. Casement returned to Ulster and was knighted by the grateful British Government.

Sir Roger now turned toward his second life goal—the winning of Irish independence. Even before the outbreak of World War I, he wrote anonymously that Irish interests required a working

* The classic sources on German sabotage and espionage in the United States in World War I are: Henry Landau, *The Enemy Within*, 1937, and Franz Rintelen von Kleist, *The Dark Invader*, 1933. Most other works on the subject are inflated and not particularly intelligent.

alliance with Germany against the British Crown. In the summer of 1914 he appeared in the United States and addressed stormy meetings for Irish independence. He also used the opportunity to work with German Ambassador von Bernstorff to create a fighting alliance between the two peoples. In the winter of 1914, Sir Roger Casement, in disguise and holding a borrowed American passport, went to Germany. There he began organizing an Irish Brigade in the German prison camps. This brigade was to be armed by Germany and thrown into battle against England.

A man of genius, courage and spiritual strength, Casement was nevertheless to prove worthless as a political leader of any cause which required moving armed forces into action. Appalled by the plans of Irish nationalists to stage a rebellion in Dublin on Easter of 1916, Casement, still in Germany, attempted to betray the Easter Rising to the British Cabinet so that innocent blood would not be spilled in a hopeless clash. When he landed in Erin on a German submarine in the spring of 1916, Casement had two great objectives: to prevent the rebellion and to destroy himself—and only himself—as a martyr to the cause of Irish freedom.

Recruiting Saboteurs

Even before Sir Roger's brief trip to the United States in the summer of 1914, a working alliance between the Sinn Fein movement and the Imperial German Government had been forged. Contacts and liaison were centered in America. In all this, the commanding figure was John Devoy—a veteran of the 1867 Irish troubles, a man with a Socratic forehead, a General Grant beard and the aspect of a professor of some obscure and forgotten language. Devoy lived a life of utter simplicity without wife or companion. His single and dominating purpose was Irish freedom.

As to the ethics of calling on Germany for military aid to the Irish cause, Devoy had no apparent scruples. "If the weapon were long and sharp enough to reach England's heart, either through the back or the chest," he wrote, "Ireland would have been entirely justified in giving the death blow."

Shortly after the outbreak of the war in Europe, the revolutionary Clan-na-Gael—represented chiefly by John Devoy—met with Ambassador Johann von Bernstorff and German Military Attaché Franz von Papen. By December of that year, plans had been hatched for an Easter Week insurrection in Dublin. John Devoy was insistent that the Germans provide arms and combat instructors, but no military force. The revolutionary Irish leaders

in America harbored no illusions as to the result. The Easter Rising would be a "blood sacrifice". It would end with death and gallows, but inspire the Irish people for more massive armed efforts in the future.

On a far more modest level of operations, an attorney named Jeremiah O'Leary pitched away a \$25,000 a year practice to serve as President of the American Truth Society. This organization had been set up immediately prior to the war to coordinate the German-American and Irish-American movements in the United States. Its immediate purpose was to forestall a contemplated 1914 celebration of a hundred years of peace between the United States and Great Britain.* This orgy of hands-across-the-sea propaganda appeared most undesirable to German eyes at a time when Europe was swiftly drifting toward war.

In January 1915, the German Great General Staff telegraphed the German Embassy in Washington as follows:

"For Military Attaché. You can obtain particulars as to persons suitable for carrying on sabotage in the U.S. and Canada from the following persons: one, Joseph McGarrity, Philadelphia, Pa.; two, John P. Keating, Michigan Avenue, Chicago; three, Jeremiah O'Leary, 16 Park Row, New York.

"One and two are absolutely reliable and discreet. Number three is reliable but not always discreet. These persons were indicated by Sir Roger Casement. In the U.S. sabotage can be carried out in every kind of factory for supplying munitions of war. Railway embankments and bridges must not be touched. Embassy must in no circumstances be compromised. Similar precautions must be taken in regard to Irish pro-German propaganda.—Zimmerman."

In 1917, while O'Leary was on trial for seditious propaganda under the Espionage Act, the State Department made this cable public. The Irish leader immediately issued a hot denial that he had ever been involved in sabotage of any sort.

During the three years of American neutrality, O'Leary concentrated on propaganda to keep the United States out of war. He spread atrocity stories against England and fulminated over the perfidy of Albion. His propaganda was no more mendacious than some of the inventions of the British apparatus engaged full time in influencing the American mind, but it was considerably

* This was also the centennial of the burning of the White House by British troops.

more amateurish. Speaking more or less the same language, instinctively grasping American psychology and having the good sense to assign their best minds to this work, the English generals in the "war of lies" turned out a finished piece of work.

George Sylvester Viereck, the sinister young propaganda adviser of the German Embassy, was bending all his efforts to swing the Irish and the German vote behind Republican candidate Charles Evans Hughes in the 1916 elections. Viereck thought Hughes would keep America neutral and was convinced that Wilson wouldn't. In this hard task of getting the traditionally Democratic Irish to switch to the Republican camp, O'Leary cooperated loyally. He snapped at the heels of candidate Woodrow Wilson, who retorted in exasperation: "I would feel deeply mortified to have you or anybody like you vote for me. Since you have access to many disloyal Americans and I have not, I will ask you to convey this message to them."

In his revealing book, *Spreading Germs of Hate*, Viereck recalls: "As early as 1915 or the first months of 1916, the secret Irish revolutionary party sent word to America that they intended to fight, and a new organization (Friends of Irish Freedom) which was controlled by the Clan-na-Gael, came into being." With this more intimate cooperation, Irish-Americans were designated by German intelligence for sabotage of the Canadian Pacific Railway. When plans were made to blow up the Welland Canal, two veterans of the Irish rebellions were brought into the German apparatus. The activist group of dynamiters operated from the Buffalo area, while the funds were channeled out from the office of German Military Attaché Franz von Papen. To avoid any police check on disbursements, von Papen wired the cash to a Buffalo attorney, John T. Ryan, who served as paymaster. This Ryan, a leader in Irish nationalist circles and an acquaintance of Sir Roger Casement, was later to be indicted along with O'Leary for treason.

Irish longshoremen cooperated effectively in German arson plans by placing incendiary bombs in the storage holds of vessels carrying arms to the Allies. Fires were set on 36 ships and \$10,000,000 worth of cargo went up in flames. When German agent Franz Rintelen von Kleist set up a dummy trade union organization and struck the New York docks—the theory being that tying up the Port of New York for eight weeks at an estimated cost of \$2,500,000 would win the war in the West—Irish nationalists took key positions in the strike preparations.

The Road Toward Armed Uprising

The main blow was being prepared in Ireland itself. Patriots in Dublin were ready to take up arms, but had none to speak of. The only possible source was Germany.

In April 1916, Judge Cohalan, a prominent Irish nationalist leader in New York, gave German Military Attaché von Papen a message to be coded to Berlin: "The revolution in Ireland can only be successful if supported from Germany," he argued; merely smuggling arms to Irish coastal stations would not be enough. The insurrection should be synchronized with diversionary German air attacks on England and a German expeditionary force must land in Erin to spearhead the attack. U-boat stations could then be set up along the Irish coast and beleaguered Britain could be starved into surrender. "The services of the revolution," he concluded, "may therefore decide the war."

This view contradicted the strategy of the master spirit of the uprising—John Devoy. Devoy wanted a blood sacrifice. German aid must be minimized so as not to deprive the revolt of its character as the harbinger of a national revolutionary awakening. The prevailing strategic situation made Devoy's approach a sound one. The Kaiser's fleet was bottled up in the North Sea and any German force landed in Erin would be stranded there without adequate supply lines. So the extent of German aid was to send Casement to Ireland by submarine and to move a cargo of captured arms toward the Irish coast in the freighter *Aud*, which proceeded under a neutral flag.

Hammer blows of disaster followed. A British warship overhauled the *Aud*. Unable to fight against suicidal odds, the German captain scuttled his ship. The arms went to the ocean's bottom and with them the rebellion's chances. The Easter rising left no doubt as to the fighting calibre of the Irish forces—over 2,500 insurgents and civilians were killed or wounded in its course.

In the dock on trial for treason, Casement rose to those heights of which he was capable. "In Ireland alone in this twentieth century," he said, "is loyalty held to be a crime. If we are to be indicted as criminals, to be shot as murderers, to be imprisoned as convicts, because our offence is that we love Ireland more than we value our lives, then I know not what virtue resides in any offer of self-government held out to brave men on such terms."

In his last days, Sir Roger proved himself worthy to belong in that procession of great men who have died on English soil for treason to the Crown.

There was an outcry of grief and rage from the Irish-American nationalists. They had used German channels to keep in contact with the developing insurrectionary movement and had generously financed it. John Devoy's *Gaelic American* publicly charged that the *Aud* had been overhauled because of information "treacherously given to the British Government by a member of the Washington Administration." Five days before the arms ship was to arrive on the wild Kerry coast, Secret Service operatives had raided the New York office of the German Embassy and seized messages from Berlin and Dublin dealing with the mechanics of the arms debarkation and the insurrection. Although the United States was neutral, this information was relayed to London.

Adventures of James Larkin

Not all of the American Irish leaders who cooperated with the German military apparatus were pure and simple nationalists. In his own field, James Larkin was more influential than either Judge Cohalan or Jeremiah O'Leary. He was a social revolutionary. Between 1914 and 1923, Larkin lived in the United States, was Secretary of the Irish Transport and General Workers Union and a leader of the American Socialist Party. In 1919, he became one of the founders of the Communist Party of the United States and in 1924 was elected to the Executive Committee of the Communist International.

When interrogated in Ireland in 1933, Larkin cheerfully admitted that he had organized strikes to prevent munitions shipments to the Allies. A more curious admission was that the German sabotage agents had trusted him sufficiently to show him their incendiary bombs. Moreover, in early 1916, Larkin had sat in at a meeting of German conspirators at which the fateful decision was taken to blow up the Black Tom munitions dump. Although equipped with an airtight alibi, Larkin decamped for Mexico as soon as he learned that the explosion had taken place.

Why Mexico? During the first phase of the war, German sabotage operations in the United States had been directed from the Washington Embassy. But a series of devastating newspaper exposés, fueled largely by British intelligence, had forced the recall of key agents von Papen and Rintelen. Realizing that the apparatus was shot through with counterspies, the Germans began to shift operations to Mexico City in 1916-17. Mexico was in a state of chaos, the prey of rival revolutionary armies. The gov-

ernment controlling the capital, that of General Venustiano Carranza, was blatantly pro-German.

Arriving in Mexico City, Larkin proceeded to the Hotel Juarez, an establishment which, although little more than a flea trap, happened to lodge the principal members of the German sabotage and espionage groups. Stormy scenes ensued. Larkin was importuned to play an active role as a member of the apparatus. He claims that he refused. In the course of a violent brawl, the Irish labor leader was thrown out on the streets. For a while, he slept on park benches and was almost murdered by Mexican *pistoleros*. Returning to the United States, he was indicted and sent to prison for revolutionary activity.

Irish Plots and German Spies

Before America went to war, a great Irish movement fought against our involvement on the British side. In the spring of 1916, 2,300 delegates to an Irish Race Convention challenged the United States to use "all force and power . . . to uphold the freedom of the seas against British aggression and selfishness, as it was against Barbary piracy." In early 1917, an official American Sinn Fein was organized, with both James Larkin and Jeremiah O'Leary in directing positions.

But now that America was embroiled, the Irish-American camp was broken and despondent. John Devoy loyally severed contact with Germany. The Secret Service cracked down on Gaelic nationalists. In October 1917, Liam Mellows, a Sinn Feiner, and Max von Recklinghausen, a German agent, were arrested in New York. Their purpose had been to foster a new Irish rising.

No easy solution to the Irish problem seemed in the cards. To many, the only hope for freedom lay in a German victory. All efforts to enlist Woodrow Wilson's energetic intervention with the British for independence resulted in total failure.

Jeremiah O'Leary considered the President little better than a British agent. He held similar views concerning *The New York Times*, the House of Morgan and the other favorite scapegoats of the soapboxer. The saturnine George Sylvester Viereck thought that any man as marvellously simple-minded as O'Leary must be sincere.

In January 1917, a new German agent arrived in the United States to prod the festering discontent of the Irish. The youngest daughter of Baron von Kretschmann, Madame Maria de Victorica

was a Ph.D. in economics and fluent in many languages. A love for adventure had brought her into the Naval Intelligence Service.

"One of the few spies who came up to Hollywood standards," the usually accurate Henry Landau writes, "she actually was a beautiful blonde who employed all the prescribed paraphernalia of her profession: secret inks, a dozen aliases and disguises, and above all the multiple wiles of her sex in enslaving men." Other writers have been similarly lyric. If newspaper photographs can be believed, however, Victorica was a portly woman with a doughlike face and the very definite suggestion of a double chin.

In November 1917, the omniscient British Secret Service informed American authorities that a new German espionage director was operating in the United States. Letters in secret ink were intercepted and laboriously decoded by the American Black Chamber. Soon the chase of Maria de Victorica was on. The trail led from one luxurious hotel to another, involving numerous aliases and cover addresses. Finally, the quarry was brought to bay. The Government discovered that Victorica was holding secret meetings with Jeremiah O'Leary and other Irish nationalists. O'Leary's shrill, Anglophobe publications were being financed with German espionage funds. Whether or not he was aware of this fact was another question.

Victorica was arrested. Facing death as a German spy, she told her story to the U.S. Bureau of Investigation. The Government's next move was to indict Jeremiah O'Leary, Jay Willard Robinson, John T. Ryan, Albert Paul Fricke and Hermann Wessels for "conspiracy to commit treason."

The only plausible case the Government had was against Robinson. A young Dakotan of English decent, Jay Robinson was a male stenographer by trade. Starting on O'Leary's scurrilous anti-British publication, *Bull*, he rose to the position of private secretary. The two men harangued people on street corners at a time when any opposition to the war required courage—and a willingness to spend time in jail.

While Robinson was beating a path between his soap box and a prison cell, Victorica was attempting to put Irish extremists on British warships—the idea being to sabotage them and, if possible, blow them up. This plan misfired and, as far as one can judge, the only tangible accomplishment of Victorica and her fellow agent, Hermann Wessels was to spend \$35,000 of German money.

Then, in March 1917, Jay Robinson departed from Halifax as a scullion on a liner bound for Rotterdam. The American Declara-

tion of War turned the vessel back, but on April 16th it sailed for Europe again. According to the Government, Robinson carried with him messages for the German Government.

Among them was a communication from Victorica, stating she had not received her credentials as a German agent and was therefore helpless. She thought she was being shadowed and begged the apparatus to stop sending her letters through cover addresses.

The Irish-Americans, according to this correspondence, were interested in a wild scheme. They wanted a German U-boat to submerge off Newport, Rhode Island, and pick up volunteers to join the revolutionary movement in the old country. O'Leary was also allegedly excited about the possibility of planting a spy in an organization which handled British espionage funds in America.

Now all these messages were apparently penned at a time when Germany and the United States were at peace. If Robinson delivered them, however, he did so when he knew America was at war and by that act committed treason.

The young courier arrived in Rotterdam where he allegedly met a mysterious director of German Naval Intelligence. This man was called Frank Richards. He had once been an American citizen and was a cousin of John T. Ryan.

The Government claimed that Jay Robinson was then and there recruited into the German espionage service and that he returned to America, carrying with him messages written in invisible ink on the pages of a Bible. The German spy leaders were beginning to view American operations with a cold and fishy eye. Victorica was to come home. No submarines could be spared for Newport jaunts. The Kaiser's heart bled for Ireland, but the Irish would have to wait for the Peace Conference before being liberated.

Robinson contacted his accomplices in New York and immediately went into hiding. Although twenty-eight years old, he neglected to register for the draft. Then French Intelligence reported that a German agent in Spain had transmitted \$10,000 to Robinson in Summit, New Jersey. The amateur spy was put under surveillance and letters to him from Europe were intercepted. When he was finally arrested, some of his soft collars were impregnated with the new German invisible ink.

The affair was magnificently bungled by the Department of Justice. Shortly after the newspaper spread on Victorica's arrest, John T. Ryan vanished into thin air. The newspapers speculated that he had intercepted funds, destined for the espionage ring, and

jumped across the Mexican border. He was never arrested or brought to trial.

The golden tongued Jeremiah O'Leary also fled the Court's jurisdiction and disappeared into smoke. A nation-wide manhunt ended with O'Leary's arrest in a West Coast hideout. Bland and self-assured, he told a pat story of having gone to the country for his health. He was thrown into the New York Tombs on charges ranging from violation of the Espionage Act to conspiracy to commit treason.

The O'Leary trial was a brilliant dramatic performance. Aided by his brother, the prisoner acted as his own attorney. Though intellectually shallow and something of a demagogue, O'Leary was quick on his feet and swift at repartée.

The famous blonde spy, who had been presented to the public as a creature of dazzling beauty, created a sensation when she appeared in court. Madame de Victorica "wore a Hudson seal coat trimmed with sable, a black velvet dress over satin, and a large black beaver hat with gourah feathers," *The New York Times* dutifully informed its readers. The witness gave a detailed account of her meetings with O'Leary and the transmission of intelligence to the German authorities through Robinson.

The case stood or fell on the issue of her credibility. Other information she had given the Department of Justice—clues on the Black Tom explosion, for instance—had proved to be right. But these matters could not be aired in court.

O'Leary was on his feet. Was it not true that Victorica was a drug addict? Had she not been doped with morphine before taking the stand? The Prosecution reluctantly conceded both points. Medical experts then took the stand to state that the testimony of any witness in an advanced stage of addiction was worthless.

From the moment the defense began cross examination, the Government's case started to fall apart. Victorica's craving for dope had become her primary physiological need. This supply could be granted or withheld at the whim of her jailers. Moreover, she was an admitted spy. The Department of Justice held the alternatives of life and death over her. The jury, it would seem, had no alternative but to regard her testimony as virtually worthless.

O'Leary turned on the detective who had shadowed him and proceeded to puncture his evidence. When he had finished with another state's witness, she appeared not only as a perjurer

but also as a prostitute. The Government showed that German espionage sources had financed O'Leary's propaganda work to the tune of several thousand dollars. But it was unable to show that O'Leary knew where the money had come from.

The jury freed him. Irish-American nationalist circles celebrated his court victory as a triumph for justice and freedom. Men such as Judge Cohalan and John F. Hylan, later to be Mayor of New York, showered their congratulations on the martyr.

With their faces already smarting from two legal defeats, Department of Justice attorneys began to prosecute Jay Willard Robinson. Here was by all odds their strongest case.

Robinson had neither the flare for drama nor the love of courtroom rough-and-tumble of O'Leary. Fortunately for him, he was tried before Judge Learned Hand, a man of liberal philosophy who stood in the great tradition of Holmes and Brandeis. At a time when other Federal Judges allowed the passions of war to cloud their judgment and warp their decisions, Hand was a Gibraltar of the Constitution. More pliant and politically astute men would rise to the Supreme Court. The scholarly and eloquent Hand was to stay exactly where he was.

The main overt act of treason charged against Robinson was that he "embarked from the city of Rotterdam bound for New York, carrying with him the reply messages heretofore described, with intent to convey these to the agents of the German government, Victorica, Wessels, Ryan, and O'Leary, and with intent to act as a secret agent for the German government."

Now what was the proof of this?

"His return . . . was proved by two passengers, who were in the second cabin along with him, and his presence in New York, registered under surreptitious names, was proved by a number of witnesses. Nothing was shown of what he had done in Rotterdam or anywhere else in Europe except that he had been met upon the street by one of the witnesses in clothes noticeably better than that which he possessed while on board."

Only Victorica testified to Robinson's actual delivery of these secret messages upon his return to the United States. "The evidence in this case," Judge Hand said, "is amply sufficient to sustain a verdict for the government were the crime charged other than treason, and I shall confine myself therefore simply to the consideration of whether the rule has been satisfied which is peculiar to that crime."

This rule was the two-witness requirement in the Constitution. The judge continued:

" . . . it is necessary to produce two direct witnesses to the whole overt act. It may be possible to piece bits together of the overt act, but, if so, each bit must have the support of two oaths; on that I say nothing. In the case of none of the overt acts at bar was the necessary evidence produced. The gravamen of the charge depended for direct support on Victorica alone. For the rest, the case rested upon circumstantial evidence, which, while well-nigh conclusive in fact, was not direct as required. . . "

The judge added that the overt act must be more than a mere manifestation of traitorous intent and suggested that it was not enough to prove a step which gained "its treasonable character only from some covert and undeclared intent."

On these grounds, he directed the jury to acquit Robinson. The considerations which moved Judge Hand's extraordinarily subtle mind may seem mere mumbo-jumbo. But the substance of law is often concealed within the technicalities of procedure. What he was concerned with was at bottom fairly simple. The Constitution had thrown various barriers of protection around the man charged with treason. One of these was that there must be two witnesses to the same overt act. This, Judge Hand thought, was real protection as long as the overt act was defined as a significant criminal move which by itself showed the cloven hoof of treason. The Constitutional protection would be vitiated if the overt act were reduced to any insignificant, seemingly innocent step such as taking passage to Rotterdam.

In later years, the Supreme Court was to reject Judge Hand's doctrine decisively in the Haupt Case. His opinion on the Robinson matter is nonetheless a classic statement in defense of that doctrine.

While Robinson was certainly in collusion with the enemy and most of his confederates probably were, the treasonable conspiracy was, on the whole, a soap bubble affair. Jeremiah O'Leary emerges as an inveterate and enthusiastic meddler and Madame de Victorica was so involved in the intricate paraphernalia of her trade that she accomplished nothing. George Santayana once defined a fanatic as a man who redoubles his efforts when he has forgotten his ends. The bloated German espionage system showed the same characteristics. The Wessels-Victorica apparatus seems to have been held flat on its back by the endless bonds of its own red tape.

PRO-NAZIS IN WORLD WAR II

"When the MAD MOB gets in MOTION make sure that they dig all of the blood-sucking banksters out from under their piles of rock and steel. Line them up against a wall and SHOOT them . . . Now we are to give up our LIVES for the Delusions of Grandeur of a Merciless Monster, FRANKLIN DELANO ROOSEVELT, SOME NECK—for a ROPE."—George W. Christians, convicted of sedition in 1942.

Since the Civil War, there has never been a period in American history in which para-treasonous activity was conducted on such a huge scale and in such high places as during World War II. Prior to Pearl Harbor, the Nazis had more influential friends in the command positions of the American body politic and body economic than Soviet Russia could boast during any phase of the cold war.

These pages necessarily cover only a small fraction of the ramified activities of American fascists during the years of the battle for neutrality. A much fuller story is available in John Roy Carlson's exposé, *Under Cover*, the absorbing record of a volunteer democratic spy in the right-wing totalitarian underworld.

Since this book is concerned chiefly with seditious and treasonable action, rather than merely disloyal utterance, the spotlight in this chapter falls primarily on leaders of fascist action, rather than on the powerful and cautious men in high places who sometimes served as their protecting aegis.

During the early phases of World War II, the German strategic task was the same as it had been in World War I—to buy time with the coin of internal dissension until the Nazi armies could overrun and subjugate Europe. America had to be prevented from awakening to the political facts of life until it was too late to act decisively.

Within the United States, the parallelogram of forces was again similar to that of 1916. Spiritually, the American people was linked with that world-wide democratic tradition which had found its greatest fulfillment on New World soil. Against this main current there ran streams of divergent opinion and interest which might, under consummately adroit political leadership, be marshalled into a temporary coalition strong enough to arrest the drift toward war.

The radical movement was once more sundered by the issue of war or peace. The miniscule Socialist Party, self-insulated from the everchanging realities of the world situation, was vociferously anti-interventionist. The Communists—those siblings of socialism who had bartered their integrity for the pottage of power—faithfully served the interests of the Kremlin. They violently opposed American entry into the war until Hitler's attack on the Soviet Union, when they instantly assumed leadership of the pro-war labor forces. In these political somersaults, they were faithfully followed by their inevitable coterie of sheep-brained liberals.

The salient difference between the two wars from a propaganda standpoint was the existence of a clear-cut ideological issue in World War II. To a minority of Americans, Nazism and Fascism represented "the wave of the future." Science, technology and the increased complexity of society had supposedly made democracy obsolete. The blueprint, engineering mind tended to worship order and uniformity, to be callous toward human suffering and to be fearful of any upsurging from the underprivileged social strata.

During the period of the Hitler-Stalin Pact, those who sought the destruction of American democracy united behind the same mock-pacifist slogans. During the last six months of American neutrality, however, with Russia and Germany at war, the seditious movement assumed a definite rightwing totalitarian character.

The modern heirs to the Know Nothing movement rallied under the banner of anti-Semitism, anti-Catholicism, and Aryan supremacy. At Camp Nordland on August 18, 1940, the German American Bund and the Ku Klux Klan drew up a formal pact of alliance.

Blind opposition to the New Deal, was skillfully enlisted behind the German cause. Although loyal as a whole, the German-Americans nevertheless furnished the hard inner core of conspiracy and treason. While Irish disaffection had been somewhat

blunted by the establishment of the Free State, followers of Father Coughlin and the brawling strongarm squads of the Christian Front played a disreputable and violent role in the battle over the nation's war policy.

The pro-German coalition ranged from Senators and Congressmen to gangsters and fanatics, Klan leaders and madmen. Hardly a single American intellectual supported this movement or had a word to say in its defense. To a large extent, it was an uprising of the moral underworld.

The power of these forces sprang largely from the fact that they gave voice to the popular desire for peace and reinforced the dangerous myopic outlook that the European struggle could not affect America's destiny. The pre-fascist movement reached into the highest places. A handful of American Congressmen did not hesitate to abuse the franking privilege by disseminating, at the taxpayer's expense, tracts written by German Government agents. While the fascist underworld fomented race riots in Detroit, seemingly respectable figures such as the silver-tongued Father Charles E. Coughlin derided the President over coast-to-coast radio hookups and undermined the will of America to fight.

The America First Committee

Although the red thread of treason runs through the dubious political transactions of the period, it is not always easy to separate it out from other strands and different motivations. It is particularly difficult to do so during the last year of American neutrality. By that time, the Nazis seem to have discarded, reluctantly but of necessity, their initial strategy—that of building an ideologically fascist battle force and then finding a man on horseback to lead the American people to their doom. The emphasis by 1941 was on merging the underground army of terror into a far broader movement for American neutrality.

Bundist and banker, Klansman and pacifist worked shoulder to shoulder in the America First Committee—the one major mass organization created to block the entry of the United States into World War II. Virtually the entire native fascist movement filtered into America First and soon a silent, relentless struggle for power raged within the organization between the mass of the membership (which wanted peace) and the militant fascist minority (which wanted Nazi victory).

After Pearl Harbor, the America First Committee dissolved. The subversives went underground and spread Nazi propaganda

to undermine the American war effort. Others entered the German espionage rings. Many spent the war years in American prisons and internment camps. A handful were convicted of treason. The vast membership of America First, however, did its part in the nation's war effort.

Zealots and Psychopaths

In early 1944, thirty Americans went on trial in the District of Columbia for seditious conspiracy against the Government of the United States. For the most part, the defendants were either German-American Hitlerites or the leaders of picayune hate organizations. It would be tedious in the extreme to regurgitate the doings of all thirty of them. Certain characteristics, however, emerged with striking regularity and are worthy of brief comment.

Several of the defendants had peculiarly infantile hallucinations of grandeur. Take, for instance, the matter of false names—indispensable in any conspirative organization. Communist leaders, when faced with this necessity, have generally assumed commonplace American names, such as Dennis, Gates, Richards, Peters, Stevens—the most usual procedure being to add the letter S to a common first name. The fascist approach was entirely different. One of the defendants was a tight-lipped, cagey individual of Greek-Polish birth whose natal surname was doubtless unpronounceable to the American tongue. Despite his racial origin, this character chose the grandiose name, C. Leon de Aryan. Even more pretentious was Howard Victor Broenstrupp—originally nothing more exotic than a small-town Indiana lawyer. He called himself the Duke of St. Saba and also Lieutenant General Count V. Cherep-Spiridovich. In sober fact, "General" Broenstrupp had never been entrusted with the command of armies. His strategic talents had instead—and without spectacular success—been devoted to soliciting money from aged and credulous women.

Several of the alleged conspirators were either common swindlers or men with fantastic pretensions. Silver Shirt Fuehrer William Dudley Pelley claimed that he had died and gone to Heaven. Apparently, St Peter's oversight had been quickly corrected and Pelley tossed back to earth.

They included obsessive maniacs and pliant scoundrels. De Aryan had been confined in an asylum and dishonorably discharged from the Army of the United States. Yet, Henry Hoke

in his stimulating pamphlet-book, *It's a Secret*, points out that some were unquestionably sincere. Hoke saw "real pathos in the man who saved for months to take a vacation but who spent the money instead on an extra large edition of his paper. He was so pleased and happy that, in foregoing a personal pleasure, he could give his readers what he called 'a spiritual feast.'"

That many of these men wanted to overthrow the Government of the United States and to destroy its democratic institutions, that they were ready, if necessary, to drown their country in the blood of civil warfare, admits of little doubt.

Defendant David Baxter wrote after Pearl Harbor: "A revolution means complete destruction of an old house and the erection of a brand new one . . . Revolution Alone can accomplish the necessary rebirth." He urged members of his activist group to train in the tactics of street war and keep their arsenals in a state of readiness.

Ellis O. Jones and Robert Noble ran an organization called the National Copperheads. After Pearl Harbor, they urged the impeachment of President Roosevelt and, during the fight for Bataan, Noble shouted: "To hell with MacArthur!" This pair was sent to jail under a California law requiring organizations of a seditious character to register.

Then there was defendant Peter Stahrenberg, who once said: "My religion is National-Socialism. That's the only religion I believe in. Christianity is the bunk." He headed the American National Socialist Party and was an open advocate and organizer of terror. "We'll have to have a revolution," he told Carlson. "We got to clean up this Goddam democracy."

On the dock was James True, who had patented a club called "the Kike Killer," and George E. Deatherage, who had advocated the use of "terror and fear." Defendant George W. Christians had once threatened to cut off electric power when President Roosevelt visited Chattanooga, explaining that "lots of things can happen in the dark."

A man who stood in a class by himself was sedition defendant Lawrence Dennis. A former Foreign Service man, Dennis had some culture and was capable of penning a coherent paragraph. He was considered the intellectual leader of American Fascism—a field in which the competition was not particularly heavy.

Joe McWilliams

The prototype of the artisans of terror and hate was Oklahoma-born Joseph Ellsworth McWilliams, the Yorkville Fuehrer.

In the summer of 1939, he emerged from obscurity and created a powerful organization overnight. It was called the Christian Mobilizers, later the American Destiny Party. Its symbol was a covered wagon.

McWilliams was tall, powerfully built, handsome, with harsh features and a flair for mob-swaying oratory. During the eight years prior to his emergence as a would-be American Fuehrer, he lived with four Jewish friends and sponged on them. Starting as a Communist, he switched first to the Trotskyist faction, then to right-wing totalitarianism—which promised larger opportunities for personal power and glory.

Having learned the lessons of Nazi street warfare, wherever possible he provoked clashes against Jews and other opponents of his Nazi ideology. "I'm gathering around me the meanest, the toughest, the most ornery bunch of German soldiers, Italian veterans and Irish I.R.A. men in the country," he told a street meeting which Carlson attended. "I'm going to have the greatest collection of strong-arm men in the city. And if anybody tries to stop us . . . they'll think lightning hit them."

McWilliams' Christian Mobilizers beat up policemen and brought terror to the streets of New York. One of his leaders was Joseph Hartery, a convicted pimp; another was crippled Edwin Westphal who had served time for burglary.

The stalwarts of the McWilliams organization were drawn from the German-American Bund and the Christian Front (the radical wing of Father Coughlin's Social Justice movement). Even more decidedly sinister was the Iron Guard, closely affiliated with the McWilliams gang. James Banahan, leader of the Iron Guard, explained its purposes to member John Roy Carlson as follows: "You'll be known as the Death Legion, and will specialize in terror. . . . Not faith, hope and charity, but faith, hope and terror. Remember that, men. Terror! Terror! Terror! That is our password from now on."

Carlson also quotes Banahan as saying: "In time of war we are all saboteurs. We'll blow the hell out of this country. We'll blow up docks, power plants, ships, bridges."

In the first year of war in Europe, the Nazi plan was to unleash street warfare, pogroms and disorders throughout America's

cities. The initial blows were to be launched against Jews and Communists. Violence was to polarize the political situation and swell the ranks of the extremist groups. Out of this cauldron would come internal dissension to prevent the formulation of a national policy for participation in the European conflict. It was hoped that these operations would midwife first a mass fascist party in America and then a full-fledged civil war.

In January 1940, FBI agents raided Cassidy's Sports Club, a Christian Front underground army which had been experimenting with bombs and training for street warfare. Seventeen men were brought to trial for conspiring to overthrow the American Government. Blind to the world crisis, the jury was unable to take the charges seriously and brought in a verdict of not guilty.

The preparation for street war was premature. It was not a technique capable of creating revolution in America. Nevertheless, it was tried in New York, Boston, Detroit. Later McWilliams, the Oklahoma Hitlerite, went with the rest of the demagogues into America First. At a great Madison Square Garden rally held by the America First Committee in the spring of 1941, Charles Augustus Lindbergh spoke and was followed on the rostrum by author John T. Flynn. Catching sight of Joe McWilliams in the audience, Flynn turned on him with a savage denunciation. The audience burst into roars of applause, but the applause was not for Flynn. It was for McWilliams.

In 1944, the American Destiny leader was indicted for sedition. When VE Day came, the conquistador dreams of the man who had said "Adolf Hitler is the greatest leader in the history of the world" were ground into the mud. Joe McNazi, as his followers had called him, was reduced to soliciting money for the Nationalist Party, a fly-by-night organization led by ex-Senator Robert Rice Reynolds. It was a hard come-down.

Trojan Women

Of the two women indicted for seditious conspiracy to establish a fascist government in America by force, Mrs. Lois de Lafayette Washburn was the less important.

According to John Roy Carlson, Mrs. Washburn believed that the Jews were plotting to sell her into "white slavery"—a scheme of at least questionable merit as a business venture. When she discovered that Carlson was a one-man fifth column inside the fascist movement, she addressed him as "Your Honor of the Jew-

ish Gestapo." Plainly, Mrs. Washburn harbored the illusion that she was being pursued and hunted.

After Pearl Harbor, she urged an immediate peace and action against our "subversive" government of "secret plotters". And as for the satanic creatures in power who were persecuting her, "I will defy the devils and taunt them," she declaimed.

Mrs. Elizabeth Dilling

Far more important was Elizabeth Dilling. The only woman to be indicted on three successive occasions for seditious conspiracy against her country, she had won nationwide notoriety with her book, *The Red Network*. This purported to expose Communist plotting against the United States. As a study of Communist activities, the *Network* is shallow, incomplete and highly inaccurate. Its main purpose is to smear a large variety of liberal organizations and individuals with the Kremlin dye. It denounces the Y.M.C.A. and the Federal Council of the Churches of Christ in America. In Mrs. Dilling's demonology, the Reverend Harry Emerson Fosdick rubs jowls with William Z. Foster. Sinclair Lewis (known to his friends as "Red" because of his carrot hair) is scored as a Moscow transmission belt. It is all reminiscent of the time when the House Un-American Activities Committee investigated a hair tonic company as allegedly subversive—the Committee thought that the trade-name Kreml was suspiciously similar to Kremlin.

By pursuing her single, tiresome theme of the menace of Bolshevism, Elizabeth Dilling maintained a public reputation as a non-fascist. Since both types of totalitarianism are impartially detested by the majority of the American people, each finds it advantageous to urge the public to join it in a crusade against the other.

In some matters, Mrs. Dilling displayed surprising shrewdness and cunning. Again according to John Roy Carlson—a uniquely valuable source of data on these matters—she was careful to avoid anti-semitic propaganda under her own name. Under the alias of the Reverend Frank Woodruff Johnson, however, Mrs. Dilling published a scurrilous little sheet called *The Octopus*. She made frequent visits to Hitler's Germany and Franco's Spain and, returning to America, gave the fascist salute at public meetings. What happened to her in Europe is unknown, but while her news bulletins flayed the usual Nazi scapegoats—President Roosevelt,

the British, the Jews, the Bolsheviks and the international financiers—she never had an unkind word for Adolf Hitler.

Elizabeth Dilling's greatest political adventure was the organization of a mob of so-called mothers who descended on Washington en masse in early 1941 to smash the Lend-Lease Bill. The idea of marshalling the mothers of America behind an ostensible anti-war program came from the subtle brain of radio priest Charles E. Coughlin.

In February, Mrs. Dilling, surrounded by a turbulent female horde in the lobby of a Washington hotel, turned triumphantly to John Roy Carlson. "This is my thundering herd," she said. "How do you like it?"

Brandishing "our sacred American flags", the herd tried to storm the Capitol, hoping for arrests and publicity. When good-natured policemen blocked their passage, the Dilling mob called them "Jew stooges." The cops infuriated the "mothers" by laughing.

The mothers knelt on the sidewalk and recited the Lord's Prayer while press cameras clicked. A certain Miss Rooney who "always cries" had to be ordered to give her tear glands a rest until Mrs. Dilling gave the signal for expressions of bereavement. Miss Rooney was supposed to be a mother who had lost her sons in World War I.

The show included a "death watch" and the hanging of Senator "Benedict Arnold" Claude Pepper in effigy. A "sitdown strike" was staged in the Senate Office Buildings. A few hysterical females were arrested for disorderly conduct.

"I believe it would be pertinent to inquire whether they are mothers," Senator Carter Glass of Virginia suggested drily. "For the sake of the race, I devoutly hope not."

Elizabeth Dilling enjoyed every moment of it. She rushed from one section of the herd to the next, giving orders, shouting defiance at all who opposed them. The lines of her ageing face were taut and her eyes blazed with the fury of battle.

Cathrine Curtis

Miss Cathrine Curtis, a more subdued and subtle propagandist against American preparedness, was, however, less than satisfied. This massive woman—six feet tall and about two hundred pounds in weight—had been quietly buttonholing influential Congressmen and Senators to smash the Lend-Lease Bill. While she was

associated with the same fascist leaders as Elizabeth Dilling, Miss Curtis realized that the thundering herd tactics were a colossal mistake. The fascist movement had not yet advanced to a point where it could afford to trample openly on the prestige and majesty of the American Government. Mrs. Dilling's storm troop methods backfired; the herd dispersed and the "mothers" remained active, but ineffectual.

Laura Ingalls

One of Cathrine Curtis' close associates in the pro-fascist campaigns for neutrality was Laura Ingalls, the aviatrix. Better looking than most of her colleagues, Miss Ingalls was nonetheless a bit old for her girlish hair-do. Her forte was shrill oratory and, when not restrained, she would open her meetings with the Hitler salute. "If they mean to have a war, let it begin here," she once said. In this context, 'they' referred to the leaders of the American Government, not to the Nazis.

For \$300 a month, Laura Ingalls sold her services as a secret German agent. Her paymaster was Baron Ulrich von Gienanth, second secretary of the German Embassy and allegedly chief of the Gestapo in the United States. Fortunately for Miss Ingalls, she received pay from the enemy at a time when the United States was neutral and was hence indicted as an unregistered foreign agent, not as a traitor. At her trial, a letter from her to Cathrine Curtis was introduced in evidence, inviting that massive female to "visit me at my chalet in Berchtesgaden"—the site of Reichsfuehrer Hitler's mountain retreat. Like Miss Curtis, Ingalls was quick to threaten the American Government with civil war if it passed legislation to aid the embattled European democracies. Her German Embassy (or Gestapo) assignment was "to continue to promote America First."

She pleaded guilty as an unregistered German agent and was sentenced to prison. Miss Ingalls gave the usual ranting speech in her defense: "My motives were born of a burning patriotism." But the court believed that love of country was in some way inconsistent with taking money from Hitler's Germany to betray American interests.

Mrs. Agnes Waters

The "thundering herd" was scattered, but the "mothers" remained active. One of the more despicable devices of the fascist element was engineered by a certain Agnes Waters, a large-boned,

lantern-jawed woman, who, unlike some of the other professional mothers, had progeny. Mrs. Waters illicitly acquired franked envelopes from the offices of Congressmen, none of whom were her accomplices. Using War Department casualty lists, she wrote the bereaved mothers of American soldiers under Government frank, thanking them for having given their sons to "Jewry's war". For technical reasons, it was not possible to indict her.

