

## CHAPTER VIII

## FROM TAR AND FEATHERS TO SOVEREIGNTY

JAMES MADISON, SR., was a natural selection for chief of the Orange County Committee. He was county lieutenant, or commander of the militia, which gave him the title of Colonel. He was also a justice of the peace and vestryman. When, answering the call of the Continental Congress, he became a revolutionary official, a good share of the county government went over in his person. As a justice, he was one who answered Dunmore's description of legal officers acting only as committeemen. As county lieutenant, he converted the office into an agency for recruiting revolutionary troops. He also had a Tory rector to deal with, for which purpose the committee mistook itself for the vestry.

James Madison, Jr., had plenty of military ardor, but his physical frailty debarred him from service in the armed forces. Enlisting in the Orange County Independent Company, "his experience during the exercises and movements" warned him against a continuance.<sup>1</sup> To Bradford he wrote in January, 1775: "We are very busy at present in raising men and procuring the necessaries for defending ourselves." Such a remark, made only three weeks after the Orange County committee organized, points to active work as a committee member in securing volunteers and supplies. This continued after he had been forced to give up training. Virginia military records show £20 paid "to James Madison for Colo Madison" on October 24, 1775, on account of arms collected for provincial forces. That Madison took part in military activities for some months, at least as far as rifle marksmanship is concerned, is shown by a letter to Bradford dated June 19, 1775:

"We have a great unanimity and as much of the military ardor as you can possibly have in your government; and the progress we make in discipline and hostile preparations is as great as the zeal

with which these things were undertaken. The strength of this colony will lie chiefly in the riflemen of the upland counties, of whom we shall have great numbers. You would be astonished at the perfection this art is brought to. The most inexpert hands reckon it an indifferent shot to miss the bigness of a man's face at the distance of 100 yards. I am far from being among the best [yet] I should not often miss it on a fair trial at that distance. If we come into an engagement, I make no doubt but the officers of the enemy will fall before they get within 150 or 200 yards. Indeed I believe we have men that would very often hit such a mark 250 yards."<sup>2</sup>

Apart from what he said about himself, Madison was repeating a boast that was traveling all over Virginia about the prowess of the frontiersman. Richard Henry Lee wrote to his brother Arthur in London, the previous February 24, that the six frontier counties could produce six thousand men of amazing hardihood, whose skill with the rifle was so great that "not one of these men . . . wish a distance less than 200 yards or a larger object than an orange—Every shot is fatal." The heightened pugnacity of Madison's letter in June, putting a man's face in place of the orange and almost taking a battle with the British for granted, reflected the provocative attitude of Governor Dunmore. Even more, it represented the continental impact of the battle of Lexington and Concord, fought on April 19. The Second Continental Congress, convening on May 10, responded to that battle by resolving that "these colonies be immediately put into a state of defence." It was too early for Madison, writing on June 19, to know that five days earlier Congress had voted to establish "the American continental army," and the next day had elected George Washington "General and Commander in chief of the army of the United Colonies." Extravagant reports were spreading over the continent. "A rumor is on the wing," Madison wrote, "that the provincials have stormed Boston and with the loss of 7,000 have cut off or taken Gage and all his men." It was extremely improbable, he thought, "but the times are so remarkable for strange events that improbability is almost become an argument for their truth."

The chief worries in Orange County, Madison stated, were a scarcity of powder,<sup>3</sup> although, he said, "a little will go a great way

with such as use rifles," and apprehension that Dunmore would start a slave insurrection. "To say the truth," the young man remarked, "that is the only part in which this colony is vulnerable; and if we should be subdued, we shall fall like Achilles by the hand of one that knows that secret. But we have a good cause and great courage which are a great support." Governor Dunmore attempted in the spring of 1775 to frighten the Virginians into submission with the bogie of a slave uprising. This failing, he threatened to arm the slaves. Madison's apprehension, however, was based on foresight, not on Dunmore's propaganda, for on November 26, 1774, he had written to Bradford: "If America and Britain should come to an hostile rupture I am afraid an insurrection among the slaves may and will be promoted." It is prudent, he said then, speaking of an abortive uprising by "a few of those unhappy wretches" in a Virginia county, "that such attempts should be concealed as well as suppressed."<sup>4</sup>

Madison shared the intense antipathy to the royal governor which that unwise executive had aroused by his perverse and panicky actions. "I understand," he wrote on June 19, "Lord Dunmore by deserting his palace and taking sanctuary on board the ship of war, under pretense of the fear of an attack on his person, has surprised and incensed them [the burgesses] much, as they thought it incredible he should be actuated on that occasion by the motive he alleges." More likely, Madison thought, he was acting under instructions from his superiors or intelligence from his friends in the North, but "Some will have it that Lord Dunmore removed from Williamsburg and pretended danger that he might with more force and consistency misrepresent us to the ministry. His unparalleled malice to the people of this colony since the detection of his false and wicked letters, sent home at the time he was professing an ardent friendship for us must lead us to suppose he will do us all the injury in his power. But we defy his power as much as we detest his villainy."

