OLD LONDON COFFEE-HOUSE, SOUTHWEST CORNER OF FRONT AND MARKET STREETS.

A couple of days before the First Continental Congress was to assemble, a number of deputies "drank sentiments until eleven o'clock" at an elegant supper in the grand and spacious house of Thomas Mifflin. Among the toasts, one at least expressed everyone's hopes—"May the result of the Congress answer the expectations of the people." Congress indeed accomplished much, and in an astonishingly short time. In the eighteenth century, leaders seem to have been able to make political decisions and produce documents more expeditiously than in the twentieth. Members who had already arrived, met on September 5, 1774, at City Tavern, proceeded thence to Carpenters' Hall, and decided that this suited their needs as well, or better than the room in the State House offered by Speaker Joseph Galloway of the Pennsylvania assembly. Mechanics and artisans would, it was thought, be pleased at the choice, and conservatives frustrated. This choice of meeting place represented a liberal or patriot victory.

Congress got to work at once. "A large and well-looking" Virginian, Peyton Randolph, was elected president. When he became ill, a slender and silent South Carolina planter, Henry Middleton took his place and presided after October 20. Charles Thomson, Irish born student of Alison, scholar, Philadelphia merchant, and an expert on Indian and scriptural matters, was approved as secretary because, not being a deputy, he could give full time to clerking. Thomson, "life of the cause of liberty," was to serve this and suc-
ceeding sessions of the Continental Congress until it was superceded by the provisions of the new constitution. In spite of more than one reference to delays—John Adams remarked: "Tedious indeed is our Business—Slow as Snails." When Congress dispersed on October 26, a number of important and formidable papers had been approved and ordered disseminated; among them a declaration of rights and grievances, an address to the people of Great Britain, a letter to the inhabitants of Quebec, a memorial to fellow-colonists in North America, and a petition to George III. These largely declaratory documents presented clear statements about the situation as the majority of the fifty-six deputies then understood it.

During the first three days at Carpenters' Hall, one question, that of the procedure to be followed, was dismissed on September 6. The day before James Duane, a conservative New Yorker, had suggested appointing a committee to draw up rules, but he was assured that, since all were familiar with the usage of the House of Commons, this was unnecessary. Another query, that was to recur and provoke debate as late as the convention of 1787, concerned the controversial matter of voting. Should each colony's vote count as one, or should the larger settlements like Pennsylvania, Virginia, and Massachusetts have votes in proportion to population and wealth, or both; since their burden of responsibility would be greater? Major John Sullivan of New Hampshire, a state in the same class as Rhode Island and others, declared that "a little colony had its all at stake as well as a larger (one)." Sensibly the decision on September 6 cut through arguments: there was little statistical information on which to base precise judgments. Though again questioned, the rule of one vote, one colony prevailed.

Also on this same September 6 Congress proposed and the next day appointed two committees; one to draft a declaration of rights and grievances, the other to examine and report statutes affecting trade and manufacture. The larger committee, on rights, met on the 8th, and, after a debate vividly reported by John Adams in his diary, nominated a subcommittee which met from September 10 to 14. A report being made to a full Congress on the 22nd, it was then decided on the 24th to limit listing of infringements of rights to those occurring since 1763. On October 14 the Declaration of Rights and Grievances, possibly originally drawn up by John Sullivan but

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revised in committee, and in part at least by John Adams, was adopted by Congress. This paper, after a very brief glance at other significant actions by the deputies, will deal with its contents.8

One proposal, a Plan of Union, presented by Joseph Galloway and supported by James Duane, John Jay, and others was, after an adverse vote, dismissed.9 Another plan had a different history. The colonists wished not only to make their case known but to obtain redress. Sporadic attempts to obtain this by way of interruptions of trade and commerce had been made since the Stamp Act of 1765. As Congress convened in Philadelphia, a determined group of New Englanders met and passed the Suffolk Resolves. They demanded complete intermission of commercial relations with Great Britain. Drafted chiefly by Joseph Warren, who was soon to die tragically at Bunker Hill, the resolves were signed on September 9 and taken by Paul Revere to Philadelphia. Reaching Congress on the 16th, the resolves were debated and endorsed the next day, "one of the happiest days of my life," Adams wrote.10 In consequence, the first publication of Congress was a directive issued by printer William Bradford and his son Thomas from the London Coffee House on Front Street, ordering merchants to suspend commercial transactions with Great Britain.11 Congress continued debate on the Suffolk Resolves, while also being concerned with their rights and grievances. On Thursday, October 20, the association was signed and published, embodying the boycott asked for, and describing retaliatory measures to be used against violators of the varying forms of nonconsumption, nonexportation, and nonimportation decreed. This was the first American decision, taken in the name of all, and applicable to all. The association represented a willingness for sacrifice in the common cause and demonstrated the possibilities of joint action and a spirit of union. The effect of the association on Great Britain was less than many hoped, but its significance for our purpose here and now is that deputies at Philadelphia of all shades of opinion, and representing widely divergent interests, rejected any compromise. The grievances suffered, and the rights violated or