Colonel Eugene N. Sanctuary

An old Fundamentalist with a long, grey, lifeless face, Colonel Eugene Nelson Sanctuary found a new religion when Hitler took power in Germany. He poured out a torrent of anti-semitic writings and garbled Nazi propaganda. When John Roy Carlson was associated with him in New York, Sanctuary boasted of having been received by eleven Congressmen and Senators during a weekend trip to Washington. Senator Nye in particular was said to have proved most gracious and cooperative. A man with numerous German connections, Colonel Sanctuary gained the unique distinction of being the only American Army officer to be indicted three times for seditious conspiracy against the Government he had sworn to uphold.

After the war, the *New York Post* discussed his activities in an article which was understandably entitled "American Quislings." Sanctuary committed the blunder of suing the newspaper for libel. Chief Justice Ferdinand Pecora delivered the opinion of the court:

"In this complaint plaintiff defined the term 'Quisling' to be 'one of opprobrium, meaning and intended to mean a person who voluntarily serves his country's enemies.' This court does not hesitate to adopt plaintiff's definition. Neither does it hesitate to hold, in view of plaintiff's conceded conduct, that the application of that term to him was substantially justified."

The court briefly reviewed Sanctuary's record. It showed that he had addressed meetings of the German-American Bund, edited a history of the Ku Klux Klan in 1940-41 "which was endorsed by its Imperial Wizard", defended Ralph Townsend (a convicted Japanese agent whose activities are discussed in the next chapter), and excused Hitler's extermination of the Jews. It demonstrated that he had gone to the German Embassy and turned over to its officials "evidence . . . to show the alleged complicity of President Roosevelt in a plot to cause the war."

In a pamphlet, Sanctuary had written: "We dare to make this prediction, that if the American people do not stop Mr. Roosevelt from getting us into this war . . . future generations, and some of the present, will journey to the shrine he had constructed at Hyde Park with the same morbid motive which prompts like persons to visit the Ford Theatre in Washington. It was there that the immortal Lincoln was shot in the back of the head by John Wilkes Booth."

Mr. Justice Pecora believed that these words might "readily have incited to assassination of the President of the United States."

After reviewing Colonel Sanctuary's record in somewhat greater detail, the Court added: "Thus, by his own testimony, plaintiff presents the shocking spectacle of a retired reserve officer of the U.S. Army gathering 'evidence' designed to incriminate his commander-in-chief, and turning it over for use to a foreign nation which he deemed to be an enemy of his own country. . . .

"It is not necessary to take up arms against one's country in order to betray it or encompass its ruin. The history of the world shows that the sowing of racial or religious prejudices among a people is often the prelude to the seizure and overthrow of its government. . . .

"Those who participate in such movements are traducers of America, for they ruthlessly trample upon its constitution. They are false to their professed Christianity when, in their hooded and blind bigotry, they foment racial or religious hatreds, for it was the Founder of Christianity who taught that love of God and love of neighbor are two great Divine Commandments. . . .

"If plaintiff's confessed deeds were, as he insists, prompted by his loyalty to America, then perfidy has become a synonym for patriotism."

Judge Pecora's opinion applied not only to the grim, grey and rather spiritless plaintiff, but to those other American fifth columnists whose disloyal activities could not be palliated as a mere product of mental derangement.

APOSTLES OF HATE

"The peace will be negotiated by Hitler, Mussolini, the present Japanese Government . . . and by patriotic Americans such as General Moseley, William Dudley Pelley, Father Coughlin, Colonel Lindbergh and Senator Nye. It will be a just peace."—Garland L. Alderman.

"These people are no more guilty than I am."—Senator Gerald P. Nye on the alleged seditionists.

President Franklin D. Roosevelt had been reading through a collection of American fascist gutter propaganda and his gorge was rising. He asked Attorney General Francis Biddle to remain a few moments after the Cabinet meeting:

"This is the same type of planned dissension which broke the will to resist aggression in every country in Europe," the President said. "You are the prosecutor. I want something done about these cases. You go ahead and do it." (The anecdote and the quotation are from Henry Hoke's book, *It's a Secret*, a swift-moving factual account of the background and course of the mass sedition trial. Accurate as to facts, Hoke is prone to simplify or ignore the legal and political issues underlying the trial.)

With some misgivings, Biddle proceeded to carry out orders. On July 2, 1941, a Grand Jury met in Washington and for the next fifteen months heard 221 witnesses testify about Nazi and fascist seditious activities. Two more Grand Juries took up the trail and continued to hear testimony until October 1943. The voluminous evidence laid before these bodies remains secret.

Three sets of indictments were brought against alleged fascist seditionists in 1942, 1943, and 1944. Eighteen persons were indicted on all three occasions; ten indictments were dropped between 1942 and 1944, and twelve were added. Insofar as any trend was perceivable in these bizarre proceedings, it was to eliminate periph-

eral and independent persons and concentrate on those who seemed to have a more direct liaison with one of the Axis governments.

These thirty men and women were indicted under the Smith Act, signed by President Roosevelt in 1940. They were charged with conspiracy to undermine the morale of the armed forces and to set up a Nazi-type government in the United States. They had, according to the indictment, "joined in this fascist movement and program and actively cooperated *with each other* and with leaders and members of the said Nazi Party to accomplish the objectives of the said Nazi Party in the United States." (Author's italics.) Their alleged crime was also "to advise, counsel, urge, or in any manner cause insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or Naval Forces of the United States" and to distribute printed matter serving the same purpose.

Title I of the Smith Act establishes the first peacetime sedition legislation since the disastrous experiment of the John Adams Administration. It makes it a felony, punishable by up to five years imprisonment, for any person to "knowingly or willfully advocate . . . or teach the duty . . . or propriety of overthrowing or destroying any government in the United States by force or violence. . . ." It applies equally to the publication or circulation of printed material falling within this category or to assisting in the organization of any society or meeting for this purpose. To be guilty under the Smith Act, a man need not conspire to overthrow the American Government. It is enough if he knowingly assists any organization which teaches that this is proper.

To illustrate the point by an admittedly extreme hypothetical case: Assume that a non-politically minded American citizen raises money for Station XQZ because it provides a program of Baroque music which is his principal relaxation and delight. Assume further that Station XQZ is controlled by a pro-Nazi element which, whenever possible, injects a subtle appeal for revolution. Conceivably, our hypothetical lover of Mozart and Vivaldi knows about this propaganda, but is indifferent to it because he assumes it will be unsuccessful. Possibly, he is simply bored by the whole issue, or perhaps willing to hear ten minutes of seditious palaver if he can get a Haydn symphony in return. Under the Smith Act, this non-political and admittedly woolly-minded music lover can be sent to jail for five years.

The Smith Act has exceptionally sharp teeth, which can rend

the innocent as well as the guilty. Whether technically Constitutional or not, it seems to be a frontal attack on the spirit and tradition of the Bill of Rights. The issues involved in the Smith Act will be scrutinized more fully in the section dealing with the trial of eleven Communist Party leaders for seditious conspiracy.

The Viereck-Fish Scandal

The Government's efforts to prosecute the thirty defendants were subjected to sniper fire from a minority group in the Senate and House, consisting both of isolationists and pro-fascists.

Senator Burton K. Wheeler of Montana stormed into Attorney General Biddle's office one day and demanded that the energetic prosecutor—William Power Maloney—be taken off the case. The "or else" was a full dress investigation of Department of Justice activities by the Senate. Maloney told Wheeler to go ahead with his investigation, but to make all hearings public. Nothing, of course, came of it. Congressman Clare Hoffman of Michigan rallied to the defense of the thirty "persecuted Christians." The sedition trial, thundered other Congressmen, was a Jewish plot. As a matter of fact, however, it had originated largely from the newspaper exposés of a non-Jewish reporter—Dillard Stokes of the *Washington Post*.

During one of the duller days of the sedition trial—and there were many of them—the defendants spent their time in court addressing franked envelopes to the members of their subversive organizations. These envelopes contained a two-hour speech delivered in defense of the accused by Senator William Langer of North Dakota. The impropriety of making an issue of the case in the Senate when it was already before the court was equalled only by the contemptuous conduct of the defendants. Under equal provocation, Judge Harold R. Medina was to jail Communist defendants for contempt of court—a necessary measure when the prestige of the judiciary is flouted.

The little cheering squad for the accused seditionists in the Senate and House included men who had already done their bit to carry out in the United States a program applauded by the Third Reich. During the years of American neutrality, George Sylvester Viereck, whose record as an agent of the German Government on American soil spanned two world wars, conceived the inspired idea of having the United States Government subsidize Nazi propaganda. As his plans took concrete form, he co-

operated closely with Congressman Hamilton Fish of New York and Senator Ernest Lundeen of Minnesota.

Viereck's methods were brilliant. Working as a paid agent of the German Foreign Office, he financed a publishing house known as Flanders Hall. Prescott Dennett—a shrewd-looking individual later to be indicted for seditious conspiracy—was ostensibly a publicity man for Flanders Hall, but actually a liaison operative between the rump Congressional group and the Viereck-Berlin apparatus.

Viereck wrote or solicited propaganda articles for insertion into the *Congressional Record*. When Dennett took this material over to George Hill, the mouse-like secretary of Congressman Fish, Hill arranged for some Senator or Congressman to get the propaganda into the *Congressional Record*, either as a speech from the floor or as "printed remarks." Reprints would be ordered in the quantities needed by Viereck and then bulk-shipped under Government frank to the various subversive organizations and other groups within their radius of influence.

There were manifest advantages to this plan. The principal one was that the material received more attention under the name of Senator Blank than under that of George Sylvester Viereck. As far as the American public knew, Senator Blank was a representative of the United States, loyal to our democracy and sworn to uphold the Constitution. The public also knew, or could easily have found out, that Viereck, while an American citizen, had spent a large part of his life in connivance and intrigue to bend the policies of his country to the interests of a foreign state. Sometimes, of course, the Senators and Congressmen who let their names be used in this fashion did not necessarily know that a registered German agent was the prime mover and ghost writer. In other instances, Viereck openly approached Congressmen for their cooperation.

Use of the franking privilege meant that this Nazi propaganda was broadcast throughout the nation without payment of postage. Moreover, since the Government Printing Office issues documents and reprints at considerably less than commercial cost, an enormous element of subsidy was involved. The taxpayer thus footed the bill.

This sordid and disloyal operation was uncovered when Prosecutor Maloney paid a surprise visit to Prescott Dennett's apartment and found it littered with thousands of franked envelopes and dozens of empty mailbags. The trail led to a House Post

Office truck which had just picked up a large number of filled mailbags and taken them from Dennett's flat to the office of Hamilton Fish. The mailbags contained the franked speeches of twenty Congressmen and Senators—German-inspired propaganda destined for dissemination among the American people.

Unobtrusive George Hill, who had been working under the direction of George Sylvester Viereck, was subpoenaed to appear before the Grand Jury. After lying like a trooper, he was sentenced to four years imprisonment for perjury. The sentence was cut in half when Hill, crushed by this blow, turned against George Sylvester Viereck and helped send him to jail.

Hamilton Fish rose on the floor of the House to answer the "contemptible, dastardly and lying charges" levelled against him. Tall, beetle-browed, with a large grim face like the mask of death, he had the eyes of a zealot. Fish came from a long line of distinguished statesmen who had honorably served their country in high positions. Yet as early as 1933, he had fronted for a world alliance against Communism openly organized by the German Nazis. On the floor of the House, he had opposed the fortification of Guam as a gratuitous insult to a friendly Japan.

Now on the spot, Fish raised the cry of persecution. He begged Congress without success to instruct him to duck the Grand Jury subpoena. On the floor of the House, where the perjury laws do not apply, Fish backed up Hill's original version of the affair as truth. (Hill had denied knowing Viereck and had also denied knowing the contents of the mysterious mailbags.) But at Viereck's trial, when George Hill broke down and told the truth, he said that it was Hamilton Fish who had first introduced him to Viereck and instructed him to collaborate with the Nazi agent.

Since their bank accounts are not subject to public scrutiny, whether or not material benefits accrued to implicated Senators and Congressmen is a matter of conjecture. However, it is a matter of public record that Fish did receive \$3,100 from the Romanoff Caviar Company of New York. This organization was run by Hansen Sturm, a man with close German Embassy connections and on the FBI watch list. The Romanoff Company was a distribution center for Nazi propaganda and helped finance both Flanders Hall and the America First Committee. Despite his name, it is a safe assumption that New York Congressman Fish did not make \$3,100 by marketing sturgeon roe as a side-line.

German money was used with great ingenuity to sweeten Congressional employees. When Viereck's propaganda was mailed

out under the signature of some Congressman, the latter would get letters of both protest and approval from recipients. The names of those who favored the propaganda were consolidated in special lists and Hill sold them to Viereck.

Senator Gerald P. Nye, whom President Roosevelt considered the most dangerous pro-fascist in America, admitted to having sold a million of his franked postcards to America First. During the last frantic propaganda flurry before Pearl Harbor, Nye was addressing as many as fifty meetings a month and generally getting \$500 for each appearance. When audiences were too poor to foot the bill, the deficit was covered by unidentified sources.

Nazi agent Viereck used the offices of Senator Ernest Lundeen of Minnesota as his unofficial Washington headquarters. A hero of the Steuben Society, the isolationists and the pro-fascists, Lundeen was one of those who helped the Nazis send out propaganda under false pretenses.

He came to a somewhat mysterious end. On August 31, 1940, his secretary found him near collapse. The Senator's head was buried in his hands and he was weeping. "I can't talk about it. I've gone too far to turn back," he said. That afternoon, Lundeen was killed in a Virginia plane crash.

Young Senator Rush Holt had come into politics as one of the stalwarts of mine leader John L. Lewis. He joined the isolationist pack and wrote a book for Flanders Hall called *Who's Who Among the Warmongers*. A British censorship official in Bermuda found the corrected proofs of this book in an envelope addressed on Viereck's typewriter to a known Nazi letter-drop in Lisbon. Inside the large envelope, there was a smaller one containing the proofs which was directed to Hans Dieckhoff, a high official in the German Foreign Office. Had matters reached such a state that the writings of American Senators were submitted to Berlin?

After the Viereck-Fish scandal was blazoned over the nation's front pages, the legislators who were implicated became either discreet or patriotic. But sniping went on. Scurrilous literature was illegally inserted into the franked envelopes of Congressman Clare Hoffman of Michigan. (It is not known who wrote this propaganda or placed it in the isolationist Congressman's mail.) This material went out to Hoffman's constituents with the caution that it was not to be read by members of the armed forces. (Since the United States was now at war, the mailing of seditious propaganda designed to undermine troop morale was a felony.)

The constituents of the Michigan Congressman, some of whom had husbands and sons in General Eisenhower's great expeditionary force, read that their loved ones were being "Victimized by Verminous Voracious insects, Venomous snakes, Vitiating tropical diseases, Voo-Dooed and Hoo-dooed by the horrors of war in the hottest hell on earth." This propaganda was evidently based on an unflattering assumption—the effete American people could be frightened from war by a few African asps and adders.

Stewart and "Scribner's Commentator"

The growing America First movement was in need of a national publicity organ. It found what it was looking for in the magazine *Scribner's Commentator* and the newspaper *Herald*.

The former started life as a not particularly intelligent but eminently stodgy publication of conservative hue. Its chief financial prop was a banker, Charles S. Payson, and its directing brain was a certain Douglas M. Stewart.

As America First got into motion, *Scribner's Commentator* began to come to life. Colonel Robert McCormick (publisher of the *Chicago Tribune*), Senator Rush Holt (whose book was sent in proof to the German Foreign Office), and other respectables wrote for its columns. General Robert E. Wood, head of America First, published an article on the importance of Japanese trade to the United States. At a time when Japanese armies were spread all over the Chinese landscape, Yakichiro Suma, official spokesman of the Nipponese Foreign Office, assured American readers that his country had "no designs toward conquering China." An incoherent article by the venerable and intellectually addled Henry Ford charged that "greedy financial groups . . . lustful for power" manipulated the trade unions and pulled the wires which made Hitler and Mussolini dance. A genius with cars and production problems, Ford maundered miserably on more abstract matters.

In the spring of 1941, the Payson and Stuart organization moved from New York City to Lake Geneva, Wisconsin. On August 5, 1941, it launched a newspaper called the *Herald*. Where *Scribner's Commentator* had confined itself to more or less staid appeals to feed German-occupied Europe and smash the British blockade, the *Herald* appealed directly to the fascist-minded mob. "Seventeen Nations Join the German Reich in Holy Crusade Against U.S.S.R." was a characteristic headline.

Both publications looked to Colonel Charles A. Lindbergh as

the coming savior of America. Although his luster had been slightly tarnished by certain of his utterances and activities, the Lone Eagle was still an all-American hero. With its disarming respectable front, *Scribner's Commentator*—together with the more plain spoken *Herald*—was, according to Henry Hoke, "sent to every warship, Army and Navy installation in the Pacific." In the months immediately preceding Pearl Harbor, the men in uniform were thus able to learn that their Commander in Chief was a warmonger, that the real fifth column on American soil was British and that the Japanese had no hostile intentions against anyone.

The *Herald* quoted and praised some of the little subterranean hate sheets, whose editors were soon to face trial for sedition. It was hawked about by Father Coughlin's Social Justice groups and it had on its editorial board men like Frederick Kister, one of the small fry of the pro-fascist movement who was later to become head of the so-called Christian Veterans of America.

America was at peace and fascists had a right to put out a magazine if they wanted to. But there were strange goings-on in the spendthrift publishing concern which was located in the heart of the Midwest German-American belt. For one thing, the plant was equipped with powerful short-wave radio receiving and recording apparatus, capable of picking up information or instructions from any place in the world.

Dillard Stokes of the *Washington Post* discovered a connection between the *Scribner's Commentator* crowd and Prescott Dennett, Viereck's contact man in the malodorous franked mail deals. The Washington Grand Jury investigating seditious conspiracies against the United States became deeply interested. A subpoena was slapped on Ralph Townsend, an editor of both *Scribner's Commentator* and *Herald*.

Instead of obeying the subpoena, Townsend took to his heels. He became the object of a nationwide manhunt. Simultaneously, the *Scribner's* organization folded and disintegrated. The short-wave radio apparatus vanished. It subsequently turned up in the home of a certain Seward Collins—one of the New York clique of "intellectual" fascists and the proprietor of a bookstore which hawked right-winged totalitarian fare. A rather civilized man, Collins' fanaticism was of a more weakly distilled brew than that of the madmen and scoundrels with whom he associated. The bottomless ignorance of the self-appointed generals of the armies of lies and destruction must have appalled him. However, he be-

lieved in the existence of the devil and doubtless found that conviction reinforced by his daily associations. Collins apparently wanted to return to the distributive society of the Middle Ages. But the real question remained: Why did he need high-power short wave radio apparatus?

Ralph Townsend was indicted as a seditionist. When he was finally located, he confessed to being an unregistered Japanese propaganda agent. The Japanese Government had lavished \$175,000 on him for the purpose of softening up the nation preparatory to the Pearl Harbor sneak attack.

The United States Government was curious. How had Douglas M. Stewart financed his plush publications? The editor gave a frank, manly explanation of the monetary aspects of his forays into appeasement journalism. It seemed that Stewart was blessed with the Midas touch. One day, somebody broke into his Wisconsin home and left \$15,000 on a table. Then there was the time when a rude stranger jostled Stewart in a crowd and thrust several thousand dollars into his palm. One night, a missile was hurled through the open window of his study. Stewart yawned, picked it up and found the usual \$15,000.

When Editor Stewart insisted on sticking to this story, Federal Judge Edward C. Eichers considered it a barefaced lie and had him jailed on the spot for contempt of court. A higher court was later to reprimand the judge for his somewhat highhanded procedure.

The Government has a long memory and, in March 1947, Douglas Stewart was put on trial for perjury in a District of Columbia court. The audience at the trial consisted largely of men and women associated with pro-fascist and other subversive organizations. The first witness for the Government was burly, red-faced Baron Heribert von Strempel, who had served prior to Pearl Harbor as the secret paymaster for the German Embassy. He testified that he had been authorized by the real directing brain of the Embassy, Hans Thomsen, to pay Douglas Stewart upwards of \$10,000. Von Strempel further testified that he met Stewart and a man called Lancaster Greene secretly in New York's Pennsylvania Hotel and turned over the money in \$20 bills. Thomsen next went on the stand to confirm this, adding that the purpose of the subsidy was to get Stewart to spread Nazi propaganda throughout the United States.

The defense attorneys concentrated on building up Stewart as a patriot who had always been true to the Stars and Stripes. They

announced that they planned to call to the stand banker Charles S. Payson, who had supported *Scribner's* to the extent of \$90,000. The Government at once read into the record a letter from Payson excoriating Stewart for his reckless conduct in taking money from mysterious sources and severing all connections with his publications. After this exhibit, the Defense changed its mind.

Stewart's lawyers immediately made the usual charge of an FBI-Justice frameup. They said poor von Strempel had been coerced and badgered. The Defense then trotted forth ex-*Scribner's* assistant editor Frederick Kistner who testified to the character and patriotism of the accused, pointing out that his former employer was on friendly terms with such loyal Americans as Charles A. Lindbergh and Senator Burton K. Wheeler. (This was probably true. The Lake Geneva publications had built circulation by using what were described as the Fish, Nye, Wheeler and Lindbergh lists.)

Finally Stewart alleged that he had been supported by big industrialists who were reluctant to contribute openly to his publications. Some \$39,000, he said, had been left lying around his house. An unorthodox method of business financing to say the least.

Having pondered these facts, the jurors returned with their verdict. They apparently drew no inferences from the disappearance of the short-wave radio apparatus or the flight and subsequent conviction of Japanese-agent and *Commentator*-editor Townsend.

Douglas M. Stewart was acquitted of perjury and is today a free man.

The Sedition Trial Fiasco

The mass sedition trial limped through month after month of tedious documentary evidence. Every effort was made by would-be assassins of American democracy to turn the court into a carnival and bring the entire system of justice into public disrepute. The courtroom was packed with relatives, friends and followers of the accused. The audience yelled and hooted. It applauded the defiant speeches of the defense attorneys. It acted like a gang of drunken Legionnaires on a convention spree.

During seven and a half months of 1944, a bored jury listened to 3,500,000 words of exhibits and testimony. The defense attorneys used every conceivable device to goad and badger the

judge. They were apparently hoping to irritate him into taking some rash, punitive measure that would lay the basis for a mistrial. When one of them was asked by the court why he didn't state his objections in proper legal language, he had the impertinence to reply:

"Your Honor, I am trying to speak in language that even Your Honor can understand."

The defense attorneys hopped up in monotonous sequence, objecting to virtually every exhibit submitted in evidence. Whether the objections were sound or nonsensical made little apparent difference. They provided an occasion for harangues. They delayed the trial. They befuddled the jury.

This continuous barrage of badgering, bullying and clowning finally broke Judge Eichers' health. He died in his sleep late in 1944 and the whole affair had to begin all over again.

A period of hibernation followed. Then, after the Nazi defeat in Europe, Prosecutor Oetje John Rogge—who had supplanted the vigorous and over-aggressive William Power Maloney—went to Germany *to gather additional evidence*. Thus five years after the first indictments, the Justice Department was scouring the world for proof of the guilt of the accused!

Returning from Germany, Rogge made a speech at Swarthmore College which bristled with hints and charges concerning pro-Nazi activity in high places. The implication was that the Department of Justice was covering up influential subversives.

On October 25, 1946, Attorney General Tom Clark fired Rogge from the Justice Department for a willful breach of government security regulations. Clark took the view that it was the business of Assistants to the Attorney General to try criminals in the courts, not in the press. He revealed incidentally that Rogge had recommended that the sedition cases be dropped for lack of evidence.

The matter came up a month later before Chief Justice Bolitho L. Laws of the Circuit Court of Appeals. He ordered the indictments dismissed and delivered a scathing rebuke to the Department of Justice for "lack of diligence" in prosecution. To bring these men and women to trial after holding them in court or under indictment for four and a half years, Laws stated, would be "a travesty on justice." He commented acidly on the fact that Rogge, after expressing doubt on three separate occasions that a lower court conviction could be sustained on appeal, had been sent to Germany on a fishing expedition for more evidence.

The main legal reason for Laws' action was that the defendants were entitled under the Constitution to a speedy trial. Regardless of how evil a man may be, the Government is not at liberty to hold him year after year in the meshes of a loosely drawn indictment. Were it permitted to do this, men could be deprived of their freedom without convincing evidence and on the mere whim of the Executive.

The liberal *Washington Post*, after a sardonic comment on Rogge's "sensational innuendos", characterized the trial as a "colossal blunder" and an "hysterical move."

The Abuse of American Justice

Yet did not these men deserve condign punishment? Most of them had worked to the best of their meagre abilities to bring about the downfall of their nation and to undermine its moral and material defenses in a time of great peril.

The alleged seditionists should certainly have been tried and some might well have been convicted—but not as the Department of Justice handled the case. The spectacular mass political trial in Washington gave off a faint scent of Nazi and Communist procedure. The accused were not brought to the bar to answer for the concrete and tangible things they had actually done. They were instead accused of forming part of a worldwide Nazi conspiracy. The evidence to substantiate this grandiose charge was not available to the Government at the time the indictments were laid.

In explaining the sedition trial fiasco, Henry Hoke trots out the old "hidden hand" theory, according to which sinister fascists in high places paralyzed the Prosecution. "Too Big—or Too Hot—To Handle" is one of Hoke's chapter titles.

There was, to be sure, unremitting pressure on the Justice Department to nolle prosequere the case from men of possibly tarnished political character in high places. But the decisive fact remained: the case itself was legally bad. The law under which the alleged fascists were tried was vague. The indictment was filled with generalizations and oratory which passed for history. The evidence was weak and the prosecutory efforts of O. John Rogge were diffuse and rambling.

The charge under which the defendants had been indicted was conspiracy. Now under criminal law if a man is accused of attempting to commit a crime, there must be evidence that he has

taken substantial and practical steps toward translating the criminal impulse into action. The conspiracy laws, in contrast—on the theory that a plot hatched by a large number of people is more dangerous to society—do not require an overt act provided a common design can be proved.

If men are to be tried for conspiracy, therefore, at least the existence of this concerted design must be shown. The indictment said that the thirty accused had conspired "with each other." Yet the evidence showed that some of them never met, never worked together and operated thousands of miles apart.

They were also accused of having conspired with leaders and members of the German Nazi Party. Some undoubtedly had, but no evidence was introduced to prove the blanket charge. A conspiracy in this sense meant that the accused had planned joint action with German agents, not merely that all were fascists.

Faced with these difficulties, Prosecutor Rogge made an opening speech which was cluttered with generalizations about the Nazi rise to power in Germany. He attempted to establish conspirative connections by loose analogy and innuendo. For example:

"Just as the Nazis in Germany and the Bund in this country had their publications, so the defendant True had a publication, the *Industrial Control Reports*. He sent this publication to the Bund and received the Bund's publication, *Wekkruf*."

But were there not legitimate means at hand to imprison people who tried to betray their country in wartime? Two or three men who belonged to the same subversive organization could have been tried in one batch for conspiracy. The Government could have refrained from burdening the record with modern European history and concentrated on showing that these groups existed to teach the propriety of armed insurrection or to incite disobedience by troops.

Other defendants were possibly guilty of plain common law crimes such as incitation to riot and assassination. Men who sold known forgeries like *The Protocols of Zion* as bona fide revelations—and most of them did—might have been convicted of using the mails to defraud.

It seemed that there were at least several legal measures, consonant with the American tradition, by which men whose guiding aim was betrayal and whose beacon light was disloyalty could be brought to justice.

TREASON BY SABOTAGE

"Germany will not let me hang."—Max Stephan after sentence of death was pronounced upon him.

"The law of treason makes, and properly makes, conviction difficult, but not impossible."—Majority opinion of the Supreme Court (*Haupt v. United States*, 330 U. S. 631).

At Pearl Harbor, Hitler lost his greatest gamble. With the United States at war, the Third Reich began to do what the Kaiser had begun during the first six months of hostilities: it unleashed sabotage and destruction against American war facilities. Again, as in 1914-17, a vigilant Federal police system frustrated the more important of these attempts to spread fire and devastation through the nation.

Outright, centrally organized sabotage lies outside the scope of the present book. Even those U-boat conspirators who owed America allegiance were executed, not for treason, but for landing in this country "to commit sabotage, espionage, hostile or war-like actions . . . violations of the law of war." The German-American accomplices and harborers of this destructive band, however, did go on trial for either treason or misprision of treason. Insignificant, seemingly law-abiding citizens were brought into the glaring light and icy solitude which the accused traitor faces when fighting for his life. Two of the cases went to the Supreme Court on appeal, enabling that tribunal to clarify some of the blurred edges of the treason law.

Max Stephan, Hyphenated American

At about nine o'clock on the morning of April 18, 1942, the doorbell rang in the home of Margaretta Johanna Bertelmann, the dark, slim, pretty wife of a Detroit war plant foreman. When she opened the door, a young man entered. He was dressed in muddy coveralls and his smug, hard face was unshaven.

The visitor, Mrs. Bertelmann later testified, "showed me a military epaulette he had. . . And then I felt a shiver over my whole body for I knew he was a German prisoner of war."

Several days earlier, during roll call at the Bowmanville, Ontario, camp for enemy prisoners, the officer of the day had noticed that two of his Nazi charges seemed unable to stand at attention. Approaching, he discovered that these figures were being held erect by their comrades. They were dummies. Where the shining, scrubbed and supercilious face of Luftwaffe Oberleutnant Hans Peter Krug should have been, there was merely a wad of dough covered with newspapers, on which eyes, nose and mouth had been clumsily painted.

The alarm was given and the search was on, but young Krug was already across the Canadian border. Before his escape, he had forged papers, identifying himself as a sailor from the S. S. *Normandie*—by now a capsized hull in New York harbor. With these documents, Krug extracted money from a kind-hearted priest and, after various peregrinations, beached on American soil in a stolen rowboat.

The first person this greasy and dishevelled officer called on in America was Margaretta Johanna Bertelmann. He had never set eyes on her before. Although Mrs. Bertelmann was very decidedly in deshabelle, she unhesitatingly admitted the stranger. She was one of those German-Americans who had knit socks and mittens for the German prisoners in Canada. Some of the garments which the prisoners received contained American addresses where they might be harbored in the event of escape.

Krug "was looking at me like a hunted animal," Mrs. Bertelmann later testified. She gave him cheese and sardines, but he was too upset to eat. The next thing she did was to telephone Max Stephan, a portly German-American tavern keeper who was also a big wheel in the Detroit Nazi movement.

Stephan hurried to her place. According to Mrs. Bertelmann's story, he then turned toward Oberleutnant Krug, saying:

"Why don't you give up? You haven't a chance."

But Krug replied that he had to get back to the Reich. A German non-com had been murdered in the prison camp and this shocked the sensitive young Nazi to such an extent that he felt he had to return to Berlin via Mexico to tell Hitler about it.

That is the story which Mrs. Bertelmann told. According to J. Edgar Hoover, however, Max Stephan needed no persuasion. He

"listened, with shouts of glee and slappings of his fat thighs, to the fugitive's plan for rejoining his army."

Stephan gave the fugitive a meal, a cup of coffee and a drink. He treated Krug at a local house of prostitution, thereby giving him aid and comfort of a sort. He bought him new clothes, a zipper bag and gave him \$40 and the address of a female Nazi in Chicago who was to aid him on the next lap of his flight to Mexico. To politically unreliable people, Stephan introduced his protege as "one of the Myers boys." To his fellow Nazi, Theodore Donay, who was to forward a message from Krug to the German Government, he told the truth. Finally, Stephan saw the German officer off on a Chicago-bound bus. For this day's work, he was almost hanged.

A few days later, an FBI agent addressed a small meeting in one of the less important San Antonio hotels about the importance of noticing such small things as ear lobes and hair convolutions. That evening, the hotel manageress of the hotel practiced on several of her guests, then telephoned the FBI that she thought the man registered as Jean Ette was in reality Hans Peter Krug.

When picked up, Krug still wore the necktie and billfold Friend Stephan had given him, and he carried a pistol. His arrest was only the beginning. According to international law, the prisoner had to be returned to Canada and could not be forced to testify in any American court.

The FBI solved this psychological problem by appealing to Hans Peter Krug's belief that he was "a superior being." They asked him stupid questions which seemed to implicate innocent people. Soon it occurred to the Nazi officer that he would have to testify before the grand jury as "a sort of master of ceremonies . . . whose duty it was to separate the sheep from the goats." (The quotations are from J. Edgar Hoover's article in *Colliers*, "Traitors Must Die".) The young superman fell into the prepared trap. Before his court debut, Krug treated his face with creams and lotions and prettied his nails with a manicure set. He appeared scrubbed, shining and radiating complacency and conceit.

According to J. Edgar Hoover, Krug came to look upon Stephan and his other Detroit friends "as beneath contempt. Only in America, he insisted, would such disloyalty be tolerated."

The First Death Sentence

Fat, heavy-jowled, with watery eyes, Max Stephan looked like

the typical proprietor of a small German beer hall. Betrayed by his accomplices, he appeared pathetic, rather than sinister. The restaurant which he owned, however, also had a hidden rifle range and a hall seating a hundred and fifty people. Here the German American Bund and the equally dangerous Kyffhaeuser Bund met secretly during wartime, drilled, and practiced marksmanship. Stephan was associated with Garland Alderman and other leaders of the National Workers League, a Detroit fascist organization which fomented anti-Negro riots and used Black Legion tactics. This group was a miniature army of terror.

For a long time, the FBI had wanted to get Max Stephan and now that he was on trial for treason, there would be no recommendation for mercy.

In a freshly pressed uniform with shining epaulettes, wearing the high peaked cap of the Luftwaffe and cradling a huge German-English dictionary under his arm, Oberleutnant Krug strode up to the stand and gave an astonished bailiff the Nazi salute. When he had finished betraying the man who had befriended him, Krug was asked by the Defense Attorney:

"What purpose do you have in testifying against a man who has aided you, who is charged with treason?"

No pressure had been exercised to make him testify, the German explained. In fact, he personally had nothing to gain from the denunciation. "I was told by the FBI agents that I had only to tell about facts that were already known and to tell the truth," Krug added.

"Well, have you told the truth?" the Court asked.

"Yes," he replied.

The second witness against the restaurant proprietor was Margaretta Bertelmann who had brought Stephan under the shadow of the gallows once by introducing him to Krug and now was doing it again. Veiled and attractive, the Court reporters thought her the very model of a modern Mata Hari. Mrs. Bertelmann was a German national but, as an American resident, she owed the United States temporary allegiance. She was interned as a dangerous enemy alien, but not put on trial for treason.

Frail under the weight of his seventy-four years, Judge Arthur J. Tuttle addressed the Court thirty days after the jury had rendered a guilty verdict. He said: "We have been too soft, to the extent of being mushy. There are too many in the sob squad, and too few in the fighting squad."

The Judge then sentenced Stephan to hang. As the only capital

crime in Michigan was treason against the state and nobody had ever committed it, there was no gallows. The Governor promised to provide one in time for a November execution.

Thus, for the first time since the Civil War Copperhead cases, an American court had sentenced a man to die for betraying his country. There was a slight national tremor of apprehension as this fact was brought home to the newspaper reading public, for it symbolized America's entrance into a new era in which totalitarian fire would sometimes have to be fought with fire.

Pale, but stolid, Max Stephan heard the news in his cell. Puffing at a cigar, he told reporters:

"Victory will be sure. Germany will not let me hang. This war will be over soon and when it is over I will get out of jail. A victorious Germany will not leave Stephan in jail."

The hanging was postponed while lawyers frantically attempted to appeal to the higher courts. But the trial judge had not been in reversible error and no debatable issue of law was involved. The Supreme Court refused to review and Max Stephan was ordered hanged by the neck until dead in the pre-dawn hours of July 3, 1943.

Among others, Roger Baldwin of the American Civil Liberties Union worked to persuade the President to commute what seemed by all rational standards to be an unreasonably harsh sentence. According to Mr. Baldwin, the late Mr. Justice Murphy of the Supreme Court went directly to President Roosevelt on the matter, while his associate, Mr. Justice Frankfurter, discussed it with Attorney General Biddle.

The President appeared unmoved. Then, on July 2nd, he commuted the execution to life imprisonment, expressing the earnest hope that no future American Chief Executive would pardon Max Stephan.

"The man was properly convicted of treason. He was guilty," the White House stated. But: "the statute provides the death penalty, or at the discretion of the Court, imprisonment for not less than five years, together with fines. Thus the statute definitely contemplates with respect to the sentence, treason of different qualities. . ."

Stephan's betrayal "was not part of a preconceived plan. His treason bore something of a parallel to murder in the second degree or manslaughter in the first degree. . ." Although convinced that Stephan "was, and probably is, pro-German or pro-Nazi," the President rebuked the Court for its excessively severe sentence.

Meanwhile, the seedy tavern keeper had been waiting in an hysterical and jittery state for the pre-dawn execution which was hourly approaching. He collapsed when he heard of the reprieve and then kissed the hands of the prison warden. "He was delirious with gratitude," his lawyer related. "He fell all over us, kissing and crying and laughing."

Presumably, President Roosevelt had allowed the Stephan matter to slip his mind until the final hours. Regardless of the prisoner's crime, it can scarcely be imagined that he would needlessly have inflicted on Stephan the terror and anguish of the hours immediately preceding execution. Czar Nicholas I deliberately did exactly this in commuting the death sentence of Feodor Dostoevsky and other suspected revolutionaries with the result that one of the prisoners went mad on the execution ground. "Do you know what a death sentence means?" Dostoevsky wrote later in *A Writer's Diary*. "He who has not grazed death cannot understand it."

The presidential reprieve appears wise in the calmer light of the present. Stephan's treason had not been premeditated. Called upon to help an enemy officer in trouble, he had merely provided him with food, clothing, money, a Chicago contact and a woman. While Lieutenant Krug proposed to return to Germany and there rejoin the Luftwaffe, his purpose was not directed specifically against the United States. Aiding him was, therefore, a less flagrant act than harboring the German sabotage squads.

From the standpoint of motive, as distinct from treasonable actions, the situation is reversed. Stephan was a hardened Nazi. He was active in illegal fascist organizations which existed only to strike at the American democratic system by means of terror. After his conviction, he was defiant and unrepentant.

But he did not deserve the uncomfortable distinction of being the first man to suffer death for treason against the United States. Although his motives were flagrantly disloyal, his traitorous conduct verged on the insignificant. Each of the two elements had to be weighed in assaying the gravity of the crime.

U-Boat Saboteurs

A few days after the outbreak of war in Europe, the yacht *Lekala* was riding at anchor about a mile off the Long Island shore. Coast Guardmen on patrol noticed that its crew of seven acted as if they had never been on a ship before. Since the Guard-

men knew that this particular part of the Atlantic shoreline was an ideal spot for submerged submarines awaiting provisions, suspicions were aroused.

A checkup revealed that the yawl *Lekala* stowed sufficient provisions to feed its crew for several years. Edward Kerling, the surly young man who seemed to be in charge, was a butler by profession. He refused to tell the authorities how he could afford to maintain a yacht on his salary.

The FBI decided to give Kerling enough rope so that he could hang himself. Released after perfunctory questioning, Kerling abandoned his attempts to provision German submarines and plunged into Bund activities in New Jersey. In the summer of 1940, he was in Chicago, where he became an intimate friend of another young Nazi—Herbert Haupt. The shadow of the FBI followed wherever he went and month by month the dossiers became fatter.

Herbert Haupt of Chicago had been reared in a pro-German atmosphere which, at least as early as 1936, became ardently Nazi. His father, Hans Max Haupt, a neat, gray-haired man with a small moustache and a dignified, inoffensive appearance, had served in the German Army in World War I. Like the Fuehrer whom he so vastly admired, he was by profession a house painter. Hans Haupt told friends that Hitler was "a wonderful man. Germany is better, much better, than the United States. I am going to send Herbie back there."