Madison, like other Virginia revolutionists, gave Dunmore too much credit for craft and villainy; too little for stupidity. Whatever it was possible to do wrong, he did. In April he enraged and alarmed the colony by carrying the public powder supply from the

Williamsburg magazine to a warship, then displayed weakness by paying for it under a military threat from Patrick Henry. He insulted the colony and revealed his own fears by putting his wife and children on board a warship. Then, after an "independent company" of fourteen-to-sixteen-year-old boys stole a quantity of muskets, he secretly set two or more spring guns at the magazine doors. Early in June one of them wounded three Virginians, including a member of the House of Burgesses, who had gone to the magazine to investigate a rumor that Dunmore had removed the arms stored there. In the ensuing uproar the governor fled precipitately to H. M. S. *Fowey* and sought to administer the affairs of the colony from that warship.

Madison's surmise that Dunmore acted, not from sheer fright but on advice from the North, was supported in the following August by an article in an English newspaper. The governor, it was said, received a letter from General Gage at Boston telling of his intention to arrest John Hancock and Samuel Adams. Dunmore feared that when news of this became public, he would be seized and held as hostage for the Bostonians.<sup>5</sup> However, other reports were current which reveal the unifying effect of violence upon the conservative and radical wings of the revolutionary party. Edmund Pendleton, conservative leader, wrote to a Massachusetts friend that Dunmore blamed a threat of assassination for the necessity of his flight, and added that "he might well fear what he must have been conscious he deserved," if he was responsible for setting those spring guns. More astonishing, however, is the identification of the conservative Richard Bland as the author of this threat.<sup>6</sup> James Parker, the Norfolk Tory who thus named Bland, gave a still more plausible explanation. The governor's lady, he predicted, will not return to Williamsburg, but "'tis said he will, provided the shirtmen are sent away." Whatever fears Dunmore felt as a repercussion from the policies of General Gage or from the unimplemented threats of Bland must have turned to terror when he saw the long rifles, hunting shirts and bucktails of back-country Virginians who strolled around Williamsburg at this critical juncture. It was such men as these whom Madison visioned bringing down British officers at two hundred yards. In

any event, the explanation of the flight was panic, not Machiavellian duplicity.

Dunmore's "false and wicked" letters, as Madison called them, were two missives to the Earl of Dartmouth, colonial secretary, dated May 29 and December 24, 1774, published by order of the House of Commons and republished in the *Virginia Gazette*. If Madison told the truth in his letters to Bradford, Dunmore likewise told the truth to the colonial secretary, for both accounts of the revolution in Virginia present the same set of facts. Dunmore wrote in a spirit of bitter complaint; Madison, in the tone of exultant pride. Possibly the Governor's factual narrative seemed false to Madison because of the innuendoes it contained against the integrity of the Virginia revolutionists and the slant of violence and treason put upon their work. The Virginia House of Burgesses had the same feeling, for on the very day Madison was denouncing the "false and wicked" letters to Bradford, the burgesses were denying everything in a resolution which was a masterpiece of dissimulation.<sup>7</sup>

Were there independent companies in every county, as the Governor charged? Why, said the burgesses, "there were a few companies of gentlemen formed, who were desirous of perfecting themselves in military exercises; but we find not more than six or seven throughout the whole colony, which consists of sixty-one counties." Very different from Madison's boast about killing a British officer with every shot and the "many counties" which had companies.

Were these companies designed to support the county committees and oppose the King's government? No, said the burgesses, the sole purpose was to "distinguish them from the militia at large" and protect the colony. (This statement actually had back of it such typical testimony as, from Essex County, "not merely for protecting the committees.")<sup>8</sup>

But the charge by Dunmore that created the greatest stir was an allegation that Virginia took seditious leadership among the colonies. The burgesses, he said, wanted it thought that "a determined resolution to deny and oppose the authority of Parliament . . . always originates with them." He declared in his letter of December 24 that the Continental Association was first recom-

Congress presented the same day to consider the declaration of Independence which has been reported & lies on the table the Friday preceding. The pusillanimous idea that we had friends in England's worth keeping for us with, still haunts the minds of many. For this reason those passages which conveyed assurances on the people of England were struck out, but they should see their offences. The clause too respecting the enclosing the inhabitants of Africa, struck out in compliance with South Carolina & Georgia who had never attempted to restrain the importation of slaves, and who on the contrary still wished to continue it. Our Northern brethren also I believe felt a little tender on this point, but their people have very few slaves & therefore not they had been justly accused of them to have the declaration being taken up the same day. The change of July was in the evening of that day the declaration was adopted by the Congress and signed by every member present. The declaration was originally signed & interlined in the same manner as by Congress. It is distinguished by a black line drawn under them when inserted into the margin or in a convenient column.