9 Julian P. Boyd, Anglo-American Union: Joseph Galloway's Plan to Preserve the British Empire, 1774-1788 (Philadelphia, 1941), commentary and text.
threatened, were thought too important for any halfway strategy. Drastic policies were demanded and accepted.

There was thus a widespread consensus. Of course, there were also exponents of loyalism—Isaac Low of New York like Galloway was to die in exile—as well as of moderates who wanted policies restricting, for example, British parliamentary action to the kind familiar before 1763. Loyalists began to find themselves in a thoroughly uncomfortable, not to say impossible position. Moderates, of whom John Dickinson was one, became increasingly unpopular. In the first Congress few deputies thought the Intolerable Acts necessary or just. All were therefore able to agree about passing the Declaration of Rights and Grievances, even if some were more aware and apprehensive than others of possible repercussions. Endorsement in Congress of the Association and Declaration was lent further strength by the publication of tracts by Thomas Jefferson, (Summary View, 1774), John Adams (The Novanglus Letters, 1774-1775), and Alexander Hamilton (A Full Vindication); the first written in the summer anticipating some actions to be taken by Congress, the others supporting its decisions. Proponents of British authority like T. B. Chandler, "the American Querist," and Jonathan Boucher, an Anglican chaplain, professed themselves surprised and concerned at the theories put forward by such discontented pamphleteers and the opinions expressed in Congress. Samuel Seabury, writing as "The American Farmer," declared that altogether too many Americans were uttering "strong and lamentable cries about liberty, and the rights of Englishmen."12

The Declaration of Rights and Grievances13 was passed, as noticed, on October 14. It began with a list of exactions regarded as innovative and illegal, followed by complaints about their collection and the penalties imposed upon evaders. In the enforcement of Parliament's new financial acts, it was said, ancient juridical rights were abrogated, and long established governments disturbed by the dismissal of assemblies and by the presence of mercenary troops occasioning unwarranted expense, and, at times, harassment of civilians. The revenge taken by Great Britain upon Massachusetts was looked upon as intolerable as were the arrangements made by the Westminster authorities for the settlement and boundaries of the recently conquered Province of Quebec.

The Acts of Trade, or Navigation Acts, were designed to protect against foreign competition and conquest. Dues were not primarily intended for revenue. Colonists grumbled, but, since before the French and Indian wars they took the navigation acts as a necessary evil, the price of being part of an extensive empire. During the wars collection was poor, and expenses were high. To expedite matters, not only soldiers, but occasionally writs of assistance, that is warrants to enter, against which James Otis made so powerful a stand in 1761, were utilized to speed collection of duties. With the peace of 1763 the British began to think in terms of a cash return from the colonists. Taxes voted were not large; the most notorious, the impost on tea of 1773, was but three pence a pound, less than that exacted in England. But the principle involved seemed important and even small dues had far reaching effects.

Over a century earlier a wealthy English squire, John Hampden had refused to pay the trifling sum known as ship money to the officers of Charles I on the grounds that the levy had not been voted by Parliament. No taxation without representation was an oft repeated cry. As far back as the reign of Edward I (1272-1307), a statute had, later lawyers and politicians averred, provided that no imposition should be levied without the consent of the estates of the realm. Precedent, not always well-proven, was cited in opposition to the exactions of Stuart kings. Discussions on the matter widened concepts of the rights of Englishmen. What happened when the ministers of George III decided to pass a revised Sugar Act in 1764, the Stamp Act in 1765, acts imposing the duties of 1767, and the tea act of 1773 was acceleration of the colonists' deepening awareness that these and other taxes were determined by an agency, the Parliament at Westminster, over which they had no control, and which was, apparently, indifferent to all protests. To be sure, objections had brought about repeal of the Stamp Act, but the victory had been marred by the passage, along with repeal, of an act asserting the supremacy of Parliament. But Americans were not served in the Commons by members elected by them. The doctrine of virtual representation, seldom discussed before this period, meant nothing to them. They felt that the enactments about taxes violated constitutional principle. Some quoted a statute of 1672 enfranchising the palatine county and episcopal city of Durham. The preamble to this act explained that since these northern Englishmen were liable to taxation, they should send representatives to Westminster.14