After completing R.O.T.C. training, Herbert Haupt swaggered in the uniform of the German-American Bund. When that organization went underground, Hans and Herbert followed it into the Bierstubes and secret meeting places where the faithful, ideologically hardened core continued to work for the new Germany. Men wearing brown puttees and dark ties would stow their rifles in Herbert Haupt's car and they would then all set forth for secret Bund meetings. Herbert trained during his weekends at a Nazi youth camp in Michigan. He was employed as a lens grinder in the Simpson Optical Manufacturing Company, a plant engaged in producing the highly secret optical element in the Norden bombsight and headed, oddly enough, by Andreas Conrad Grunau, an ex-German aviator who was later to be thrown into an internment camp by the United States Government.

In 1940, Herbert's parents, Hans and Erna Haupt, worked as servants for a Mrs. Fishman. At their trial, she quoted Hans as follows: "if we entered war against Germany we would have a

revolution in this country like they had there after the last war; that we have German organizations back here that would take our armories over, our electrical companies, our telephone companies; that the same thing would happen to us as happened in Norway and France, that we would be taken from within by Fifth Column activities." He added that the preparations for this work were already being made by Nazi organizations to which he belonged. On another occasion, he said that he would kill Herbert rather than allow him to fight as an American soldier against Germany. Mrs. Fishman discharged the couple and reported them to the FBI.

The Haupts moved in a little group of Chicago Nazis. There was Otto Walther Wergin, like Hans a naturalized American. His citizenship papers, he thought, were "just something to throw in the gutter." Equally unsavory and no less disloyal was Hans' brother-in-law, Walter Wilhelm Froehling. These three men, together with their wives, were soon to be tried for treason against the United States.

Herbert Haupt's Higher Education

In early 1941, the FBI discovered that Herbert had disappeared. Ditching his pretty fiancée, the young Nazi swam the Rio Grande—according to his subsequent and over-dramatic account—in the company of Wolfgang Wergin, the son of the man who thought his American citizenship papers were only good for the gutter. The next clue to Herbert's whereabouts came when Mrs. Haupt sent a wire to Tokyo, congratulating him on his twenty-first birthday. Appropriately enough, Herbert came of age on Pearl Harbor day—a symbol of betrayal.

After three months on a blockade runner, he rounded Cape Horn, landed in Occupied France and proceeded to the Reich. His friend Wolfgang Wergin entered the German Army; but Herbert volunteered for a "special assignment" and was immediately sent to a sabotage school near Brandenburg. Here he and seven other men detailed for the destruction of American armaments plants went through accelerated training. They were taught how to manufacture incendiary bombs, timing devices and detonators. They were instructed in the assembly and planting of high explosives. At the great Nazi submarine base of L'Orient, they went through arduous practice in rubber boat landings from submarines.

The saboteurs were given wrist watches which contained in-

incendiary devices. They were provided with nuggets, indistinguishable from lumps of coal, which, when fed into the boilers of industrial plants, would explode. Some of the fuses could be screwed onto bolts and clocked to create a detonation after so many rotations of the machines to which the bolts were attached. In his subsequent testimony, sabotage agent Ernest Peter Burger made it plain that he was very much impressed by a fountain pen which "contained a small glass container with sulphuric acid. The sulphuric acid would eat after a certain time through a separating piece of cellophane, finally reach a combination of calcium chloride and powdered sugar, which would instantly result in a high-powered flare and then result in setting off a detonator." In addition to all this, the fountain pen could actually write. It was, however, merely a minor variation on the incendiary pencil with which German sabotage agents in World War I had blown up the Kingsland shell plant, causing \$17,000,000 worth of damage.

The saboteurs were to enter war plants secretly and at night, setting their incendiary and demolition bombs without detection. They were to derail locomotives and destroy industrial track. Above all, they were to concentrate on "the aluminum production of the United States . . . by using all of the knowledge and instructions that we received at the school." Alcoa plants in Tennessee, Los Angeles and Oregon were marked for destruction. The main target was the flow of raw materials to the American aircraft industry.

The saboteurs didn't like or trust Herbert. They said he was too young and were silenced only when the school leader pointed out that Herbert had been given the Iron Cross for his heroic work in evading the British blockade and getting to Germany. Their instincts were right. While never disloyal to the Nazi cause, Herbert had even more dangerous defects. He was vain, immature, flighty, boastful, unable to keep his tongue from wagging.

Toward the end of May, 1942, two separate groups of saboteurs sailed by submarine for American shores. Each of the eight agents was given \$5,400 in American currency and the two group leaders—George Dasch and Edward Kerling—were provided with \$50,000 each—the purpose being to bribe Americans to aid them in their destructive work. Kerling is our old friend of the yawl *Lekala*.

On the night of June 13, 1942, Coast Guardman John Cullen saw fresh footprints on the sands near Amagansett, Long Island,

and hurried to investigate. Four of the saboteurs had already landed by rubber boat from a German submarine and had dragged ashore and buried in the sand boxes, containing fuzes, detonators, fountain pen incendiaries, "coal blocks" and "enough stuff," as an excitable Coast Guard officer later put it, "to blow up half of New York." Cullen stumbled on all this. He was alone and surrounded by four saboteurs:

"Stop talking," one of them said. "Let's kill this fellow quick and get out of here."

Another argued that Cullen would be missed. That would set the FBI on their trail and the boxes would then be discovered.

They tried to bribe the Coast Guardman, who pretended to agree. Within a few hours, the four saboteurs were on a local train bound for New York and the FBI was moving into action on a nationwide scale.

In retrospect, the mistake seems to have been the boxes. If the Nazis had landed without that damning evidence—with merely their faked draft and Social Security cards and their \$150,000 in cash—they could have beaten Coast Guardman Cullen to death and left him on the beach. His murdered body would have been discovered and the footprints leading in from the ocean would have been suspicious—but none of this would have been conclusive as to a submarine landing. If they had learned their lessons well, the saboteurs could have eventually bought the chemicals, casing and fuze material needed to manufacture their own demolition devices.

The story of how the Long Island saboteurs were run to earth has been told elsewhere. There were such incredible clues as a crumpled cigarette pack in a Long Island train—the cigarettes a brand made only in Germany. There was the fact that the giant, hawk-nosed squad leader, George John Dasch had the sort of appetite generally encountered only between the pages of Rabelais. The FBI told New York restaurants to be on the watch for a customer who habitually consumed two roast beef dinners and five bottles of beer at a sitting. Soon they had their quarry.

Meanwhile, the entire Atlantic and Gulf Coast was covered with a patrol network on the lookout for fresh saboteur contingents. Special attention was paid to Florida, which offered unique opportunities for disguised U-boat debarkations. On June 18, fishermen at Ponte Vedra reported to the Jacksonville FBI office the discovery of four boxes buried in the sand.

Herbert Haupt had landed at Ponte Vedra with three com-

panions. Within less than a week, he turned up in Chicago and proceeded to the home of his aunt, Lucille Froehling. That evening, Herbert boasted about his exploits and his importance to the Wergins, the Froehlichs and his parents. "Herbert stated he had been trained as a saboteur," Walter Froehling later confessed. All six German-Americans knew that he had landed on American shores from a submarine on a special mission to destroy key war plants.

Wergin asked about his son and Herbert assured him that the boy was in the German Army. "Further," Wergin later testified, "he told me that if I said anything to anyone about his being in this country Wolfgang would be shot by the German Gestapo. . . I didn't tell anyone because I know what goes on in Germany and I knew they would kill my son and that relatives of myself and my wife would be jailed."

If this statement was a lie, it was a clever one. The courts have held that a man may commit treason against the United States if he is threatened with death and if the danger is real and continuous. Might they not apply the same rule toward a man whose son's death was threatened? Unfortunately, however, Otto Wergin's awakening to the ruthlessness of the Nazi regime was belated. This was the same Wergin who had predicted that, in two weeks of war, Hitler would wipe out the entire population of the United States by "spreading germs on the water." And while Wergin may have been coerced into not denouncing Herbert to the FBI, this hardly explained his approaching the saboteur the succeeding night with an offer of active cooperation:

"If you need me, I am willing to go along," he said on that occasion. "Just let me know. I am not dumb." The accuracy of the last of these statements was at least debatable.

After boasting falsely that the German Government had entrusted him with \$15,000 and impressing the older people with his hardihood and courage, after telling about the frozen feet of the German troops invalided from the Eastern Front, Herbert went home with his parents and hid the money he had been given under a rug in their house. This was a breach of his explicit instructions. Moreover, Herbert had reason to suspect that his family was under FBI surveillance.

The next night—Sunday—the three couples again sat in the parlor with Herbert and planned more positive acts of cooperation. The saboteur's instructions were to get his old job back in the plant which made the optical element of the Norden bomb-

sight, to acquire a car, to register for the draft and to convince his friends that he had been mining in Mexico. All of the saboteurs were to spend the first few months building up airtight identities. One was to buy a farm, where explosives could be stored. Another was to open a restaurant. On the Fourth of July, they were to meet in Cincinnati and celebrate American Independence by planning a series of spectacular fireworks displays.

For several years before this, G-men had been attending Bund rallies, heiling Hitler and photographing the assemblages with miniature hidden cameras. In addition to an immense photographic library, the FBI had a list of those Germans and German-Americans who had returned to the Reich after the outbreak of war. Herbert Haupt was among them. Finally, J. Edgar Hoover's organization remembered that Kerling, the butler-yachtsman, had been an intimate crony of Herbert.

Although they were blithely unaware of it, the noose was now tightening around their necks. A G-man called at the Haupts on some fictitious errand. He was looking for Herbert. "He has not been here," Hans Haupt replied anxiously.

The agent smelled cigarette smoke and knew that Hans Haupt used only pipes. He asked courteously whether he was detaining the house painter. Perhaps he had company?

"Nobody's been here," the German replied.

From 10:30 a. m., Monday, June 22nd, until Herbert's arrest on June 27th, the Haupt apartment was under surveillance at all times by never less than two FBI agents. Harboring an enemy of the United States is an overt act of treason and, under the Constitution, two witnesses to such an act are required.

On Tuesday, June 22nd, Mrs. Haupt phoned Herbert's girl and over lunch told her in confidence that the saboteur had returned. Sooner or later, the FBI had assumed, Herbert would date his attractive fiancée. Accordingly a "customer" appeared at the beauty shop where Gerda Melind worked, remarked that she looked radiant and learned that the cause of the change was the return of her "boy friend."

The previous day, Herbert in the company of his parents called on Andreas Grunau, head of the plant working on the Norden bombsight. When Herbert explained he wanted his job back, Grunau tipped him off to the fact that the FBI had been making inquiries about him.

The saboteur replied airily that he had straightened everything out with Mr. Hoover's organization. As a matter of fact, he had

gone to Mexico, "bought a mule and worked in a gold mine."

The father took other steps to help his son get back in the optical plant. And this had a more sinister significance than appeared on the surface. According to the trial testimony of Herbert's fellow saboteur, Ernest Peter Burger, their operating instructions read:

"To procure information and details concerning the optical industry in Chicago, especially the Norden bombsight, and to furnish us information . . . in order to equip us to carry out our assignments. . . . There was only one particular name mentioned, and that was the name of the Simpson Optical Company in Chicago connected with the Norden bombsight."

The father also helped his son buy a Pontiac car. "The purpose of purchasing an automobile," Burger testified, "was to, first, remove our explosives from the place where they were caged [cached?], or hidden or buried, back to a place which in the meantime would be prepared. The second purpose for a car was to give us range for our operations." (Trial Record, p. 116.)

While the FBI was displaying silent and terrifying efficiency, its garrulous and bird-brained prey was talking recklessly. On Wednesday night, Herbert appeared at a German nightclub and told one of the guests that he was in urgent need of the telephone number of a certain Gerhardt Kauffmann for whom he said he had an important message from a high official in the German Wehrmacht. Herbert then bragged to a café singer that he had twice run the British blockade and made the sea passage from Germany to Florida. When he was asked how he had done it, Herbert became the perfect spy.

"Ach," he observed, "I can't talk about that."

He had a date with the pretty Gerda for June 27th, but the FBI made him break it. On August 8th, foolish Herbert, together with five other Nazi saboteurs, died in the electric chair in the District of Columbia. The gluttonous Dasch and the slick, dapper Burger turned state's evidence and were rewarded with long prison terms.

The day of Herbert's arrest was one of panic and grief for his family. By that evening, however, all of them had recovered sufficiently to reassemble at the Froehling house. According to Wergin's statement, they agreed then and there to say that all they knew was that the saboteur had been in Mexico.

"I didn't know what the boy was up to," Herbert's grief-stricken mother told reporters.

But all six of them lacked what used to be called intestinal fortitude. They could be ruthless enough to aid saboteurs in bringing down death and destruction on the nation to which they had pledged allegiance, but now that they were trapped, they confessed everything and incriminated each other. Mrs. Erna Haupt told the FBI how son Herbert had left in a German submarine with bands playing and pretty girls showering him with floral wreaths. Hans Haupt followed with a twenty-three page confession that implicated Froehling more deeply than himself. It was Froehling who had kept most of the money for Herbert, he said. Froehling's house had been the contact point for other conspirators. And a New York banker, whose name only Froehling knew, was to handle the money for Herbert. Wergin joined the rest in this epidemic of confession.

At the trial, Ernest Peter Burger, who had saved his own skin by clinching the evidence against his comrades, testified for the Prosecution. Neat, courteous, cooperative, he seemed like a promising junior executive in a small company, rather than a dangerous conspirator.

When asked by the Defense whether he had been promised his life in return for testifying, Burger replied haughtily:

"I may remind you that you are speaking to a German soldier. The United States Government respected me by not even offering me any promises whatever. I expect the same from you, sir."

The jury convicted and Federal Judge William J. Campbell sentenced the three men to death. Their wives, whose role in the affair had been less active, received twenty years imprisonment.

These convictions, however, were reversed upon appeal to a higher tribunal, following which Hans Max Haupt, the father of the saboteur, was tried alone for treason against his country.

After deliberating for twenty-eight hours, the jury returned a verdict of guilty. Despite the fact that the United States was at war, the jurors resorted to the unusual practice of writing a letter to the trial judge which all of them signed. This document is worth quoting in full as an indication of the way in which twelve ordinary American citizens judged an issue of life and death at a time of public passion and national ordeal:

"Realizing fully that our function terminates with the rendering of our verdict, we, the jury, are moved humbly to beseech your Honor's consideration in dealing mercifully with this defendant.

"In conformity with your Honor's instructions, neither pity

nor sympathy has entered into our deliberations. In this plea, we express only what is in our hearts."

The Judge then imposed sentence:

"The court does not believe that Hans Max Haupt can be reformed. He is and always will be a Nazi.

"The court does not believe that it need by punishment try to prevent Hans Max Haupt from committing treason again. While the court believes that the defendant's mental faculties are unimpaired, his spirit is broken and he is not likely to commit treason again.

"What punishment is necessary to be imposed in order to deter other like-minded persons from committing like crimes? My conscience tells me that there is but one answer to that question and that answer is—Death."

The Judge then added:

"In deference to the request of these men and women, whose judgment may be better than mine, the sentence will be life imprisonment and, because the statute requires it, a fine of \$10,000."

The Hans Max Haupt who had once boasted that if inducted into the American Army he "would crawl over the enemy lines and tell them our position" was now a broken and pathetic character. His education of Herbert in Nazi principles had brought death to the son, life incarceration to the father and ruin to the entire family.

"Franz From Chicago"

Anthony Cramer came to the United States in 1925 and was naturalized eleven years later. Dark, balding, with a thin, prim mouth and a pedantic way of speech, he was a boiler worker by trade, earning \$45 a week. His best friend was Werner Thiel, an ardent Nazi. They had worked together, shared rooms together for four years and launched a luckless delicatessen business. Cramer had been a member of the Friends of the New Germany—the precursor organization of the Bund—but had left it in 1935 because he thought there was some swindle to it and found it excessively "radical". In 1936, he went to Germany for the Olympic Games and hobnobbed with American Bundsmen.

Friend Thiel left for the Reich in the spring of 1941 to join the submarine saboteurs. Although their menage was broken up, the two corresponded. In November 1941, Cramer wrote his comrade that he had refused a job in Detroit "as I don't want to

dirty my fingers with war material." He hoped that Germany would win, thought America was interested in becoming "a world conqueror" and listened in on Lord Haw-Haw's broadcasts. "We sit here in pitiable comfort," he wrote Thiel, "when we should be in the battle—as Nietzsche says—I want the man, I want the woman, the one fit for war, the other fit for bearing."

The uneventful and solitary life of this philosophical boiler worker was interrupted on the morning of June 22, 1942 when an anonymous note was shoved under the door of the rooming house where he lived:

"Be at the Grand Central station tonight at 8 o'clock, the upper platform near the information booth, Franz from Chicago has come to town and wants to see you; don't fail to be there."

Cramer knew no Franz from Chicago, but he kept the appointment. When he met Thiel, he said:

"Say, how have you come over, have you come by submarine?"

Thiel evaded the question, cautioned Cramer that he must be known publicly as an anti-Nazi. Later he admitted that he had come from Florida and that he had been "scared to death" when they were bombed. The mousy, precise Cramer gloated in this vicarious adventure. He was now sure that his friend had arrived by submarine, that he had landed in a rubber boat as an agent of the German Government and that "whatever his mission was, I thought that he was serious in his undertaking." With his indomitable inquisitiveness, he asked Thiel whether he had "come over here to spread rumors and incite unrest."

For conspirative reasons, Thiel was unwilling to meet Cramer at the latter's boarding house. They had dinner together at a restaurant with Edward Kerling, leader of the Florida submarine group. At least two FBI agents witnessed this meeting. Thiel went to the washroom, removed his money belt and returned to the table. He slipped \$3,600 to Cramer, telling him to put it in a bank for him and to keep \$200 on hand so that he could draw small sums from his friend as needed.

Cramer banked and secreted the money, then contacted Thiel's fiancée, Norma Kopp, and told her that he had "sensational" news. She later quoted him as saying that Thiel "came about six men with a U-boat, in a rubber boat, and landed in Florida" and "brought so much money along from Germany, from the German government." Since the FBI was keeping the Florida matter under wraps until the saboteurs could be rounded up, Cramer could not have learned this from the newspapers. "Tony", as Norma Kopp

called him, told her how he was hiding the money for Thiel and getting "instructions from the sitz," or hideout, as to what to do with it.

Thiel was quietly arrested and then the FBI paid a call on his breathless co-conspirator. Lies exuded from Cramer like ectoplasm from a spiritualist's medium. He said that his visitor was William Thomas who had not been out of the United States. His friend was suffering from draft board troubles. The \$3,500 in the safe deposit box? That belonged to Cramer personally. As the questioning got hotter, he took one FBI agent out of the room and told the truth. Why only one? Search of his rooms later revealed a copy of the Constitution of the United States with the paragraph on treason—including the phrase about two witnesses—heavily underscored!

The hapless Anthony Cramer had the fortune to get an extraordinarily skillful lawyer who served without fee—Mr. (now Judge) Harold R. Medina. Medina's defense was that Cramer had not knowingly betrayed his country, that he was unaware of the nature of Thiel's mission and that he made no effort to hide the money the saboteur had given him. This made an impression on the trial judge, who said, on sentencing the prisoner to twenty-five years imprisonment:

"From the evidence it appears that Cramer had no more guilty knowledge of any subversive purposes on the part of Thiel or Kerling than a vague idea that they came here for the purpose of organizing pro-German propaganda and agitation. If there were any proof that they had confided in him what their real purposes were, or that he knew or believed what they really were, I should not hesitate to impose the death penalty."

The Supreme Court Decides

The case went to the Supreme Court. Mr. Medina argued for a rather novel definition of the nature of the overt act needed for a treason conviction. This "must be such an act," he thought, "as, when coupled with evidence of the accused's owing of allegiance to the United States, and a traitorous intent, would warrant the submission of the case to the jury." By this rule, Hans Max Haupt could not have been convicted of treason for his overt acts consisted "merely" of such trivia as buying a car for his son!

A majority of the Supreme Court was impressed. Mr. Justice Jackson delivered an eloquent and scholarly opinion. He said in part: "the Government's contention that it may prove by two

witnesses an apparently commonplace and insignificant act and from other circumstances create an inference that the act was a step in treason and was done with treasonable intent really is a contention that the function of the overt act in a treason prosecution is almost zero." He added that the overt act could not be allowed to shrivel into insignificance without reducing the two-witness phrase in the Constitution to mere ritual. At the very least, Mr. Justice Jackson urged, the overt act must show "in its setting" that "the accused actually gave aid and comfort to the enemy."

Mr. Justice Douglas drafted a vigorous dissenting opinion. As only three of his colleagues concurred, Cramer was allowed to return to his boiler room and his Nietzschean cogitations.

Two years later, when the Supreme Court was considering the fate of Hans Max Haupt, the specter of the majority Cramer opinion rose to plague it. The issue was whether Father Haupt's overt act of giving his son a bed and victuals was sufficient to constitute treason. Speaking for seven members of the Court, Mr. Justice Jackson led a skillful and orderly retreat. He said that Cramer had been set free because "the act which two witnesses saw could not on their testimony be said to have given assistance or comfort to anyone, whether it was done treacherously or not." And he contrasted this to what Haupt did.

Mr. Justice Douglas was not prepared to let matters rest. In a caustic, brief and crystal-clear opinion, he drew the parallel between the two cases, arguing that both men had been proved traitors:

"Two witnesses saw Cramer talking with an enemy agent. So far as they knew, the conversation may have been wholly innocent, as they did not overhear it. . .

"Two witnesses saw the son enter Haupt's apartment house at night and leave in the morning. That act, without more, was as innocent as Cramer's conversation with the agent. For nothing would be more natural and normal, or more 'commonplace', or less suspicious, or less 'incriminating', than the act of a father opening the family door to a son. . .

"As the *Cramer* case makes plain, the overt act and the intent with which it is done are separate and distinct elements of the crime. Intent need not be proved by two witnesses but may be inferred from all the circumstances surrounding the overt act. But if two witnesses are not required to prove treasonable intent, two witnesses need not be required to show the treasonable char-

acter of the overt act." This no more requires comment than a proof of Euclid.

The late Mr. Justice Murphy stood alone in urging that the conviction be reversed and Haupt freed. He spoke, as the jury had in pleading for mercy, from his great heart and compassion. He thought that "petitioner . . . had the misfortune to sire a traitor" and added:

"The touch of one who aids is not Midas-like, giving a treasonable hue to every move. An act of assistance may be of the type which springs from the well of human kindness, from the natural devotion to family and friends, or from a practical application of religious tenets. Such acts are not treasonous even though, in a sense, they help in the effectuation of the unlawful purpose."

HITLER'S RADIO TRAITORS

"At this moment, I would exchange places with no person, anywhere, even if I could."—Robert H. Best to the court before receiving sentence.

In 1943, eight Americans who had broadcast to the United States in wartime over the German and Italian radio systems were indicted for treason. Of these eight, two are now in prison serving life sentences; one is in an insane asylum; another died in Germany, and a fifth became a corpse while a Soviet prisoner. Indictments against the remaining three have been dropped because of insufficient evidence. In addition to these eight, Mildred Gillars was convicted of treason and sentenced to ten to thirty years imprisonment, and Herbert J. Burgman, a former U.S. consular officer, was also found guilty.

What motivated these renegades? What traits did they have in common that made them decide to sell out their country?

There are no simple answers to these questions, particularly since what is involved is not primarily an intellectual process. According to William L. Shirer, former Berlin correspondent of the *New York Times*, "all of them had a sense of frustration about their role, however small, in the American scene. All of them had come to be conscious of being misfits in their native land."

This is doubtless true. With the exception of Ezra Pound, who did not belong in this somewhat shabby company, they were all

* *Convicted as traitors*: Robert H. Best (Sumter, South Carolina); Douglas Chandler (Baltimore, Maryland); Mildred Gillars (Portland, Maine); Herbert John Burgman (Hokah, Minnesota).

Dead: Frederick William Kaltenbach (Dubuque, Iowa); Max Otto Koischwitz (New York, New York).

Declared Insane: Ezra Pound (New York, New York).

Indictments Dropped: Jane Anderson (Atlanta, Georgia); Constance Drexel (Philadelphia, Pennsylvania); Edward Leo Delaney (Olney, Illinois).

partial failures and frustrates. This does not mean that they lacked intelligence. On the contrary, all were of above average mental capacity, and one or two were outstandingly so. The fault was more one of adjustment, of self-discipline, of integration into a complex environment. Some of them had attached themselves to the fringes of the world of letters and art, but lacked either the drive or the creative flare necessary for significant achievement.

Although fascism was frequently painted as a glorious resurgence of youth, the ten Americans accused of radio treason in Europe averaged well over fifty years at the time of their indictment. The baby of the group was the dreamy, pseudo-mystical Max Otto Koischwitz, a former Professor of German at Hunter College and, despite encroaching middle age, still something of a Lothario.

As a group, the radio renegades had reached a point in life where its broad course and direction is ordinarily fixed. Admittedly, a man of any age may be on the road to Damascus and suddenly discover that "there shone from heaven a great light round about me." No such light, however, burst upon the radio traitors. Their act was one of repudiation without affirmation. More than anything else it seems to have represented an abrupt crystallization of accumulated resentment. They had plowed the seas and they envied those who were rooted in the earth.

Some had been torn from their moorings by the Great Depression. Others feared to go home—either during the economic crisis of the thirties or afterwards—believing that further failure awaited them there.

"In another epoch," Shirer suggests, "they might have become minute and cheap imitations of Henry James, who also became estranged from the current of life in America. . . . But between the two wars Fascism and Nazism had attracted human derelicts as a flame attracts a moth." ("The American Radio Traitors," *Harper's Magazine*, October 1943).

This comparison is not particularly apt. James was hyper-civilized and these men and women were in a sense, hardly civilized at all. James had an almost pathological sensitivity to pain, either psychological or physical, while the radio renegades gloried in vicariously inflicting it.

As a group, they were calloused. Their egoism distorted their perceptions. At times, they were incapable of discriminating between reality and hallucination. In the last hours before the dark-

ness of prison, a few of them attempted to deliver lofty speeches which would illuminate their purposes and provide a moral justification for their actions. But they struck false notes. They seemed in fact to be only counterfeit ambassadors of the forces of evil they had represented. The contrast between the puny figures on the dock and the havoc and enormity of the fascist decade was glaring.

The fact that the traitors were frustrated, rootless and unable to adapt to any healthy environment actually tells us very little about their motives. The world is filled with people who try to hide their inadequacy beneath a thin carapace of pretension. And by the nature of things, such people fail more often than they succeed and are frequently wounded in the process. But they do not therefore devote their lives to encompassing the downfall of their country and their heritage.

Robert Best

"I always figured he was an eccentric," said an American foreign correspondent, "but I never thought he was a son of a bitch." That comment about summed up the reaction of the little band of former Vienna correspondents for the American press when they learned that Robert Best was a traitor.

Best was a Southerner and the son of a Methodist minister. After service in the AEF during World War I, he returned to Europe on a \$1,500 Pulitzer scholarship in journalism and soon landed in Vienna of the early twenties. After working as a United Press string man (that is, paid only for stories actually published), he graduated to staff correspondent.

For twenty years Best was a permanent feature of the Cafe Louvre in Vienna; he hardly budged from the seat at a corner table which served him both as home and office. In an atmosphere of genteel decadence, the 220-pound reporter stood out as an incongruous museum piece in his Stetson hat and high-laced boots.

He lived with an elderly Russian woman known as "the Countess". They were a well-matched couple. She was a morphine addict; he was rapidly turning into a religious fanatic.

He had thus found a haven for himself in the dying world of post-war Austria. He was at home in this environment of seeping rot and gentle death where actuality mingled with illusion and where the high stakes of the political game were largely imaginary in character. Best had restricted the frontiers of his world to the

Louvre Cafe. He had also chosen a mistress who possibly also performed some of the functions of a mother. No man could have worked harder to recapture the security of childhood.

Most of the American correspondents liked him. They would sit at his table to talk, drink and kill time. To be sure, Dorothy Thompson thought him "intellectually lazy" and "ignorant" and other journalists considered him less than first class in his profession. Unfortunately for his ego, he was in the midst of a brilliant galaxy for the Vienna assignment was covered by such correspondents as John Gunther, H. R. Knickerbocker, William L. Shirer, Sinclair Lewis and Dorothy Thompson. Did he accept the fact of his inferiority or did Best inwardly rankle and dream at night of the time of self-assertion and revenge? One does not know the answer.

He was generous with information and was always ready to give his last dollar to a friend. Although he was soon to become a fervent and implacable spokesman of the forces of destruction, his private character seemed incompatible with this role. Somehow he remained a kind and considerate man in his personal relations to other human beings.

The cold air-mass of Nazism was moving toward Austria in the middle thirties. At first, Best opposed the new force because it signified change and threatened to disturb the storm cellar he had created for himself. His sympathies lay with the Stahlhelm and the clerical fascists.

During the crisis of Austria's national existence, his tendency to mistake wish for illusion came to the fore. When the Austrian Chancellor travelled the Canossa road to Hitler's mountain retreat to conclude an unavoidable, but nonetheless heart breaking, surrender, gloom settled over the small contingent of American correspondents. Best, however, was calm and assured. He sat at the Louvre and wrote a fatuous dispatch to the effect that the Nazis were about to be thrown out of the country.

Despite his growing Nazi sympathies, Best revealed no antipathy toward individual Jews. This man, who was soon to rant with such unbridled fury at world Jewry, himself associated very largely with Jews. His best friend was Jewish. When the Hitler terror began to rage through Austria, Best loaned a Jewish editor a month's salary so he could escape the country.

After the outbreak of World War II, over a hundred American correspondents and diplomats, stranded in German territory, were interned at Bad Nauheim. This period of internment lasted until

March 1943. At first Best was among them, but it was soon plain that he had already made his decision. While his fellow Americans were wilting from hardship and lack of adequate nutrition, Best lived in a hotel and added more girth to his waist-line. His dope-addict countess had meanwhile died in an asylum and Best had acquired a fiancée. He explained that he intended to stay on in Germany to take care of some property she owned.

Having spent eighteen years building a Chinese Wall around himself only to have Hitler take the wall by storm, Best followed the line of least resistance into Nazism. Had he returned to America with the Bad Nauheim group, he would have become a stranger in his native land—a lusterless mediocrity among a galaxy of stars.

Best now began to hate Jews with ungoverned frenzy. Since perhaps half of his American newspaper associates and friends in Vienna had been of that race, the Jew may have come to symbolize to his disordered mind the American world he had betrayed.

According to the trial testimony of Rundfunk official Werner Plack, Robert Best went to the Nazis on his own initiative, stating that he wanted to warn America of “the Bolshevik menace and the danger of world Jewry.”

Once on the air for the Germans, Best was a wild man. He called himself “Guess Who” and his Jewish friends, including the Austrian editor whom he had helped escape, were thunderstruck when they recognized his voice. He ranted against “Clown Churchill”, asked the American people to impeach “funny Frankie”, inveighed against the Archbishop of Canterbury as a “hyena in human form . . . diabolic son of Satan . . . would-be hangman of civilization . . . a disgrace to wholesale murder.” The Jews were “the Christ killers” and he wanted them exterminated.

“I see no reason,” Best declared, “why Europe will not demand the life of one Jew for every European who died in the present war. . . I firmly hope that such will be the case.” With these two sentences, Best assumed moral responsibility for the gas chambers, the concentration camps, and the slaughter of six million human beings.

Hag-ridden by his strange obsessive hatreds, this grotesque character cut a consequential figure among the Nazi radio propaganda directors, who, devoid of any understanding of the democratic mind, believed in his potentialities for destruction.

Over the German radio, Best enacted the farce of running

for Congress. "Elect me," he urged, ". . . and I shall do my best to bring about peace before America has fallen into a state of complete chaos. . ." Although Best was not elected to Congress, he was given free transportation back to the United States after the war. When he appeared before a Boston judge to stand trial for treason, pouches hung under his eyes and his face was deeply striated. He seemed like what he was—a sinister zealot drifting toward insanity.

The trial, Best declaimed, was "part of a world-wide conspiracy against God and man." He refused counsel at first on the grounds that he was already defended by "the holy trinity of God: the Father, the Son and the Holy Ghost." Asked whether he had intended to betray his country, Best replied glibly: "Certainly not. The idea never occurred to me."

But he had sung a different song to the Nazi officials. The prosecution introduced a letter which Best had written in 1944 to Dr. Dietrich Ahrens, protesting against the efforts of minor Nazi functionaries to deprive him of a vacation in Carinthia:

"It would be well for you to emphasize the importance of my work for Germany in its fight against Bolshevism and also the fact that I volunteered at the price of having myself branded as a traitor and exposed to the sentence of death. You and I know that, in view of American production and manpower, the only chance Germany has is in creation of so-called war weariness in America."

His lawyer referred to him as "a crusader," but the court replied: "a fanatic can do as much harm to his country as any other person."

The jury found him guilty on all counts. On July 1, 1948, he was sentenced to life imprisonment and \$10,000 fine. It was Best's fifty-second birthday. His sister, Louise, a Methodist missionary, who had come up from Brazil for the trial, gave him a box of candy. "Don't worry about me, madame," Best said. "You are now the sister of a convict."

Fixing the judge with fierce, haunted eyes, Best said defiantly: "At this moment, I would exchange places with no person, anywhere, even if I could." It was his last public appearance. The prison doors closed behind him. They will open only when Robert Best is a corpse.

"Paul Revere" Chandler

To the sound of thundering hoofs on cobbled streets followed by a flute rendition of Yankee Doodle, the German Rundfunk announced the forthcoming appearance of a new radio renegade. This propaganda man of mystery would be known simply as Paul Revere. On the 166th anniversary of the New England silversmith's glorious ride, he was to go on the air.

April 18, 1942, passed, but nothing happened. Technical difficulties had intervened. A week later, Douglas Chandler, alias Paul Revere, set forth on the ride that was to end with a life sentence of imprisonment for treason to his country.

Like his predecessors, Chandler was a fiasco. He droned monotonously about "Roosevelt and his Jews" without wit or imagination. There was nothing about his radio personality that could reach across the fighting fronts to the hearts of American listeners. He wasn't even good enough to make his audience hate him.

A few weeks after the beginning of his broadcasts, the mystery propagandist identified himself as Douglas Chandler, born in Chicago in 1889. After the massive build-up with patriotic sound effects, this revelation came as a leaden anti-climax. During the first fifty years of his life, Douglas Chandler had left an imprint on American society that was so faint as to be virtually invisible. Even though he had served for many years as a Berlin correspondent, William L. Shirer had to admit in regard to Chandler that "none of us had ever seen him in the flesh. In fact, we thought for a time he was a fictional character."

Chandler came from a long line of native American stock. As a young man, he had been genteel, slightly effeminate and a writer of sorts. He published a few articles in the *Baltimore Sunday American* in which he described his countrymen as "sophomoric", the prey of crackpot movements and coated with "a thin and brittle veneer of culture." This was an excellent, although an unconscious, self-portrait.

The young Chandler had clung intellectually to the coattails of H. L. Mencken. Like so many of his literary contemporaries, he believed that the society which had produced Lincoln was a rabbit warren of boobs and boors. Few of his nose-thumbing articles sold.

In 1924, he married a lineal descendant of John Hay. Having failed as a dabbler in letters, Chandler now tried his hand in the

Stock Market—a field in which incompetence is more relentlessly punished. Either because of the depression or because he showed poor business judgment, Chandler lost virtually all of his wife's fortune.

In 1931, the Chandlers with their two small daughters emigrated to Europe, where the dollar could buy more comforts than at home. On the eve of his departure, he spoke glowingly of "sloughing off . . . inhibited provincialism." Chandler was to remain abroad until December 1946, when he was flown back to America to stand trial for treason.

He drifted through Central and Western Europe rather aimlessly. His writing was not a serious enough matter to give him a function in life. He found the bistros and weinstubes less provincial than the American speakeasies and appears to have patronized them too generously for his own good.

Upon visiting Germany in 1933, the year the Nazis seized power, Chandler was profoundly impressed by Hitler. He found deep emotional satisfaction in floating in the backwash of the Nazi torrent and forgot his own inadequacy in the collective power of the movement. Like other weak, frustrated and only moderately talented people, he attached himself to a force which promised to revolutionize the society which had assayed and rejected him.

After 1933, American editors cut him off in the belief that he was a paid Nazi agent. So far as Chandler was concerned no honest writer could have anything against Hitler: "The newspaper boys from La Guardia's village want to eat and keep their jobs" so they "beat their typewriters into lances and go tilting against the Nazis."

The outbreak of war found him in Yugoslavia. Here his sympathies were so blatantly pro-Hitler that the crypto-fascist government of that country expelled him. In 1940, he was haunting the cafes of Florence and writing about the beauties of the scenery and the vileness of man.

Somewhere along the line it dawned on him that he had a mission in life—preventing the United States from going to war against the Third Reich. Writing to his German friends, he posed the question of what to do. They replied with the suggestion that Chandler broadcast over the Nazi radio.

Italy plunged into the war. In the winter of 1940-41, all Americans in Florence were officially urged to return home. In refusal, Chandler called attention to his "rapidly crystallizing determination to actively fight against war participation." Unable to obtain

an American passport, he went to the Reich on a German *Fremdenpass*, or alien identity card.

The Important Matter of Money

According to his testimony, Chandler agreed to speak over the German broadcasting facilities as "a free lance commentator" without compensation. The Nazis, he alleged, explained that such an arrangement would be impossible. Chandler would have to accept "a salary or honorarium." This was an unhappy necessity for a patriot whose only motive had been a "passionate wish to help protect my country from the horrors of war." It would appear that he squirmed inwardly at Nazi insistence that he take pay for his treason, but eventually succumbed.

The facts show considerably less hesitancy. Chandler signed a contract at 1,000 marks a month with the short wave station of the German Reich Radio Corporation, another contract at 750 marks monthly with the Foreign Language Service Press Corporation and still a third contract at 750 marks monthly with the Anti-Komintern. His work was exclusively for the first of these three organizations. Earning the equivalent of \$750 monthly, Chandler was the second highest-paid of the American radio traitors. The Chief of the U.S.A. Zone, who gave Chandler his instructions, was a German national who earned only a third as much.

Far from being disinterested in money, Chandler was consistently mercenary. As the Justice Department brief before the Supreme Court put it:

"Throughout his activities as a broadcaster, petitioner was alert to protest whenever there was any interruption in his pay and on one occasion he insisted that his daughters, who had appeared on a musical program with him, be paid also."

The purpose of Chandler's broadcasts was plainly treasonable. Commentators were instructed "to stress themes along the lines that America would never be able to win the war, that it would be much too costly, that the establishment of a Second Front would fail . . . , that actually America had nothing to do in this European war, that America had no war aims, that the GI did not know what he was fighting for: . . . to create homesickness among the American troops and defeatism in general. . . ."

Policy on psychological warfare was hammered out at daily top-level staff conferences conducted by Propaganda Minister Goebbels. These were followed immediately by meetings of the

radio chiefs for each sector. Finally, the heads of the U.S. Zone within the German Short Wave Broadcasting System held daily meetings of staff commentators, which Chandler attended, at which the directives were given the traitors.

Chandler was aware of the legal consequences of his action. Upon hearing the news of his indictment for treason on July 26, 1943, he expressed no surprise "because he considered this a natural consequence of the ideological war that he was fighting. . . ." When first interrogated by American military authorities in May 1945, he said that he had planned "to return to the United States and be tried for treason." Although he wore a swastika on his clothing, he of course claimed to be "a better patriot than many Americans who were over here."

For four years, Douglas Chandler worked heart and soul for his new masters. By day, he would drink himself into a haze and at night take barbiturates to ward off insomnia. He demonstrated his loyalty to the Nazi cause in a striking way—by denouncing his old friend, Gerhardt Wagner, to the Gestapo. Wagner was a denaturalized American who had returned to Germany in 1940 and was doing radio propaganda work. After a trip to the Baltic area, he told Chandler that he had collected documentary evidence that 160,000 Jews had been massacred there. Chandler claimed that this was lying propaganda and turned Wagner over to the security police as a secret enemy of the Nazi cause. The unexpected result of the denunciation was that Wagner remained at his post, while Chandler was suspended from further broadcasting activities. Thereupon, he hired a lawyer and was reinstated on the Nazi payroll.