A Declaration by the representatives of the United States of America, in General Congress assembled.

When the course of human events it becomes necessary for one people to declare the political bonds which have connected them with another, and to assume among the powers of the earth, separate and equal station, it is the

#### JEFFERSON'S NOTES ON INDEPENDENCE DEBATE

Jefferson copied these notes for Madison in 1783, omitting the word "present" which here is interlined. The statement is incorrect either way, since the first signing occurred on August 2, after Dickinson left Congress. The inference that Jefferson wrote in the word "present" after he made his copy for Madison, and after it had been pointed out to him that many others in Congress on July 4th did not sign, is not correct. The fact that the long interlining is in Madison's copy, and was written high between the lines to avoid the word "present," shows that this word was in Jefferson's copy when he omitted it—probably by accident—from the one he made for Madison.

mended by Virginia. A false charge, replied the burgesses; the proposal of a trade embargo "came first recommended to us from several of the Northern Colonies."

The irony of this lies in the fact that countless books, articles and letters have been written by Virginians, since the Revolution, to prove just what Dunmore alleged, that Virginia took the lead in revolutionary measures. Such statements were false and wicked in 1774, when they might cause the British ministry to deflect troop transports and men of war from Boston to Chesapeake Bay.

In reality it would take a finely marked measuring rod to determine who gave the Continental Association its first push. Dunmore did not miss it far. It was true that the first proposal of an embargo came from Boston, and the first move for a Congress was made by New York, but Virginia, not knowing of these actions, issued a call for both embargo and congress two days before Paul Revere came riding in with word of the northerly moves. Furthermore, there was a vast difference in the motives of some of these bodies. The New York committee was dominated by merchants of the same type as those whose violation of the Non-Importation agreement stirred Madison and other Princeton students to a letter-burning bonfire in 1771. They asked now for a general Congress in order to postpone the Boston demand for immediate action to ban imports.<sup>9</sup> But Virginia, like Boston, was seeking to speed and spread the embargo. In specific action Baltimore was first of all, its committee declaring an embargo and forming an association on May 31, 1774, four days after Virginia made its preliminary move. This, and the Virginia Convention's similar action in August, furnished the model for the Continental Association adopted in October.

With such a record during 1774, it was rather difficult for the burgesses in 1775 to prove that black was light gray, and there was no greater warrant for Madison's characterization of the Dunmore letters as "false and wicked." Both denials reflected the fact that Virginians had taken the plunge into armed revolution with courage and determination but were not quite ready to face all the implications of their action.

During this time the Orange County committee left no doubt

avoided, as dangerous to liberty; and that, in all cases, the military should be under strict subordination to, and governed by, the civil power.

16. That the people have a right to uniform government; and therefore, that no government separate from, or independent of, the government of Virginia, ought, at right, to be erected or established within the limits thereof.

17. That no free government, or the blessing of liberty, can be preserved to any people but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.

18. That religion, or the duty which we owe to our CREATOR, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore, that all men enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience, unpunished and unmolested by the magistrate, (unless, under colour of religion, they attempt to subvert the happiness, or safety of society) and that it is the equal duty of all to practice Christian forbearance, love, and charity, towards each other.

*(Unless the preservation of equal liberty and in its violation of the same as manifestly in our goods)*

*That Religion is the duty we owe to our Creator, and the manner of discharging it, being under the direction of Reason and Conviction only, not of violence or compulsion, all men are equally entitled to the full and free exercise of it, without any distinction of Colour, or Rank, or State, or Religion, and that no man or class of men ought to be molested or persecuted on account of Religion, or be compelled to support any particular denomination of worship; nor subjected to any civil disabilities on that account.*

MADISON'S TWO RELIGIOUS AMENDMENTS

His first revision of Mason's article on religion begins in manuscript, "That Religion or," the manuscript ending "unless under, etc." This indicated that it was to pick up the printed article at the words "unless under."

His second revision began with the printed article, which he altered by a few words, with the handwritten clause in parentheses to be inserted in place of the printed words inclosed in parentheses.