If one tax, however small, were levied for revenue, more would follow, and the connection between such legislation and consent forgotten. Dickinson had opposed the taxes, yet he felt that there must be a recognized and supreme authority. "We are," he wrote, "but parts of a whole; and therefore there must exist a power somewhere to preside and preserve the connection in due order." Since the Glorious Revolution, when James II fled to France, the sovereign power in England had rested in Parliament. Dickinson might accept this within the old limits perhaps, but Americans were more and more coming to believe that what bound colonist and mother country was common allegiance to the crown. Legislative autonomy for each state was just and feasible. Britons and Americans were fellow subjects of George III, but the latter could not be subordinate to a parliament representing only the inhabitants of the British Isles. As early as 1768 William Hicks in *The Nature and Extent of Parliamentary Power Considered* propounded this view. About the same time, Benjamin Franklin expressed similar sentiments. Before 1774 was over, Adams, James Wilson, Jefferson, and Hamilton shared them. Whatever the proportion of Americans also endorsing this theory, there can be no doubt it was widespread.

Arbitrary measures for collection of dues and taxes aroused, as already noticed, the opposition led by Otis in the early 1760s. The decision to keep or even increase troops in America after 1763 could perhaps be defended as a necessary, protective policy, but it also provoked protest about whether they assisted in nonmilitary government activity or merely garrisoned towns. A standing army in time of peace became a major colonial grievance. Incidents between soldiers and civilians, actions involving revenue ships offshore, and trouble over the housing of troops added greatly to the general deterioration of relations between Great Britain and the Americans. The Quartering Act of 1765 ensured that billeting would not be in private houses; its amendment in June, 1774, eliminated that saving clause. Steps taken to seize stores of arms and to dismantle fortifications by General, late Governor Thomas Gage, further exasperated the population and made the threat of a resident army even more menacing.

Americans could readily find in English statutes and tracts, mostly

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16 Lawrence H. Gipson, *The British Empire before the American Revolution* (New York, 1967), XII, 72.
of the seventeenth century, arguments to bolster the case against a peacetime standing army. The Petition of Right of 1628, besides protesting unparliamentary taxation, objected to the quartering of soldiers upon civilians. Clause six in the Bill of Rights of 1689 declared that the maintenance of forces in time of peace without the consent of Parliament was illegal. Indignation was high, and pamphlets expressing it innumerable when, in 1697 after peace with France had been signed, William, the Dutch deliverer, hesitated to disband immediately troops raised to fight the French allies of the exiled Stuarts. In 1767 overseas, indignation ran equally high, when the New York assembly was suspended for refusing to comply with the requirements of the Quartering Act. Bad feelings about soldiers stationed in or near Boston led to incidents, of which the most famous was the Boston Massacre on March 5, 1770, involving the killing of five and wounding of six citizens. For years thereafter orations on that date commemorated the massacre and quoted eloquent words first written during long past English controversies. Free colonial government and peoples could not survive while British forces occupied cities, drained their resources, and intimidated or injured inhabitants.

Englishmen always stressed their juridical privileges. Redress of grievances could only be obtained, it was argued, while officials were dependent for their salaries and jobs upon legislative assemblies. When after 1763 Great Britain began to pay certain officers out of dues collected in the colonies, this materially lessened the power of state deputies. Trial by jury, reputed to go back to the Magna Carta, or even before, was also believed fundamental to liberty. This right was endangered by the revival of a statute of Henry VIII (35 Hen.8.c.2) in 1769, providing that suspected traitors could be removed from the neighborhood from which ordinarily the jury should be drawn and dispatched elsewhere for trial. Americans suspected of subversive activities could be sent from a center organized in Rhode Island and tried in London.