It is difficult to judge what really lay behind this nasty episode. German foreign broadcast activities were controlled by the Minister of Enlightenment and Propaganda, Dr. Joseph Goebbels, but Foreign Minister Joachim Ribbentrop also had a hand in them. These two men were forever at one another's throat. Each had his agents within the apparatus, and in this atmosphere of recrimination and secret denunciation, personnel underwent continual upheavals. The losers in the internal struggle for power would be sent to the front, to concentration camps or would simply disappear.

Wagner retaliated by trying to ship Chandler to Paris, but the American traitor managed to back out on the grounds that the occupied capital was dangerous. Whatever else he may have been, Douglas Chandler was certainly no hero.

Either because he was unwilling to work in the same office with Wagner or because the Nazis simply refused to trust him, Chandler began to broadcast in a recording room. The discs were scrutinized and censored, then played back on the air. The Nazis, as Rebecca West points out in *The Meaning of Treason*, "made curiously little use" of "honest and lettered" fanatics. "They seemed more at ease with the rogues and the madmen and the sane men off their balance, whom they took great trouble to procure. . . ." On the whole, Chandler belonged to the former class. His antagonist, Wagner, fitted more appropriately among the rogues. "Give them jazz and *schmalz*," he urged the directors of the American propaganda program. "Deliver it like a nightclub master of ceremonies." Propaganda for American ears must always be "indecent." It is easy to see why Wagner rubbed Chandler the wrong way. The 20th Century Paul Revere liked to think of himself as a man with a serious mission.

The "Malignancy of Littleness"

This phrase from Goethe must have seemed peculiarly apposite to spectators at the treason trial in Boston before Judge Francis J. W. Ford. At first glance, the shrunken, somewhat cadaverous man who stood before the Court seemed like a startled rabbit. Those who had expected a satanic presence were disappointed. Chandler's shoe-button eyes were framed by dark eyebrows, which tilted upward in an alarming manner to create the impression that their possessor was in a state of chronic astonishment. His head was abnormally small and undistinguished; his everted ears added to the grotesque impression he produced.

These features, while striking enough, made a misleading impression on the observer. Mentally subtracting them, one noted that Chandler's face was constructed almost entirely of verticals and horizontals. It had no rounded contours and there was no depth to it. His mouth was straight and fleshless. This was the face of a man who had renounced the sins of the flesh for those of the spirit. He seemed a fanatic without force, a mediocrity whose passions were strong enough only for hatred.

The face suited the man. It somehow seemed a national indignity that the resources of the United States should be marshalled to dispose of such an unworthy antagonist. If Chandler represented anything at all, he illustrated the poetic truth of the Platonic doctrine that evil is incompleteness of being. But then, none of the American radio traitors could be understood in Mil-

tonian or Nietzschean terms. They were unfit subjects for tragedy. At best, they could arouse only the feeble emotion of pity.

The star witnesses against Chandler were Edward and Lily Sittler. Without the slightest trace of a blush, Edward Sittler, after describing Chandler as "his best friend", proceeded to testify as a witness to fifteen overt counts of treason. He told how the prisoner had come to his house in his "big maroon Mercedes with a big American flag painted on its side." He testified to seeing his friend broadcast and to watching him type a treasonable script in his (Sittler's) apartment.

Edward V. Sittler had also been an American—at least he had been born on United States soil. But his heart was elsewhere. Having become an ardent Nazi, he went to Germany to work for Reich radio propaganda as a member of the National Socialist Party. Unlike Chandler, however, he had the circumspection to take up German citizenship and thus escape possible indictment for treason. Now he was serving as a paid state's witness who regularly popped up every time one of his former comrades was on trial for his life. His remuneration of \$5 a day represented little—even by Biblical standards—but after their defeat, Germans could hardly be choosers. Sittler had the effrontery to apply for American citizenship and the luck to get a position as Assistant Professor of German in an American university. It has been publicly suggested that he be deported. The only commendable aspect of Professor Sittler's role was the retributive justice in the fact that Chandler, having cast his lot among traitors, was himself betrayed.

Before sentence was pronounced, the unrepentant traitor told the Court: "If I die for my beliefs, they will not die with me." The first part of the prognosis was wrong—Chandler was given life imprisonment. As for the second part, the answer lies in the future.

Legal Issues

The Chandler case went up to the Supreme Court on appeal. Some of the petitioner's contentions were mere mare's nests. He claimed, for instance, that as a resident in enemy territory during wartime he had owed a certain allegiance to Germany. This was true. However, it did not cancel out his permanent allegiance to the United States. "He must obey the enemy's laws while living in the enemy's territory," the Department of Justice conceded. "But he cannot actively support the enemy's effort to crush the country of his permanent allegiance."

The petitioner also averred that "mere words" cannot constitute treason. There were, in fact, occasional statements to this effect in the law books. But the fundamental question had to do with the context within which the words were spoken. The rule clearly did not apply to "any such potent weapon as radio propaganda in total war." As the trial judge expressed it, "One may commit treason by conveying military intelligence to the enemy, though the only overt act is the speaking of words."

Attorneys for Chandler's defense tirelessly rang the gongs on the issue of freedom of speech. The lower court held that: "It is preposterous to talk about freedom of speech in this connection; the case cannot be blown up into a great issue of civil liberties. . . . Trafficking with the enemy, in whatever form, is wholly outside the shelter of the First Amendment."

Nor was the petitioner successful in urging that treason cannot occur unless it is effective. In reply, the Department of Justice snorted:

"If this contention is sound, then Benedict Arnold was no traitor, since he failed in his effort to deliver West Point to the British. If sound, petitioner might have joined and served in the German Army, yet could escape conviction for treason in the absence of proof that the operations in which he participated won ground for the Nazis, or that the bullets which he fired found their mark. If sound, it would not be treason to deliver to the enemy a paper containing military secrets, if the enemy agent lost the paper before delivering it to his superiors to be put to use. . . . Obviously, success in a treasonable enterprise is not required to sustain a conviction for treason." The Supreme Court's opinion on the Chandler case firmly established the fact that radio propaganda for an enemy government, designed to weaken the war effort of the United States, is treason under the Constitution.

FEMALE TURNCOATS

"If you put fifteen months in a prison camp, and you seen your buddies once a month in that camp—one fellow a month—shot . . . and you see an American person come in and say she is an American working for them, do you think I love that person to sell out her country—no, sir."
—Eugene D. McCarthy at the trial of Mildred Gillars (Axis Sally).

Four women were indicted and two were convicted of treason against the United States during World War II. Mildred Gillars and Iva Ikuko Toguri d'Aquino were the first women in American history to be found guilty of this supreme political crime. Yet neither was an ideologically hardened apostle of the fascist creed. They were both women to whom abstract ideas were not particularly important. The forces that drove them toward treason included weakness of character, love and an adverse web of circumstance.

Public opinion made the indictment of Mildred Gillars necessary. A strange aspect of radio treason was that the two convicted women, who were engaged mainly in broadcasting a somewhat counterfeit glamor over the air waves, seemed, to the popular mind, to be the very apotheosis of betrayal. By contrast, Robert Best and Douglas Chandler—two stern, implacable voices of a nihilist creed—aroused scarcely a stirring of rage. What these fascist fanatics had to say was little noted by either soldiers or civilians. The women who made the armed forces yearn for home and sex, however, struck deep at the sensitive heel of discontent.

Lady Haw Haw

A moon-faced, somewhat blowsy woman with thinning blonde hair whose body was going to fat, 47 year-old Jane Anderson of Atlanta had once been known as the Georgia Peach. She had been

the wife of the composer Deems Taylor and a friend of H. G. Wells and Rebecca West.

Intermittently a newspaper correspondent, Jane Anderson went to Spain during the Spanish Civil War. The record shows this to have been a turning point in her life. The Loyalist Government came to believe that she was not only a reporter, but a Franco spy as well. She was imprisoned, tried and sentenced to death.

Reprieved by the good offices of the State Department, Miss Anderson hurried home with her harrowing story. In New York, she told a meeting of Catholic women that she had been "arrested illegally, imprisoned and tortured." "Loyalist Spain," she reported, "is loyal only to murder and Moscow."

Urging Americans to form a Christian Front against Communism she asserted that the United States was "morally and mentally ripe for a revolution." As for Fascism, there "should be less talk about hypothetical dictatorial sabers."

It is to be regretted that this fanatical woman apparently succeeded in deceiving a few outstanding Catholics. In the opinion of the *Catholic Digest*, she was "the world's greatest woman orator in the fight against communism." *Time Magazine* quoted Monseignor Fulton J. Sheen, a consistent opponent of both Communism and Fascism, as calling her "one of the living martyrs."

Armed with a letter to Franco's Propaganda Minister from Merwin K. Hart, she returned to Spain and, from there, was drawn toward the Fascist Mecca of Berlin.

Miss Anderson married again, her second husband being the Marques de Cinefuegos. As the years passed, she derived her psychic satisfactions increasingly from excursions into politics. A most tiresome woman, she was obsessed by a single idea: Bolshevik hordes, manipulated by the Jewish masters of international finance, were about to overrun the world. "Her tongue never ceased wagging," Shirer recalled unhappily.

After the Pearl Harbor attack, Jane Anderson went on the German Rundfunk four times weekly. Her breathless, shrill, melodramatic voice insistently warned Americans of the perils of Communism and world Jewry.

The surgical operations which she performed on the English language were drastic: "The American brain trust, alien to and superimposed upon the land of Old Glory, is but a branch of the International Secret Superstate which holds equally Soviet Russia, plutocratic England and Roosevelt's America in the hollow of its hybrid hand."

Mixing a new metaphor for every occasion, Miss Anderson once said: "Roosevelt has peeled a brass band out of his pocket and a concentration camp from under the coat tails of the brain trust."

Had it not been for an unfortunate accident, she would probably have harangued through the whole war with her mixed metaphors and her foggy ideas (plundered from the forged *Protocols of Zion*).

In April 1942, Miss Anderson conceived the unsound idea of proving to the American public that Berlin was not starving to death. She broadcast a description of the delicious steaks and fine wines still available in the better cabarets of the Nazi capital during the third year of war. In the belief that the German front-line soldiers would like to know how well their own 4-F's were faring, the U. S. Office of War Information rebroadcast Miss Anderson's descriptions of Berlin night life for the benefit of the Wehrmacht. One result was that heads began to fall in the Rundfunk and Miss Anderson was yanked off the air. Consequently, she broadcast for only a few months of the period of American war involvement and what she said during that period did not seem sufficient to warrant bringing her to trial. The treason indictment against her was accordingly dropped.

"Axis Sally" Gillars

To capture the public imagination, a spy or a traitor should be a youngish woman and preferably a blonde.

Mildred Gillars had once satisfied these two conditions. When she stood trial in the District of Columbia, she was forty-eight years old. Her silver-gray hair cascaded gracefully in a shoulder length bob. Her figure was surprisingly good. Her eyes were expressive; her mouth was full, pouting and sensual. Time and military prison had coarsened her skin, but she had coated it for the trial with a cosmetic imitation of Bermuda tan. She wore shoes with very high heels and tight fitting black dresses. Her skirts were too short.

In the cruel words of Richard H. Rovere, "Although she is trying desperately to avoid conviction, she is at the same time determined not to destroy the illusion of herself as a woman of mystery, glamour and intrigue. By all the rules of the game, a woman in Miss Gillars' fix, on trial for her life before a jury that includes five proper-looking members of her own sex, should not

be getting herself up like this, but Miss Gillars is following her own course. It is doubtful, however, whether she stands to lose much by this, for the notion of Miss Gillars as a woman of glamour, either sinister or otherwise, is one that—at this stage of the game, anyway—only Miss Gillars herself can harbor. The total impression that she makes is not that she is a woman who has spent years in the service of the mighty war machine of the state that was going to endure for a millennium but that she is a woman who has been fighting an uphill battle to make a living from a dress shop in Queens or a millinery shop in Staten Island."

Actually, she was not a very important figure in the scheme of things. She drifted into treason rather than deliberately seeking it. She was not the sort of woman who cares passionately for ideas or who is capable of spirit-destroying hatred. She was merely greedy and her greed increased as her time ran short.

Her role on the Rundfunk was to peddle sex over the air waves in behalf of the Nazi cause. This was, at best, an unsatisfactory method of merchandizing the commodity, but the American soldiers were lonely and Miss Gillars had, one suspects, been lonely most of her life. She succeeded in striking some sort of rapport with her audience on the elemental basis of physiology. She doubtless enjoyed this.

Mildred Gillars was born in Portland, Maine, on Thanksgiving Day, 1900. Her parents were divorced when she was seven and her mother married a dentist, named Robert Bruce Gillars, whom Mildred cordially disliked. He drank.

After high school, she went to Ohio Wesleyan University because it had a first-rate dramatic department. She studied under Professor Charles M. Newcomb and took a leading part in the college dramatic productions. When forced to choose between marriage and a theatrical career, she turned her young man down. A period of skimping and starvation followed, during which she worked as a clerk by day and studied theatre at night. Since her dramatic courses ate up two-thirds of her earnings, Mildred, herself, ate practically nothing.

Mildred Gillars landed in Greenwich Village in the era of free love and art for art's sake. She pulled out of a musical comedy, explaining: "I didn't feel my career was being helped by playing that sort of part. . . . I hoped to get something with the Theater Guild or . . . more serious producers." In her trial testimony, Miss Gillars never deviated from the hackneyed script of the starving artist in her garret. She battled, one is to believe, with indomitable

courage to dedicate herself only to the purest forms of theatrical art.

If all this is true, then there were some curious backslidings. In 1928, a Mrs. Barbara Elliot of Camden, New Jersey, advertised that she was pregnant and wanted her husband to come back to her and their child. Telling reporters she was a common law wife, she staged an artistic suicide attempt. Further investigation revealed: (1) that Mrs. Elliot was Mildred Gillars; (2) that she was neither married nor pregnant; (3) that the pathetic story was a hoax to get publicity for a movie called "Unwelcome Children."

In 1933, she went to Algiers to meet a man in the English consulate there whom she knew "rather fleetingly." After this meeting had run its course, she knocked around the Continent, landing in Germany in 1934. It had always been her dream to study music in Dresden, Miss Gillars later alleged, but, due to lack of funds, the dream was not to materialize. She taught in the Berlitz School, translated, tutored, attempted interpretive dancing and established a tenuous connection with the German film colony.

When the German armies slashed through Poland, Mildred Gillars again found herself unemployed. A year later, she was given a tryout by the German radio and then a news announcement spot at 180 marks a month (Chandler earned 2,500) on the Rundfunk.

From this point on, most of what Miss Gillars said in court must be regarded with profound skepticism. She was represented by a shrewd lawyer, who was engaged in building up as many lines of defense as possible. The fact that these lines were mutually contradictory made very little difference. If the jury believed any of them, she might get an acquittal. Her story was designed to prove the following points:

(1) She was always loyal. The idea of betraying America had never entered her patriotic head. She loved her country.

(2) She was a German, not an American, subject. She owed the United States no allegiance and therefore could not have betrayed it.

(3) She did it all because the Gestapo threatened her with death.

(4) She was the victim of a frameup by the American vice-consul in Berlin.

(5) All that she had wanted to do was to comfort the American boys in their foxholes.

(6) A great love had come into her life and she was not respon-

sible. (Though legally a weak line of defense, this was the aspect of things which Miss Gillars emphasized during her trial.)

A few facts are clearly established. Her Government asked her to come back to the United States. She perjured herself in order to get a visa extension. On cross-examination, Miss Gillars asked: "Go home to what?"

Prosecutor Kelley: "To the United States, your own country."

Miss Gillars: "To poverty again?"

Continuing with her story, she claimed that an American vice-consul had rudely snatched her passport from her in the spring of 1941. She shrewdly inferred that "there was something wrong." The news of Pearl Harbor made her go "all to pieces." Yet she says that at about that time she swore an oath of allegiance to Germany. Had such an oath been given under appropriately formal circumstances, she would have thereby renounced her American citizenship and escaped trial for treason. But there were no witnesses or documents supporting this supposed oath. And it seemed out of character for the notoriously bureaucratic Germans to transfer nationality in this happy-go-lucky fashion.

American voices were becoming scarce after Pearl Harbor in Dr. Goebbels' radio propaganda apparatus and Mildred Gillars became a success almost overnight. She put on a program called "Smiling Through" and when American troops landed in North Africa, they heard her sexy voice and liked it. Eventually, she received 3,000 marks a month and had the distinction of being America's highest paid traitor since the days of Benedict Arnold and James Wilkinson.

At about this time, Dr. Max Otto Koischwitz bounded into her life. She described their love affair as a meeting of soul-mates with a backdrop of mist-covered mountains. "He loved his country very, very much," Miss Gillars testified, "with a depth that I have seldom seen in another human being, and the soil of Germany was precious to him. He loved the mountains with the intensity that a man may love a woman." This passion for his country had not prevented Koischwitz from emigrating to the United States in 1924 and taking American citizenship. He had taught German at Hunter College and thrown in free of charge a great deal of *Schwaermerei* about blood and soil. Smooth and dreamy, the Professor was a real *matinée* idol. The girls liked him.

"Words of love were not spoken," Miss Gillars testified. "They were written from Silesia . . . in the spring of '43." While his wife was pregnant with their fourth child, Svengali Koischwitz pro-

ceeded to "a particular mountain in Silesia which had played a fateful role in his life ever since his childhood." He took his problem to this mountain and "got the answer, that God favored his love."

One is naturally impatient with this sort of thing, coming from a woman well within the boundaries of middle age, and the weekly news magazines made great sport of Miss Gillars' supreme passion. Every indication in the voluminous trial record that some man other than Koischwitz had once winked at her or embraced her was avidly seized upon. Yet, despite the fact that Miss Gillars described her affair in terms of grand melodrama, it was apparently a real love and of great importance to her. As so many women do, she moulded her personality into that of her lover. Like a sponge, she absorbed his grandiose, inchoate ideas. She became transformed from an entertainer into an ideological propagandist of Nazism.

Breathing heavily, she told the court that discussing her love for Koischwitz was "like discussing religion." She added: "I consider Professor Koischwitz to have been my destiny . . ." Her attorney supplemented this with the observation that the Nazi radio big wheel had had "a magnetic—nay, hypnotic—personality."

She had two theme songs. The first was that the soldiers were not getting any sex life worth speaking about, whereas their wives in America were. Everything was done to build up her glamor. "Midge does look as gorgeous as she sounds," mountain-com-muner Koischwitz declared over the Rundfunk. ". . . Her hair is the blackest black imaginable . . . her skin is rather white." This seemed a somewhat feeble descriptive effort from Miss Gillars' destiny.

The only count on which the jury convicted her had to do with the radio script *Vision of Invasion*. A Koischwitz play, it dealt with the mangling and mutilation of battle, the invincibility of German arms and the fate that waited for thousands in the Normandy hedgerows. Talking about D-Day, Miss Gillars declaimed that the D stood for Doom. . . Defeat. . . Death. . . Dieppe. There was an off-key line by the Professor in the script describing hay wagons hauling corpses "their pale heads . . . like cabbage on the way to the market."

For thirty marks apiece, she reported the fate of American airmen shot down in German skies. She and Koischwitz toured the POW camps and got the boys to make "Hello, Mom and Dad" recordings for rebroadcast. She told how enthusiastically the

American soldiers received her when she identified herself as a Nazi radio propagandist.

The GIs told a different story at the trial. James P. Caparell, formerly a prisoner of war in Stalag 2-B, testified: "I asked how is it she is an American just like I am and she is running around free in Germany and I am locked up behind barbed wires."

Eugene S. McCarthy of the same camp was asked under cross-examination whether he was prejudiced against her. "If you put fifteen months in a prison camp," he replied, "and you seen your buddies once a month in that camp—one fellow a month—shot . . . and you see an American person come in and say she is an American working for them, do you think I love that person to sell out her country—no, sir."

As the sands began to run out for the *Herrenvolk*, Miss Gillars grasped frantically for palliations against the day of eventual arrest. Martin J. Monti breezed into her broadcasting station one day in 1944. Miss Gillars was not pleased to find him there. "That man is either a spy or a traitor," she declaimed, "and I refuse to work with either one. . . If you by any chance think that I am a traitor and you have been thinking so all of these years, then I am very sorry that it took me so long to find it out."

This protestation of virtue, if it actually took place, was somewhat marred by the alternative "spy" or "traitor." Since Monti was in Germany, the only spying he could be engaged in would be in behalf of the United States.

During the breakup of Hitler's empire, Miss Gillars starved for a while, pawned her belongings, talked of disappearing into the Russian Zone, but didn't get around to doing it. At her trial, she complained bitterly of mistreatment—by her American captors and by the defunct U.S. Zone of the German Short Wave Broadcasting Station, which still owed her money.

But she was on her way to a place where financial troubles would no longer plague her. The jury sat stolid and dry-eyed while she recited her life history. Her admiring half-sister stood by her. "I was always so thrilled she was my sister," Edna Mae explained. "She was so wonderful."

Mildred Gillars was one of the least malevolent of the radio traitors. It is true that she was selfish, grasping, an exhibitionist who loved the limelight and paid heavily for it. She had absorbed the woolly theories of her man of destiny either osmotically or otherwise, but in no real sense was she an ideological traitor. The law probably cannot make allowances for the plain, every-day

fact that most women seek to fashion themselves after the pattern of their men and that their intellectual passions are secondary to their emotional ones.

Love-struck or not, Miss Gillars had at last found a star part on the world stage. Given the opportunity and the man, she might have worked with equal fervor to push the sale of war bonds, egg the world proletariat to revolution or convert Hottentots to Mormonism.

Her misfortune was to be cast in a role which was not destined to have the thousand year run Hitler had promised. The jury convicted her and the Court imposed sentence of ten to thirty years imprisonment together with the usual \$10,000 fine.

The Case of "Tokyo Rose"

Only a handful of Americans were willing to join Nippon as ideological traitors. Some of these were Buddhists; others frothed at the mouth when they heard the name Franklin Delano Roosevelt—all were psychotics. Treason could not be procured with the fool's gold of future Japan world conquest, for no sane American believed in it. Moreover, fierce racial hatred erected an almost impassable barrier between the enemy and the potential traitor.

The Japanese Army procured treason from American prisoners of war by playing not on greed or lust for power, but upon the more basic urge for survival itself. The Japanese offered starvation and terror to those who refused and loaves and fishes to those who accepted. And in every army there are weaklings.

Personnel records of the Allied prisoners taken at Singapore, Manila, Corregidor and Saipan were scrutinized. Those with radio experience were sifted out and given the choice of working for the enemy in the broadcast apparatus or getting standard prisoner of war treatment. In a sense, the choice was voluntary. But the alternative to acceptance was vividly illustrated by the Bataan death march and the condition of the half-insane and emaciated American prisoners finally liberated by our forces.

Those who agreed to broadcast were eventually lodged in Bunka Prison Camp, where they received special privileges and considerable freedom of movement. Some of the Bunka prisoners have since attempted to persuade their governments that they were engaged—along with Tokyo Rose—in a patriotic conspiracy to sabotage the Japanese propaganda effort. Their testi-

mony is, unfortunately, self-serving and suspect. At least some of the "patriots" of Bunka may face trials for treason in the future. What they did was *prima facie* traitors' work and even those legally cleared have their reputations to think about.

Mrs. Iva Ikuko Toguri d'Aquino of Los Angeles was one of six women who broadcast propaganda in English for Nippon during the war. All of them seem to have been known by the generic name "Tokyo Rose". Unlike the others, Iva steadfastly refused to relinquish her American citizenship and by this refusal became subject to the treason law. After deliberating for seventy-two hours, a California jury decided on September 29, 1949, that she was a traitor. On October 6, Chief Judge Michael J. Roche of the Federal District Court pronounced sentence—ten years imprisonment and \$10,000 fine. This exceeded the minimum penalty required in treason cases by five years. It automatically involved forfeiture of the American citizenship which Iva had clung to for four years in wartime Japan.

The case was a perplexing one—the crucial issue being not facts, but motives. It was a problem of "the imagination of the heart of man which is so secret as God only knows it." In a relentless speech, Special Assistant to the Attorney General Tom DeWolfe summed up the Government's case against Iva:

"The evidence properly brands her a female Nipponese turncoat, an arch traitoress. The evidence, not only of the United States, but of the defense itself, shows that she is a betrayer of her native land, of our Government in its time of need.

"The defendant says she was one of our little soldiers—our Little Nell—working behind the enemy lines. This is, to the Government, a very odious comparison, when you think of our young men and women who were risking their lives fighting the Government which paid her. . . ."

Iva was born in California in 1916. She was thus more than a decade younger than any of the American radio renegades on Hitler's payroll. In high school, she was popular, a good tennis player, and active in church work. As long as the United States was at peace, she seemed a typical American girl of foreign extraction. Iva had no subversive connections and was unable to speak Japanese.

Finishing a pre-medical course at the University of California, she applied in the critical year, 1941, for a passport, stating that she wanted to visit a dying aunt in Japan. No passport was given her—presumably because of the strained diplomatic situation on

the eve of the war. Instead, Iva was given "a letter of intent." It was probably this small, technical fact which resulted in her conviction as a traitor and caused one of the longest treason trials in American history—with a recorded 900,000 words and a cost of half a million dollars.

She was in Japan when Pearl Harbor was attacked, but, lacking a passport, she was unable to join the first homeward-bound shipload of stranded Americans. She would have been accepted on the last sailing of the repatriation liner to the United States in the autumn of 1942. But, at the last moment, Iva made up her mind not to go.

This was a crucial decision. At the trial, she gave two reasons for it. First, she lacked the \$420 needed for the passage. But why didn't she get her father to stand surety? The answer was that Toguri, Sr., along with thousands of other Americans whose only offense was their ancestry and pigmentation, had been tossed into a concentration camp, politely known as a Relocation Center. His wife had died there and the property he had accumulated through years of hard work had been sold at miserable prices.

Obviously, the Toguri family was far from solvent. However, if Iva had been as patriotic in mid-1942 as she claims, she would certainly have incurred the \$420 obligation and worried about repaying it after she got home. The Imperial Japanese Government was notorious for its savage persecution of all political dissent and most Americans would have sold their souls to the devil in order to get out of Japan.

But Iva was only a second-class American. While she was wavering in indecision, a shameful page in American history was being written on the West Coast of the United States. There, under guise of military necessity, those members of the community in whose veins Japanese blood flowed, were being uprooted, moved hastily eastward with scant regard for their comfort or welfare, and surrounded with the barbed wire of internment camps.

The execution of this program mirrored the rampant prejudice of the day. This was crudely but effectively voiced by General John De Witt, who carried out the evacuation order. "A Jap is a Jap and must be wiped off the map," said the General. This Nazi-like attitude came strangely from a soldier supposedly fighting for the Four Freedoms. A Federal Court subsequently excoriated the conduct of Army officers who carried out the relocation program, held that Nisei had been coerced into sur-

rendering their American citizenship and ruled that all such relinquishments were legally void.

The press and motion picture industry meanwhile joined in turning out propaganda of a degrading sort, purporting to show that the Japanese were simply beasts, that all eighty million of them were sadistic, deceitful and devoid of any spark of originality. It is indeed little short of a miracle that the Japanese-Americans who were finally permitted to fight for their country should have retained sufficient faith in its democratic institutions to establish the finest war record of any racial group in the Armed Services. And it is indicative of the unfaltering belief of these people in the United States that so few of them broadcast for the enemy.

Axis Sally claimed that she refused to leave Germany for the United States in wartime because she feared poverty at home. Iva's justification was more substantial. Having first tried to get back, she abandoned the attempt when her country was in the throes of one of the worst waves of racial hysteria in its history. If she had come home, she would have been placed in a stockade for the duration. Viewing the American scene through the distorted lenses provided by Tokyo propaganda, she may have feared mob outbreaks and physical violence against people of her race.

Stranded in Japan, Iva had to work or starve. The talent she had to sell was her knowledge of English and of American conditions. *Domei*, the Japanese news agency, hired her at a few dollars a month, to monitor American broadcasts. Here she met a linotype man, Felipe J. d'Aquino, a Portuguese national of preponderantly Japanese blood. They married in 1945.

Iva told a story at her trial that was almost entirely unsubstantiated. She claimed that she made unsuccessful efforts to have the Japanese intern her as an enemy alien, but that they refused. She also alleged that the *Kempeitai*—the dreaded Japanese "thought" police, notoriously expert in torture and terror—intimidated her and liquidated some of her acquaintances.

The prosecution was unable to show that Iva had been pro-Japanese at this time. Her husband claimed that she was forced out of *Domei* for expressing pleasure at the American victory in the Coral Sea. Another defense witness, pretty Mrs. Albert Kanzaki, testified: "Iva stated. . . Japan didn't have a chance. She always spoke of returning to America and waiting until America won so she could come back."

In 1943, she went to work for Radio Tokyo as a typist at a

microscopic salary. Major Charles H. Cousens of the Australian Army—a POW script writer for the enemy—testified that he picked Iva for broadcast work because she had “just what I wanted—a gin-fog voice, anything but femininely seductive. It was the comedy voice I needed for that job.”

According to Cousens’ story, three of the top POW radio broadcasters were involved in a tacit conspiracy to throw sand into the Japanese propaganda machine. Iva had sought out their company and “told us she was an American citizen and flatly refused to accept Japanese citizenship as most of the other Nisei at Radio Tokyo had done.” She used to bring Cousens, Ince, Reyes and the other radio POWs blackmarket food, vitamins and medicine—all of which she bought from her own slender salary. At first, they thought she was a *Kempeitai* agent, but after a few months Cousens decided to trust her.

When she was reluctant to go on the air for Nippon, Cousens claimed he told her:

“This is a straight out entertainment program. I wrote it and I know what I’m doing. Look on yourself as a soldier . . . you’ll do nothing against your own people. I guarantee that.”

Now Charles Cousens’ testimony is obviously suspect because he was involved up to his neck in Japanese propaganda broadcast work. It has all the earmarks of an explanation concocted afterwards for courtroom and public relations purposes. On the other hand, it is significant that Cousens has been exonerated by his own country of treason charges.

The Tokyo Rose case was wrapped in a dense fog of mendacity and evasion. The Prosecution witnesses brought from Tokyo were Japanese nationals, either by birth or naturalization. The Government had great difficulty in inducing them to testify. Although war propaganda had taught the American public that the Nipponese were tricky little people devoid of personal honor, these Japanese witnesses were extraordinarily reluctant to implicate their former comrades and associates. This was in sharp contrast to the behavior of the German Nazis who ate the bread of betrayal with evident relish. Charges were made at the trial that a prosecution witness before the Grand Jury had been involved in bribery attempts and this individual was not brought forward during the trial.

The defense relied principally on American and British Empire nationals who had been engaged in work similar to Iva’s in Tokyo. Some of these people had told stories to the FBI which

were utterly at variance with their trial testimony. Generally, they explained these discrepancies as resulting from vague fears and amorphous pressures. The fact that the defense witnesses have not been indicted for treason does not mean that their reputations are irreproachable. Evidential requirements are strict under treason law and the Government has all the time in the world.

After Cousen's approach, Iva became a disc jockey. She began by reading Cousen's scripts between records; later she added her own ideas. Most of her broadcast statements seem to have been pilfered from an obsolete edition of Joe Miller's *Joke Book*. She was given an unofficial award by American Navy personnel in Pacific Waters as their best morale builder. The gobs voted that she was their main incentive to get to Tokyo quickly!

While the Nazis were boring their American listeners with fascist ideological rant, Iva was rousing nostalgia, talking about dimly remembered nights with girls back home. One witness accused her of saying:

"Well boys, I'll be signing off for tonight. I'm going to get my loving tonight. How about you?"

This was aimed accurately at the vital center of armed forces morale. It was a blockbuster. But there was no corroboration that Iva, rather than one of the other "Tokyo Roses", had said it.

Just after the battle of Leyte Gulf, Iva reportedly commented:

"Orphans of the Pacific, you are really orphans now. With all your ships sunk, how will you get home?"

That was the only count on which the jury found her guilty.

Her able attorney contended that she had engaged in broadcast activities under duress—because of her fear of the "thought police". While this may have been true, it seemed abundantly clear that Iva could have left Radio Tokyo before the debacle. The Court ruled that "coercion or compulsion must be present and of such a nature as to induce apprehension of death or injury of a serious bodily nature." The duress, moreover, had to be present during the whole period of broadcast activities.

She was tried by an all-white jury. The Prosecution used four peremptory challenges against Negroes "for various reasons we cannot discuss." It similarly barred a Chinese and a Filipino juror. Nobody else was challenged by the Government. The Prosecuting Attorney was entirely within his rights in doing this and it is customary trial procedure. Nonetheless, the present writer believes that it is a practice to which the Government of the United States should not stoop. It implies that the loyalty of colored

Americans is less than that of whites and is, of course, contrary to the Administration program of equal consideration toward all citizens without regard to racial origin.

Newspaper reporters covering the trial voted nine to one for acquittal. The jury originally ballotted ten to two for the prisoner, but the superior capacity of the minority to remain inert in the jury room over a protracted period of time finally tipped the scales of justice.

The trial showed some of the ways in which the procedure laid down in the Constitution for convicting traitors was cracking apart at the seams. The two-witness requirement involved the United States in an enormous outlay. The Department of Justice had to scour Japan to find people who could testify that Iva had actually made specific broadcasts. The evidence presented by monitoring stations which had picked up Japanese broadcasts was not deemed adequate to satisfy the two-witness provision. There was a vast area of bewilderment as to which of the six Tokyo Roses had said what.

The rigid law of treason made no allowance for her apparently sincere desire to return to the United States immediately after Pearl Harbor. The plight of a young woman alone in a strange land—fearful, destitute, stranded and ignorant of the language—was not weighed in the scale of justice. No consideration seems to have been given to the apparent fact that she was not pro-Japanese and took pride in her American citizenship.

The verdict was according to the law, but the law ignored delicate shadings between crime and necessity. It forgot that, once in Japan, Iva had to work or starve. It forgot that, under conditions of total war, all work is war work.

While she was employed to shatter the will of American troops to fight, the jury was not permitted to consider the effect of her program as a whole. It convicted for nineteen words, lifted from two years of broadcast activity. Had there been convincing evidence that she went to Japan bent on destroying her country, these nineteen words would certainly have been enough. But no such traitorous motive was shown.

Conclusion

Radio treason is a new technological wrinkle in an ancient activity. Since the earliest periods of history, nations at war have used propaganda agents to sow doubt and discord in the enemy's

mind. With the impact of democracy on warfare, entire peoples took up arms. Lacking the cynicism of the professional soldiery, this citizen-militia had to be convinced not only that its military prospects were hopeless but that the cause for which it fought was morally noxious. The propaganda traitor at once assumed a far more important and difficult role. He had to wrap himself in a cloak of morality and discuss lofty issues of principle. He had to know how to reach the minds and emotions of millions in the enemy camp.

The development of radio as an international propaganda vehicle made the traitor still more important in the machinery of warfare. A German or Japanese might turn out plausible copy for a propaganda leaflet but a guttural voice or an Oriental lisp would be ludicrous over the air. If it is to be effective, radio propaganda must appear to come from the friend and the neighbor. The radio traitor therefore disguises himself as a member of the community he is paid to destroy. This is treason's most insidious aspect.

The talons of American law were badly designed for the job of pinning down the radio renegades. The domestic Nazis who broadcast defeatism within the United States escaped prosecution for treason because there was no conclusive evidence that they had "adhered" to the enemy cause. All of the men and women actually indicted were paid employees of the German, Italian or Japanese radio systems. Moreover, all were American citizens at the time of their alleged treason.

Americans by birth who went abroad and there worked to undermine their own country escaped indictment if they had had the cunning to surrender their United States citizenship. They could pose as Americans while doing their work; yet no law could touch them. Some of these men made a living after the war as \$5-a-day informers. Having first betrayed their native country, they next betrayed their fellow traitors.

The law considered intent, but not motive. A few fanatics, saturated with hatred for the land of their birth, escaped the penalty for their betrayal. On the other hand, women who committed treason through weakness and adverse circumstance were convicted. All in all, the aftermath of the Second World War revealed serious weaknesses in our legal machinery.

TREASON WITHIN THE ARMY

"Bold amongst friends, cowardly amongst enemies, they have no fear of God, and keep no faith with men."—Niccolo Machiavelli, *The Prince*.

In a nation at war, there are bound to be some traitors, but in America's foreign wars there have been surprisingly few. As of the end of 1949, only two American soldiers had been arraigned before civilian courts on the charge of treason and only one had been convicted by court martial under the 81st Article of War.

The two convicted men—Martin James Monti and Dale H. Maple—were ideologically hardened Nazis. Both were of native American stock. Both entered the Army voluntarily and dishonored the uniform they wore. Both were apparently prepared to kill American soldiers on behalf of the Third Reich.

Doubtless there were mitigating factors in their treason since neither was sentenced to pay the supreme penalty of death. Yet their crime, in comparison with that of Iva d'Aquino, Mildred Gillars, Hans Max Haupt and Max Stephan, appears peculiarly atrocious and indefensible.

The procedure of trying men for treason by Army court martial has grave disadvantages. For reasons which to the writer are unfathomable, the trial docket is not made available to the public. This practice inevitably leaves a residue of suspicion and a source for rumor as to the justice of military law.

Moreover, the Army as a whole is continuously under strong political pressure—pressure which affects the judicial arm as strongly as the administrative. Wartime military executions in the United States raise a storm of protest letters from Congressmen whose constituents are bereaved. The military lives in fear of the political repercussions of letters asking why "the poor soldier boy" must die. Yet there are murderers and traitors among soldiers as well as among civilians.

The Case of Sergeant Provoo

In September 1949, a tall, hard-faced redhead left an Army post at Governor's Island for civilian life. Thirty-three year old Sergeant John David Provoo, holding a discharge which was neither honorable nor dishonorable, walked a few paces in his unfamiliar civilian suit. Then FBI agents converged on him and brought him to the United States Commissioner's Office in New York, where Provoo was arraigned for treason.

The Army records showed that he had served eight years in the uniform of the United States—three of them as a Japanese prisoner of war. After VJ Day, Provoo's term of enlistment expired, and he went back for a second hitch.

The real story that lay behind this seemingly honorable record was far more complex and interesting. Provoo had gone to Japan in 1941 ostensibly to study Buddhism. He must have been a precocious student for he was back in the United States in time to put on a uniform and fight with the Corregidor garrison against the Japanese onslaught.

The Government alleged that when the fortress fell soldier Provoo tried to escape disguised as a Buddhist priest. Apprehended by the Japanese, he aided them traitorously in occupying and garrisoning the American stronghold. He next turned up in the notorious Bunka Camp, where, for three years, he allegedly worked for the enemy to disintegrate the military role of United States forces.

Shortly before his arrest, *San Francisco Chronicle* correspondent Stanton Delaplane predicted that the "Tokyo Rose" trial "may touch on such sinister characters as an American Army sergeant from San Francisco taken at Corregidor. This known homosexual exercised a life-and-death hold over American POW's and is suspected of ordering the execution of an American captain."

"His was the 'voice of greater East Asia, strong, determined and ever-victorious.'"

"He is in an Eastern Army hospital now, unable to be a witness at the trial [of Tokyo Rose], adjudged hopelessly insane."

In January 1950, when these lines were written, Provoo was awaiting indictment and trial. Neither the National Military Establishment nor the Department of Justice was willing to comment on the case.

Wrong-Way Martin Monti

Lieutenant Martin James Monti stole an American combat plane and flew it behind German lines. He then tried hard to enroll in the Nazi *Luftwaffe*—a venture which, had it succeeded, might very well have entailed killing his comrades of the American Air Corps in combat. When Hitler lost his gamble, Monti fell into American hands. He then told a series of lies which apparently swayed an American court martial. Far from being a traitor to his country, Monti claimed to be one of those rash heroes of the cinema who suffered from an unremitting itch to kill Germans. Perhaps his most amazing accomplishment was to have his reenlistment in the American Air Corps accepted.

Although not exceptionally intelligent, Monti ranks high in the muster roll of American traitors. As long as effrontery and deceit, treachery and blind fanaticism are admired, he will occupy his own peculiar niche.