Copying his amendment in his old age, Madison put the two handwritten portions together, thus producing an incorrect composite article, which has until now been accepted as the one he wrote originally.

that it was exercising the functions of government in that region, as far as the activities covered by the Continental Association were concerned. The first known case of violation of the Association to come before it was that of Francis Moore, Jr. Tried on February 23, 1775, on the charge of violating Article 8 by gambling, he confessed, but "gave such evidence of his penitence and intention to observe the association strictly for the future" that the committee readmitted him "into the number of friends to the public cause." This mitigation of the punishment prescribed by the Association, the committee explained, "proceeds from a desire to distinguish penitent and submissive from refractory and obstinate offenders."<sup>10</sup>

The committee got hold of one of the latter kind a month later. He was the Reverend John Wingate, rector of the Brick Church which the Madisons attended. Hearing that this clerical gentleman "had in his possession several pamphlets containing very obnoxious reflections on the Continental Congress and their proceedings," which they believed he was circulating "to promote the infamous ends for which they were written," the Madisons and other committee members assembled at the courthouse on Saturday, March 25, 1775, to consider what to do about it. They decided to proceed delicately and ask for the pamphlets without disclosing "the least suspicion that Mr. Wingate had procured them with a design to make an ill use of them." To their astonishment (so they said) the rector absolutely refused to give them up, saying that they belonged to a gentleman at Fredericksburg. Arguments and entreaties failing, the committee "peremptorily demanded the pamphlets," and got them. They then adjourned until Monday for a full examination of the material. There were five different publications, nearly all signed "A Farmer," "A Country Gentleman," etc., and "most of them printed by Rivington of New York."<sup>11</sup>

On March 27 the committee, after reciting these facts, expressed itself as follows:

"Resolved, That as a collection of the most audacious insults on that august body (the grand Continental Congress) and their proceedings and also on the several colonies from which they were deputed, particularly New England and Virginia, of the most slav-

ish doctrines of Provincial Government, the most impudent falsehoods and malicious artifices to excite divisions among the friends of America, they deserved to be publicly burnt as a testimony of the Committee's detestation and abhorrence of the writers and their principles."

"Which sentence," the committee report added, "was speedily executed in the presence of the Independent Company and other respectable inhabitants of the said county, all of whom joined in expressing a noble indignation against such execrable publications, and their ardent wishes for an opportunity of inflicting on the authors, publishers and their abettors the punishment due to their insufferable arrogance and atrocious crimes."<sup>12</sup>

No direct evidence exists as to the authorship of this vigorous resolution, but there is good reason to believe that it came from the pen, exceedingly trenchant just then, of James Madison, Jr. The published report was signed by Francis Taylor, clerk of the committee, who might have been either Col. Francis Taylor or Maj. Francis Taylor of Revolutionary fame, cousins of the Madisons. One of the Francis Taylors wrote with some facility, as indicated by the diary he kept in later years, but he was more concerned with child-bed difficulties of slaves, and complaints that the elder Madison froze his guests with cotton sheets in winter, than with the refinements of literary expression. In contrast, the spirit, diction and physical content of the resolution and report against the Reverend Mr. Wingate fit precisely into the groove of Madison's mind as revealed in his correspondence of that particular period.

Bearing in mind that Rivington was chief among those whose "execrable publications" stirred a desire to inflict "the punishment due to their insufferable arrogance," one can judge whether these were Madison's words by reading what he wrote to Bradford only a few days earlier: "I wish most heartily we had Rivington and his ministerial gazetteers for 24 hours in this place. Execrable as their designs are, they would meet with adequate punishment."<sup>13</sup>

The nature of the punishment that awaited such gentlemen is made plain enough by Madison's next words: "How different is the spirit of Virginia from that of New York! A fellow was lately

tarred and feathered for treating one [of] our county committees with disrespect: in New York they insult the whole Colony and Continent with impunity!" These remarks were elicited, not by the Wingate case, which arose just afterward, but by a contrast between New York and Virginia and a reference to Rivington in an earlier letter from Bradford: "Your province seems to take the lead at present; that silent spirit of courage which is said to reign there has gained you more credit than you can imagine. . . . As to New York I think it has the least public virtue of any city on the continent. . . . Rivington is encouraging the cause of administration there with all his might: he is daily publishing pamphlets against the proceedings of the Congress and the cause they are engaged in. Some of them are grossly scurrilous, particularly 'A Dialogue Between a Southern Delegate and his Spouse on his return from the Congress.'"