In 1774 associates dubbed the Bostonians "warm."17 From the earliest days of troubled relations with Britain, Boston had been the scene of violence—the stamp act riots, the burning of the house of the loyalist Governor Thomas Hutchinson, the 1770 massacre, and the famous tea party of December 16, 1773, destroying cargoes of the "fragrant leaf." All these brought British retaliation.18 The 1774

17 E.g., Burnett, ed., Letters of Members of the Continental Congress, 6-7.
18 Bernard Bailyn, The Ordeal of Thomas Hutchinson (Cambridge, Mass., 1974), is the most recent and excellent work on affairs in Boston.
acts, almost at once called intolerable, closed the port, "better regulated" the colony by abrogating the old charter, and increased military rule. Sympathy was instant, and general, throughout the colonies.

News of these acts reached America in May. The Virginia Assembly, expressing its distress, was dissolved by James Murray, fourth Earl of Dunmore. Meeting as a convention on May 27, it arranged a further session in August and called for a congress of all colonies. Others followed similar procedures. The amended Quartering Act and the Quebec Act of June dealt further blows to liberty. These and the earlier intolerable acts were mentioned in the Declaration of October 14. All of these statutes, it stated, "are impolitic, cruel, as well as unconstitutional, and most dangerous and destructive of American Rights." The Continental Congress was determined to secure a settlement safeguarding America's laws and liberties against past and forthcoming subversion.

In the Declaration of Rights and Grievances, and in its accompanying papers, as well as in the Declaration of Independence of 1776, a stated grievance, not specifically connected with the financial, legislative, or juridical infringements of colonial rights, concerned the act passed in June, 1774, making "more effectual provision for the government of the Province of Quebec." As soon as the contents of the Quebec Act became known, it was labeled extraordinary, dangerous, an end to liberty, and what Patrick Henry, the eloquent Virginian, called "a capital grievance." The tall, spare Richard Henry Lee, another Virginian, seems to have brought up the matter at the Mifflin party on September 3. He returned to it in Congress on October 4, and the next day Sullivan wrote that the act was a menace. In spite of efforts by Duane to keep it off the list of grievances, it remained there. His negative vote, recorded by himself, was passed over in the Congressional Journals, where Thomson noted unanimity. A letter to the Canadians, drafted by Lee, Dickinson, and Thomas Cushing of Boston, was considered at

19 Gipson, The British Empire before the American Revolution, XIII, chapter 11, 134-168, "The Province of Quebec"; see also chapter 12, p. 132; Gustav Lancelot, Canada & the American Revolution, 1774-1783 trans. Margaret M. Cameron (Toronto, 1967), is better than the older work by Reginald Coupland, American Revolution and the British Empire (Oxford, 1925), on the act. In the Common Cause, American Response to the Coercive Acts of 1774 (Charlottesville, 1974), David Ammerman presents a judicious examination of the extraordinary character of the act considered as a grievance.

Carpenters' Hall on October 21 and finally approved on October 26. Printed the next day, it was translated into French by Pierre Eugène Du Simitiere, and it was also put into German. These were the first official American foreign language publications. Two thousand copies were printed for Canadian distribution.¹¹

There were, James Duane declared, three things in the Quebec Act to complain of: the establishment of the Roman Catholic religion, the institution of arbitrary government, and the extension of the colony—that is of Quebec—by "excessive limits."²² Guy Carleton, afterwards Lord Dorchester, was anxious to win the allegiance of French Canadians by freedom of worship, and what amounted to a recognition of the Catholic establishment in the province. Catholics, though asked to take a loyalty oath, were excused from taking one imposed by an Elizabethan statute designed to make office holding impossible for conscientious papists. Though in "A Letter"²³ Congress was careful to make clear a tolerance for religious diversity, there can be no doubt that the maintenance of the Roman Church in Quebec, with nearly all its earlier privileges, revived ancient prejudices about popery, and the threat it posed in near proximity to the American colonies. The government set up by this act was composed of a royal governor and council, empowered to legislate without any reference to an elected assembly. English criminal law would prevail, but French civil custom would be followed. This, it was pointed out, would deprive Canadians of the juridical privilege of trial by jury and the writ of habeas corpus. Feudal tenures were kept, or restored, though these had been abolished in England in 1660. Dues and services for land would therefore follow an older pattern in the northern province.