One of seven children, born to a respected St. Louis family of Italian descent, Martin Monti was brought up to be a vehement Roosevelt hater. The Montis were one of the few St. Louis families which subscribed daily to the isolationist *Chicago Tribune*. Martin spent his spare hours reading religious tracts and anti New Deal literature. He became "fanatically imbued" with hatred of Soviet Russia as "the real enemy of the United States," his attorney, Lloyd Paul Stryker, explained during his trial for treason.

Young, physically powerful, six feet two inches tall and without wife or children, there was no good reason why Martin Monti should not be drafted. Realizing that this event was imminent, he reluctantly enlisted in the Air Corps and emerged, in due course of time, as a Lieutenant.

In late 1944, Monti reached Karachi, India, where he was assigned to the 126th Replacement Battalion as a P-38 combat pilot.

On October 2nd, he hitch-hiked by air to an American airfield in Italy where many of his associates in pilot training were assigned. They were surprised and not overjoyed to see him. The story he told was that he had been sent up from Karachi to a replacement battalion in Italy. Bored stiff in India, he was eager to get into combat against the Germans. Above all, he wanted to fight with his buddies with whom he had trained. Monti approached the commanding officer of the airfield with this request, but was turned down.

There was a brand-new P-38 on the air strip which had never

been flown. Specially rigged for photographic work and carrying equipment which had never before been used in the Theatre, this plane was awaiting test flight. Claiming that he had not been able to fly his favorite P-38s during the six weeks of sweating and ennui at Karachi, Monti inveigled the others into letting him take the plane up for a few minutes.

The American Army never saw that P-38 again. Monti, however, reappeared seven months later. At that time, he was wearing the black uniform of Heinrich Himmler's *Waffen SS*.

As soon as he got over German lines in his stolen P-38, Monti found an enemy airfield and landed there. This was not a particularly difficult undertaking since the Luftwaffe had been practically blasted out of German-held Italy and Nazi anti-aircraft installations had been heavily attacked by American bombers.

Monti stepped out of his plane and explained to the German commanding officer that he was joining them. It now appeared that Monti was not "yellow" and that he was, in fact, eager for combat. He asked to be enrolled as a fighter pilot in the Luftwaffe. While the mainspring of his treason was a prescient—though doubtless exaggerated—hatred of Soviet Russia, no evidence has come to this writer's attention that he stipulated that he be used on the Eastern, rather than on the Western, front. If, as he believed, Nazi Germany was holding high the banner of Western Civilization, then any soldier in that cause would have to fight where assigned and where needed.

To Monti's intense chagrin, he was treated like any other American prisoner. The plane he had turned over was accepted with alacrity and used subsequently to train German pilots in combat against American P-38s. The Nazis suspected Monti of being an American spy. As they had considerably more pilots than operable aircraft, they had no need for his services in combat. From Milan, he was shipped to Germany and put behind barbed wire. Seemingly, his efforts at treachery were to be frustrated by Nazi stupidity.

However, a time soon came when the prisoners of war were asked to fill out questionnaires. Monti wrote that he had landed voluntarily to assist the German cause. Shortly thereafter, he was assigned to propaganda broadcast work over the Rundfunk. He spoke in English from Berlin, using the pseudonym Martin Wiethaupt.

In this work, he was a failure. Though an incessant talker, Monti was inarticulate. Though opinionated, he had few coherent

ideas. In the Air Corps, he had been unpopular. Even here, his fellow American radio traitors disliked and distrusted him. Nonetheless, he gave fifteen to twenty propaganda broadcasts and was taken on a junket to Hungarian territory which the Germans had recaptured from the Russians. Here his eyes and ears were filled with war atrocities—rapes, murders and mutilations, supposedly inflicted by the Red Army.

He returned to Berlin to broadcast his eyewitness account of these horrors. Here he acquired one friend—a renegade priest from St. Louis who had fought with a motley group of non-German Nazis in the Wehrmacht. This man brought Monti with him into the *SS Standarte Kurt Eggers*—a special detachment of Himmler's *Waffen SS*, composed of Spanish, French, English and Balkan fascists and engaged in propagandizing enemy front line troops in their native tongues. After pledging to work for the Hitler cause, Monti was enrolled as a lieutenant in the *Standarte*.

Soon the Reich, destined to endure for a thousand years, was crashing in fragments around him. The leaders of the *SS Standarte* released the little polyglot band of renegades from their military assignments. An English traitor refused to take the plane he was offered for escape purposes, preferring to go down fighting with his German comrades. Monti's conduct, though understandable, was less heroic. Ripping the insignia from his SS uniform, he headed for Italy. Shortly after VE Day, American officers discovered him in that uniform among a trainload of German prisoners of war.

Monti told a strange yarn. He had taken the P-38 on test flight and, because the impulse was irresistible, had flown over German lines. The purpose was not combat [after all, the plane was specially equipped for photography] but curiosity. Monti claimed that he was shot down, that he was taken to a prisoner-of-war camp in Germany and that he then escaped. The underground had helped him work his way back to American lines, giving him an SS uniform for greater protection.

The trial was held on August 6, 1945—in the midst of the disorganization and chaos immediately following victory in Europe. German records were not available and there was thus no conclusive evidence of Monti's treason.

Charged with desertion and misappropriation of a plane, Monti was convicted of the second offense. The charge of desertion was reduced to that of AWOL.

On September 30, 1945, he was dismissed as an officer and be-

gan his sentence of fifteen years imprisonment. His place of confinement was a disciplinary barracks rather than a penitentiary.

The Monti family quite naturally began to stir up political pressure for their son's release. The Army was bombarded by letters from a Missouri Congressman. The family's theme song was that Martin Monti was a brave, patriotic, clean-living, God-fearing young American soldier, whose only crime was that he had been impatient to get into combat. Hotheaded and young, he had made a mistake. President Truman commuted his sentence to time already served, on condition that Monti agree to re-enlist as a private. This he agreed to do on February 11, 1946.

Meanwhile, Victor Woerheide of the Department of Justice was in Germany, tracing the interconnections of Nazi radio treason. His task was not facilitated by the fact that the short wave station from which the broadcasts had emanated was located in the Soviet sector of Berlin.

Nonetheless, in 1946, Woerheide discovered that the man using the alias Martin Wiethaupt was also known as Lieutenant Martin Monti. He communicated this information at once to the Army. A minor jurisdictional skirmish followed as to which agency should handle the case. Nobody wanted to take the ball. The Army claimed that Monti had passed out of military control during his period as a prisoner. Eventually, this view prevailed.

Monti was called into the Department of Justice and asked whether he would testify for the Government against another suspected radio traitor. He blandly denied knowing the man. That was strange, the Department attorneys commented, because they had heard the contrary from several officials of the German *Rundfunk*. When the officials were named, Monti looked less jaunty.

He was invited to the Justice Department a second time. When he entered the conference room, he saw half a dozen former Nazi radio officials, who were earning a living by testifying against their *ci-devant* comrades and eating excellently while doing so.

"Hello, Monti," the Nazis chorused.

The American traitor was unhappy.

If he knew these individuals, Woerheide suggested, why not reply to their greeting?

Monti left the conference. He found a lawyer and was soundly advised to stand on his constitutional right not to incriminate himself.

While the evidence was slowly being marshalled against him, he behaved in an odd manner. Monti had the pathetic illusion that the Justice Department attorneys were his friends. He wanted them to help him get out of the Army. From his new worm's eye perspective, he found the enlisted men uncouth and disgusting, forever boasting about liaisons which he considered flagrantly immoral. When asked what his future plans were, Monti replied seriously that he was thinking of going to Europe to study under the GI Bill of Rights. He seems to have been pleasantly unaware of his peculiar situation and its implications.

At some period prior to the trial, Monti stated that the Nazis had used "subtle threats" to force him to broadcast. Considering that he had flown behind enemy lines for the specific purpose of fighting Americans and their allies, this excuse was somewhat thin. It was reminiscent of the murderer, who after assassinating his father and mother, begged the court to have pity on a poor orphan.

Monti confessed to twenty-one overt acts of treason and became the first American to admit perpetration of this crime in open court. His defense counsel alluded at length to his abnormal educational background and the influence of his family in molding a mental pattern of potential disloyalty. He added that Monti, though of more than average intelligence, was psychotic. "Paranoid traits," the psychiatrists at Kings County Hospital had pronounced, but "not legally insane."

Prosecutor Woerheide did not ask for the death penalty. He reminded the court, however, that "this man did everything he could to commit treason; he left no stone unturned."

Monti was sentenced to twenty-five years imprisonment and \$10,000 fine. He was 27 years old at the time.

Dale Maple: Nazi in Khaki

"Even a bad dictatorship is better than a good democracy."

This profound conclusion was reached in October 1940 by a 20 year-old student of philology who was momentarily enjoying the benefits of a Harvard education. Shy and unhappy, Dale H. Maple had immersed himself since boyhood in the German language, German culture and Hitler's ideology. At Harvard, he became treasurer of the University's German club—The *Verein Turmwächter*—a convivial, carousing society, given to beery evenings and Heidelberg drinking songs. Maple, however, pre-

ferred the *Horst Wessel Lied* to the *Erkloenig* and habitually harangued bored and sometimes angry club members on the grandeur of Hitler and the glories of the Third Reich. Since the United States was only fourteen months removed from war, these strange doings came to the attention and elicited the disapproval of the club's faculty adviser. Maple was expelled from the club. He felt aggrieved, persecuted and injured. Defiantly, he placed a bust of the German Fuehrer on his desk. Even tolerant Harvard was shocked.

The seeds of treason were already sprouting in the heart of this handsome, clean-cut student of moribund languages. All that was needed was an act joined to the will. This act was to come when Dale Maple's country went to war.

He came from a devout San Diego family. The separation of his parents probably contributed to his sense of insecurity and, by the time he arrived at Harvard, Maple was a touchy non-conformist, dangerously laden with explosive hidden resentments. At college, he specialized in the study of Hungarian, Assyrian and Catalan—languages which have nothing in common and which, considered in aggregate, would seem to constitute a peculiarly infertile field of study. This, however, was an area of learning in which Maple faced little competition from his fellows. It emphasized his self-imposed withdrawal from the uncongenial democratic society into which an accident of birth had thrust him.

In 1940, he was fired from the Harvard R.O.T.C. for suspected disloyalty. Long before Pearl Harbor, he had attempted to make contact with the German Embassy.

Maple was on the FBI watch list. When he enlisted in the Army on February 27, 1942, he was assigned, in the grade of private, to the 620th Engineer General Service Company. This organization of leaf rakers and pit latrine diggers was a conglomeration of known and suspected Nazis. The Army preferred to put all of them in one place where they could do least damage.

In February 1944, this little, treason-tainted outfit was at Camp Hale, Colorado, awaiting overseas shipment to a combat area. At about this time, German prisoners of war were moved into the camp. Since its loyalty was highly dubious, the 620th company of engineers of treason was not permitted to have anything to do with guarding the prisoners. However, the mere presence of the friendly enemy gave a lift to its soggy morale. Soon Maple and other pro-Germans in the 620th had mapped out grandiose

plans. Escaping with ten German prisoners, they would cross the Mexican border, then head for South America and, aided by Nazi sympathizers, proceed from there to Germany. Arriving in the Reich, Maple proposed to contact the German General Staff and win it over to a program of wholesale sabotage and seditious propaganda.

The conspirators had marked a map of the United States with sabotage targets. The main aim was to cripple the nation's transportation system through simultaneous bomb explosions at key points. Maple estimated that 150 men would be needed to paralyze transport west of the Mississippi and considerably more in the eastern area. The young philologist thought himself the ideal man to direct this vast project woven from the yarn of megalomania and hatred.

The conspirators decided that only three men would be able to get away safely. Maple, accordingly, was to take two German prisoners with him and dash for the Rio Grande. While his comrades acquired Army uniforms and bought necessary supplies, Maple purchased an automobile. Shortly before noon on February 15th, two hard-jawed veterans of Rommel's *Afrika Corp* were spirited away from under the eyes of slothful guards, put in American uniforms and dispatched on their southward journey with Maple at the wheel. To prevent his absence from camp from being immediately noticed, the traitor had reported for sick leave.

The three fugitives were caught by the Mexican immigration authorities south of the New Mexico border. The trial record does not show that the Counter Intelligence Corps or any other American police agency participated in the capture.

Dale Maple was put on trial before a general court martial for violating the 81st Article of War. This covers relieving, corresponding with or aiding the enemy, giving them arms, ammunition or other supplies, harboring or communicating with them. It is the military equivalent of treason and carries the penalty of death or whatever punishment a general court martial may decide to impose.

Like other Nazis before him, Maple confessed and implicated his associates. He named eleven accomplices among the 620th Company—some of whom were women. Four were tried and convicted under the catch-all 96th Article of War, which does not carry the death penalty. The sentences, however, were set aside by higher military authority.

Despite his scorching hatred of his country and its institutions, Maple received a sentence of only twenty years imprisonment. Any other country, anywhere on the face of the earth, would have shot him. His brief adult life had been dedicated to an attempt to bring about the nation's downfall. His plan of operations was not merely aid to the enemy, but a campaign of terror and destruction specifically directed against his own people. In enlisting in the Army, he committed a double betrayal.

In surveying this brief and sordid record of military treason, one is reminded of George Washington's comment after the discovery of Benedict Arnold's betrayal. It has been quoted once, but bears repeating:

"Traitors are the growth of every country and in a revolution of the present nature it is more to be wondered at that the catalogue is so small than that there have been found a few."

THE STRANGE CASE OF EZRA POUND

"I could never take him as a steady diet. Never. He was often brilliant, but an ass. But I never . . . ceased to love him."—William Carlos Williams on Ezra Pound.

"He is abnormally grandiose, is expansive and exuberant in manner, exhibiting pressure of speech, discursiveness and distractibility. . . He is, in other words, insane. . ." —Report of four alienists to Justice Bolitha J. Laws concerning Ezra Pound.

On November 18, 1945, a man of sixty with unruly, graying hair and a stubble beard (which had once come to a fine Mandarin point) was removed from an Army plane and taken to the District of Columbia jail. The passenger was Ezra Loomis Pound, born in a pioneer's cabin in Hailey, Idaho. A distinguished critic, a revolutionist in poetry, a man of sprawling scholarship and subtle cadences, of lucid images and maundering hallucinations, he had at last come home to his native land. He had come home to stand trial for having betrayed it.

When he was arrested near Genoa in the springtime of 1945, Ezra Pound made a statement that was characteristic:

"If I ain't worth more alive than dead, that's that. If a man isn't willing to take some risk for his opinions, either his opinions are no good or he's no good." *

A man going on trial for his life on a political charge should be buoyed by the belief that he stands for some general idea or principle. Here was Pound, the putative wizard of words and cadences, striving to hit a colloquial note and sounding as off-

* Most of the quotations used in this chapter are drawn from the excellent symposium by Charles Norman, *The Case of Ezra Pound*, New York, 1948.

key as a high-school band grappling with a Beethoven symphony. To grasp the difference, compare Pound's political testament with almost anything John Brown had to say when on trial for his life.

Ezra Pound was the only American radio traitor who formed more than a ripple in the tidal stream of Western culture. His creative and critical work has constituted a contribution of undeniable consequence to that stream. He understood and had once spoken the common tongue of civilized man—and yet he had betrayed his birthright and deliberately merged with the forces of nihilism. Pound's fellow workers in the field of radio treason had been the pygmies, the simians, the mercenaries and the frustrates found by the fascists in the backwash of Western culture. Surely, there must have been moments when Ezra Pound realized that he was keeping incongruous company.

To the intellectuals, Pound's betrayal seemed infinitely more heinous than that of the others. One expects little from an animal, but much from a man. The intellectuals were not emotionally interested in the fate of a street ruffian, such as Joe McWilliams, the Yorkville storm trooper. They could follow the trial of Mildred Gillars with a diluted sense of compassion. The psychoneurotic failures like Best and Chandler aroused no strong reactions of either pity or revulsion.

But precisely because he retained some of his standards of intelligent speech, Pound was the most guarded, unemotional and ineffective of all of America's radio traitors. To those who recall the almost unbearable tension of the blood-soaked Italian front, it will seem incredible that any of Pound's queries or metaphors could have induced American soldiers to throw down their rifles and surrender.

The Fugitive

Pound's entire life was a flight from the soil that had nurtured him. In college, he read world literature omnivorously and issued himself a party card in the American aristocracy of intellect. He was both shy and domineering. William Carlos Williams recollects how he would read his poetry—his voice trailing off into inaudibility. Pound was so unsure of himself that he once asked for male reinforcement in a tactical operation which, by its very nature, must be done alone—that of picking up a girl, *one* girl, Williams emphasizes. And even so, be botched it.

Shortly after Ehrlich discovered the "magic bullet"—606—Pound wanted to take Williams with him to the North Coast of

Africa. He thought there were enough syphilitic chieftains there so that they could both make a fortune and retire within a year to write poetry. Nothing came of the scheme.

Shortly after being given a position on the faculty of Wabash College, he was discharged for being "the Latin Quarter type"; thereafter, all academic doors in the United States slammed in his face. At twenty-three, he was in London and had published *Personae*—a work described by Edward Thomas as replete with "the beauty of passion, sincerity and intensity, not of beautiful words and images and suggestions."

Pound was a constructive iconoclast. His "great contribution to the work of other poets," T. S. Eliot once said, ". . . is his insistence upon the immensity of the amount of *conscious* labor to be performed by the poet; and his invaluable suggestions for the kind of training the poet should give himself—study of form, metric and vocabulary in the poetry of divers literature, and study of good prose."

Preoccupied with the language as music and with the subtlest tonal patterns which could be constructed with it, Pound advised the young poet to "fill his mind with the finest cadences he can discover, preferably in a foreign language so that the meaning of the words may be less likely to divert his attention from the movement; e.g. Saxon charms, Hebridean folk songs, the verse of Dante, and the lyrics of Shakespeare—if he can dissociate the vocabulary from the cadence."

His emphasis on poetry as cadence and pure music induced him to write verse which was a melange of snatches from living and dead tongues, incomprehensible to all but an eclectic minority. A dilettante student of the Chinese written language, Pound was entranced with the ideogram and experimented with the instantaneous presentation of complex thought in an ultimate of compactness. This resulted often enough in "intellectualized chop suey", or, more accurately, in the reduction of poetry to cryptograms—the deciphering of which was an arduous mental process wherein the emotional reactions of the reader were inevitably deadened.

Needless to say, Pound was an esoteric and a starving one at that. The young Pound of London and the Latin Quarter was the very model of a Bohemian. His beard was bright red and stiletto pointed. His hair was a lion's mane, his collars Byronic and his cape long and flowing. He was a rootless tumbleweed on the earth's surface.

About 1915, T. S. Eliot writes, Pound "was living in a small dark flat in Kensington. In the largest room he cooked, by artificial light; in the lightest but smallest room, which was inconveniently triangular, he did his work and received his visitors. There he lived until he moved, in 1922 I think, to Paris: but he seemed always to be only a temporary squatter. This appearance was due, not only to his restless energy—in which it was difficult to distinguish the energy from the restlessness and fidgets, so that every room, even a big one, seemed too small for him—but to a kind of resistance against growing into any environment. In America, he would no doubt have always seemed on the point of going abroad; in London, he always seemed on the point of crossing the Channel. I have never known a man, of any nationality, to live so long out of his native country without seeming to settle anywhere else."

His most salient characteristic was an Olympian arrogance and an urge to master others. Even the loyal T. S. Eliot describes him as "a dominating director," adding: "No one could have been kinder to younger men, or to writers who, whether younger or not, seemed to him worthy and unrecognized. . . . He liked to be the impresario for younger men, as well as the animator of artistic activity in any milieu in which he found himself. In this role he would go to any lengths of generosity and kindness; from inviting constantly to dinner a struggling author whom he suspected of being under-fed, or giving away clothing (though his shoes and underwear were almost the only garments which resembled those of other men sufficiently to be worn by them), to trying to find jobs, collect subsidies, get work published and then get it criticized and praised."

Pound "always had a passion to teach." A perfectionist, he regarded his protégés impersonally "as art or literature machines to be carefully tended and oiled, for the sake of their potential output." The obvious corollary which Eliot drew was: "Pound was always a masterly judge of poetry; a more fallible judge, I think, of men." He was also a perfectionist unwilling to brook anything which he thought smacked of mediocrity. He had a compelling desire to be the Dalai Lama of all poets.

This not unsympathetic portrayal is the work of a colleague and disciple, who shared Pound's strong antipathy toward American democracy. It was written at a time when Pound faced possible death as a traitor. Another poet, William Carlos Williams, sketched Pound's countenance with harsher lines.

"Ezra always insisted in the loudest terms," Williams writes, "on the brilliance and profundity of his mind. He doesn't have a great mind and never did but that doesn't make him any the less a good poet. His stupidities coupled with his overweening self esteem have brought him down. . . ." Pound had "the most acute ear for metrical sequences, to the point of genius, that we have ever known," but he was also—Williams said forthrightly—"the biggest damn fool and faker in the business."

Where T. S. Eliot speaks of Pound's incredible self-discipline and vast capacity for work (he had turned out twenty books by the time he was forty) Williams calls him "a lazy animal in many ways."

Although a close friend of his at the time, Williams was irritated at the way Ezra Pound would always walk one pace ahead of his companions. He commented: "I remember my brother once in the same situation turned and walked off in the opposite direction."

Wanderings of an Expatriate

Ezra Pound was for a long time one of the awe-inspiring figures of the Left Bank. Ernest Hemingway, James Joyce, Gertrude Stein and Ezra Pound were the four towering leaders of the Paris expatriate band of literary iconoclasts. Pound turned out massive works of criticism, creation and translation: the *Proper-tius*, the *Cantos*, renditions of Chinese literature, appraisals of the troubadours and of Japanese drama. "Thus, year after year, since the appearance of the *Personae*," Charles Norman writes, "Pound has brought forth a body of literature without parallel in our time, a mass of work which has inspired other writers and helped to shape their styles; and he did this without much encouragement from critics in the United States and on an income which few would have been content to struggle with."

Unfortunately, there is no place in our economic system for a writers' writer, particularly if he happens to be a path-breaker in poetry. The successful writers are conformists who have no reason to subsidize literary revolutions; the others find it hard enough to support themselves.

Pound was never too busy or too poor to take up the battle-axe in defense of any powerful writing which fell dead from the presses. He championed Rabindranath Tagore and Richard Aldington. When a Paris crowd howled down the unconventional *Ballet Mecanique* of George Antheil, Pound wrote a book

in defense of the composer. Though intellectually an anti-semite, Ezra Pound sang the praises of Heinrich Heine and dedicated his *Culture* to the poet, Louis Zukofsky. And when he was on trial for treason, the Jewish poet whom he had befriended wrote:

"I never felt the least trace of anti-semitism in his presence. Nothing he ever said to me made me feel the embarrassment I always have for the 'Goy' in whom a residue of antagonism to 'Jew' remains. If we had occasion to use the words 'Jew' and 'Goy' they were no more or less ethnological in their sense than 'Chinese' and 'Italian'."

At first, Ezra Pound was an expatriate only in the physical sense. When Harriet Monroe founded the important magazine, *Poetry*, Pound wrote her a long letter:

"Are you for American poetry or for poetry? The latter is more important, but it is important that America should boost the former, provided it don't mean a blindness to the art. The glory of any nation is to produce art that can be exported without disgrace to its origin." He appendaged this note, written in the summer of 1912:

"P.S. Any agonizing that tends to hurry what I believe in the end to be inevitable, our American Risorgimento, is dear to me. That awakening will make the Italian Renaissance look like a tempest in a teapot! The force we have, and the impulse, but the guiding sense, the discrimination in applying the force, we must wait and strive for."

Miss Monroe appointed Pound as an unpaid foreign editor of her magazine. The relationship was reminiscent of that Greek philosopher, captured in war and sold into bondage, who auctioned himself off on the slave market with the cry: "Is there any man here who wants to buy a master?"

As Miss Monroe recalls their collaboration: "Thus began the rather violent, but on the whole salutary, discipline under the lash of which the editor of the new magazine felt herself being rapidly educated, while all incrustations of habit and prejudice were ruthlessly swept away. Ezra Pound was born to be a great teacher. The American universities, which, at this time of his developing strength, failed, one and all, to install him as the head of an English department, missed a dynamic influence which would have been felt wherever English writing is taught. It is not entirely his fault if he has become somewhat embittered. . ."

In the middle twenties, Pound went to Rapallo, Italy, withdrawing from the world of the cafes. He read medieval manu-

scripts and, when the depression came, began to pore over economic theories. The reasons for this decisive flight into solitude remain obscure and debatable. Among them surely were his poverty and rejection by his native land. Was he, as William Carlos Williams suggests, a giant in the creation of aesthetic form, lacking a content, or unifying force, with which to fill it? In plainer language was "the thing that finally ruined Ezra" nothing less than "plain emptiness?" J. V. Healy puts the same idea somewhat more tactfully when he remarks: ". . . Eliot's success and Pound's failure lay mostly in Eliot's possession of a synthesizing imagination and Pound's lack of one."

Under more favorable circumstances, Pound might have become a comparatively prosperous poet who resided in America, but he could never have become a poet of America in the sense that Walt Whitman was. He scorned the values of democracy, the discipline of science, the faith in technology and the blunt tool of pragmatism. He had removed himself progressively from the American scene to the outmost limits of time and space. Other eminent Americans ultimately rejected American values—notably Henry James and Henry Adams—but none of them became traitors.

"Ezra is one of a well recognized group of Americans who can't take the democratic virus and stand up under it," Williams comments.

Monetary Economist

Pound was soon dating his letters to American friends from Rapallo according to the calendar of the fascist revolution. He published a book on economics with a postscript signed: *E. P., Feb. 12, anno XII dell' era Fascista*. He had apparently been abroad long enough to forget that February 12th was Lincoln's birthday.

The Great Depression had come and Pound, along with many others, pondered over the fact that millions were idle and hungry while the machines that could clothe them and the farms that could feed them gathered dust and grew weeds.

In search for a solution, he turned his mind to the discipline of economics, and shortly found his economic Koran in the writings of one Silvio Gesell (1862-1930). To all respectable economists, Gesell seemed a crackpot and a denizen of an irrational scientific underworld. A German, he had retired from a successful career as a merchant to devote himself to experimental farming and the writing of polemics. When the Communists took power briefly in Bavaria in 1919, the 57 year-old Gesell joined the

Soviet Republic as its Finance Minister. When it collapsed, he was court-martialed, but avoided execution.

Gesell was, however, by no means a Marxist. He believed in a highly competitive economic system kept on an even keel by an ingenious type of monetary manipulation coupled with the nationalization of land.

His starting point was the discovery that throughout history the interest rate had remained comparatively constant, whereas the earning power of capital had not. He inferred that the stickiness of interest rates forced fluctuations in investment levels which caused alternating periods of boom and crisis. His proposed remedy was to impose a stamp tax on money. In order to avoid paying the tax, people would spend more rapidly, money velocities would increase, interest rates would decline and rising investment would pull the world out of depression. This program would have been beneficial during depression. The late Lord Keynes rescued Gesell's reputation from the limbo of the little groups of monetary maniacs.

It was too bad that Ezra Pound had to dabble in these matters, since he did not have the type of mind which readily grasps them. But he had now found the central, unifying theme which he believed would impart significance to his life work of poetic creation. The motif was usury, or *usuria*, as he put it. Inflexible interest rates, he thought, produced economic disaster. And who, after all, were the usurers? They were Jews.

He then combined Gesell's theories, economic anti-semitism and an adulation of Mussolini as a symbol of ORDER. The product was a nonsensical book called *Jefferson and/or Mussolini*, which mirrored the rapid disintegration of his once powerful mind: "The fascist revolution was for the preservation of certain liberties and FOR the maintenance of a certain level of culture, certain standards of living, it was NOT a refusal to come down to a level of riches or poverty, but a refusal to surrender certain immaterial prerogatives, a refusal to surrender a great slice of the cultural heritage."

Toward the Abyss

Pound's last decade was one of swift demoralization and loss of creative power. The sensitive ear remained, but not the mind. Having become a campfollower of the armies of terror, Ezra Pound marched into the mire of nihilism.

In 1939, he returned to the United States to spread anti-semitism

and laud the nation of order and discipline where all trains ran on time. Some of his literary contemporaries took the charitable view that Pound was insane; others ostracized him. He lectured bankers on economics for hours at end—at least, those who would listen. He showed no desire to learn anything himself, but clung smugly to his obsolescent view of economic Truth.

He returned to Italy disappointed. When war came, he broadcast over the fascist radio. After Pearl Harbor, there was a brief month of silence from Ezra Pound. Then, in January 1942, he resumed his radio addresses and at once crossed the borderline between disloyalty and treason.

The Italian radio announced that Ezra Pound "will not be asked to say anything whatsoever that goes against his conscience, or anything incompatible with his duties as a citizen of the U.S.A." Whatever Pound's conscience, his duties as an American citizen did not include attempting to undermine the morale of the armed forces of his country.

In addition to being an economist and one of the few sane men in a mad world, it seems that Pound was also an expert on international law. On January 29, 1942, he announced:

"The United States has been for months illegally at war through what I consider to be the criminal acts of a President whose mental condition was not, so far as I could see, all that could or should be desired. . . ." It is difficult to see how America could be "illegally at war" when Mussolini and Hitler had first declared it. The only outlaws produced by this reasoning were the Fascist and Nazi leaders. But even this simple point escaped Pound.

A few months later, he broadcast some incoherent jargon that may have been calculated to impress the men on American warships: "I ask whether the spirit of '76 is helped by a-floodin' the lower ranks of the Navy with bridge-sweepin's. . . ."

On May 26th, he told the American people: "Every reform, every lurch toward the just price, toward the control of a market is an act of homage to Mussolini and Hitler. They are your leaders. . . ." These four words were, in all probability, enough to entitle Pound to the electric chair had he been sane enough to stand trial for them.

His other broadcast ideas were also shoddy things clad in an incoherent vocabulary—hardly worth risking a life to express. For instance, the poet had ideas on the peace. It "will not be based on international lending. Get that for one . . . England certainly

will have nothing whatever to say about what its terms are. Neither, I think, will simple-hearted Joe Stalin, not wholly trusted by the kikery, which is his master."

He wrote former American friends in less cautious terms—the broadcasts were perhaps both a mirror of cerebral decomposition and of a squirming sort of cowardice. These letters laid bare an ugly streak of sadism and insensitivity. The civil war in Spain, he told Williams, was of "no more importance than the draining of some mosquito swamp in deepest Africa." He exulted over Gestapo butcheries on the Eastern Front, referring to "fresh meat on the Russian steppes." He spoke of "Hitler the martyr."

America, Ezra Pound declared, "never had a chance in this war." In reply, when Mussolini's papier-maché war machine collapsed the American military placed Pound in a prison camp near Pisa. His new leisure time went into writing the *Pisan Cantos*, to which none of his captors bothered to object.

The Verdict

Eventually, he was flown to Washington to stand trial for treason. Four alienists, after examining him and his writings, concluded:

"At the present time he exhibits extremely poor judgment as to his situation, its seriousness and the manner in which the charges are to be met. He insists that his broadcasts were not treasonable, but that all of his radio activities have stemmed from his self appointed mission to 'save the Constitution.' He is abnormally grandiose, is expansive and exuberant in manner, exhibiting pressure of speech, discursiveness, and distractibility.

"In our opinion, with advancing years his personality, for so many years abnormal, has undergone further distortion to the extent that he is now suffering from a paranoid state which renders him mentally unfit to advise properly with counsel or to participate intelligently and reasonably in his own defense. He is, in other words, insane and mentally unfit for trial, and is in need of care in a mental hospital."

On the basis of this report, a jury in the District of Columbia decided on February 13, 1946, that Ezra Pound was of "unsound mind."

Poetic Justice

Pound now sits in a comfortable room in St. Elizabeth's Hospital on the outskirts of Washington. Friends and admirers supply him with books. He is writing more verse and studying Chinese.

This last fact apparently infuriated the poet, Robert Hillyer, who composed an article for the *Saturday Review of Literature* (June 18, 1949) in which he implied that a man sane enough to learn Chinese was also sane enough for hanging. But the asylums are, as a matter of fact, sprinkled with linguists and mathematical wizards. Hillyer was on more solid ground when he objected that the comfort of the poet's surroundings "may with just indignation be contrasted to the crowded wards in which are herded the soldiers who lost their minds, defending America, which Pound hated and betrayed."

There is at least poetic justice in the conclusion to the Pound affair, which is far more instructive than the crude alternative of penitentiary or execution. If the alienists were right in their unanimous judgment, the one American representative of Western culture who betrayed democracy to the fascists was a lunatic.

Thus adjudged, Ezra Pound cannot afford to be cured. Once he steps out of St. Elizabeth's he must stand trial for treason. The alienists decided that he was too unbalanced to stand trial, but they did not conclude that he had been mad when he took traitor's pay from Mussolini's government.

The Communist publication *New Masses* issued a symposium on Ezra Pound "in which all the contributors declared he should be executed forthwith, some favoring hanging, some shooting." This was before Pound had been brought to trial and at a time when no jury had found him guilty, but Communist notions of democracy, justice and civil rights are, of course, more than slightly different from our own. In the People's Democracies, the judicial process frequently begins after officials have already returned the *Alice in Wonderland* decision, "Off with their heads!"

But even from the standpoint of political expediency, the Communists were short-sighted. Hanging an eminent American poet would have given fascism an aura of martyrdom which it did not deserve. The jury's restraint in taking nothing from Ezra Pound except his dignity and stature as a man is to be commended.

The Bollingen Award

Ezra Pound's betrayal stirred up a tempest in the world of American verse. The literary world was further agitated when, in early 1949, a Library of Congress committee of eminent American poets granted him the Bollingen Award for *The Pisan Cantos*—the poems he had written as a military prisoner in Italy.

When the irrelevancies were stripped off, the intellectuals' attack on Pound boiled down to the belief that the rottenness of Pound's philosophy and the anti-human role which he had played in the world struggle of the thirties had also corrupted his poetry. This is very different from saying that because a man is a traitor he cannot be a great writer. It involves judging his work in terms of its content as well as its form, insisting that the meaning of poetry is as important as its cadence.

Unfortunately, Pound's assailants were not always clear as to the importance of this distinction, although it is the very knife edge separating literary criticism in the totalitarian states from that in a democratic society.

The fact that an artist holds ideas which we believe are not only wrong but pernicious obviously does not disqualify his work. If Pound hated the Jews, Dostoevsky had similar feelings about the Germans. If Pound wanted Western science and democracy ground into the *kulturkampf* of Hitler and Mussolini, Dostoevsky held not dissimilar views about Imperial Russia vis-a-vis the West. We cannot praise Dostoevsky merely because Czarism is a distant memory and castigate Pound because the enormity of fascism is of recent date.

The issue then is the work itself. The critics are most relevant when they assert that Pound's influence over poetry has been, on the whole, degenerative; that he has helped alienate poetry from life; that he has distorted song into acrostics for the pseudo-learned; and that, wherever he has plagiarized, he has also polluted. If all this is true—and the present writer feels incompetent to express any personal judgment—then the parallel between Pound's poetry and Pound's politics is so close that one must inevitably shed light on the other.

The Bollingen Award was a triumph for Ezra Pound, but, in a sense, also a culminating defeat. He may have been amused at the official verdict that America's greatest poetry was being written by a madman under indictment for treason. But a more significant consideration was that such an award, whether substantively right or wrong, could have been made at all. In judging Pound's poems without reference to his treason, the Bollingen committee revealed the immense vitality of the American tradition of liberalism which Pound had sought so vainly to destroy.

PRO-SOVIET ESPIONAGE

"A prince should have a spy to observe what is necessary, and what is unnecessary, in his own as well as in his enemy's country. He is the king's eye; and he who hath him not is blind."—The Hitopadesa.

"He that spies is the one that kills."—Irish proverb.

Somewhere in his great novel of revolution, *The Possessed*, Feodor Dostoevsky describes a useless and unnecessary murder. The instigator of the crime is the revolutionary leader, Stavrogin. His purpose is not to spill the blood of an enemy of the movement, but to bind the tool who does the actual killing to the cause. There is no cement, Stavrogin observes, stronger than the guilt of shedding blood.

To a lesser extent, this applies to joint participation in other crimes. The binding force created is not merely fear. Even if its detection is unlikely, the crime transforms its perpetrator into an Ishmael. He can no longer feel a secure member of the society into which he was born. He can justify the criminal act to himself only by total identification with the organization which instigated it. That organization and he share a mutually dangerous secret.

Paradoxical as it may seem, Communist espionage in Washington—in its initial phases at least—appears to have been largely motivated by considerations similar to these. The apparatus was interested in the "political development" of its agents. They were to become NASH, as the matter was put in the notebooks of the Soviet Embassy spy leaders of Canada. "'NASH', literally translated," the Canadian Royal Commission explained, "meant 'OURS' or 'HE IS OURS.'" Men who were NASH were unconditionally loyal to the Kremlin and the apparatus. Theirs was a faith

beyond or below reason. They acted according to the dictate "*Credo quia absurdum.*"

This chapter discusses some of the known background of Soviet espionage in Washington. It deals chiefly with the purposes and mechanisms of the Comintern apparatus and with the causal factors which brought men of apparently high moral character into the net of betrayal.

Fragmentary data has been published concerning an espionage organization in Washington with which Whittaker Chambers was associated as courier during the last spasms of the Hoover Administration. Documents were microfilmed in Washington. Concealed in cheap pocket mirrors, the films were taken to Moscow by Communist sailors on German ships. This was presumably part of the Comintern apparatus, directed from its West European headquarters in Berlin. After Hitler took power, the communications system was broken up. Efforts to use seamen on Italian liners for the same purpose failed.

In the early nineteen-thirties, there were probably four functioning Soviet underground apparata in the United States. In so far as possible, each was kept in a watertight compartment. However, small fragments of information coming to the couriers indicated that parallel spy groups were at work.

Three of these organizations were political and centered in Washington. They served Soviet Military Intelligence, the NKVD (or Russian political police) and the Comintern (or Communist International). The fourth was an industrial espionage outfit. It was not primarily interested in government data and did not operate from Washington.

The existence of these three independent political apparata had certain real advantages from the standpoint of the Kremlin. The value of the data supplied by each group could be checked against that furnished by the others. If American counter-intelligence had penetrated any one of these groups and fed false information through the courier channels, this could have been detected. If one of the organizations were discovered and broken up, the other apparata could continue to function.

The Comintern apparatus was instructed to recruit influential government men—either in key jobs or destined for them later. The central objective was to push these agents forward into strategic positions of government power. In a future period of crisis between the Soviet Union and the United States, it was thought that their services would be invaluable.

Role of Espionage

Government employees working in the Comintern apparatus in the early thirties were used, wherever possible, as sources of classified information. The main purpose of this was not to get priceless secret data, but to change the character and outlook of the men who served the illegal organization.

The agents had to be kept loyal and this meant keeping them busy. The men of the underground believed that they were part of a moral and intellectual elite. Reminiscing over his years as a Soviet spy while an employee of the Department of State, Henry Julian Wadleigh spoke of his sense of "exhilaration." He lived in the stimulating environment of continuous danger. The strongly religious yearnings of his childhood and youth seemed fulfilled by conscious self-sacrifice in a high cause. Wadleigh's life had been given purpose and meaning by the Communist apparatus.

If the agents had been left idle until the great crisis in Soviet-American affairs broke out which all Communists foresaw, the Washington organization would probably have disintegrated. This apparatus would have been subject to the same forces of disillusion and doubt that created periodic defection and apostasy in the open Communist Party. The Soviet Union could not afford fair-weather friends in the underground organizations. It needed men who would continue unhesitatingly to serve the U.S.S.R. into and after the cold war period. Accordingly, dangerous, illegal activity was a pre-requisite to organizational survival. By the act of espionage, the agents destroyed their bridges back to a normal life as loyal citizens of their country. Only a few would travel the hard road of apostasy and confession. Those who were to follow this course would be denounced by their former comrades as renegades and traitors and they would be suspected by American society at large both because of their past and their present.

The stealthy process of ideological hardening through criminal action was linked with outright moral corruption. Although the recruits had entered the ring for ideological purposes, the couriers of the Comintern apparatus were instructed to offer them money regularly in return for data received. Every cash payment was receipted by the government spy.