Preachers who supported the British ministry stirred the particular ire of these young patriots. Bradford reported that Brackenridge was seeking to publish a poetic satire against "some drunken swearing ministerial parsons who infested his neighborhood."<sup>14</sup> Madison found that an attack by Gen. Charles Lee on ministerial parsons did not meet with unanimous approval in Orange County: "Some of our old bigots," he wrote in the same paragraph in which he expressed a desire to tar and feather Rivington, "did not altogether approve the strictures on the clergy and King Charles: but it was generally, nay, with this exception, universally applauded." Madison's own idea was that tar and feathers would cure practically any case of Toryism and were especially useful in dealing with the clergy. Describing another case and reporting also on the Wingate affair, he wrote to Bradford on July 28, 1775:

"A Scotch parson in an adjoining county refused to observe the fast or preach on that day. When called on he pleaded conscience, alleging that it was his duty to pay no regard to any such appointments made by unconstitutional authority. The Committee it seems have their conscience too; they have ordered his churchdoors to be shut and his salary to be stopped, and have sent to the convention for their advice. If the Convention should connive at their proceedings I question, should his insolence not abate if he does

not get decked in a coat of tar and surplice of feathers and then he may go in his new canonicals and act under the lawful authority of Gen. Gage if he pleases. We have one of the same kidney in the parish I live in. He was sometime ago published in the Gazette for his insolence and had like to have met with sore treatment: but finding his protection to be not so much in the law as the favor of the people he is grown very supple and obsequious."<sup>15</sup>

From the work of the Orange County committee and Madison's personal attitude, it is possible to obtain a clear picture of the state of civil liberties at the onset of the Revolution. There was no such thing, after adoption of the Continental Association, as freedom of opinion. Every deviation from support of the colonial cause was ruthlessly punished by the county committees. To be "published" in a newspaper, after trial by the committee, subjected a person to ruinous social and business ostracism. This crushed the opposition of the merchants, who were seriously injured by the artificial curtailment of trade. The part played by the Continental Association was described by Madison in his letter of January 20, 1775, to Bradford:

"The Quakers are the only people with us who refuse to accede to the Continental Association. I cannot forbear suspecting them to be under the control and direction of the leaders of the party in your quarters; for I take those of them that we have to be too honest and simple to have any sinister or secret views, and I do not observe anything in the association inconsistent with their religious principles. When I say they refuse to accede to the association, my meaning is that they refuse to sign it; that being the method used among us to distinguish friends from foes, and to oblige the common people to a more strict observance of it."

It is left uncertain whether coercion was used solely on the "common people" because the wealthy planters responded voluntarily or whether there was some truth in the charge made by Lord Dunmore in his letter of December 24, 1774: "The lower classes of people, too, will discover that they have been duped by the richer sort, who, for their part, elude the whole effects of the

Association by which their poor neighbors perish."<sup>16</sup> Dunmore's assertion that people of fortune "supply themselves and negroes for two or three years, to the distress of the middling and poorer sort," was indignantly but inconclusively denied by the House of Burgesses, which said that "some, but very few, may have supplied themselves, as opportunity offered, for the present year." Since the leading families of the Piedmont district excelled in revolutionary vigor and Madison had a thorough contempt for rich tide-water planters who acted from interested motives, it is not likely that he meant to exclude the wealthy from the workings of the Continental Association. Coercion was used where the leaders thought it was needed.

Madison's leaning toward the use of tar and feathers, suprising even in the youth of one so prominently associated with the Bill of Rights, can only be understood in the light of the general American attitude. The practice was recognized in 1775 to be a trifle off-color. That is shown by the fact that it was not resorted to officially by the committees. But when employed by a group of leading citizens, often captained by a committeeman, it was regarded as a rational means of strengthening the committee's authority, and those who took part felt insulted if called members of a mob. The extent to which Madison's attitude toward tar and feathers was typical of the period may be judged from the flippant question asked in the *New England Gazette* of April 4, 1776: a correspondent who heard that British commissioners were coming with pardons from the king inquired "whether it would be featherable for a man to be detected with one of them in his pocket." The fine line of distinction between defensible mob action and excesses which were condoned without being defended was illustrated by the Philadelphian who described the attempt to tar and feather the eminent Loyalist, Dr. John Kearsley, as the work of "sober, spirited men," while it could be said "to the honor of the associators" that it was not they who burned the victim's house but some "heartly jolly tars, market people, and others out of the crowd." Coercion was applied in the name of liberty, not as a necessitous departure from it. Nobody seemed to see the magnificent irony in the story from Charlestown, South Carolina, that

when it came to the signing of the Association of the Continental Congress, "such is here the spirit for liberty and freedom . . . there were only two who were hardy enough to ridicule or treat it with contempt. . . . Yesterday they were carted through the principal streets of this town, in complete suits of tar and feathers."<sup>17</sup> The hot bucket brigade in Charlestown was more nearly official than in any other city on the continent. Tar and feather victims were chosen by the Secret Committee of Five, which included William Henry Drayton, first chief justice of the South Carolina state supreme court; Arthur Middleton, signer of the Declaration of Independence; and General Charles Cotesworth Pinckney, one of the framers of the United States Constitution. The rights of free men were never more ruthlessly denied than in a revolution to establish the rights of free men.