Not mentioned in "A Letter," but third in Duane's list, and very irritating to the colonies of New England and the middle states were those "excessive limits" laid down in the act. The province was to include within its boundaries, and under the authority of its royally appointed administrators, all lands west of the Appalachians not otherwise specifically disposed of by charter. This was intended to ensure that Indian claims were kept within British jurisdiction. That it also restricted unlimited expansion and exploitation by the colonists is indisputable. Taken by opponents of the act both in

¹¹ Powell, Books of a New Nation, 43-44.
²² Burnett, Letters of Members of the Continental Congress, 77-79.
²³ Journal of the Proceedings of the Congress held at Philadelphia, September 5, 1774, 118-131, the address to Quebec published as "A Letter."
Great Britain and America as an attempt to provide the British with a basis for the curtailment of westward movement, the "excessive limits" remained in the minds of Americans as a very real grievance. Both the colonial secretary, William Legge, second Earl of Dartmouth, and Carleton recognized in that more tolerant age the rights of Canadians to the exercise of their religion. They also wished to keep Canada out of the controversies multiplying elsewhere.

"A Letter" was designed as an alert to threats posed by the act both to the inhabitants of Quebec and to their neighbors. After a glorious resistance in the late wars, "A Letter" wrote, Canadians had been "conquered into liberty." The proclamation issued after the peace of 1763 had conferred on them all the rights and privileges of Englishmen. These the act now withdrew. A famous Italian author, the Marquis Cesare de Beccaria, had, "A Letter" pointed out, stressed the constant struggle of one part of the body politic to dominate the others, a danger only to be averted by known and good laws. Charles Secondat, Baron Montesquieu, in the much read Spirit of the Laws (1750) had also emphasized the rule of law, and the necessity for the making of that law by an elected, representative assembly. These revered European authorities were cited especially for the influence they might have with Canadians. "A Letter" also stated that should the act be repealed, men of differing faith on both sides of the border could live as peacefully side by side as those of the Swiss Cantons were known to do. The inhabitants were warmly urged to attend the next meeting of Congress in May, 1775.

"A Letter" is especially appropriate to the present examination of The Declaration of Rights and Grievances, because a part of it was devoted to a description of the fabric of the English Constitution and the foundations upon which it rested. In the safety provided by it, as Montesquieu had remarked, tranquillity of mind was assured. The English enjoyed, the Frenchman wrote, that essential to liberty, a separation of powers—that is the insistence that the making, executing, and adjudicating laws were functions exercised by different persons, assemblies, or courts. The will of one man, or of one set of men, brought misery; diversification and the enjoyment of freedom of speech and press made happiness possible. For centuries, Montesquieu continued, the English have defied time and tyranny, waging internal and external wars to maintain their form of government. This and the rights it protected passed also to the people emigrating, "grown great nations in the forest they were sent to inhabit." "A Letter" assumed that even where the act did not
itemize each renewal of French custom, it implied restrictions similar to those familiar in France. An all powerful executive unchecked by representative institutions, juridical privileges, protected property, and an easy tenurial system threatened every inhabitant of Quebec with arbitrary government and an inquisitorial system. The inhabitants were not asked to revolt, merely to consult about current situations which so readily bring trouble to them as well as to their fellow subjects in Congress assembled. The Canadians, in spite of this appeal, remained for the most part neutral in the developing conflict. "A Letter" thus failed of its purpose but serves to underline the grievances and rights claimed in the Declaration of October, 1774.

In that declaration, after listing infringements, the deputies as Englishmen, "their ancestors," in like case, had commonly done, proclaimed their rights, "by the immutable laws of nature, the principles of the English constitution, and the several compacts or charters" relating to the colonies. Ten resolutions, or resolves, followed. The first four relate to life, liberty, and property, never to be disposed of without consent. All the rights of Englishmen remained to those who emigrated. The foundation of all free government was based on the right to participate in a legislative assembly, without which all taxation was illegal. The fifth and sixth resolves stressed the privileges of the common law, the right to trial by jury, habeas corpus, and to all the benefits of such statutes as existed at the time of emigration, and "which have since been found appropriate" to circumstance. Number seven related to the rights bestowed, or confirmed by charter, and codes of provincial law. Eight claimed as the English Bill of Rights of 1689 had done, the right to assemble and to petition the King without suffering prosecution for so doing. Nine, again like the Bill of Rights, but rephrased to suit colonial needs, declared standing armies in peacetime, and without the consent of the local legislature, illegal. The tenth resolve emphasized the separation of powers, violated in several instances by royally appointed councils regulating and administering affairs. The rest enumerated acts passed under George III which were considered illegal and listed steps about to be taken for redress by way of petition, and through the stipulation of the association.