In Canada, where the same course was followed, the more high-minded agents regarded payment as "a preposterous suggestion." Old hands such as Sam Carr, Organizing Secretary of the Communist Party of Canada, however, got into the habit of taking Russian money. In the United States, Soviet courier Elizabeth

Bentley, acting under FBI instructions, accepted \$2,000 from Anatol Gromov, First Secretary of the Soviet Embassy.

The Canadian Royal Commission report concludes that a cash nexus was imposed "to further the moral corruption of the Canadians caught *'in the net'* and thus to assist in their further *'development.'*" The signed receipts, the Commission thought, "could, if necessary, presumably be used for blackmail purposes. . . ." This last observation seems palpably wrong. The last thing the Russians wanted to do was to admit the existence of the espionage apparatus. Surely, the point was to make the members of the spy nets understand that they were no longer free agents.

Where the direct cash approach failed, moral integrity could be undermined by means of presents. Girl agents were deluged with flowers. Male operatives received Bokhara rugs and other "gifts from the peoples of the U.S.S.R." Alger Hiss was accused of having received such a rug and Henry Julian Wadleigh admitted having been given one. These "gifts" were bought in New York with funds supplied by the Russian Embassy,

New Orientation?

In Soviet eyes, espionage soon became of critical importance. Probably the change occurred during World War II.

The enormous store which the Russians placed on stolen documents during the war period is revealed by the Canadian spy investigations, the accuracy of which has never been questioned in any responsible quarter. The two chief leaders of the Canadian Communist Party—Fred Rose and Sam Carr—worked as active spy group-leaders in the Military Intelligence apparatus. Moreover, they were in the pay of the Soviet Government. The Soviet Embassy attached such importance to espionage that it assigned at least fifteen of its officials and employees to the work of contacting the Canadian spies and processing their reports. At VE Day, the Russians planned a vast expansion of their espionage bureaucracy and proposed to smuggle into the country trainees of the Military Intelligence Headquarters in Moscow in the guise of commercial and economic personnel.

Through the Canadian spy apparatus, the Soviet Government received a sample of Uranium 235, technical information on atomic diffusion plants and the formulas and production set-up for the secret Canadian high explosive RDX. Sample requests from the Military Intelligence Director in Moscow covered proximity fuzes, radar submarine detection, aerial photography and a con-

geries of related military-technological matters. In a single day, the Soviet Embassy microfilmed seven hundred pages of secret technical data received from one agent.

This covers only part of the material listed in the reports which Cipher Clerk Igor Gouzenko stole from his Embassy and turned over to the Canadian authorities, thus starting a four-year chain reaction of spy hunts. It is only a fragment of the tasks and progress reports of one out of several espionage rings at work on Canadian soil. The full scope of these activities may never be known. And, in comparison with the United States, Canada is of secondary importance both as a military power and as a war research center.

The value of these harvests of secret data to the Soviet war machine cannot be gauged. Most military devices require a vast assemblage of production data seldom available to any single espionage agent. There are few "secrets" which can be jotted down on cigarette paper. The utility of spy reports covering the design of secret weapons, for instance, would hinge on such factors as the mass of related data available to the U.S.S.R. and its technological capacity to reproduce the armaments. If it is true that plans for the B-29 were stolen by Americans working as Soviet spies, this was of major importance since the Russians already had interned B-29s to work with.

The Soviets evidently considered espionage important enough to justify sacrificing the international good will they had built up during the war. No single factor was more potent in drying up the reservoir of sympathy resulting from the combat record of the Red Army against the Wehrmacht than the spy disclosures. After the espionage exposés had convinced the public in the Western democracies that sincere cooperation could not be obtained from the Soviet regime, Congress appropriated billions of dollars to checkmate Russian territorial expansion. A tepid atmosphere became glacial. The revelations of systematic betrayal at a time of apparent comradeship in arms between the two nations hardened the American people and accelerated the apparent drift toward war.

The Russians must have believed that the vast mass of information legitimately available to them during wartime was either largely worthless or furnished for purposes of deception. In their warped scheme of things, the spy began to assume huge proportions. The grotesque trials for espionage behind the Iron Curtain during 1948-49 revealed the extent of this mania. The incurably romantic Bolshevik materialists acted as if conspiracy were one

of the prime movers of history. In part, this was a heritage of the revolutionary underground of Czarist Russia. Had not Stalin himself spent twenty years of his manhood as an illegal plotter?

The barricades had, of course, become obsolete. All effective armed power was now concentrated in the complex military-industrial organizations of the state. Successful revolution in a modern nation, therefore, assumed the guise of a combined operation between the Red Army and domestic fifth columns. As the role of the organizer of street warfare faded in the Communist scheme of things, that of the communications network between the war apparatus of the enemy camp and the Soviet power grew correspondingly in importance.

Espionage Recruitment

The recruiting methods of the Comintern apparatus in Washington showed a brilliant, apparently fool-proof technique. Since the very existence of the spy rings was a closely guarded secret, members were categorically forbidden to approach prospective recruits. Moreover, wayward, doubting and intellectually independent people were not wanted within the highly-charged voltage of the illegal organizations. Even the psychically sound and the consistently sober might some day find their convictions shaken by the dizzying changes in Communist policy which Soviet national interests periodically demanded. Unless guarded against, this would prove a potent source of danger to the internal security of the apparatus.

Recruitment work was generally handled by specialists—by a highly-paid band of experienced professional revolutionaries. They moved back and forth between Washington and New York, appearing before the members of the net with no more warning than a carefully guarded telephone call. They were generally known only by assumed first names. Their addresses, identities and background—even their nationality—was a mystery.

Moscow gave the couriers the names of people in Government to contact for espionage work. These prospects might have been originally recommended either by men and women already inside the apparatus or by outside Communists. Having been ordered to do so, the courier would call on the prospect, discuss politics without revealing the existence of the underground organization and gather data about the potential member.

The courier then forwarded this information to Moscow, where it was systematically analyzed by a corps of political experts and

psychiatrists. Fresh questions were forwarded by Moscow. The political history of the recruit, together with data for the psychiatrists, covering such matters as his taste in food, hobbies and sports, his relationship to women, his drinking habits, were duly deposited in Comintern dossiers. Sometimes as many as a dozen questionnaires had to be filled out before the courier broached the critical question: Would the prospect be willing to work in an underground unit of the Comintern?

During his visits, the courier resolved the prospect's doubts and waverings and indoctrinated him in the Communist faith. If the candidate agreed to enter the apparatus, he would immediately be isolated from all radical activity. The First Commandment was no contact, under any circumstances, with the American Communist Party. This ban extended to all organizations tarred with the brush of Communism. From now on, the only contact of the espionage agent would be with his courier.

The chief duty of the agent was to advance as far and as fast as possible into key positions of government power. He therefore had to conform. He was under orders to express conventional opinions, to move in the right social set, to dress well, to slough off hampering personal idiosyncracies. The agent had to mask his personal opinions. His life became intellectually barren and shot through with deceit, involving forced isolation from all who held similar views. Whereas the spy in wartime only lives behind a mask for a period, the Soviet conspirator within the Government could never reveal himself.

Secrecy was thus an absolute rule. The conspirators were drawn into the highly dangerous business of espionage by a compelling faith. As a rule, the ideological approach was hatred of fascism and support of the worldwide Communist battle against it. This became gradually transformed into unconditional support of the Soviet power as the principal vehicle both of anti-fascist action and of the world Communist revolution.

The underground agents bound themselves to lives of secrecy and silence. If discovered, they would be deprived even of the small joys of martyrdom for a cause. Their role under such circumstances would be to repudiate any taint of even sympathy for Communist ideas.

Character and Betrayal

Obviously, these Communist agents were by no means the adventurers and moral derelicts normally associated with the

soiled occupation of espionage. Most of the officials implicated in both Canada and the United States were highly intelligent, of superior education and seemingly unimpeachable moral character. The Canadian Royal Commission report on Soviet espionage activities—the basic study of the operations, role and interrelationships of these criminal apparata within the Western democracies—shows this. Thus, Dr. Raymond Boyer was a university professor with an international reputation in chemistry, of good family, social grace and large private means. Eric Adams was an expert financial economist. Dr. Israel Halperin was a professor of mathematics entrusted with vital war research. Of the thirteen Canadians charged with pro-Soviet espionage, three were Doctors of Philosophy, five were responsible executives and five were research scientists on war projects.

With great perceptiveness, Rebecca West describes the trial of the English Communist agent, Dr. Allan Nunn May, who was convicted of giving samples of uranium to the U.S.S.R.:

"The Attorney-General, Sir Hartley Shawcross, showed that he was sick at heart under the necessity of making the speech for the prosecution and waited for the sentence with an apprehension rarely shown even by a defending counsel. It was the light that shone about the man's head which made the thought of his imprisonment intolerable: the changing and complicated intellectual patterns proceeding from his brow and spelling out a meaning which men required. All present knew that the power to make such divinations is intertwined with a special liability to feel pain and panic: for him imprisonment would be such a hell as death would not be to William Joyce. Dr. Allan Nunn May was precious to us . . . because he was something which man must be and is not yet, save here and there, and with great difficulty."

Psychic Bonds

How is the faith of men such as this retained intact despite the swift, cynical alterations in Communist policies? How is it that men of exceptional vision, trained for years in the scientific and critical approach, can blind themselves to the difference between the skin of Communist idealism and the musculature of Soviet tyranny?

Some of the processes have already been described. The elaborate recruitment system plays a major role. The Communist organization is analogous to a system of concentric circles. As the neophyte approaches toward the hub, he advances in power and

responsibility. He also moves into illegal activities—into the danger zone where the consequences of exposure would be highly serious to the Party. The selective process bars potential truants from the inner circles. Those who reach it are men with a compelling need for an absolute faith.

Lenin exalted the calling of the professional revolutionary, played upon the psychic impulses involved and won the allegiance of the Russian underground functionaries to his faction. The ideological spy must feel "exhilarated;" he must believe that he is the salt of the earth; his feelings of loyalty must be transferred entirely from the community in which he lives to the conspiracy of which he forms part.

The need for this sense of exaltation is great since the Soviet espionage source leads, by all accounts, a sterile life. There is no resemblance between this drab business of stealing and surreptitiously passing papers and the spy of romantic fiction. One might think that this emotionally and spiritually arid life would cause mass defections. But the record seems to show that it does not. As far as is known, only four members of the Washington espionage underground have given their stories to the authorities. Of these, David Whittaker Chambers, Hede Massing and Elizabeth Bentley were couriers and liaison agents. Only the fourth—Henry Julian Wadleigh—was a truant Government official who served as a source of spy data. The conditions surrounding the exception prove the rule. For Wadleigh had been dropped from the apparatus for suspected disloyalty, had refused to rejoin it and then had remained silent for eight years. He testified only after he had been accused of espionage by Chambers.

Thus the insulated spies in Government were apparently not tormented by the widening gap between appearance and sordid reality. Some of the more tough-minded couriers were. The nature of their work deprived the spy operatives of normal psychic satisfactions. The couriers, on the other hand, were well paid and had considerable freedom of action. The fact that the couriers provided the apostates seems a paradox.

In general, the courier—a mysterious and peripatetic figure—was the sole bridge between the agent and the worldwide movement he served. The agent received orders from his courier. The courier meted out praise or blame. The courier represented and personified the burning faith which had led the agent to betray his country's interests. Surely, except for wife and children,

the courier must have become the most important individual in the latter's life.

Julian Wadleigh has written a stimulating and in some ways revealing account of his life as a pro-Soviet spy. One is struck at once by his incessant speculations about the background and past of his courier—the man he knew as “Carl” and the public knows as Whittaker Chambers. Wadleigh tells of the day when Chambers first disclosed that he had broken with Communism. To Wadleigh, this was not a disappointment; it was a psychic earthquake.

How deep-seated was the emotional dependence of the agent on his courier? How much loyalty could the apparatus squeeze out of a relationship which assumed transcending importance because of the intolerable nature of the double life which the spy was forced to lead? Probably, the situation created was comparable to the emotional transfer which occurs in psychoanalysis and which the analyst must at all costs break.

Seed-Beds of Treason

In the emotion-charged atmosphere of the first trial of Alger Hiss, any visitor would have thought that the former State Department official was being tried, not for perjury, but for treason. Hiss himself had characterized his accuser, Whittaker Chambers, as “a confessed former Communist and traitor to his country.” During the trial, Defense Counsel Lloyd Paul Stryker, a great forensic actor of a bygone Shakespearean school, roared at Chambers:

“You had left the flag, the Stars and Stripes—the flag there between you and His Honor?”

Inevitably, the epithet “Traitor” followed and Chambers blandly concurred in this appraisal of his past, possibly on the religious theory that guilt can be wiped away by confession like fog on a windshield.

Nor was the Prosecution more measured. In his pyrotechnic summation of the Government's case, Prosecutor Tom Murphy declared:

“Alger Hiss was a traitor. Another Benedict Arnold. Another Judas Iscariot. Another Judge Manton, who was in high places and was convicted right here in this building . . . Someone has said that roses that fester stink worse than weeds. A brilliant man, like this man, who betrays his trust, stinks. Inside that smiling face is a heart black and cancerous. He is a traitor.”

Allowances must be made for the florid tradition of criminal trials—a tradition according to which the world consists only of saints and villains. Neither Mr. Murphy nor Mr. Stryker created this tradition, but it is perhaps inevitable that both should follow its dictates.

Let us take a closer look at what Attorney Murphy said. Martin T. Manton, whom he compared with Benedict Arnold, was a crooked judge and bribe-taker. He was faithless to his trust, but not a traitor. The real charge against Alger Hiss was that he had acted as a Soviet spy while an American official. A gross betrayal of trust, but not treason—for the simple reason that the United States and the Soviet Union were not at war.

Over a century ago, Chief Justice John Marshall pointed out that the charge of treason, since it had such immense power to rouse public passions, should not be levelled against persons accused of lesser offenses.

This seems a commonsense rule and the present writer has tried to follow it. Soviet espionage is discussed in this chapter and in the two that follow, not because it is treason, but because there is a clear line of causal progression between the activities of the ideological spy and those of the outright traitor. Treason, in its most significant form, is a covert transfer of allegiance to a foreign power in time of war. Those who do this in peacetime form the cohorts of future traitors. "The peacetime thistle of an alien loyalty," the London *Economist* editorialized on October 8, 1949, "is unlikely to yield the figs of patriotism in the season of national emergency and all significant [English] traitors of the last war . . . had already clearly made their choice in prewar days."

In our time, the Faustian compact of betrayal frequently stems from thirst for power. Men and women who fear to submit their political ambitions to the test of free elections often withdraw into the microcosmos of conspiracy. "Treason, far from being an antiquated concept," the *Economist* declares, "is a special danger of an age of international revolutionary ideologies; it cannot be doubted that in any armed struggle with Communist Russia treasonable activity would be more serious for this country than in the late war against Nazi Germany."

It is for these reasons that Communist underground work is discussed in these pages. While not treason itself, it is a stepping stone toward it. Former agents, such as Whittaker Chambers, Hede Massing and Julian Wadleigh, broke away from the con-

spiratorial apparatus when it became plain to them that they were serving, not an international cause, but a foreign dictatorship. For some agents the Nazi-Soviet Pact was their Rubicon and they refused to cross it.

The pro-Soviet conspirator of the present day stands much closer to treason. Unless blinded by faith, he can have few illusions as to the character of the regime he serves. The belief that the U.S.S.R. is a democracy or that its support is necessary for the destruction of fascism both belong to an era long since dead. Even more fundamental is the fact that the chief enemy of the Soviet Union today is, not Germany, but the United States. The issues, in other words, are at last becoming clear.

THE CASE OF ALGER HISS

"I do not hate Mr. Hiss. We were close friends, but we were caught in a tragedy of history."—David Whittaker Chambers.

"A confessed former Communist and traitor to his country."—Alger Hiss on Chambers.

The experience which the United States had gained in combatting Nazi sedition was of little use against Communist disloyalty. As previously observed, the would-be American Fuehrers were almost all prima donnas. Each gloried in strutting before his little hate organization and printing his particular type of hallucination in a private periodical. For the most part exhibitionists and charlatans, they chose outlandish pseudonyms and passed themselves off as Dukes and Lieutenant Generals. One of them claimed to have used a roundtrip ticket to Heaven.

Infantile as they were, they nevertheless managed to work together without too much backbiting. Their cooperation was the voluntary camaraderie displayed by inhabitants of a maniac world. The armies boasted more generals than privates. If more than a handful were in the pay of the Nazi or Japanese Governments, no evidence of this fact has been made public.

The Communist organization exhibited methods and personnel that stood in stark contrast. Tightly knit and controlled from the distant Kremlin, the Communists, like a religious brotherhood, emphasized subordination of self. The ideal professional revolutionary was portrayed as a man of iron discipline, unflinching obedience and quiet courage. He suppressed all personal qualities, urges and passions which ran counter to the needs of the Party.

Stalin stressed this leaden goal of an absolutely monolithic revolutionary machine as early as 1928, after smashing the Bukharinites—the last powerful oppositionist group in the Comintern.

From then on, affirms biographer Isaac Deutscher, "he squeezed out the men who had independent minds, the rebels, the theoreticians, the radical *literati*, the leaders of European communism in its period of revolutionary spontaneity."

Under Stalinist leadership, in short, the lineaments of the archetypal underground Communist had entirely changed. The resolute and romantic organizer of street war had been put away in a museum. Into his place had stepped the iron bureaucrat—the well-dressed, soft-spoken, capable executive who sat in the board room or on the Government committee. This man with a briefcase led a secret life of his own. If Communist rule should be proclaimed in his country, he would move to the head of the table.

Like their predecessors and foreign compatriots, the quiet American agents of the Soviet Revolution were largely intellectuals. They were intellectuals with a conscience and therefore, to a certain extent, masochists. In a curious way, they delighted in humbling themselves. Well-educated, comfortably situated and able to reason clearly on most matters, they grovelled before an idealized conception of "the proletariat." Their peculiar desire for self-abasement made them eager participants in the Party program to suppress individuality and transform it into the grey mass of the movement. They posited the bizarre personal goal of becoming mere fuel for what they deemed the locomotive of history. Their individual drives toward power were less fierce and singleminded than those of the fascists and they assumed strange, contorted forms.

The cleavage in orientation and outlook between the two groups is illustrated in part by their differing religious backgrounds. Jews need not be considered in this context since, for self-evident reasons, fascism has not appealed to them. Similarly, the doctrinal unity of the Catholic Church makes it hard to delineate ideological differences within the fold.

Within Protestantism, however, there exist marked theological and emotional divergences which have had significant political implications. A comparatively large number of the fascists who were Protestants espoused Fundamentalist creeds, insisted on literal interpretation of Scripture, and exalted the Old over the New Testament and the Book of Revelations over the Gospels. The emphasis was on miracle, cataclysm and eschatology, rather than the individual soul. Col. Sanctuary and Gerald Winrod were both Fundamentalist preachers. One wing of the domestic Fascist movement held as its basic tenet that the Anglo-Saxons,

rather than the Israelites, were the Chosen People of the Bible.

In contrast, Communists of Protestant background tended to come from the pacifist, non-conformist groups which had formed the "levellers" of the Cromwellian period and had battled under Roger Smith for freedom of belief in Rhode Island. They exalted individual conscience, moral purity and salvation by good works over and above creed. Julian Wadleigh, for example, was the son of a liberal Protestant minister and a follower of Gandhi. Harold Ware, the first leader of the Communist elite group in Washington, was originally (the writer is informed) a Quaker. Ex-Soviet courier and group leader Whittaker Chambers gravitated eventually from Communism to the Society of Friends. Among those accused of illegal Communist activity, Noel Field had been a Quaker.

The participation of Quakers in American Communism is curious, for there is absolutely nothing inherently totalitarian about the Society of Friends. On the contrary, few religious groups place such great stress on the individual spirit, on the supremacy of each man's conscience and on the attainment of spiritual life through non-authoritarian means.

The chief characteristics shared by Communist neophytes and Protestant non-conformists, whether Quaker or not, would seem to be an acute sensitivity to injustice, a desire to suppress the more blatantly egoistic manifestations of personality and a belief that man can best realize the good life through service to others. The transition from Protestant non-conformism to Communism tends to occur when the religious man is reluctantly persuaded that the world's ailments cannot be cured by mere radiation from exemplary individual goodness.

The inherent conflict in this conversion is vast and, in its ultimate implications, self-destructive. The man who believes in the supremacy of the individual conscience falls under the sway of an iron collectivist discipline. The religious seeker accepts the doctrine that all morality is to be weighed on the scales of historic expediency. The believer in the power of peace and love becomes an organizer of class hatred and eventually of war. The devotee of freedom is transformed into an instrument for its utter extinction.

There are several reasons why such a transmutation is possible. The Protestant non-conformist asserts categorically that the end cannot justify the means and therefore finds himself highly critical

of the mores of his society. While the Communists outspokenly exalt ends over means, they claim to do so merely as a necessary evil during a transitional period of social struggle. The nominal and alleged end-objective of Communism is closely related to the Christian goal. It posits the disappearance of the state, considered as an instrument of coercion, and the arrangement of human affairs on the basis of a voluntary contribution by each according to his abilities, and distribution to each according to his needs.

By the time the Communist neophyte realizes that he is pursuing an ever-receding mirage across an endless moral desert, his course can be changed only with tremendous effort and sacrifice. The corruption of Communist agents through compromise, in short, is gradual, insidious, and frequently, final.

Another salient difference separating the Fascist and Communist movements lay in their mental and emotional appeal. As Hitler predicted, the men consumed by searing hatreds, by avarice, frustration, the lust for power and the urge toward destruction came to him of their own free will. Between men of this sort and the nihilist cause they espoused, there could be no real conflict or schism.

The attraction of Communism was virtually the antithesis of that of Fascism. The intellectual, middle-class Communist was generally drawn toward the movement, initially at least, by outrage over social injustice. Intolerance of evil and impatience with the creeping processes of democratic change led him to advocate a revolutionary solution. Once the necessity of violence and upheaval was accepted, any and all means, stratagems, lies and betrayals became just if they served the cause of revolution. The embodiment of this cause was the Soviet State. As the beneficent ends faded into the far distant future, the means toward these ends—a cynical and implacable struggle for command over the state—became all important. But it should again be pointed out that individuals who were neither cynical nor power-seeking could and frequently did enter this struggle without losing their sense of high mission.

At times the dialectic of the process is interrupted by an unexpected shock. Elizabeth Bentley, an ex-Soviet courier, for instance, experienced a psychic blast when she met her Russian superiors. Her testimony is revealing:

"I suppose, in a way, I was a very confused liberal, and, unfortunately, we confused liberals have a tendency to look for guid-

ance some place and a tendency to admire efficient people who know where they are going and seem to be doing a good job in the right direction. . . .

"Having worked with Mr. Golos, whom I took to be a great idealist, a man who was working for what I considered to be the betterment of the world, I had been terrifically shielded from the realities behind this thing, and when he died I was thrown in direct contact with Russians who had just come over from Russia. . . .

"They thought that I knew what was going on, and unfortunately they landed on me with both feet, made no bones about the fact that they had contempt for American Communists with their vague idealism, no bones of the fact that they were using the American Communist Party as a recruitment for espionage, and, in general, they were about the cheapest type of person I have ever seen—the gangster type."

A constant oscillation between idealism and cynicism, between self-abasement and aggression, seems characteristic of the non-Soviet Communist. It is part of the psychic matrix within which the Hiss-Chambers drama was played.

Whittaker Chambers: Poet-Conspirator

David Whittaker Chambers was born in Philadelphia in 1901. The son of an impecunious commercial artist, at eleven he was peddling vegetables and reading Dostoevsky. After high school, he moved through the South as a migratory worker, taking casual jobs, also suffering from hunger and unemployment. He lived for a while in a New Orleans dive.*

Chambers next turned up at Columbia University, edited the literary *Morningside*, but was taken off the masthead because of his tireless tilting at organized religion. After that came a trip to Europe. He saw Germany after World War I with the gangrene of hyper-inflation spreading over the land, and heard tumultuous Communist demonstrations roar the fighting song of the 1848 uprisings:

"Tear the concubine from the Prince's bed;

"Smear the guillotine with the Prince's fat."

When he returned to America, Whittaker Chambers had fin-

* During one of his court battles with Alger Hiss, an effort was made to prove that Chambers had then been the bed companion of "a prostitute named 'One-Eyed Annie.'" This seems to have been a poor guess.

ished the first stage in his pilgrimage toward a faith. In 1924, he joined the Communist Party—not as a fellow-traveller fuzz-brain, but as a professional revolutionary in the making. Chambers believed that a moribund society needed the surgeon's knife of Marxism-Leninism if it was to survive. His new faith combined Christian fervor with conscious acceptance of evil in both tactics and strategy.

Although he had become a "proletarian writer" acclaimed by Moscow, in 1929, when Stalin intervened personally to purge the majority faction of the American Communist Party, Chambers drifted out of the movement in protest against the destruction of intra-party democracy.

With the depression, however, Chambers hurried back into the Communist orthodoxy. He was soon recruited by Russian agents into the inner danger zone of Party activity—espionage. When his wife, Esther, heard the news, its implications did not escape her and she cried openly. For the next six years her husband—a pudgy, unimpressive figure with a blank face and immense aplomb—was involved in courier work.

Chambers recently testified that, shortly after the inauguration of President Roosevelt in 1933, a Communist "elite" cell was established in Washington. The men he named as its members ranged in age from twenty-one to thirty. One of the most experienced professional revolutionaries in the American Communist Party, Harold Ware, became the first director of the new organization. Ware had previously visited the Soviet Union with a few goodwill delegations and had stayed to run the second largest state farm in the U.S.S.R. His ostensible job in Washington was to direct a shadowy fellow-traveller farm research organization. His actual mission was to build the underground.

Ware was killed in an automobile accident and presumably Chambers then took over. Chambers' immediate superior was J. Peters, director of all the illegal work of the Party. Also known as Roberts, Alexander Goldberger, Steve Lapin, Pete Stevens, Steve Miller, Isador Boorstein and Alexander Stevens, this shuffling, dark, self-effacing man was a veteran of the Bela Kun Communist regime in his native Hungary.

Throughout the first phase of operations, Chambers stated, the Party considered infiltration into policy-making Government positions of critical importance, and espionage secondary or nonexistent. In 1936, Peters ordered four men severed from the secret Communist cell on the theory that they were destined to

go places in the Government and their careers might be endangered by functioning as a group. The most important of the men in this super-elite group, according to Chambers, were Harry Dexter White and Alger Hiss.

Dr. White was to rise to Assistant Secretary of the Treasury, to draft the so-called Morgenthau plan for conquered Germany and to serve as Lord Keynes' American opposite number in creating the World Bank and International Monetary Fund. In a gruelling examination before the Un-American Activities Committee, White categorically denied all of Chambers' charges. He had a bad heart condition and died a few days after the investigatory ordeal.

This meant that the brunt of the attack was to be borne by Alger Hiss. Of the nine men accused by Chambers of forming part of the Washington Communist Party elite in the early thirties, one was dead and six refused to answer any questions concerning Communist affiliations on the grounds of possible self-incrimination.* This left only Alger Hiss and his younger brother, Donald, whose bureaucratic career had not been of great importance to national security.

Alger Hiss: American Success Story?

Few of the younger men in Government were more generally liked and respected than Alger Hiss. He had been named for Horatio Alger, the writer of rags-to-riches fiction, and his career seemed to epitomize, almost flawlessly, the realization of the Great American Dream.

The early life of Hiss paralleled in certain respects that of Chambers. Where the youthful Chambers had sold vegetables, the boy Alger had marketed squabs. The happiness of both families had been darkened by suicides. But there the resemblance ended.

At Johns Hopkins, Alger Hiss was voted "most popular . . . best all around." Even in college, he combined unobtrusive brilliance with an easy-going, modest, attractive personality. Graduating cum laude from Harvard Law School, young Hiss proceeded

*Almost immediately after the conviction of Alger Hiss on January 21, 1950, Chambers stated that he was prepared to testify against members of this group. Some had been independently accused by Elizabeth Bentley of wartime espionage—a capital crime not covered by the limitations statutes,

to Washington as secretary to the Olympian Mr. Justice Holmes—perhaps the most coveted honor which a law school fledgling could attain. During the next fifteen years, Hiss was a Government career man. With the years, he moved into increasingly responsible positions, penetrating the sensitive areas of high policy. He accompanied President Roosevelt to Yalta and was responsible for organizing the San Francisco Conference at which the United Nations was created. In 1947, he resigned from the Department of State to become President of the Carnegie Endowment for International Peace, succeeding the eminent Nicholas Murray Butler.

Alger Hiss' hobby was ornithology. He was, Chambers thought, "a man of great simplicity and a great gentleness and sweetness of character." Chambers added that Hiss was a good Communist, rather "pious" about paying his Party dues.

If he was a secret Communist, he hid the fact superbly. Former spy courier Elizabeth Bentley testified against Assistant Secretary of the Treasury Harry D. White, but offered nothing detrimental concerning Hiss. Julian Wadleigh, the Soviet espionage agent who worked in the same division of the State Department as Hiss, thought him "a very moderate New Dealer with strongly conservative instincts."

The Catharsis of Chambers

In 1938, David Whittaker Chambers was apparently caught in the grappling hooks of the Soviet purges. He had "cut clear" of the Communist apparatus. Assistant Secretary of State Adolf A. Berle, Jr., recalled, "apparently as a result of the purge activities" under which thousands of Communist functionaries were being herded toward death.

Julian Wadleigh tells a similar story. He recollects that he met Chambers secretly at a restaurant. Chambers explained that the Kremlin had become convinced that he was a Trotskyite and had ordered him to report in person to Russia—"clearly with the intention of executing him when he arrived." Chambers told Wadleigh how he had sat up all night with a one-armed Russian named Sasha—apparently a high official in the Washington spy apparatus and also a suspected deviationist—and how they had discussed "crazy" plans. They considered going to Spain to fight for the Republic, but then realized that the NKVD would arrest them there. "We would have been executed on the spot," Chambers informed the loyal and horrified Wadleigh.

Testifying about his break with Communism, Chambers telescoped what was doubtless a slower process of emotional and intellectual development.

"I repudiated Marx's doctrines and Lenin's tactics," he said. "Experience and the record had convinced me that communism is a form of totalitarianism, that its triumph means slavery to men wherever they fall under its sway and spiritual night to the human mind and soul. I resolved to break with the Communist Party at whatever risk to my life or other tragedy to myself or family. Yet, so strong is the hold which the insidious evil of communism secures on its disciples that I could still say to someone at the time: 'I know that I am leaving the winning side for the losing side, but it is better to die on the losing side than to live under communism.'"

"For a year I lived in hiding, sleeping by day and watching through the night with gun or revolver within easy reach."

After his break with the apparatus, Chambers claims that one night he went to see Alger Hiss, hoping to persuade Hiss to join him:

"Mrs. Hiss attempted while I was there to make a call, which I can only presume was to other Communists, but I quickly went to the telephone and she hung up, and Mr. Hiss came in shortly afterward, and we talked and I tried to break him away from the party.

"As a matter of fact, he cried when we separated . . . , but he absolutely refused to break."

Two or three days after the Hitler-Stalin Pact, Chambers tried to see President Roosevelt to lay before him evidence concerning Communist activities in the United States Government. He was routed to Adolf A. Berle, who, in addition to his other duties, handled counterintelligence matters for the White House.

The squat conspirator with the high intellectual forehead, the veiled eyes and anonymous face, appeared at Berle's house. As Berle remembered the encounter after a time-gap of nine years, Chambers told him that "a study group of some sort had been formed of men who were interested in knowing something about Russia and the general Communist theory of life and so on." Chambers mentioned three men, then in Government, as part of that organization. He "did not make the direct statement that any of these men were members of the Communist Party." Espionage was not even mentioned, according to Berle.

While he believed Chambers was telling the truth, Berle was not impressed with the sinister potentialities of the thing. "The

idea that the two Hiss boys and Nat Witt were going to take over the United States Government didn't strike me as any particular danger," he afterwards recollected. Moreover, Berle thought that ex-Communists "sometimes tend to exaggerate a little the depths of the experience they have had. They have obviously been through a violent emotional experience, and I gather that part of the Communist apparatus is designed to impress the people in it with the all-powerful quality of it, probably exaggerating their own importance."

Throughout the war years, Chambers' story remained sealed in his mind. He had successfully begun a new life, climbing the journalistic ladder to a position as a Senior Editor of *Time Magazine*. Then, when the Soviet Union and the United States confronted each other over the corpse of the Nazi Empire as the two giant protagonists of the modern world, he began to make public disclosures. Either Chambers was being dragged forward inch by inch or he was playing his hand with great adroitness.

At first, he accused Hiss merely of having been a member of the elite Communist cell "of men specifically not wanted to act as sources of [espionage] information." The purpose of this group, Chambers said, was infiltration into command positions of the American Government.

This charge was enough, if substantiated, to damage seriously a man in Hiss' position, but it was not enough to destroy him. The public might believe, as Berle had, that the unit was merely a discussion group of very young men with very radical ideas and that Chambers suffered from a propensity to exaggerate. However, speaking with calm assurance and dignity, the Carnegie Endowment President denied that he had ever been a Communist or a fellow traveller. He described his accuser as a self-styled freelance writer who had used the name, George Crosley, and leeches himself to the Hisses, getting a dilapidated Ford and a rent-free apartment through his persistence. "I had been a sucker and he was a sort of a deadbeat," Hiss testified, "not a bad character, but I think he just was using me for a soft touch."

The Pumpkin Papers

Hiss brought a libel suit against Chambers. At a pre-trial hearing in Baltimore, Hiss' attorney said something to Mrs. Chambers which enraged her husband.

"... they spread stories that I was insane and that I was a pervert," Chambers related. "Then they called in my wife and were

very rough with her. It made me angry. I know as a Quaker I must never act in anger. So I sat for another day, and I came to the conclusion that the only thing to do was to tell everything I knew, to spare no one."

Up to this point, Chambers had concealed the evidence he possessed of espionage against the American Government. His professed reason: "I wanted to expose the Communist conspiracy, but I did not want to destroy the humans involved."

On November 17, 1948, Whittaker Chambers threw 65 copies of secret State Department documents on the table during the Baltimore pre-trial examination. He claimed that Alger Hiss had given them to him when both were allegedly agents of the Communist underground.

Investigators went to the Chambers farm in Maryland at night. The portly former espionage agent proceeded to a vegetable patch and extracted several aluminum cylinders from the hollowed interior of a pumpkin. He had placed them there only a few days before. Inside the cylinders were microfilms of copies of secret State Department dispatches. Some were aide-memoires in Alger Hiss' handwriting. Others were typed.

The dateline on the documents was early 1938. They represented, according to Chambers, one week's haul by part of a Soviet espionage ring which had been functioning under his direction for three years. Eastman Kodak experts first stated that the films had been manufactured in 1946. This led to the almost irresistible inference that old State Department files had been recently rifled and their contents microfilmed for the specific purpose of incriminating Hiss. The chief investigator of the House Un-American Activities Committee was so furious that he could not trust himself to talk to Chambers on the telephone.

Then a call came through from Eastman. They had made a mistake. The films were of 1937 vintage. The web of circumstantial evidence was tightening.

The pumpkin has played a prominent and honored role in fairy stories and few adults have forgotten the tales told them in childhood about pumpkin coaches drawn by gnomes. Any illusion that the microfilmed documents belonged to the world of fancy, however, was rudely dispelled when former Undersecretary of State Sumner Welles scrutinized them and remarked:

"Two of these documents in particular would greatly jeopardize our security if released. If any agent of a foreign power saw these, he could have broken our code."

Whittaker Chambers charged that Hiss had given him these classified papers for transmittal to the Soviet Union. The modus operandi he described was as follows:

Spies within the American Government would cram their briefcases full of secret documents and take them home at the close of the day, ostensibly for study at night. Chambers would call at the homes of the spies and remove the briefcases. He would hand them to a photographic technician, who would then proceed to Baltimore and have them microfilmed in a special laboratory. The photographer would return to Washington, giving Chambers the briefcases filled with the documents. (It was sometimes one in the morning before Chambers was able to return all the briefcases to the homes of the Government spies. By morning, every document would be back in its proper place in the Government files.)

Late the same evening, Chambers would proceed to the Baltimore laboratory, pick up the film, secrete it in his tobacco pouch and travel to New York. Here he would turn over the rolls to Colonel Boris Bykov, chief of Russian espionage in the United States.

Presumably the mechanics of the system would occasionally demand different handling. When the courier was busy servicing other members of the apparatus, and a document of immediate, crucial importance was routed over the Government desk of an agent who was not on the courier's calling list for that night, it would be necessary to copy the document in Washington.

None of Chambers' testimony in this connection necessarily incriminated Hiss. The fact that some of the pumpkin papers were in his handwriting did not prove that he had turned them over to Chambers. They might have been stolen. The most interesting circumstantial evidence was that the documents had been legitimately available to only four persons in the State Department. One of these four was Alger Hiss.

The standard operating procedure in State was to take the secret dispatches from the Department code room in a locked black box to the Trade Agreements Division. The Division Chief, Francis B. Sayre, and his aide, Alger Hiss, would study them, sometimes taking them home at night. Generally, after four days, they were returned to the code room.

The pumpkin papers had been copied from original State Department dispatches on an old Woodstock machine. No such typewriter was in the Department.

In late 1948, personal letters from Mr. and Mrs. Hiss were found which showed the same typewriter key markings under the microscope as the pumpkin papers. The stolen State Department papers were dated early 1938. The Woodstock typewriter which had copied them had been in the Hiss household in late 1937.

Alger Hiss was summoned before the New York Grand Jury investigating Communism. He was asked whether he had had any contacts with Chambers after 1936. His answer was no. He was then asked whether he had ever turned over confidential Government papers to Chambers. He returned a flat denial. Immediately thereafter, Hiss was indicted for perjury on the basis of those two statements.

Charge and Counter-charge

Throughout the two arduous trials he underwent, Hiss cut an impressive figure. His open countenance, forthright denials and distinguished record told heavily against the dark, labyrinthine past of his assailant. Alger Hiss avoided testimony with intellectual overtones. His mind seemed simple in its basic processes, sure and practical. To him, apparently, every former Communist was "a traitor." There were no shadings.

The one certain thing about Whittaker Chambers was that his emotional and mental processes were highly complex. He seemed a guilt-tortured introvert of manifold reticences, evasions and lies. His zeal in shattering what he had once stood for aroused distrust. But his professed reluctance to destroy men with whom he had once associated in a relationship of trust seemed in his favor. Even so, he was helping to ruin Alger Hiss.

Partisans of Hiss believed that Chambers was actuated by unfathomable malice. If this were true, he would occupy a unique position in some gallery of infamy. One was to believe that he had stored up hatred against a former benefactor and friend for ten years, and that this rancor continued to smoulder despite the fact that he had not associated with Hiss and was absorbed in a highly successful career in a different field. One was to assume that, for the sake of vengeance, Chambers was prepared to risk ten years' imprisonment for perjury. The motives for such a conspiracy of destruction would have to be compelling enough to warrant Chambers' sacrificing his career, his family and his freedom. Such motives were, of course, psychologically possible, but their existence was not shown.

Lloyd P. Stryker, Hiss' first attorney, relied heavily on a downright challenge to Chambers' veracity. With flamboyant oratory, he characterized Chambers as an outcast:

"In the tropics, in a place like Algiers, when a leper walks in the street, the cry is heard before him, 'Unclean! Unclean! I say to you 'unclean' at the approach of this moral leper.'"

The evidence that Whittaker Chambers was morally leprous was, however, unconvincing. He had confessed to multiple perjuries subsequent to his breach with Communism. But the reason he gave for these lies was reluctance to shatter the lives of individuals. If true, this automatically endowed Chambers with greater moral stature than some of the other apostates from Communist conspiracy. It meant that he was a man who refused to see his moral duty in black and white terms. It implied a recognition that there are both private and social duties, that they often conflict, and that moral problems should be resolved by an intelligent weighing of the imponderables of good and evil involved.

The burden of the charge against Chambers' credibility was that he was a confessed former Communist, a confessed former atheist and a confessed former spy. On one dramatic occasion, Stryker hurled at him the epithet, "Traitor." Whittaker Chambers quietly conceded the point, then looked off into space.