A Loyalist preacher, looking upon the Continental Congress as an "unconstitutional authority," might think he had a right to do as he pleased about its proclamation of June 12, 1775, making July 20 a day of public humiliation, fasting and prayer, to bring King George into a reasonable state of mind. But to Madison and the committees this recommendation of the Congress, addressed to "the inhabitants of all the English colonies on this continent," had the force of law, and woe betide any preacher, whose business was praying, if he failed to pray properly on that day.

It will be noted from Madison's letter that the committee dealing with the Scotch parson, though created by and acting under the Continental Association, referred its July action to the Virginia Convention for advice and approval. This marked the advancing position of revolutionary provincial government. In March, eulogizing "that august body, the grand Continental Congress," Madison's Orange County committee denounced the "slavish doctrines of Provincial Government" circulated by the rector of the Brick Church. This did not denote rivalry between continent and province or disregard for Virginia. It reflected the fact that the Continental Congress was totally free from ministerial control and personified strength, unity and freedom of action; while provincial government in Virginia and elsewhere had not yet writhed wholly loose from the royal governors. Save in Connecticut and Rhode

Island, the Revolution lacked "grass roots." The committees supplied that defect. Supported by the committees, the provincial conventions moved forward instantly and, by a natural step in evolution, took charge of the committees.

The Continental Congress itself helped to establish provincial control of committees. When Robert and John Murray of New York, convicted by a county committee of unlawfully importing canvas, memorialized Congress "to be restored to their former situation with respect to their commercial privileges," the obvious impossibility of dealing with such matters by central authority led to a resolution of May 26, 1775, "That where any person hath been or shall be adjudged by a committee, to have violated the continental association, and such offender shall satisfy the convention of the Colony . . . of his contrition for the offence . . . the said convention . . . may settle the terms upon which he may be restored to the favor and forgiveness of the public, and that the terms be published."

Here was a natural, non-controversial assertion by Congress, before it had lost any of its early powers or prestige, of a principle stated by Madison June 21, 1787, in the Constitutional Convention—the principle that division of power between state and nation is governed by expediency, and "the expediency of the general government itself would concur with that of the people in maintaining subordinate governments." The resolution of Congress in effect made the provincial government a court of appeals in the administration of a locally enforced continental law. For the moment there was a pseudo-federal judiciary system, akin to that feature of our present federal system which makes the provisions of the United States Constitution enforceable in state courts. The ultimate structure, before recognition of royal authority faded out, was reported to the Earl of Dartmouth on December 5, 1775, by a correspondent signing himself "B. P.":

"The Continental Congress is over all, under the King; the provincials over the committees, and the committees over the counties."<sup>18</sup>

The correspondence between Madison and Bradford in 1775 reveals an easy interplay of thought on local and general affairs—a natural commingling of local action and continental loyalty. Bradford spoke in local terms, but thought of America, when he cried out to Madison in protest against the refusal of the Pennsylvania revolutionary assembly to sanction independent military companies: "Happy for us that we have Boston in the front and Virginia in the rear to defend us: we are placed where cowards ought to be placed, in the middle." The one redeeming feature he saw was that "our Assembly is strenuous in supporting and recommending the resolutions of the late Congress and have appointed delegates for the ensuing one." Bradford identified separate colonial action with submission, union with resistance. "Was it not too late," he wrote to Madison, "a petition from the several assemblies might perhaps be advantageous to our cause. . . . A little submission on our side by affording them an opportunity of receding with credit might not be amiss. But if, as is probable, our fate is already determined in Parliament, Union among ourselves, and a strict observance to the measures of the Congress is the only means of safety."<sup>19</sup>

Bradford, in contact with Congress, was worried over a rumor spread by Richard Henry Lee that Benjamin Franklin, colonial agent in London, had returned to America "rather as a spy than as a friend and that he means to discover our weak side and make his peace with the minister by discovering it to him."<sup>20</sup> Madison accepted this rumor against Franklin with astonishing credulity. "Little did I ever expect," he wrote to Bradford on June 19, "to hear that Jeremiah's doctrine that 'the heart of man is deceitful above all things and desperately wicked' was exemplified in the celebrated Dr. Franklin, and if the suspicions against him be well founded it certainly is remarkably exemplified. Indeed it appears to me that the bare suspicion of his guilt amounts very nearly to a proof of its reality. If he were the man he formerly was, and has even of late pretended to be, his conduct in Philadelphia on this critical occasion would have left no room for surmise or disgust. He certainly would have been both a faithful informer and

an active member of the Congress. His behavior would have been explicit and his zeal warm and conspicuous."