The colonists, obviously convinced of their rights as Englishmen, could readily find parallels in the past. Constitutions, charters, cases, and decisions formed bases for their belief. Galloway and Duane at
the committee drafting the declaration felt that an approach through these precedents provided all the necessary arguments.²⁴ Others, like John Adams and the merchant Christopher Gadsden (whose motto was "don't tread on me"), preferred a more theoretical or philosophical context.²⁵ Justification could be discovered in the works of Sir Edward Coke, Sir William Blackstone, whose Commentaries had recently been published, and of Montesquieu. Authorities frequently cited and for the most part writers on government, the laws of nature and natural rights were the Dutchman Hugo Grotius, the Germans Samuel Puffendorf, and Emmerich de Vattel as well as the English philosopher John Locke. All these found many readers on both sides of the Atlantic. Had we but time to analyze them, we should discover many differences in the philosophies they professed. But along with their contemporaries, they all accepted the law of nature and of nations.²⁶

A concept of natural law can be found in Greek, Roman, and medieval writers. Medieval scholars, for example, distinguished between an eternal law, that of God himself, a divine law, revealed by him to mankind in scriptural admonitions, a body of positive law agreed upon in civil society, and expressed in acts, ordinances, and codes, and a natural law, or the law of right reason, deduced by man with the help of the intelligence bestowed upon him by the Almighty. By the seventeenth century, the laws of nature were often separated from religion. By the law of nature, men were born equal and able to enjoy life, liberty, and the property they could acquire without the molestation of others. As time went on, according to this theory, the formation of society seemed advantageous, the contract on which it was founded depending on a natural law of observing promises. A further contract could follow, between rulers selected to order society and those they were to rule. Yet under such agreements, natural rights to life and liberty could not be ceded and could therefore, if infringed, be cited. Thus passage of the intolerable acts by Great Britain dissolved obligation and put America in a state of nature. Government was dissolved, Patrick Henry ex-

²⁴ Butterfield, ed., Adams Diary, 124, 128-130.
Congress could concentrate on rights at that moment; later there would be opportunity for constitution making.

Invocation of natural law, the common law of all humanity, was appropriate at this time for the protection of those inalienable rights which as Englishmen, and as human beings, Americans felt to be in jeopardy. Recourse only to arguments from precedent would have been inconclusive. Colonists had been taxed; charters had been altered; laws about the process of, for example, naturalization had been disputed. Yet complaints had not so far been overwhelming. That the ministers of George III had adopted a firmer, more aggressive attitude, along with the determination to tax and control the colonies was undeniable, but, as pro-British tracts pointed out, it had always been generally accepted that sovereignty lay in London. The so-called "salutary neglect" of enforcement had allowed the matter of principle to rest. Meanwhile in various ways, colonies had grown into states, prizing their heritage and claiming a large measure of autonomy. The principles of the English constitution were after 1689 often regarded as synonymous with that natural law to which appeals were made; rights and practices were confused.

But in the struggle of the 1760s and 1770s definitions and claims went much beyond what most would have put forward fifty years earlier. Autonomy, for example, may have at certain periods existed in fact but was hardly a matter of theory before growing interference from England brought it to mind. Strangely, throughout the disputes of the second decade of trouble there is less emphasis on interference by the British in religious politics than might have been expected after the flurry in the 1760s prompted by fears of the arrival of an American bishop. The declaration does not refer to such anxieties save for the possible repercussions of some clauses in the Quebec Act. The most important incident during the session of Congress concerned not British intolerance, but the dues exacted in New England from all residents on behalf of the Congregational Churches. Protests about this from Baptists and Quakers surprised and embarrassed Adams and his fellow deputies. Congress was occupied at this time with other liberties than that of religion.