Since espionage and national betrayal are odious crimes, it is frequently assumed that the men who perpetrate them must be equally odious. Since Chambers had been a Communist, many men assumed he was ipso facto an evil man and an inveterate liar. The corollary of this proposition was that Hiss, whose public and private life was apparently blameless, could not therefore have been a Communist espionage agent.

There was a fallacy in such reasoning. A man's integrity is not exclusively determined by what he does. As a rule, his reasons for doing it are, from a moral standpoint, far more important. Why does a person of more than ordinary ability choose the hard, unrewarding and dangerous life of the underground? Various causal influences may be involved—among them, misguided idealism, an incorrigibly romantic outlook, psychic disorder. The sordid quest for personal aggrandizement is hardly likely to be one of them.

As has been pointed out, the convicted Canadian and British agents of the U.S.S.R. were men of moral character, superior intellect, and altruistic motivation. They had reasoned logically from a set of pernicious premises and acted on that reasoning. Though

the premises were bad, the men who accepted them were not therefore monsters.

As a matter of fact, the leaders of the Spanish Inquisition, who spread blood and suffering over the face of Western Europe, were, as even the anti-Catholic historian, Thomas Henry Buckle, conceded: "men of the purest intentions, of the most admirable and unsullied morals . . . remarkable for an undeviating and incorruptible integrity."

The Web of Evidence

Hiss' trials revealed that his reputation towered far above that of most men in high positions. Despite the strong circumstantial evidence against Hiss, Justices Frankfurter and Reed of the Supreme Court testified as character witnesses. Their testimony was not only an almost unprecedented tribute; it was an act of outstanding moral courage as well. Previously, Secretary of State Dean Acheson had indicated to a press conference that Alger Hiss was still his close and good friend.

Hiss had denied any contacts with Chambers subsequent to 1936. One of the first skirmishes therefore arose from Chambers' statement that, in the fall of 1937, Hiss had lent him \$400 to buy a car. The records showed that Esther Chambers had purchased an automobile on November 23, 1937, and that the Hiss bank account revealed a \$400 withdrawal four days previously. Priscilla Hiss claimed, however, that the cash disbursement was to buy household furniture.

Mrs. Chambers took the stand to give voluminous female testimony concerning the chintzes, linens and diapers in the Hiss menage. She said that Mrs. Hiss had revealed in late 1937 that she was considering taking a nursing course in the Baltimore Mercy Hospital. Mrs. Hiss denied this, but the Government introduced a letter into evidence, dated May 25, 1937, in which she had discussed credits for a "training course at Mercy Hospital."

Chambers told a story of bringing Hiss to meet Soviet intelligence director Colonel Boris Bykov in New York. He stated that Bykov had told Hiss that the Soviet Union needed a continuous stream of espionage material. Bykov, according to Chambers, said that this data was essential to help the U.S.S.R. smash German fascism.

Whittaker Chambers also claimed that he had bought Bokhara rugs in New York with Soviet money to present to four sources

of espionage data, one of whom was Hiss. Henry Julian Wadleigh then testified for the Prosecution that he had been a Soviet spy and that he had received one of the rugs. Absent-minded, physically uncoordinated and a chain smoker, Wadleigh spoke clearly and thoughtfully. After detailing his operations for the Chambers apparatus, he said that he had had no contacts with Hiss as a Communist and had never suspected the former Carnegie Endowment President of radical views.

The first trial judge, Samuel H. Kaufman, ruled against the admission of testimony by Mrs. Paul Massing, former wife of U. S. Comintern representative Gerhardt Eisler and an ex-Soviet agent in her own right. At the second trial, Mrs. Massing told of a squabble with Hiss as to whether State Department official Noel Field should be employed in her apparatus or in his. Hiss denied this. Field was silent, having disappeared behind the iron-curtain.

Forays and probing attacks were many, but the main engagement was to be over the ownership and location of the Woodstock typewriter. It was clearly established that this machine had never been in the State Department. The person who had used it to type the pumpkin papers was therefore either a Soviet spy or an espionage accessory.

Mrs. Clytie Catlett, a middle-aged Negro woman who had worked for the Hiss family, testified that they had given her an old typewriter toward the end of 1937. Her two sons corroborated this under oath. Their testimony, however, was shaky and contradictory. In the second trial, the Hiss defense branded Julian Wadleigh as the man who had stolen and copied the documents. Wadleigh, however, had been in Turkey during part of the critical time. The defense urged that Chambers, operating through some unknown agent, had stolen the documents from Hiss' office, then surreptitiously borrowed the Catlett machine to copy them. This second supposed act was foolhardy. It could only be explained on the theory of virulent malice toward Hiss and a *Count of Monte Cristo* revenge to be wreaked a decade later.

The Defense scored heavily when Malcolm Cowley, a poet and former editor of the *New Republic*, took the stand. He testified that Chambers had told him on December 13, 1940, that Hiss' boss, Francis B. Sayre, was "head of a Communist apparatus in Washington." Cowley's evidence, moreover, was based on notes taken shortly after the conversation.

Hiss' attorney emphasized that he had no intention of impugn-

ing Mr. Sayre's loyalty. The point of the testimony by Cowley obviously was to make the jury believe that Chambers was a congenital liar.

Malcolm Cowley was immediately attacked in the press as an ex-Communist fellow traveller. However, he had long since broken with Communism and was a person of sterling integrity. One could believe that his memory might be at fault, but not that he would perjure himself.

Hiss' lawyer endeavored to ridicule Esther Chambers, stating that her gestures were reminiscent of a farmer's wife priming a hand pump. He brushed aside the experts' testimony concerning the Woodstock machine. He called Chambers a pariah and Hiss a noble character. "This isn't a case," he exclaimed. "It's an outrage."

Plodding Tom Murphy, the giant chief prosecutor, concentrated on the typewriter. He asked the jury to "apply reason and not emotion." Murphy remarked that if a child is found in the kitchen with jam on his face "we don't have to get a stomach pump to find out if he's been eating jam."

The jury at both trials had to decide a narrow but difficult issue. Who had told the truth and who had lied? After 28 hours and 40 minutes, the jurors at the first trial trooped back into the courtroom to announce that they were hopelessly deadlocked. The jury at the second trial before Judge Henry W. Goddard convicted Hiss of perjury after 10 hours and 20 minutes of debate. Yet many of the ramifications of the case are likely to remain obscure for a long time to come.

The Significance of the Hiss Trial

In 1938, the year of the pumpkin papers, two rival totalitarian systems were maneuvering toward war. To the Roosevelt Administration and the American public as a whole, the Axis coalition seemed by far the more iniquitous. It was also more powerful, both economically and militarily, and it was expanding by aggression toward the heartland of the democratic states. In 1938, the Administration considered the U.S.S.R. as a potential ally and the Third Reich as a mortal enemy.

Soviet agents secured secret data from American public servants, ostensibly at least, to assist Russia in combatting and destroying Nazism. If the pumpkin papers are a fair sample, the material transmitted focussed on Germany and Japan—their plans, their

military dispositions and capabilities, their economic resources and power.

A Government official who turned over material of this sort may not have intended to injure the United States. His action was nonetheless culpable. To transmit secret data to a foreign government through underground channels was an obvious betrayal of trust. It involved an assumption by the Government employee that he was entitled to pursue a foreign policy of his own at variance with that of his Government. If everyone acted on this megalomaniac moral premise, all government would disintegrate and the democratic system would be shattered.

If the man who turned over the pumpkin papers to Chambers continued as a Soviet agent into the cold-war period, his crime verged on treason. Whittaker Chambers stated publicly that he did not know whether or not Hiss had remained a Communist after 1938. The same doubt might apply to any other person suspected of illicitly utilizing the documents in question.

In broader terms, the importance of the Hiss case lies in the fact that it provided the first conclusive demonstration that pro-Soviet espionage existed on a large scale in a vitally sensitive area of the Government.

The very existence of the pumpkin papers proves that secret documents, important to American security, moved into Soviet espionage channels. The confession of Henry Julian Wadleigh proves that American Government officials were involved. This demonstration packed far more conviction than the flurry of charges, insinuations and facts which for years had been emanating dramatically from the House Committee on Un-American Activities.

THE CASE OF JUDITH COPLON

"... that by magical mutterings rapid rivers can be made to run backwards, the ocean be congealed, the winds robbed of breath, the sun stopped in his course, the moon made to drop her foam, the stars plucked from their spheres, the day annihilated, and the night indefinitely prolonged."—Apuleius, *Metamorphoses*.

John Dos Passos or Edmund Wilson once wrote a story about four waiters in a shabby Balkan cafe, each of whom spied on the others. The sketch had a nightmarish quality that made it memorable.

There are similar elements in the case of Judith Coplon. It reflects a rising tide of insanity in the affairs of men in which reality gives way to appearance and ends are sacrificed on the altar of techniques.

The case of Judith Coplon also contained an entirely separate component of mania. In a desperately serious situation, an eccentric middle-aged attorney persistently presented a fin-de-siècle melodrama in which his client was to star as the Innocent Girl Wronged. The fact that his drama obviously had little to do with either the facts of the case or the character of Judith Coplon in no way seemed to modify his enthusiasm. The profession of this mangler of English prose was the bar, but one suspected that his secret and suppressed avocation was to play Hamlet in a road company. An old friend of the Coplon family and a sentimentalist at heart, Palmer was, after the Washington trial, to carry on his fight for Judith Coplon without remuneration.

While Alger Hiss was accused of serving as a Soviet spy within the United States Government, the alleged function of Judith Coplon was considerably more indirect in the intricate

As this book goes to press, basic legal issues, including the admissibility of evidence obtained through wire tapping, are before the courts. As a result, Miss Coplon's conviction may be set aside on technical grounds.

machinery of espionage—that of a counter-counterspy. The twelve FBI agents assigned to track her were counter-counter-counterspies.

The Soviet Union has espionage agents engaged in filching secrets from the United States. The United States has counter-agents to discover them. Judith Coplon allegedly ascertained the names and activities of these counter-agents. The FBI men were engaged in keeping Miss Coplon under surveillance.

Although seemingly fantastic, these intertwined operations were of grave importance. Successful penetration of American counter-espionage would enable the primary Soviet agents to work undetected. If Miss Coplon's knowledge had extended to American operatives behind the Iron Curtain, the consequences for them might have been extremely serious.

An Arrested Career

The audience jammed the sound-proofed Washington courtroom where petite, page-bobbed Judith Coplon was standing trial for stealing documents and espionage. She was unquestionably a remarkably attractive and appealing woman. Hers was not the stereotyped glamor of the traditionally lacquered Venus of secret inks and permutation codes. Miss Coplon's attractiveness derived principally from her sensitivity and intelligence.

This twenty-eight year-old political analyst in the Department of Justice had seemed a promising junior Government official. She was bright, jaunty and swift-witted. Her immigrant father was a toy manufacturer who loved to play Santa Claus for underprivileged children. And Judith Coplon, although on a much smaller scale than Alger Hiss, apparently exemplified the American success story. She had gone through Barnard with scholastic distinction; she had travelled abroad; she was cultivated and familiar with the arts; she occupied a small but intellectually challenging niche in the Justice Department.

The major sour note in this biography was that Miss Coplon purloined Government data. Why and how she did so is difficult to ascertain. (At Barnard she had been affiliated with fellow-traveler student groups, but the connection was so tenuous that the Government did not bother to introduce it in evidence.)

Toward the close of 1948, Department of Justice agents began trailing her. For several months, she was under exceptionally close surveillance by a large number of operatives. They were not long in discovering some marked idiosyncracies in her behavior.

Judy was in the habit of running up to New York on weekends and then riding around on the subways, taking a pretzel-like course through the more unpromising suburban areas of the metropolis. These peregrinations seemed wholly illogical—until one day she was seen to meet a young Soviet citizen named Valentin Gubitchev, an official of the United Nations, at Tryon Park. Their ages and appearance were consistent with a love affair, but the meeting was too brief for a tryst. On another occasion, they passed, apparently as complete strangers, on the streets of New York. FBI agents saw Judy's hand go into her handbag and swiftly remove something. They could not determine what it was, nor whether she passed it to Gubitchev. There was no glint of recognition between the two. This was peculiar since the FBI had previously observed the couple dining together in a restaurant.

On the night of March 4, 1949, they were followed again. The FBI men were led through the subway system. The couple made swift and numerous changes from one train to another. Although they were in the same car, they did not acknowledge each other's presence. The Government agents concluded that their quarry sensed danger. Several times the couple succeeded in ditching their pursuers. Aware that it was now or never, the FBI men clung grimly to the trail. When they at last sighted the couple again, they closed in at once for the arrest.

While no incriminating documents were found on the person of Soviet citizen Gubitchev, the search of Judy Coplon was revealing. As described in the elegant English of her learned counsel: "Now comes this great eclipse, this marvellous piece of FBI ideology!" They "stripped her from pillar to post." From "top-sail to feet" the brewer of mixed metaphors added—so that his meaning would be unmistakable.

The FBI found a series of data slips—condensations of unevaluated FBI reports—on Miss Coplon's person. In addition, there was a memorandum on three Government officials, which appeared to detail their qualifications for Soviet espionage. She also had a report previously planted by the FBI, on non-existent American agents inside the Soviet trading organization, Amtorg. Finally, and most damning of all, was a typed statement explaining Miss Coplon's inability to turn over a top-secret document on Soviet intelligence activities in America. "When I saw the report," she wrote, "I breezed through it for a minute, remembering very little. . . . It was about 115 pages in length, summarized first: In-

telligence activities, including Martens, Lore, Poyntz, Alstchuler, Silvermaster, et. al. . . . The rest of the report I think was on Polish, Yugo, etc., activities and possibly some info on CPUSA." Judy thought it was all old stuff and mentioned that she had previously talked about the document with "Michael."

She was indicted in Washington for removing Government materials relating to the national defense, with the intent to injure the interest of the United States and further those of a foreign power. She and Gubitchev were simultaneously arraigned in New York for conspiracy to commit espionage. (At the time of writing, the Washington trial is over and the New York trial is in progress).

Rebutting the Government's charges was the hard task that confronted lawyer Archibald Palmer when the case came to trial in Washington before Judge Albert L. Reeves—a fatherly, dignified man just turned seventy-five, who had spent much of his young manhood warring on alcohol and enforcing the blue laws.

Palmer at once questioned not the validity of the charges (that was to come later), but the validity of the arrest itself. If he could establish that the arrest, which had been made without a warrant, was illegal, no evidence resulting from the arrest could be introduced into court and the Government's entire case would immediately collapse.

The Prosecution countered with the argument that, under certain circumstances involving the national security, the FBI was unequivocally empowered to make arrests and search without a warrant. Judge Reeves studied the documents which had been found on Judith Coplon's person, decided that the national defense was involved, and ordered the trial to proceed.

Thwarted on his best point of legal defense, Palmer told reporters that the "Michael" referred to in the typed report was the Archangel Michael who slew the Red Dragon. As the case developed, however, he thought better of it and declared in virtually one and the same breath that Judy had taken the reports because she was writing a novel and because she had to have them to pass a Civil Service Examination. He added that the Pontius Pilates of the Justice Department had urged her to take some of these documents with her for study. Judy's former boss in the Department of Justice, Raymond P. Whearty, was "a Nero" bent on feeding his "personal glory . . . so that he could become a Tom Clark and maybe President of the United States."

He compared his client with Christ on the Cross and, by im-

plication, the Virgin Mary. As for the meetings with Gubitchev, the Russian was a "personal person" and "love knows no bounds." She had merely gone with him to a park "where ladies and gentlemen neck." It was for this innocent activity that the Department of Justice had "hectoring" her.

There was nothing physical, declaimed Palmer, about the dawning of love in Judy's young breast. Pure and "fragrant", she had discovered somewhat belatedly but to her intense horror that Gubitchev was a married man. She had then quite properly slapped him and refused to listen either to his professions of love or to his statement that he wanted a divorce. As for the evenings they had spent meandering through the New York subway system, "Guby's" wife had put detectives on their trail and, moreover, the Russian was being hounded to his death by the terrifying NKVD.

While Palmer's fascinating show was running its course, Judy's ailing mother wept through the long days in court. Judy's father had died of a heart attack shortly after her arrest and the once happy family was now shattered and desolate.

The FBI Reports

The trial featured two subsidiary bursts of drama—the FBI reports and the Shapiro *affaire*.

The data sheets were short summaries of FBI reports which were highly classified. Palmer fought doggedly to force the disclosure of these reports in full. Perhaps the FBI and hence the Prosecution could be seriously embarrassed and discredited. It was a brilliant move.

The Government objected vehemently, indicating that if they were read in court the security of the United States would be threatened. Rather than permit it, the Justice Department might decide to *nolle prosequi* the case. The Prosecution then offered the counter-suggestion that Judge Albert J. Reeves scrutinize the documents in question and decide their pertinence. If he felt they should in fact be admitted in evidence, then he could permit the jury to examine them in private. A public disclosure could thus be avoided and the interests of justice served.

But the trial had already dragged on some six weeks, it was getting unbearably hot, and Judge Reeves was on the verge of exhaustion. He abruptly decided to introduce the reports without further haggling. The Government was shocked and infuriated, but helpless. Liberals throughout the country hailed the Judge's

decision as a triumph for law over the Executive Branch, and hence for democracy. But was it?

In the hullabaloo, it was generally forgotten that the Government had not based its case on the putatively explosive ingredients of the reports. The jury was not called upon to evaluate Judy's success in damaging American security and aiding the U.S.S.R. It was merely required to determine whether or not she had stolen properly classified Government data with the intent of turning it over to a foreign power.

If a jury and the public are entitled to know enough background to evaluate the security danger involved in any theft of Government reports, it will be virtually impossible to prosecute successful spies. By this reasoning, a man indicted for stealing a few notes about anthrax cultures could successfully demand that the National Military Establishment reveal American plans for bacteriological warfare. Judge Reeves' decision places a premium on prosecuting espionage agents who secure nothing of importance, while leaving at large those who obtain information vital to national security.

The FBI reports were not actually damaging to American security, but they were highly detrimental to the reputations of prominent people. The FBI is a collecting agency. It gathers reports from all sources—expert agents, busybodies, would-be Sherlocks, gossips and psychopaths. The resultant medley of stern fact and arrant nonsense is kept securely locked in Government files.

The reports fired salvos at a large group of prominent Hollywooders, who were accused of Communism. The wife of Dr. Edward U. Condon, Director of the Bureau of Standards and one of the nation's most eminent scientists, was smeared by innuendo and association. The connection between pro-Soviet espionage and Mrs. Condon was remote indeed. It had filtered through 48 year-old Morton Kent, a jobless ex-Government official, who had allegedly attempted through her to contact an alleged Bulgarian espionage operative. Emphasis should be placed on the word alleged. Kent did not testify. A week before the dramatic revelations, he took a canoe out on the Potomac and slashed his throat with a kitchen knife.

The woman who reported that a neighboring couple were Communists should also be mentioned. The principal evidence for this charge was that they were in the habit of wandering through their house in the nude.

These disclosures left a bad stench. Dr. Condon blasted the FBI for collecting "false and malicious" information, demanded an apology from J. Edgar Hoover which he never got, and suggested that the counterespionage organization was wasting taxpayers' money in collecting fairy tales and spite denunciations. The danger which the reports revealed was that America might be moving toward a situation similar to that in totalitarian countries, where neighbors denounce each other, where the police informer is ubiquitous, and where deceit and mendacity are the rule. In such a society, no man is free to speak his real beliefs if they deviate even a political millimeter from orthodoxy. Every maverick utterance adds a mite to the mountain of adverse reports which pile up in some locked government dossier.

Admittedly, this is a sordid and ugly business. Its chief evil is not that it shatters the reputations of honest and upright men, but that by degrees it corrupts the temper of the country.

There are situations in which evil cannot be escaped. If the containment of Soviet totalitarianism is necessary and proper, then preparations for atomic or bacteriological warfare—in which millions of non-combatants may be destroyed—are an unavoidable enormity. If preparation for war is necessary, then the efforts of a presumptive enemy to obtain secret data must be thwarted. Nor can information volunteered by outside sources be rejected merely because the motivation is or may be malicious. In the past, amateur headhunters and neighbor-spies have performed valuable service. Michael Kristoff, who helped engineer the Black Tom explosion in 1916, for instance, was trapped mainly because of an inquisitive boardinghouse keeper.

Night Life of a Government Girl

A second bombshell exploded in the Washington trial.

There was nothing particularly remarkable about Judy's night life. But in terms of the world which Archibald Palmer had built around her—a world in which villains have black and leprous hearts and virginal heroines simper and palpitate—the reality was dynamite. The fact that Judy appeared to be more or less of a Greenwich Village girl and very far from a Puritan had not deterred impresario Palmer from constructing his stereotyped character with the frail building blocks of his imagination. He tried hard to breathe life into the imaginary character whom he thought the jury would adore and acquit. But there was one blinding fact which no jury could ignore. Unlike the great lovers of literature

and history, Judy and Guby had apparently done everything within their power to avoid each other's company for more than a few seconds at a time.

When the Government began cross-examining the accused, the bubble burst. The stern and quietly relentless prosecutor, John M. Kelley, Jr., asked the defendant whether she loved Gubitchev.

"I was very deeply in love with him," ingenue Judy replied.

"Is it not a fact," Kelley thundered, "that one week prior to that night . . . you spent the night in Room 412, Southern Hotel, Baltimore, Maryland, registered as man and wife with H. P. Shapiro?"

Judy squirmed and shrieked. She denied and equivocated. She told of a shopping trip with Shapiro to buy presents for Gubitchev, her true and unloved love. She had spent the night with Shapiro talking. They had slept in different rooms. But the facts were that Shapiro and she had spent several nights together both in hotels and in his Washington apartment.

"You have branded me as a spy," Judy exclaimed dramatically, "and now you are trying to brand me as a harlot."

Lawyer Palmer contributed a philosophical explanation: "I won't even go into the psychology that love has nothing to do with fornication. Fornication! That fancy word conceived in the brain of Mr. Kelley."

A mistake that intellectuals and pseudo-intellectuals frequently make is to assume that the average man is abysmally stupid. If Palmer had drawn a less saccharine picture of the supposititious Judy-Guby romance, the jury might have overlooked the Shapiro affair. Surely it is not unusual for a woman to carry on a physiologically satisfying liaison with one man, while meditating a more serious emotional involvement with another. And, until she has made up her mind about the second man, she may avoid even the preliminaries of mating with him. While jurors would probably not have approved such a state of affairs, they would not necessarily have doubted its plausibility. Palmer, however, was seemingly unable to get *East Lynne* out of his mind.

The reaction of Shapiro—who was, by the way, entirely unaware of Miss Coplon's bizarre enterprises—was to shrink within his carapace.

In concluding his case, Prosecutor Kelley described the junior analyst as a woman with an "agile little Swiss-watch mind" and made the usual charges of betrayal and perfidy.

After twenty-eight hours, the jury brought in a verdict of guilty.

The aged judge was plainly bewildered by the motivating forces at work. "One of the great soldiers of America (Benedict Arnold) betrayed his country," his honor mused, ". . . and today his name is anathema. . . . Here is a young woman with infinite prospects, a great future before her . . . but she undertook to betray her country."

He sentenced her to from forty months to ten years in prison. Judith Coplon was later released on bail to wait for a second trial in which she and her accomplice, Valentin Gubitchev, were co-defendants. Her conviction in Washington has been appealed, and there seems a possibility that either new evidence or new legal argument will modify or change the decision.

Tragedy Without Martyrdom

An inherent evil of Communist espionage is that it too often destroys some of the potentially best elements in society, warping their lives and blighting their social utility.

The mere fact of being a Communist means that a spy is not permitted to stand erect before the court and the world and, once the game has obviously been lost and the forfeit is due, use that forum to say what he has done, why he has done it and what he believes in. Failure to do so stems not from a personal lack of courage or character, but from the moral distortion which the Communist movement tends to inculcate in its adherents.

For a convicted spy to state his true faith in open court would involve a confession that the Communist movement is not twentieth century Americanism but a twentieth century conspiracy against what America stands for, that it is in large part an illegal organization and that espionage is one of its activities. This would not only have possibly serious legal consequences, but it would batter at the simple beliefs of the soft-minded adherents at the fringes of the Communist Party.

Almost all other revolutionary movements permit their victims the small comforts of martyrdom. The ideologically motivated American radio traitors spoke their convictions when sentence fell upon them, some speaking well and others very badly, but each saying what he believed. The early Christians and the Quakers of two centuries ago stood like rocks for their faith despite the lions of the arena and the whipping posts of the bigots.

And in Lenin's day, Communists were allowed to go down in defiance as principled men and women.

In more recent years, however, Communism has become a creed within a lie—a lie required to shepherd the liberal and democratic flock into the Communist pen.

The Wire-Tapping Scandal

In Miss Coplon's second trial held in New York, Attorney Palmer conducted a brilliant attack on methods and procedures of the Department of Justice which were little short of scandalous. It became clear that responsible Government officials had been engaged in wire-tapping on a large scale, that they had destroyed the records of their action, and had misled a Federal Court as to the facts. The entire case against Miss Coplon was jeopardized by the suspicion that some of the evidence against her had been illegally obtained.

Some thirty FBI agents monitored Judy's telephone wires and ten others tapped Gubitchev's line. As the date of the trial approached, an order went out to destroy "all administrative records in the New York Office" of the FBI. According to James L. Fly, former Chairman of the Federal Communications Commission, the destruction of these records is a Federal offense, punishable by up to three years imprisonment under Section 2071 of the Criminal Code.

When Judge Sylvester Ryan went into the wire-tapping aspects of the case, recordings of Miss Coplon's conversations proved to be mysteriously scrambled. In the Washington trial, the Government prosecuting attorney had sneered at Mr. Palmer's charges of phone tapping, characterizing them as "nonsense" and a "fishing expedition". Thus, Judge Reeves was misled as to the basic facts of the case.

Wire-tapping was characterized by Mr. Justice Holmes as "dirty business". The Supreme Court referred to this information source as a "poisonous tree". As Mr. Justice Brandeis put the matter:

"Moreover, the tapping of one man's telephone line involves the tapping of the telephone of every other person whom he may call or who may call him. As a means of espionage, writs of assistance and general warrants are but puny instruments of tyranny and oppression when compared with wire-tapping.

". . . it is also immaterial that the intrusion was in aid of law enforcement. Experience should teach us to be most on our

guard when the Government's purposes are beneficent. . . The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning, but without understanding."

The zealous and well-meaning chief of the FBI, J. Edgar Hoover, issued a defense of wire-tapping in which he charged unidentified people with striving to confuse the public. The *Washington Post* considered Mr. Hoover's statement "astounding, coming as it does from a man whose agents have lately been caught in a bare-faced attempt to deceive a United States Court. . ." Mr. Palmer's singlehanded and successful fight to reveal a fragment of the FBI's operating methods may prove of greater public service than the checkmating of Judith Coplon's strange operations with classified Government documents. Thus far, the American tradition that law enforcement agents must themselves abide by the law has never been seriously challenged.

But where does ideological affinity with a cause, even if that cause seems inseparable from the foreign policy of a potential antagonist, come to an end, and conspiratorial disloyalty begin? The next chapter deals with another significant inquiry by the Government into the core of Communist activities—the trial of the eleven leaders of the Party for seditious conspiracy directed toward the armed overthrow of the United States Government. The ultimate issue of this case will determine whether or not the directing corps of this movement is to be recognized as a legitimate political leadership or proscribed as a band of conspirators against a democratic nation.

RED SEDITIONISTS

"Books are not on trial here nor are you concerned with the philosophical validity of any mere theories."—Judge Harold R. Medina in his charge to the jury in the Communist conspiracy trial.

"Those who won our independence by revolution were not cowards . . . They did not exalt order at the cost of liberty. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion."—Justice Louis D. Brandeis in his concurrent opinion on the *Whitney v. California* case.

In October 1949 in New York City, eleven members of the National Committee of the American Communist Party were convicted of seditious conspiracy.* Ten were given the maximum sentence of five years imprisonment, while the eleventh received three years.

The trial of the Communist leaders took nine months and produced a 5,000,000 word record—the equivalent of sixty novels. It cost the Government over a million dollars and probably cost the Defense half that sum. When the jury rendered its verdict of guilty, only the first round of the battle had been fought. Weighty issues of constitutional law were involved.

* This is the first time in American history (periods of war excepted) in which the leadership of a recognized political party has been imprisoned for disloyalty. Joseph Smith, the Mormon Messiah, was at least nominally running for President when he was imprisoned on the charge of treason and lynched. There was a time in World War I when the entire National Committee of the Socialist Party was in jail. Individual Communist leaders, such as Benjamin Gitlow, were convicted during peacetime for seditious speech or printed matter under state anti-anarchy laws.

The gist of the indictment was that the eleven Communists "unlawfully, willfully, and knowingly did conspire with each other, and with divers persons to the Grand Jurors unknown, to organize the Communist Party of the United States of America a society, group and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence. . ."

The crime involved, therefore, was not attempting to overturn the Government by force, but teaching that this was a proper and desirable thing to do. Moreover, the accused were not on trial for doing this, but for conspiring to do it.

The difference between attempting a crime and engaging in a criminal conspiracy is substantial at law. In the particular case of the eleven Communist leaders, the Government did not have to prove any overt act. Moreover, once it showed that all of the defendants were in the conspiracy, it could hold them all responsible for anything done by any one of the conspirators toward accomplishment of its purposes. Under this branch of the law, a man must answer for crimes committed by others without his knowledge. Once a man has entered a conspiracy, moreover, it is presumed that he remains a conspirator until he proves the contrary.

Supreme Court Justices, notably Mr. Justice Jackson, have said very harsh things about conspiracy law and have hinted that it represents a departure from the Anglo-Saxon conception of individualized guilt and the rule that mere intentions should not be punished. Writing in the *Harvard Law Review*, Francis B. Sayre commented:

"A doctrine so vague in its outlines and uncertain in its fundamental nature as criminal conspiracy lends no strength or glory to the law; it is a veritable quicksand of drifting opinion and ill-considered thought."

Judge Harold R. Medina

The case came up before a thick-set, impeccably dressed judge whose carefully trained mustache resembled that of cinema actor Adolph Menjou. Mild-mannered, at times plaintive, scholarly and addicted to crisp sarcasms, Harold R. Medina was a man whose natural habitat was the calm of the library rather than the tumultuous arena of a political trial.

Judge Medina was sixty-one. On his father's side, he was of Mexican extraction and, in his boyhood during the Spanish-Amer-

ican War, neighborhood children had taunted him and called him a "greaser." When he applied for admission to the elite Hotchkiss military academy, he was rejected, presumably because of his race. The Judge, therefore, was predisposed, other things being equal, toward sympathy with any group which consistently battled against racial discrimination and intolerance.

Medina had graduated from Princeton *summa cum laude*, had written fifteen law textbooks and, as a hobby, liked to translate Latin verse. A linguist with a library of 15,000 volumes, he was interested in the intellectual aspects of issues. He was not a man to be swayed by public passions.

Although earning \$100,000 a year when he retired from private practice, he was not a rich man's lawyer. He took cases which interested him and had the courage to range himself on the unpopular side. When the court assigned Medina to defend pro-Nazi Anthony Cramer on the charge of treason, he fought the matter up to the Supreme Court, won a reversal and was complimented by Mr. Justice Jackson on the excellence of his brief. The defense of the penniless Cramer cost Medina \$800. Since a war was on, it also cost him a few personal friends.

The Communist sedition case was the first criminal trial over which the Judge had presided. However, in defending the accused traitor Cramer, he had had to make a thorough study of American treason law and the Jeffersonian tradition from which it emerged. He was therefore by no means oblivious of the larger implications of the seditious conspiracy case.

The Government's Case

The Government asserted in this case that in 1945 the American Communists had made a *volte face*, abandoning the wartime line of collaboration with the Roosevelt Administration and organizing class warfare for eventual insurrection. It was contended by the Prosecution that a master plan had been handed down from Moscow in that year, calling for the sabotage of American war industries and, if possible, an armed rising in the event of war with Russia. Each local unit of the Communist Party, it was claimed, was a carbon copy of this master plan.

The indictment alleged that the conspiracy had begun on June 2, 1945—the date on which the Communist Political Association had been dissolved and the Communist Party re-established. This move approximated the turning point in Allied cooperation in

Europe. From VE Day forward, the world situation had abruptly changed and the territorial aggression of Soviet power had already begun to surge against American-built ramparts in Europe and the Middle East. The new Communist line was therefore class against class.

At the San Francisco conference at which the United Nations was formed, Soviet Foreign Minister Molotov had conveyed to a *Daily Worker* reporter, Joseph Starobin, his profound dissatisfaction with the moderate and conciliatory fashion in which Earl Browder was running the American Party. Starobin hurried with this tale to the top command. Shortly thereafter, the French Communist Leader, Jacques Duclos, lashed out at the American Party in an article published in *Cahiers du Communisme*. The American comrades correctly assumed that, while the words were French, the accent was Russian.

Browder was cast into outer darkness. After mock intra-Party discussions, there ensued a virulent epidemic of breast beating. Thus Charles Krumbein, then Treasurer of the American Communist Party, explained the mistake of supporting Browder in these manly words:

"We bowed and made obeisance to Browder because of what he represented. In our servility to him, we thought we were honoring the leader of the proletariat, Comrade Stalin, because Browder was supposed to convey Stalin's ideas and his magnificent judgment to us comrades here."

Louis F. Budenz, a star witness for the Government, had made the trip from Catholicism to Communism and back again. He had been a member of the C.P. National Committee, Editor of the *Daily Worker* and sufficiently trusted to be more or less innocently implicated in NKVD operations, including the recruitment of personnel for assassinating Leon Trotsky.

On the stand, Budenz claimed that after the expulsion of Browder the Party began to plot civil war in the United States. He said that the mild language of the 1945 Communist Party Constitution concealed the design for "violent shattering of the capitalist state." Secret training schools were set up for key party workers in which this esoteric doctrine was taught. As far as the mass of Americans was concerned, the Party used "Aesopian language"—double talk—to conceal its true purposes.

The Defense countered with the charge that Budenz had lived with his wife for ten years before marrying her. There were less silly reasons for weighing the former Communist leader's state-

ments carefully. He had been through a deep emotional crisis and was devoting a large portion of his life to speaking and writing against the "Red menace." Under such circumstances, men sometimes overstate the sinister character of their past associations.

Budenz was followed by a procession of FBI agents and informers who had been operating within the Communist Party. Young, swarthy, curly-haired Herbert A. Philbrick had been reporting to the FBI for nine years on Communist Party doings. He was not paid for his work. In the course of his testimony Philbrick described a secret training school for the Boston area in which a certain Fanny Hartman spoke of "violent revolution to be carried out by bands of armed workers against the government." He said that the Party had been ordered to concentrate its personnel in the key heavy industries of the area. For security reasons, professionals inside the Communist organization met in groups of five without knowing each other's last names.

The press made much of Philbrick's testimony, but it did not seem particularly incriminating. Obviously, he had never reached within spitting distance of the inner leadership. Moreover, "colonizing" key industries was a not unnatural procedure for an organization which combined, as the Communists admittedly did, electoral campaigning with trade union action.

Another FBI agent, Angela Calomiris, had been Financial Secretary of the Hell's Kitchen Branch of the Communist Party in New York. A small, dark girl of somewhat mannish appearance, Miss Calomiris shocked the Party leaders when she emerged in her true role. Since she ran the fellow-traveller organization among photographers, she had probably turned over to the FBI many snapshots of the comrades. She was taking an advanced leadership course in the Party's Jefferson School.

"I have a class today," she told the Court with a smile, "but I don't think I'll go."

As part of her expense account, the FBI had contributed \$50 to the defense of the eleven Communist leaders on trial.

Like most of the other FBI witnesses, she confirmed that the lower echelons of the Communist Party were talking and teaching armed uprising. Other witnesses testified that the membership was being readied for sabotage in the event of war between the United States and the U.S.S.R.

None of these people had reached leadership positions in the Communist apparatus. If the FBI had such men, it was holding them in reserve for a more serious crisis than the conspiracy trial.

The Art of Judge-Baiting

Goaded and impish, the defense attorneys bobbed up and down like pranksters on Halloween. All seemed to be armed with water pistols. They objected to everything on general principles. When their objections were overruled, they kept on talking. When the Court asked mildly what the Defense expected to prove by a certain line of questioning, the attorneys didn't bother to answer.

In an article in *The New Republic*, Bruce Bliven praised Judge Medina for meeting "hostility in the courtroom on a . . . human level, arguing back and forth . . . appealing, sometimes even plaintively, for cooperation, suffering with astonishing patience. . . ." Bliven thought that all the defendants and all their lawyers were continuously in contempt of court.

"I suppose it is to wear me down," the precise, pink-faced Judge mused. He then added: "It does wear me down."

The primary purpose of these tactics seems to have been to enrage the Judge into committing some reversible error. Then a mistrial could be declared and the whole circus would have to begin all over. A deeper purpose was to bring "capitalist justice" and hence the political system it served into general disrepute. The Soviet satiric magazine, *Krokodil*, interpreted the Communist trial in the following crude terms: Democratic institutions were shams, the forms and substance of law were mere rubbish, and the courts existed to put honest leaders of the masses behind bars at the behest of Wall Street.

The courtroom was packed with Communists and Party sympathizers. These men and women played their assigned role in the bullfight. Their sympathies were with the picadors. Medina was the bull.

Charles Nicodemus, a foreman in the Celanese Corporation plant at Cumberland, Maryland, and a former Communist, testified that Party leaders had told him in 1945 that the U.S.S.R., after stabilizing its European position, planned to invade the United States through Alaska and Canada. In that event, American Communists were to unleash sabotage.

"Ridiculous," somebody remarked from the audience. There were hoots and polite snickers. Judge Medina suggested that this "country-club atmosphere" was inappropriate in a court.

"Do I understand that now the court is ordering us not to smile?" Defendant John Gates inquired. "It is bad enough to be ordered not to think."

Crowds outside also did their part. "How do you spell Medina?" they chanted. The answer they gave to this rhetorical question was: "R-A-T." Another singsong, which at the very least was in extremely poor taste, alluded to the recent tragic suicide of defense Secretary James Forrestal, a *bête noire* of the Communist Party:

"Hay, Medina, get on the ball;

"Remember what happened to Forrestal."

A procession of tiny tots picketted outside the court with placards reading: "I'm proud of my daddy." However, most of these children were not progeny of the accused, but had been borrowed for propaganda purposes.

The Communists' Case

The defense diametrically denied the evidence submitted by the Government. According to its version, the Communist Party hoped to take power exclusively by means of the ballot. But it was probable that the capitalist class would use force and violence to prevent the democratic triumph of the people. In that event, the Communists would have to retaliate.

In support of this explanation, they quoted the Communist Party Constitution of 1945 which provided for the automatic expulsion of any member who "conspires or acts to subvert, undermine, weaken or overthrow any or all institutions of American democracy. . . ." This language was even stronger than the Smith Act. The question remained: Was it double talk?

The Defense attempted to introduce mountains of evidence, detailing the Party's solicitude for oppressed racial groups, underprivileged classes and legitimate social reforms. The lawyers seemed happily unaware of the fact that their clients were not being tried for their good intentions.

The star Communist defendant in terms of publicity appeal was Robert G. Thompson, New York State Chairman of the Party. A large, sallow-faced man with the suggestion of future jowls and double chin, Thompson had won the Distinguished Service Cross—the second highest valor award the United States has to bestow—for combat in the Pacific. Under cross-examination, his favorite answer was "very possibly." Judge Medina commented caustically: "It's maybe this and maybe that or I may have. . . ."

No mental giant, the evasive Thompson conceded three damn-

ing points under interrogation: that violent revolution is inevitable in all imperialist countries, that the United States is an imperialist country, and that the Communist goal of proletarian dictatorship can be achieved only through force.

On the stand, Defendant John Gates introduced a pamphlet in evidence. He was asked by the Government who had helped him write it. Gates refused to answer:

"I would have to bow my head in shame and I could never raise my head in decent society if I ever became a stool pigeon."