Madison then passed along the report current in Virginia that Richard Bland had succumbed to a British bribe. Putting the Franklin and Bland rumors together, he feared that "some golden prospects will be opened to the Congress by the minority before they make their final appeal to the sword." Having stated a case built on rumor (one hundred percent false) which almost made him "shudder for the tempted," Madison revealed his deeper judgment and sympathies by writing:

"But when I consider the united virtue of that illustrious body every apprehension of danger vanishes. The signal proofs they have given of their integrity and attachment to liberty, both in their private and Confederate capacities, must triumph over jealousy itself. However, should it come to the worst I am persuaded that the union, virtue and love of liberty at present prevailing throughout the Colonies is such that it would be as little in the power of our treacherous friends as of our avowed enemies, to put the yoke upon us. An attempt to sell us would infallibly purchase to the authors present vengeance and eternal infamy."<sup>21</sup>

In these words, revealing a strong emotional attachment to the union of the colonies, may be found the basis for Madison's federal outlook during the formative period of American constitutional government. A full year before the Declaration of Independence, six years before the ratification of the Articles of Confederation, Madison described the members of Congress as acting in their "Confederate capacities." He placed union first among the virtues of the colonies—so strong a sense of union among the people that it would triumph even though treachery took the place of the integrity and love of liberty which he saw in the Continental Congress.

The importance of this as a formative force lies in its timing—at the moment when one sovereignty was dissolving and another one forming. If Madison was right in what he said about the general attitude in 1775 and 1776, fidelity to the union must be recognized as a powerful feeling which came into being earlier than the sever-

ance from a British attachment and rose to its highest intensity at the very moment of a shift in sovereignty. Conflicting in no wise with devotion to the individual colony, it furnished a new common loyalty in place of the one that disappeared. The spirit was that of the New York mechanics who said during this struggle with the Tory merchants: "When we cast a glance upon our beloved continent . . . sorrow fills our hearts to behold her now struggling under the heavy load of oppression, tyranny and death."<sup>22</sup>

Madison described and shared the "surprising spirit of indignation and resentment" which swept Virginia in March of 1775, when it was reported that the merchant-dominated New York Assembly, as Madison said, "had voted the proceedings of the Congress illegal." To judge whether Madison's devotion to the Union was peculiar to himself, observe how far beyond his protest the Virginia Convention went. It adopted a resolution declaring that the province of New York "did, by their delegates in General Congress, solemnly accede to the compact of Association there formed for the preservation of American rights, that a defection from such a compact would be a perfidy too atrocious to be charged on a sister colony but from the most authentic information." Doubting whether, "from some radical defect in the constitution of that government, the sense of their House of Representatives, on questions of this nature, should be considered as the sense of the people in general," the Virginia Convention ordered the Committee of Correspondence to find out from the New York committee whether the assembly of that colony "have deserted the union with the other American colonies, formed in general Congress," and whether their action shall be considered "as declaring truly the sense of the people of their Colony in general, and as forming a rule for their future conduct."

In thus declaring the Continental Association binding upon a colony whose delegates voted for it, even though the colonial assembly rejected it, the Virginia Convention did not go so far as the General Committee of Charlestown, South Carolina, which on February 8, "in conformity to the resolutions" of Congress, declared a total boycott of the Colony of Georgia because it "hath not acceded to the Continental Association." Georgia at that time

had not even sent delegates to the Continental Congress.<sup>23</sup> Thus, acting under the authority of Congress, South Carolina employed a commercial boycott to coerce Georgia into entering the Union, and Virginia used the implied threat of a boycott to back its challenge of New York's right to secede from the Union. Each colony had a sovereign and independent right to join and support the Union; but to refuse to join, or to leave after joining, was perfidious, and punishable under the Continental Association.

The belief, formally stated by the Virginia Convention, that the Continental Association had established a union of the colonies by solemn compact, harmonizes with Madison's reference to the "Confederate capacities" of the members of Congress. He wrote this three days before Congress itself declared "the twelve confederated colonies" were pledged to redeem its first emission of continental currency. The Confederation was becoming not only a *fait accompli* but a recognized fact.<sup>24</sup>

The Second Continental Congress, carrying on in the line of the Continental Association, was speaking at this time with vigorous authority in commercial matters. On May 17, 1775, only one week after it convened, it resolved: "That all exportations to Quebec . . . and West Florida immediately cease, and that no provisions of any kind, or other necessaries be furnished to the British Fisheries on the American coasts until it be otherwise determined by the Congress." In military matters of a local nature, the Congress exercised power within a poorly organized colony, such as New York, which would have been resented in Virginia or Connecticut,<sup>25</sup> but in the control of external commerce its authority was recognized at this time in all colonies alike.