Natural law bolstered the case for the rights of Americans and strengthened in some way, not altogether logical, perhaps other constitutional demands. Most important of these was the insistence,

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28 Ibid., 152; Butterfield, ed., The Adams Papers, III, 311-313.
as noticed in "A Letter" as well as in the declaration, upon a separation of powers. A general feeling existed that this structure of government, so essential it was thought to the preservation of freedom, had been annulled by acts of Parliament. The appointment of a general as governor, the nomination of councils, and the removal of control of judges from the states to the London ministers, already mentioned, were all violations of the principle of separation. The doctrine of a separation, originally of the legislative from the executive branch, and then as the eighteenth century wore on, also of the juridical from the other two, was almost entirely English in formulation, although, as Americans understood it, very much developed and more clearly defined by Montesquieu. Natural law, as noted previously, had a long history: a contractual theory of society and government can be traced back at least into the middle ages, but the emphasis upon a separation of functions or persons, or both, crops up as an expedient to create and secure liberty only at the time of the English civil wars and the Interregnum of the mid-seventeenth century. In the Long Parliament of that period, there were complaints about members of the legislature also holding appointive offices. A "self-denying ordinance" at one instant provided for, but did not bring about, the resignation of all officials in the Roundhead Parliament. Somewhat later when new constitutions were being discussed, a rascally and unprincipled journalist, Marchmont Nedham, wrote what was for a long while the best exposition and the most explicit and well-argued case for implementation of the separation of powers. In *The Excellencie of a Free State*, appearing first in periodical form and then, in 1656, as a slim tract, Nedham listed errors in policy which endangered freedom. Among these was "a permitting of the legislative and executive powers to rest in one and the same hands and persons." The reason, he said, was obvious: if the lawmakers who should always have supreme power, should also administer and dispense justice, the people would be left without remedy against injustice, since no appeal could lie against such as have supremacy. People were happy only if they had such governors as were liable to give an account of their actions. 29

The Interregnum ended; the Stuarts were restored; and Nedham changed sides. But after a brief honeymoon between king and Parliament, complaints were again voiced about the many of-

ficeholders and pensioners in the legislature. These king's men, dependent upon him like jackdaws on a dispenser of cheese, found it hard to act independently. Place bills were proposed: after the Revolution of 1688 one found a niche in the statute book. Although they continued to talk about separation, Englishmen were to find in the growing distinction between what would today be called civil servants, debarred from any place in Parliament, and ministers, political in appointment and subject to the judgment of the electorate, a separation adequate for their purpose. As popular will found many more ways to make itself felt, opinion could force the monarch, even before the extension of the franchise, to choose officers agreeable to public demand. This development in Great Britain therefore ran a very different course from that advocated by early polemicists, or somewhat inaccurately described later by Montesquieu.

In America it was the earlier theory, and its later formal interpretation, that was influential rather than the current constitutional practice in Great Britain. In the Pennsylvania constitution of 1776 a single legislative body was annually elected, a council or executive triannually chosen, and a judicature voted to a seven-year term. In the federal Constitution of 1787 so severe an interpretation of the doctrine was not adopted. Instead, the founding fathers achieved a unique combination of the theories of checks and balances, together with a separation of executive, two legislative assemblies, and an independent judicature. Provision was made for impeachment, for confirmation of officers, for a presidential veto, none of which were a part of earlier systems. From the amalgam achieved, what has been an extraordinarily stable republican government is now approaching its Bicentennial. Experience between the years 1776 and 1783, at state and national levels when separation was so much talked of, and experimented with, revealed inconveniences in part rectified in 1787. No previous constitution makers had attempted to implement that separation so widely preached after 1645 and so rarely practiced in any recognizable form.

Grievances in 1774 were manifold and were reiterated not only in the declaration and "A Letter to Quebec," but in those other memorials, addresses, and petitions which Congress drew up. To these

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Rights and Grievances, the more famous declaration of 1776 added, after Jefferson's eloquent preamble, specific charges against the king, George III, listing action by land and sea, the provoking of Indians to insurrection, and the constraining American captives of war to bear arms against their countrymen. The complaints so listed set forth the reasons for casting off allegiance to the king, thus completing the process that had begun in Philadelphia two years earlier. In 1774 the Declaration of Rights and Grievances still professed loyalty to the crown, and, by way of a compromise between more and less conservative elements in the Congress assembled included also a statement of willingness to agree to such taxes devised in London which were thought essential to the regulation of external commerce and the promotion of mutual interest. This, even then, tenuous connection was repudiated in 1776.