His refusal to denounce his colleagues, at the possible cost of their jobs and careers, seemed commendable. But the Court pointed out that Gates had not been obliged to testify or to introduce evidence. Once he voluntarily took the stand, however, he could not answer those questions he liked and refuse to reply to the others. Gates was given thirty days in jail for contempt of Court. After referring to the trial as a "kangaroo court", Defendant Gus Hall joined him there.

The most impressive defendant was Benjamin J. Davis, Negro member of the New York City Council. He told how he had been born in Dawson, Georgia, the grandson of slaves. After graduating from Harvard Law School, Davis had participated in the Angelo Herndon defense in Georgia. He said that the trial judge there had called him "nigger and darky" and that that experience was the "turning point of my whole life." Ever since, the tall, well-built, distinguished attorney had been an active Communist.

Eugene Dennis, the Party General Secretary, was equally large, but by no means as impressive. A soft-fleshed mountain of a man with a small mustache and smaller eyes, Dennis spoke with a squeaky voice. For a long time, there had been a standing rule in Communist Party headquarters that Dennis was not to be photographed. His real name was Waldron and he had doggedly refused to give it to a Congressional investigatory committee. A possible inference was that Dennis had been suffering from statute of limitation troubles.

Some of the Communist defendants moved about under false names and travelled under false passports. In applying for jobs or relief, they habitually prevaricated. Neither their records nor their appearance were particularly prepossessing.

The Voice of the Vozhd

"Books," observed Judge Medina, "are not on trial here." This was one of these fine distinctions which lawyers delight in

making. The men on the dock were accused of conspiring to teach certain doctrines, doctrines which were contained in books.

The writings of Lenin played a large and often boring role in the proceedings. Even more important was *The History of the Communist Party of the Soviet Union*, authored in part by Vozhd (Boss) Stalin. The Government was not concerned with the fact that this book grossly misstated the record of the Bolshevik Revolution and subsequent history as well. It was concerned with the work's emphatic doctrinal conclusion that the road to Communist power is armed insurrection.

The misfortune of the Defense was that it had to continuously look over its shoulder. The accused Communists did not dare to repudiate the words of their international leader, Stalin. Caught between the Scylla of a Moscow deviation charge and the more imminent Charybdis of an American jail, they resorted to elaborate footwork. The *History* was something less than a blueprint. American conditions were different from those of Russia. This was standard pedagogic pap within the schools of the American Party.

After the marathon of talk and a comprehensive summation by Judge Medina, the jury voted to convict all of the accused. The Judge imposed severe sentences and then punished his lawyer tormentors for contempt of court.

The trial had torn asunder part of the veil which hid the chasm between Communist democratic pretensions and ultimate revolutionary intent. All this was far from new. It had been proved up to the hilt before at considerably less cost. Because of the nature of the indictment, emphasis was placed on the distant aim of armed insurrection, rather than on present espionage and undeviating service to a foreign state.

Judge Medina's Charge

The problem which Judge Medina faced was of great national import. It was the age-old issue of the conflict between the right of men to say pernicious things and the right of the state to guard itself against destruction. His charge had to be in accord both with the national tradition as a whole and with the realistic needs of the contemporary situation. Unless reversed, judicial decisions become bricks in the edifice of precedent.

There were two possible approaches:

One was to say the Communists had a right to preach and

propagandize armed insurrection as long as they had no earthly chance of bringing it about. This involved the standard of "clear and present danger," first enunciated by Mr. Justice Holmes and most brilliantly expounded by his close friend and associate, Mr. Justice Brandeis.

The other approach was to concentrate on the intentions and actions of the accused without reference to the pragmatic standard of their ability to do harm. Judge Medina took this second line. Concerned over preserving the right to free discussion, he stressed the difference between academic talk and agitation or incitement.

"I charge you that if the defendants did no more than pursue peaceful studies and discussions or teaching and advocacy in the realm of ideas," he told the jury, "you must acquit them."

The judge added that "words may be the instruments by which crimes are committed . . . and it has always been recognized that the protection of other interests of society may justify restrictions upon speech in furtherance of the general welfare." (Holmes and Brandeis would doubtless have agreed with this statement.)

He told the jurors that they had to be convinced of two points before reaching a verdict of guilty. First, that the Communist leaders intended to overthrow the Government by force. Second, that they planned to do this "as speedily as circumstances would permit. . . ."

He tried to spell out the distinction he had in mind by contrasting "the abstract doctrine" of armed revolution with "advocacy of action" for that purpose by language "ordinarily calculated to incite. . . ."

To this sort of talk, the Olympian iconoclast Mr. Justice Holmes had once replied with an irreverent snort:

"Every idea is an incitement. It offers itself for belief, and, if believed, it is acted on unless some other belief outweighs it, or some failure of energy stifles the movement at birth. The only difference between an expression of an opinion and an incitement in the narrower sense is the speaker's enthusiasm for the result."

All of Medina's distinctions applied not to the danger which the Communist Party represented to American society, but to the subjective intentions of the Communists and the vehemence with which they sought to realize them.

The Judge was by-passing the Holmes doctrine of clear and present danger. He said that he had determined, "as a matter of law, that there is a sufficient danger of a substantive evil that the

Congress has a right to prevent to justify the application of the statute under the First Amendment to the Constitution."

He used the word "danger" rather than the hallowed phrase "clear and present danger." When a group of men urge revolutionary means of struggle, there is—one would suppose—always some danger of some sort to society, whether sooner or later. But is the danger sufficiently great and near enough in time to warrant interfering with the Bill of Rights? In 1941, a majority of the Supreme Court emphasized that freedom of speech should only be impaired under conditions of acute social peril. The First Amendment to the Constitution, the Court said in the Bridges Case, "must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving society, will allow."

The second innovation of Judge Medina was his dictum that the judge, rather than the jury, should decide the degree of danger to society. He called this decision "a matter of law." However, the trial record did not dwell on the capacity of the Communist Party to launch an insurrection in the near future. Nor was this a matter which a judge could settle by drawing on his past experience or going to his law library. (American judges are not customarily trained in appraising the power of an insurrectionary movement to overturn the Government.)

Freedom or Order?

The root of the issue was how much security should society risk in order to allow extremists to utter foolish and anti-social ideas? There will always be men who believe that dangerous thoughts should be suppressed before they gain converts. Others will have sublime faith in the eventual sanity of the people. They will urge that bad doctrines can be killed off in the battle-royals of debate.

Conservatives, who oppose the clear and present danger criterion by temperament, are men who habitually fear that sparks will become flames and flames conflagrations. Liberal opinion, by contrast, tends to defend the right of doctrinaires to talk even though it harbors no illusions that America might be intellectually starved by their silence. But liberals have observed that the forceful suppression of evil ideas often inhibits the voicing of wise ones.

The argument is over a matter of degree. Even the most tolerant judges would favor suppressing the propaganda of the Communist Party—or any other group bent on seizing power by violence and

thereafter suppressing all dissent—if they thought the Party was within striking distance of success. These arguments over emphasis and timing, however, are often of crucial importance.

What horrifies many judges about the clear and present danger rule is that it is not precise. It has sometimes been interpreted as a license for extremists to proceed to the brink of successful insurrection before society may intervene. Apt in this context is the view expressed by Lord Chief Justice Treby in 1696 and quoted previously in this book:

“And after this kind of reasoning, they will not be guilty till they have success; and if they have success enough, it will be too late to question them.”

This is a caricature of the rule. The clearest attempt to define it was made by Mr. Justice Brandeis in the *Whitney Case*:

“No danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for discussion.”

At first blush, this brilliant and compact statement seems to provide a workable yardstick. The underlying theory is that good ideas tend to drive out bad in the course of debate. Time and discussion are on the side of democracy. Where there is an immediate threat and time is lacking, the Government must step in and punish. Through public exposure in recent years, the Communist Party has had its influence sharply reduced. Under these attacks, it has dwindled to the point where it is an insignificant minority seemingly quite incapable of ever seizing power by mass revolution.

Accordingly, this rule seems to apply clearly to the Communist Party *considered as a domestic revolutionary organization out for the armed conquest of power.*

But does the Brandeis rule apply to the Communist Party *considered as a recruitment ground for undercover agents to be employed in espionage and sabotage, particularly in the event of a Soviet-American war?*

This is more doubtful. A small fifth column in pivotal positions could do great damage to the nation's war effort. No realistic theory of democracy assumes that *all* the people will adhere to the democratic camp. There will always be a recalcitrant minority. If this minority operates as an underground, illegal organization and as an adjunct to the armed forces of an enemy state, it can certainly be dangerous.

One possible standard of clear and present danger is whether or not an incitement to crime creates a situation which cannot be coped with by ordinary police measures. An insurrectionary movement would accordingly become serious when it marshalls forces which cannot be handled, if necessary, by the local police. There is no clear and present danger when a few Trotskyites drill with pistols and rifles in Minneapolis cellars. But there is such a danger when a few hundred thousand men are enrolled in a Party military arm. There is also clearly a danger when picked men are sent into key positions, disguising their opinions and background, for purposes of sabotage in wartime.

But the Smith Act punishes men for advocating armed revolution. It does not punish them for urging that Americans give unconditional allegiance to a foreign state. The latter seems the real danger, and one which cannot be justified or protected under any intelligible definition of free speech. On any specific issue, a man may say that a foreign country is right and his own country is wrong. This is an important democratic privilege. But wholehearted, undeviating acceptance of everything a foreign government orders is obviously incompatible with the duties of American citizenship.

Significance of the Trial

For all practical purposes, the conviction of the Communist Party leaders for seditious conspiracy made the organization itself unlawful. The Communist leaders did not conspire as individual men. The instrument of the conspiracy was their political party.

Under the Smith Act, all who henceforth knowingly distribute Communist literature, print Communist Party publications or disseminate them, help organize Communist meetings, join or retain membership in the Party or affiliate with groups which they know to be Communist-controlled—all these people can be indicted and probably convicted and sentenced to long prison terms.

This is what the law provides. It stipulates that a man must know that any subversive organization which he helps is dedicated to teaching the propriety of armed revolution. The lower court has, however, decided that the Communist Party is such an organization and, unless reversed, that verdict stands. Barring some good reason to believe that a Communist was ignorant of the jury verdict in the Medina trial, it would naturally be presumed that he knew of the insurrectionary aims of the Party.

Thus, the Justice Department was seemingly placed in a most uncomfortable position. It had no intention of indicting tens of thousands of people. Yet how could it allow the Communist Party to continue business as usual under lower echelon leaders who were part of the conspiracy for which the eleven were convicted?

A probable result of this situation, if it remains unchanged by a ruling from a higher court, will be to drive the Communists underground. Here their activities cannot easily be observed or detected. They will tend to do their open work through other organizations. As these new groups mushroom forth, in which liberals, independent radicals and Communists are inextricably intermixed, the tasks of the political police system will magnify in difficulty and the police system itself necessarily expand.

These probabilities have no bearing on Communist conspirative work, as distinguished from routine organizational and political problems. The illegal apparatus does not use membership books and its personnel are trained to hide their true opinions. They are not likely to fall afoul of the Smith Act. The stifled combat between Soviet espionage and American counter espionage was neither helped nor hindered by the New York verdict against the open leaders of the Party.

Once the Communist Party goes underground, another danger is likely to arise: that the search for Communists, particularly by Congressional committees, state authorities and unofficial groups, will become a heresy hunt. The Justice Department is aware of this danger, but it is not necessarily able to prevent it from materializing in areas not under its own control.

As it becomes harder to prove direct Party membership, greater reliance may be placed on "guilt by association"—a will-'o-the-wisp standard repugnant to American traditions. As the Communists organize "respectable" front organizations with moderate programs, courts may tend to look for concealed revolutionary intent behind innocent-seeming "Aesopian" language. Members of the front groups, caught in the meshes of the legal trawl, may actually have taken the programs at their face value. Intent and knowledge are difficult things to prove.

And when all is said and done, where is the gain? Although unable to stand the searching light of public exposure and discussion, the Communist Party thrives on persecution. It thus gains recruits among people who have no business in its ranks. Men who are quick to protest against persecution, who abhor coercive measures and who have a strong, confident faith in individual free-

dom are often driven toward the Communist movement precisely because it is suppressed. It would seem important to arrest any tendency which automatically transforms liberals into aides of world-wide revolutionary totalitarian movements.

Viewed as an open political movement, the main strength of American Communism is among a minority of intellectuals. This unnatural coalition destroys the capacity of such men to provide any constructive leadership in political and social affairs. More important, it gives a false and beneficent appearance to an insidious evil. Combatting Communist ideas with imprisonment, rather than by debate, strengthens the illusion that the Communist movement stands for that tradition of American freedom which, in actuality, it hopes to destroy.

NEW DIMENSIONS OF TREASON

"All the armed prophets have been victorious, while the unarmed prophets have come to grief. . . . No doubt the armed prophets encounter great difficulties, and they are assailed en route by all the dangers of their undertaking . . . but, when once they have overcome them, and have begun to evoke veneration, thanks to having wiped out all their inveterate detractors, they then remain puissant, secure, honored and happy ever after."—Niccolo Machiavelli, *The Prince*.

Having at last approached the end of the road, we can speculate as to the types of treason which the United States may possibly face in coming years.

The first species of treason described in the Constitution is that of levying war against the United States. Although this was the danger with which the Founding Fathers were pre-eminently concerned, no insurrectionary or secessionist attempt has been made in the last eighty years. As is pointed out in other parts of this volume, the absence of treasonous movements of this variety has been due to the consolidation of national consciousness, the growth of democracy, and the concentration of armed power.

The commonsense prediction is that no danger of insurrection against the American Government is likely to arise in time of peace. History, however, has an unpleasant habit of surprising historians. Seemingly stable, unidirectional trends are suddenly upset and thrown into reverse gear. The recent history of the world is sprinkled with such somersaults. It would perhaps be foolish to dogmatize even about such a seemingly self-evident prophesy as internal peace.

The Hypothetical Armed Band

Centralization and articulation of military power creates a situation in which the role of the armed band in insurrection is radi-

cally changed. A conspirative group at the apex of the specialized organization wielding modern armament becomes potentially far more dangerous than an uprising of the masses or mutiny among the infantry.

There is a Washington rumor which illustrates these possible new forms of insurrectionary danger. It is almost certainly false in all respects and is significant only as a modern type of folk poetry.

According to the yarn, shortly before the Almagorda atomic bomb exploded on July 14, 1945, a group of American scientists on weapons projects reached some highly disturbing conclusions. They believed that armaments technology had reached a point where civilization faced utter destruction in a Third World War. Continued nationalist rivalries and power politics would, in their opinion, lead to total catastrophe. They allegedly thought that the reasoning processes of the professional political leaders, whether democratic or totalitarian, were stultified to such an extent that they could not be persuaded of the danger.

The scientists therefore planned—according to the story—to remove from the Government's possession those key plans and data necessary to the construction of certain new weapons of sufficient potency to destroy the urban and industrial facilities of the modern world. In some unexplained way, they were to find a secure base of operations, not controlled by any great power, where these weapons could be made. Finally, all governments would be given a simultaneous ultimatum to cooperate in a program of world organization or else face an annihilating attack. Supposedly, at this point the plans were checkmated by the FBI.

It is easy to see why the story is nonsense. There was no neutral place in which the weapons could be made. The task of producing them, together with launching facilities and missiles, presupposed creation of a great industrial establishment. This cannot be done in secret. It would have entailed years of preparation. A new political power would have been needed to run the nation-state emerging around the core of war industries with their tens of thousands of workers and technicians.

Conceivably, however, the coup d'état from within the military apparatus may become technologically practicable in the near future. Up to the present, the law that military potential equals economic potential has tended to hold. Developments in bacteriological warfare might upset it. The necessary preconditions to this stage of unstable equilibrium would seem to be: first, that

weapons reach a virtually absolute destructive potential; second, that such weapons can be produced in sufficient quantity without large production facilities.

Know-how and determination would then be decisive. A minority group—either of war scientists or of officials who control and apply the knowledge of scientists—might be able to offer the world the choice between surrender and destruction. As in the historical successes of resolute insurrectionary bands, it would not be necessary to win over large masses to the side of the movement. The element of surprise and the determination to force the issue to a conclusion would substitute for popular support.

The main difference between the traditional coup and that of a technological elite is that the new mass weapons cannot be applied selectively and in small doses. Governments cannot be overthrown in this way while leaving the society they rule undisturbed. The nature of the hypothetical force is such that it must destroy totally or not be employed at all. Nightmarish possibilities of this sort cannot be totally excluded as part of the congeries of potential long-range developments.

The Peaceful Counter-Revolution

An interesting aspect of the cold war against the U.S.S.R. is that it has not served as a springboard for the little pro-fascist groups of the World War II period. Many of the fascists vociferously warned of the coming struggle with Soviet Russia. But they remained, fortunately, prophets unhonored either in their own land or elsewhere. Most of the men whose loyalty failed the test of war have been left by the people in ignominy and isolation.

Domestic treasonable forces might, however, arise from the logic of present tensions. In a mounting crisis atmosphere, the public often becomes impatient of democratic procedures as seemingly too sluggish and inefficient to cope with a massive danger. If the nation were to be caught in the grip of hysterical fears and led to believe that the Government was doing nothing to defend itself, sentiment might rise for an emergency regime operating outside the frame of the Constitution.

A similar development has occurred with monotonous regularity in the crisis-torn states of Europe. It has been the normal road to power of fascist and praetorian movements. But there are fortunately no symptoms of it in the United States. In the present crisis, probably to a greater extent than in any previous one, the

majority of the people has shown its concern for preserving national security by measures consonant with the democratic tradition.

End of the Triangular War

Until VJ Day, there were three contending coalitions in the modern world. The liberal democratic alliance was based on the maritime fringe of Western Europe, the United States and the British Dominions. Opposed to it was the Axis with its myriad fifth column and the Soviet State with its international revolutionary movement.

As far as the domestic picture was concerned, each totalitarian movement sought to gain mass support by spearheading a coalition against the other. Since only a tiny minority of the American people wished to abandon democratic institutions, the totalitarians based their mass appeal, paradoxically, on that of anti-totalitarianism. Thus the American fascist movement promised to save the nation against the menace of Jewry, defined as a conspiracy of international finance and international revolution. The Communist Party, on the other hand, claimed to be the militant leader of American democracy in its combat against a fascist conspiracy hatched by Wall Street imperialists.

An essential element in both totalitarian appeals was the concept of guilt by association. The Communists were not content to expose and aid in the destruction of the small, militant fascist groups. They alleged that behind them stood a vast hidden alliance of men in high places of power and that the capitalist system as a whole supported the fascist squadrons of terror. On the fascist side, the same motif of world conspiracy was prominently brought forward, particularly in such works as Elizabeth Dilling's *The Red Network*. The "Red plot" supposedly implicated the great Protestant churches, the majority in House and Senate and the President of the United States.

It is easy to see why these fantasies were created and made to appear credible. The patriot and believer in democracy could only be won over to one totalitarian group on the theory that the other had so interpenetrated society and Government that it could not be destroyed merely by police action. From this belief, the neophyte passed to acceptance of its corollary—the conspiracy theory of history. The institutions and processes of constitutional democracy were represented as mere shams, existing to mask the conspiracy and swindle the simple-minded and gullible. Behind them stood the ruthless, hidden plotters. Once he

accepted this picture as reality, the convert was to conclude that militant, coercive action by the totalitarian party was necessary to save the nation. This action was to be directed, not merely against the handful of open enemies, but against the democratic state as a whole which covertly supported them. The paradox of this process of thought was that the initial motivations—fear that American democracy or American national independence was about to be destroyed—led the convert toward organized participation in attempts at their actual destruction.

The shattering of fascist strength in the key power centers of Europe and Asia has drastically limited the possibilities of this sort of propaganda. The Communist Party still bases much of its appeal on the need for destroying fascism—an approach, however, which has lost greatly in effectiveness. With democratic government established in Italy and a precarious popular regime in the saddle in Western Germany, the tangible menace of a world-wide axis coalition has ceased to exist. The Communists have therefore been obliged to extend the definition of fascism to virtually all forces which oppose them, and thereby vitiate the general efficacy of such propaganda.

The fascists face equally serious troubles. It is clear to most people that they are not needed for any role in the struggle against American Communism. Except for Franco Spain, their international bases of operations are—either temporarily or permanently—destroyed.

Their propaganda policy continues to reverberate, however, in Congressional debates. A group of Congressmen and Senators still vociferously urge support to fascist Spain and the building up of German military power as a necessary expedient in the fight against the Soviet coalition. However, experience has made it fairly clear that this pseudo-Machiavellian strategy does not serve long-range American national interests. Building up one totalitarian force in order to destroy the other simply reproduces the problem in a new form. The strength of the democracies appears great enough to make such dangerous expedients unnecessary.

Treason by Adherence to Enemies

It seems evident that the main sort of treason which the United States may anticipate is "adhering to their Enemies, giving them Aid and Comfort." Few people believe that the American colossus can be overthrown by insurrectionary measures, regardless of

how they may be adapted to the new forms of social, economic and military organization. Revolution requires the application of massive power. But aiding a foreign enemy does not.

If the serious dangers of treason arise only in wartime, then the only potentially effective sources of treason are the domestic allies of those nations with which the United States is likely to find itself at war. The Soviet Union and its satellite states are the one group officially recognized as probable enemies in any such conflict. With the fascist coalition shattered, the Soviet bloc is the only strong military power alliance on the face of the earth with a totalitarian system, destined, in the opinion of its adherents, to become through force the universal form of government and society.

In any discussion of potential treason against the United States, therefore, the Communist movement plays an almost unique role.

In terms of *motive* alone, the Communist Party would seem to be clearly treasonous. A Federal Court has decided that it is a conspiracy to advocate armed insurrection against the Government—treason by levying war. Even if its initial methods were limited solely to attaining power through the ballot, its domestic aims would probably be treasonable. The avowed central purpose of the international Communist movement is to institute the dictatorship of the proletariat—the ruthless rule of one class, suppressing all enemy class groups by naked force. As Lenin put it: "The proletariat cannot triumph without breaking the power of the bourgeoisie, without forcibly suppressing its enemies, and . . . where there is forcible suppression, there is, of course, no 'freedom', no democracy. . . ." Lenin's doctrine of the pivotal role of proletarian dictatorship has never been revised in any of its essentials by Moscow.

The establishment of a terrorist regime of this nature in America would necessarily entail forcefully destroying the Constitution. A Government which did this would become *ipso facto* a usurpation and its leaders would be guilty of treason against the United States by levying war.

It is no less clear that basic Communist theory requires that the constituent parties of the world movement should use all means, legal and illegal, to aid the Soviet Union in the event of war between it and their own countries. This requirement has been reiterated so frequently and unequivocally in Communist pronouncements that it hardly seems necessary to prove it. A recent instance, illustrative of the extent to which opposition to

the Soviet State has become the paramount crime in the Communist calendar is a press interview with Vittorio Vidali, Trieste Party leader and a top-level organizer of underground struggle against Marshal Tito's regime in Yugoslavia. Vidali was asked why the Communists call Tito a fascist. He replied, as reported in *The New York Times* of September 9, 1949:

"... as a man who once belonged to the Communist movement . . . , [Tito] knew that there is one basic law—that is our faith in the Soviet Union. . . . He knew very well that in the struggle of our movement anyone who began to fight against its leadership inevitably joined our enemies."

Willingness to aid the Soviet Union in war against one's own country, willingness to work heart and soul to ensure the military defeat of one's own nation and the victory of an alien power—that is the very essence of the second species of treason considered in the Constitution: Adhering to the enemies of the United States, giving them aid and comfort.

If the *ends* of the Communist movement are traitorous, nonetheless the Communist Party, under present circumstances, is not guilty of treason. Treason requires two things—a will and an act. The existence of the will is abundantly plain. The type of act, however, which carries the citizen from the safe waters of political opposition into the deadly whirlpool of treason has been narrowly defined by the Constitution lest the imputation of this crime be used to crush legitimate dissent and establish an American tyranny.

Specifically, that species of treason which the English Common Law bundled under the clause "imagining or encompassing the death of our lord, the King" is non-existent in America. In our country, conspiring to commit treason is not treason itself. Espionage in peacetime is not treason. It is not even treason to confer with the leaders of a foreign state concerning the invasion of the United States and agree to aid them in that venture.

American Communists have not given aid and comfort to the enemies of the United States for the simple reason that this country and the Soviet Union legally have never been enemies. The Constitution was drafted in a comparatively simple era when nations, as a rule, either went to war or remained at peace. But times have changed—drastically. The nebulous and unhappy in-between state known as the cold war is unique in American history.

The contemporary amorphous form of limited international antagonism cannot be considered to be war itself as defined in the Constitution. The sweeping war powers of the Federal Government—undesirable in a normal state of affairs—cannot be brought into play merely because two great powers are politically hostile to each other.

There is a logic behind the cold war phase. The advance of military techniques has created a situation where war between any two powerful states threatens the entire world with almost total disaster. The war of limited objectives, as distinct from the war of annihilation, is therefore considered increasingly obsolete. The quasi-war or cold war tends to bridge this gap. Where the conflict is not sufficiently aggravated to warrant either side in risking national suicide, penumbral measures of hostility, which fall short of actual warfare, will generally be adopted.

If War Should Come

Entirely new issues would arise under the law of treason in the unhappy event of war between the U.S.S.R. and the United States. It is here assumed that the Communist Party would then devote its activities to furthering Soviet military operations. Some of these activities, considered in themselves, would be legal: fomenting strikes in munitions plants, spreading anti-war propaganda, etc. Other activities, such as sabotage, espionage, encouraging troops to desert or rebel, would be clearly illegal.

But would they be treason? There are three elements to the crime of treason by adhering to the enemies of the United States. The first of these is *intent*. The second is the concrete assistance rendered—the “aid and comfort.” The third is the actual fact of “adhering” to an enemy power.

There can be no doubt that the intent of the Communist Party would be to aid the enemies of the United States. Moreover, it would be perfectly useless for Communist defendants in a treason trial to urge that they were aiding Russia from motives of patriotism, in the belief that the establishment of Communism in the United States was the highest conceivable good for their country. At law, *intent* and *motive* are not the same. The motive is the purpose of an action; the intent is merely the foreseen and deliberately accepted consequences of the plan of action: Thus, if a man murders a millionaire uncle with the motive of using the inheritance to establish a philanthropic foundation, he is nonetheless guilty of intentional murder.

But what about the overt act which extends aid and comfort to the enemy? Clearly, both sabotage of war plants and strikes against munitions factories would satisfy this constitutional requirement. As far as the overt acts themselves are concerned, no distinction need be drawn between conduct which, considered on its face and in isolation from its context is innocent, and that which is unlawful. Legal steps may be of greater aid to the enemy than illegal.

For example, Hans Max Haupt, was convicted of treason for having given shelter to his son and helped him to acquire a job and an automobile—all legal and normal acts considered in isolation. But the context was neither normal nor innocent. Haupt knew that he was assisting German saboteurs in destroying American war plants. With only one dissenting voice, the Supreme Court upheld his conviction as a traitor.

Similarly, the fact that a citizen merely talks against his country in wartime does not necessarily enable him to escape prosecution for treason. Thus far, five Americans have been convicted of treason for broadcasting over the enemy radio in World War II.

The only critical issue would seem to the meaning of the word "adhering." If a Communist should take orders from a Russian agent knowingly during wartime, he would be adherent to America's enemies and subject to conviction as a traitor.

Hitherto, men and women convicted of treason by adhering have either acted on behalf of known enemy agents or committed an action which is unambiguously treasonable—such as setting out to enlist with British forces on American soil during the War of 1812.

At the opposite extreme, there are cases in which there was no evidence of organizational connection. During both World Wars, there were American citizens who admitted that they wanted Germany to win and who encouraged strikes and desertion. These individuals were not prosecuted as traitors, probably because there was no evidence that they had taken the steps necessary to constitute adherence to the enemy.

In summary, a Communist who carried out orders during wartime which he knew originated with the enemy would be a traitor. The issue would become blurred, however, if this man had a general knowledge—being a Communist—that the Party was unconditionally committed to aid of the Soviet Union, but

received his orders from American higher-ups. These crucial issues have not been explored in any detail by the Justice Department nor have they come before the courts. And law is defined at its interstices by judicial decision.

No reference has been made to Mr. Justice Holmes' illuminating rule of "clear and present danger." It does not apply to treason and it emphatically does not apply to the treason of aiding America's enemies. The reasoning behind the rule is that the United States seeks to preserve two sometimes incompatible sets of social values—the right of the individual to the broadest latitude of speech, writing and assembly, on the one hand, and the security of democratic processes, on the other.

Treason, however, is not assayed in terms of the probable danger of the act of betrayal. The crime is considered too heinous to be measured by that pragmatic test. No right is guaranteed Americans, in the Constitution or elsewhere, to pretend allegiance to this country, while actually executing the will of a foreign state bent on destroying it.

The outbreak of war would thus cause an abrupt mutation in the legal status of Communist activity. Propaganda and action, hitherto privileged as falling behind the ample shield of constitutional protection, might suddenly become punishable as the most serious political crime which an American citizen can perpetrate.

Treason and Nationalism

During the present century, the United States has faced three major authoritarian challenges—those of Imperial Germany, the fascist Axis and Soviet Communism. The first two of these were answered by war; the third is being countered by a series of operations which fall into the expanding shadowland that is neither war nor peace.

In the transition from each conflict to the next, there has been a steady progression away from the nineteenth century concept of nationalism toward the even more destructive phenomenon of world-wide ideological battles for total power. The First World War was primarily an armed conflict between groups of nation-states with incompatible dynastic ambitions. The Second World War was an historic leap from the idea of the nation as the focus of allegiance toward the newer conception of a world-wide ideology transcending national frontiers. In that conflict, two

opposed forms of social organization, which by their nature could not peacefully coexist, engaged in a battle of annihilation to determine the shape of the world.

The contemporary cold war against Communism is a further stage in this progression. While Nazism was nationalistic in the sense that it posited a racially hierarchic society in which Aryans would be masters and the rest slaves, Communism is a universal social philosophy which admits of no racial or national distinctions. Whereas the racial oppression of Nazism looked toward the creation of a slave multitude from the nations of "inferior" racial stock, the class oppression of Communism is designed to liquidate the ruling class strata in their entirety and without regard to national composition.

Looking at Western Civilization as a whole, there is nothing unique or unprecedented in this conception of an international brotherhood and an international creed, equipped with a military arm and inspired by a messianic and universal aim of conquest and conversion. The religious struggles of the early centuries of Christianity were of such a nature. Throughout the Byzantine world in the period of the decline of the Roman Empire, the religious community, rather than the state, was the cynosure of allegiance and the primary bond between man and man. Wars were fought between armed creeds, each of which claimed to possess universal truth. No such wars could have limited objectives, since there was but one truth and it could save all men. The last of these great military and spiritual eruptions was Islam during its first centuries of furious conquest.

In fact, nationalism is a comparatively recent and perhaps ephemeral phenomenon in the history of the West. It began to reach gigantic proportions with the spreading of education and communications among the European masses in the latter part of the eighteenth century. As religious faith dwindled, patriotism won a tenacious hold on the mass mind. The French Revolution was an historic turning point. War, which had previously been waged for limited objectives by mercenary troops and in accordance with a gentlemanly code, became the *levée en masse*—the total war of the nation in arms.

Throughout the nineteenth century, the growth of democracy and the progress of industrial techniques stimulated nationalism. The nation-state became an articulated, viable unit. As the common people participated increasingly in control of the nation's affairs, they acquired a deep-seated allegiance to their national

community. Moreover, the liberation of the world's productive powers by applied science gave the mass of mankind in the West a material stake in their society which had been inconceivable in earlier eras and in less favored regions. It could make no practical difference to the starved and miserable villein of the Middle Ages, to the coolie of China or to the ryot of India what flag floated over his head or what lord exacted tribute from the pittance he produced.

There is, however, as Toynbee has so brilliantly pointed out, an inherent and growing conflict between the expansive forces of industrialism and the containing frontiers of the nation-state. Accelerated progress in the technology of industry, transport and communications binds together the world at large in a community of techniques and ideas. While technologically retrograde totalitarian systems attempt to resist this tendency by coercion, as in the recent Soviet cultural purges, such efforts would seem ultimately doomed to failure. The political organization of ever larger areas becomes not only possible, but efficient. The surge of a dynamic applied science against the static barriers of the nation-state expresses itself in the formation of supra-national coalitions with partial attributes of sovereignty and in the transformation of national wars into battles to unify the civilized world under a single directing center.

In Toynbee's view, just as the failure of the Greek city-states to confederate into a nation was the basic reason for the downfall of their civilization, so a corresponding failure in our time to coalesce the obsolete nation-states into a world system may cause catastrophe.

The Expansion of Sovereignty

This view of progress contains a latent paradox. On the one hand, history seems to show a forward movement toward larger areas of sovereignty, a movement paralleled and stimulated by technological advance. Thus the progress from the Greek *polis* to the Italian municipal maritime empire, to the Western European nation of the nineteenth century, to the supra-national coalition of today and perhaps finally to the world federation of tomorrow. On the other hand, even during periods of rudimentary techniques and mass ignorance, religious empires have battled amongst themselves for the governance of the world.

Two groups of phenomena, of an entirely separate character, are at work here. Viewed from the standpoint of man's intellectual

advance, of the freedom and creativity of society, the struggle has been between secular and totalitarian concepts of society. The armed creeds fought to win men's souls; to bind their thought, speech and action in conformity with a single view of the world and its destiny. Political government was only the means toward government over the mind.

This tends to explain why the greatest periods of creativity in Western Civilization have not been those of vast and tyrannous state organizations, but rather of conflicting sovereignties, either limited in scope or restricted as to territorial claims. Fifth Century Athens, Rome from the late Republic to the rise of Christianity, the condottieri-backed municipalities and statelets of the Italian Renaissance and the non-messianic nations of Europe between the Peace of Westphalia and the rise of totalitarianism are all consonant with this general rule. In these periods, political rather than religious sovereignty was pre-eminent and the former was limited in its aims and pretensions.

The contrast, in other words, is between the state as a coercive force over the mind and the state as a means to freedom. Does the good life consist in serving the dominant ideology of the state? Or does the state exist, not to provide the good life, but merely to give the individual the opportunity of choosing it? Is man the end and social organization the means? Or is the relationship reversed?

The totalitarian movements—fascism and Communism—are riding the so-called wave of the future in the sense that economic and technological considerations point to the need for a widening area of sovereignty and political organization. But they are also a reversion to a darker period in human affairs in that they seek to re-impose a system of social control which stifles creativity and human development in general, forces man to give lip service to putative absolute truths and penalizes all deviations from and criticisms of them.

The struggle between totalitarianism and democracy, therefore, is something more than a battle between "Caesarisms", as Spengler viewed it. If democracy sometimes appears an anemic faith in relation to the stentorian, million-throated shouting of the totalitarian horde, this is because it merely strives to establish a structure of freedom within which man can, by his own efforts, develop the infinite, varied and conflicting potentialities latent within him. Democracy, in short, offers no truths, but gives man a political environment in which he is free to search for truth.

Totalitarian movements rise in the waste lands of democratic failure. Paramount among such fiascos was Versailles. There, Europe might have been organized to provide a durable peace, a viable economy and a guarantee of freedom. The statesmen of Western Europe, however, either did not realize that the barriers of nationalism were being breached by forces that no diplomacy could stem or, at the minimum, failed to act on this realization. In blinding their eyes to all issues except the pursuit of narrow national self-interest, they almost brought about the suicide of the Western world.

There is also a more personal and immediate failure of democracy: the truancy of the intellectuals from the philosophy of individual freedom. The totalitarian movements—particularly Communism—were and are led by intellectuals. These men want an absolute faith and an absolute truth; they want to be absolved from the painful function of moral choice, not realizing that without such choice creativity is impossible. In short, theirs are minds too tender and too immature for the hard philosophy of freedom.

Treason Against Democracy

The present situation, which is naturally far more complex than the above paragraphs indicate, gives new dimensions to the conception of treason and tends to make the traditional view of the crime obsolete. Treason is a betrayal of allegiance and, in general, allegiance throughout the Western World is conceived as the duty of the citizen toward his nation-state. In a period when the carapace of the nation-state is being dissolved by the tempo and direction of technological evolution, the original allegiance tends to merge into a broader loyalty to a philosophy of social organization.

In America, this creed can be summarized in the much abused words "individual freedom"—the complex structure of democratic government under the Constitution being basically only an appropriate means toward its realization. Communism seeks to destroy the liberty and democracy which give value to American life. If no links whatsoever existed between American Communism and the Soviet State, this purpose would be no less of a betrayal in moral, though not in legal, terms. Moreover, as the United States commits itself increasingly to the defense of free government throughout the world, the struggle against Communism

becomes primarily significant, not in terms of alien agents operating on American soil, but in relation to the organization of the world as a whole on foundations of freedom.

The merging of the nation-state into a broader unit of sovereignty, a process which is by no means completed, suggests a re-evaluation of the conception of treason. The problem is particularly acute in Western European countries which, after two devastating wars, have sunk from an era of power and glory into one of economic decrepitude and partial political dependency. In her intuitive work, *The Meaning of Treason*, Rebecca West grapples with the problem—the dissolution of purely national allegiance. She reverts to an essentially emotional conception of loyalty, a loyalty which derives from the immediate area of a man's private life—the locus of all ties which are deeply experienced and essential to his peace of spirit. She is therefore nostalgic over the disappearance of the self-contained society of the English villages of a bygone era in which the obligations and benefits of each and the interdependence of all were not only visible, but cemented by strong emotional bonds. Here, in this medium, the nature of treason was patently obvious; it was a betrayal of the vicinage in which a man grew, developed and lived, in which his loyalties and hopes were centered. In Miss West's view, "the seven devils of internationalism" enter the soul of the traitor; he forsakes his "familiar medium." He is unhappy because "Each of these men was as dependent on the good opinion of others as one is oneself; they needed a nation which was also a hearth."

There is some poetic truth in this outlook, but it is a truth which is not particularly useful. It is unthinkable that the widening of the world should be accompanied by a narrowing of the area of loyalty. Treason is a public act. When treachery is discovered, the nation must act against it or perish. Both treason and its punishment are political actions. They are part of either public or conspirative policy. They cannot be determined on private or intuitive grounds. Since the scope of political decisions has expanded to a point where the fate of all corners of the earth may be affected, the concept of treason will slowly, and with many hesitations and relapses, also expand toward the idea of the betrayal of mankind as a whole. If treason were to shrink to the miniature proportions of betrayal of the vicinage, statesmen would have to take a worm's eye view of their responsibilities, abandoning the welfare of the world for the security of the parish.

The American Revolution took an enormous forward stride

in the needed direction. Before the American Constitution, treason among the English-speaking peoples was intimately bound up with the concept of private betrayal. A wife who murdered her husband was guilty of petit treason and, if convicted, would be burned at the stake or eviscerated and quartered. The same dreaded penalties applied to serfs disloyal to their masters or to any person, in an inferior social status, who broke the bonds of fealty and protection which held the feudal vicinage together.

The United States confined the concept of treason to betrayal of the sovereign government—whether state or federal. A society founded on the principle of equality of all under the law could have no use for a branch of treason which protected non-reciprocal private rights under a regime of status. This limitation of treason to betrayal of allegiance to the state foreshadowed the fact that America was destined to become an integrated, continental nation such as the world had never seen.

Treason under the Constitution is the betrayal of a *free* society. It is not merely the betrayal of the state, considered as an organ of power. The American owes his allegiance to governments "deriving their just power from the consent of the governed" and protecting the "unalienable rights" of the citizens to "life, liberty, and the pursuit of happiness." When governments fail in these essentials, they become unlawful; they cease to command the citizen's allegiance, and resistance to them becomes, not a crime, but a duty. This is the basic apologia of the American Revolution.

The Constitution is entirely consistent with this attitude. It defines treason as a blow directed against the United States, meaning that sovereign nation created under the constitutional compact. If an American Government should tear up the Constitution and rule by arbitrary force, resistance to it would be, not treason, but a patriotic obligation. The crime of treason exists only as defined in the Constitution and is inextricably bound up with it. The Declaration of Independence defined the type of just government to which Americans were prepared to give allegiance; the Constitution established such a government.

The American conception of treason therefore constitutes a bridge from the older idea of a betrayal of the nation to the emergent one of the betrayal of human freedom.

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