In 1774 many Americans believed themselves on the eve of civil war. That it was to come as soon as April 19, 1775, at Lexington and Concord fewer perhaps anticipated. On the other hand, very few believed that Great Britain would consent to a plan of union, so meagerly supported in America, to a restitution of the status quo—the conditions prevailing before 1763, or in fact even pay any attention to the representations of Congress. Possibly more were hopeful that the association might bring about repeal of those intolerable acts, but by the time this and the other papers were issued by the Bradfords, and reprinted throughout the colonies, there cannot have remained much faith that the British ministers would see what Americans thought made sense and reason. What strikes the thoughtful student now most forcibly is the ignorance, in spite of the proliferation of tracts, treatises, and journals on both sides of the Atlantic, about the state of opinion. Hutchinson went to London in mid-1774; his advice was freely offered and not as carefully considered as he might have wished. But as advice, and as reporting on conditions in his native land, it was far from perceptive or accurate. The former governor seemed to have had no conception of the darkness of the gathering clouds and of the magnitude of the storm about to break.

Some Englishmen were thoroughly apprehensive, but their warnings went unheeded. Unfortunately also, dissenters and reforming oppositionists in some agreement with American arguments were not only but a fraction of the whole population but were far and away the most articulate part of it. Their writings gave to those Americans who studied their works and letters an altogether false
impression of the public attitude. Statesmen also, like the Rock-ingham Whigs, for example, whose repeal of the Stamp Act weighed more heavily in their favor overseas than the Declaratory act accompanying it, were generally though pro-American. But they did little to prevent passage of the Townshend duties and ignored the introduction of the tea duty altogether. They were unwilling to see coercion tried and were justly skeptical of its effectiveness. They deplored ill feeling and dreaded the secession of colonies from England. Yet they themselves fully endorsed as essential, the subordination of the Americans to British policy and rule.31

England and America, even though at this time the latter was three-quarters British in origin, had since Jamestown grown very far apart. Before the Revolution of 1688 made Stuart tyranny impossible, differences were often concealed by a consensus about the rights of Englishmen. There was of course a real divergence in opinion about the relations of church and state. After 1688 both Englishmen and Americans continued to read and comment upon the seminal political literature those quarrels had stimulated. But constitutionally the British moved away from some of the principles then enunciated. Few were denied or contradicted, but they were lost sight of. The English and many of their European contemporaries regarded the constitution secured after 1688 the best possible. Victory attended foreign aggrandizement; the empire was in men's minds and concepts of the state changed.

The machinery of government, as distinct from the old familiar trinity of King, Lords, and Commons, required adjustment. The superiority claimed by Parliament as a defense against royal power now came to be thought necessary for the maintenance of order. That the legislature represented but a fraction of the population of the British Isles, and none, save by dubious theoretical assumptions, of the rest of the empire, worried few but a handful of reformers. More important were matters of corruption, inefficiency, slackness in treasury control, and injustice in the courts. Some efforts were made to deal with them, but most remained to be cleaned up in the nineteenth century. Ministers found they had a great deal of work to do. They regarded those who criticized them as ignorant and unobservant of the difficulties confronting them, and to most of which the old political slogans did not apply. Since the ordinary Englishman could be said to enjoy a good deal of liberty, and for the

31 Powell, Books of the New Nation, 39, quotes Chatham on Thomson's motto.
most part was able to acquire a fair living, cries of rights were not often raised and could be more readily ignored by Hanoverian than Stuart governments. Almost unnoticed, a civil service, a cabinet form of government, and a party system were all developing. The England of 1776 was very different in constitutional assumptions and preoccupations than that of a century before.

Colonial opinion is more difficult to assess. Loyalists represented at this time a considerable part of the American people. Some, like Hutchinson, left for what they hoped would be only a temporary exile in England, others settled in New Brunswick and other Canadian areas. Reliable estimates have yet to be produced, but for everyone that left, another most probably remained, tied by family, business, and an unwillingness to be uprooted. Politically conscious and vigorous Americans, "The Patriots," were not only angered by British policies but were also aware that in their development had "grown a great nation." These people were optimistic, determined that independence could be won, and able to persuade many to join their endeavor.

To this state of mind, the first session of the Continental Congress greatly contributed by its courage and, in the face of diversity, its unity. "I know not the people or senate," said William Pitt, first Earl of Chatham in January, 1775, as reports of congressional activities began to seep through, "who in such a complication of difficult circumstances, can stand in preference to the delegates of America, in general Congress in Philadelphia." The deputies prepared the way for the developments of 1776, and their experience enriched the country. E Pluribus Unum, out of many, one arises, a new order of the ages. Read on your dollar bills, the motto devised when an American seal became appropriate by Charles Thomson, willing secretary at Carpenters' Hall. Out of many, one. This can still perhaps afford the nation inspiration in development and crisis.