From this prevailing attitude, the record of which might be extended indefinitely, it is evident that James Madison's early nationalism was not a mere aberration, setting him apart from his fellows. Rather, during this period, he held steadily to principles which had arisen naturally and were generally shared before early unity gave way to the effect of commercial rivalries and the financial weakness of Congress and the states. He continued to hold to this feeling throughout the period of Confederation rivalries and weakness, when many others lost it. Henry Laurens of South

Carolina, president of the Continental Congress, might have been invoking the spirit displayed in Madison's correspondence—he was indeed harking back to that same spirit in the people at large, to a lost Utopia, as it seemed to him—when he exclaimed in 1778: "Is there a name under heaven that shall sanctify the peculator or screen the man whose neglect of duty has brought thousands to misery and death? Forbid it torpid patriotism of 1775—No! . . . God awaken us."<sup>26</sup> The attitude of Madison in these early years reflects the coming into being of a continental spirit which was submerged but not destroyed in the later period of the Revolution. It produced an original harmony between the local and central revolutionary authorities which outweighed the crudities of committee justice, the lack of form in Congress and the colonial assemblies, and helped to mold the national structure.

This feeling in Madison is the more striking when one considers that he both accepted the compact theory and venerated the written word. His recognition of the United Colonies and the United States as a confederation in advance of the signing of formal uniform articles, represented a triumph for political realism, over the artificialities of the theory of political compact as it had developed from Protagoras to Locke. The solemnity with which he and others regarded the Continental Association was due at bottom to the fact that they approved its purpose. Had they felt loyal to the king, they not only would have rejected the idea of compact in the Association but would have denied the binding force of any compact, no matter how formal, devoted to revolution.

It is evident that Madison saw and felt a swelling sense of nationhood in the entire sequence of events which followed the original summoning of Congress by the provincial assemblies and committees—the establishment, by and for the United Colonies, of an army, a navy, a treasury, a currency, a postoffice, a law on imports and exports; and the leadership of Congress in establishing civil government in the individual colonies. He saw the foundation of the American Republic and the beginning of a common organic law arising out of the union of the several colonies before they had separated from Great Britain—a union weakened by the feeble structure of federal government but saved by the desperate need

for a pooling of strength and by the absence of national sovereignty in the several states.

In this original continental unity, shared by Madison with his compatriots—a national feeling which swelled mightily (for economic reasons) among some who felt it little at first, and diminished in others who at first felt it strongly—may be found the ultimate justification for those decisions of the United States Supreme Court which held that the colonies were legally confederated from 1775 onward and that its resolutions were laws before which conflicting state laws must give way.<sup>27</sup> The weakness of enforcement machinery in the confederacy, not its lack of a national purpose, is thus made to explain its debility, but in its earliest days it rose above its structural weaknesses.

The Supreme Court, in the *Olmstead* and *Penhallow* cases, affirmed as a binding legal doctrine what Madison had expressed on an emotional basis in his letters of 1775. Lord Dunmore said much the same thing, from an opposite point of view, when he complained of the veneration of Virginians for “the laws of Congress.” Cortlandt Skinner, New York Tory, cried out in December, 1775, that “The Congress are our King, Lords and Commons.” S. McClintock of New Hampshire echoed Dunmore but again reversed the approach when he wrote to William Whipple in August of '76: “I will not say . . . [as a friend did] that people have a greater veneration for the resolves of the Congress than for the laws of the Almighty; but I will say from my observation that their resolves are observed by people in general with as much reverence as ever were the laws of Solon and Lycurgus by the Athenians and Spartans, and much better than laws enforced by Royal authority. . . . The eyes of all America are looking up to them, under God, as the guardians of the commonwealth.”<sup>28</sup>

The fundamental position of Congress in this early period was in question only between patriots and Tories. These both affirmed the same state of facts, one party in praise, the other in protest. One group affirmed the legality of Congress; the other denied it; but both recognized its power and prestige—a cleavage in thought expressed in the fictional dialog between a drunken soldier and

Governor Tryon of New York, published in the *Pennsylvania Gazette* of May 14, 1776:

“Huzza for the congress—the congress and toddy.  
You scoundrel I'll run you quite through the body.”

The initial development of a sense of American nationhood may be likened to the growth and fruiting of a tall plant, which struggles for many years to reach the sunlight, comes to a showy flowering, withers, and displays its fruit only after the petals fall. The New England Confederation of 1643 furnished provisions and wording for Benjamin Franklin's Albany Plan of Union in 1754, but obstacles rose higher than aspirations. The decade of common wrongs, common suffering, common struggle, from 1765 to 1774, was needed to overcome the handicaps of distance, ignorance, jealousy, clashing intercolonial interests and conflict between rich and poor within each colony. The flowering came in the patriotic unity of 1775 and 1776, which withered as sectional jealousies and class struggles within the revolutionary party reasserted themselves. The final fruit of this nationalism, the Constitution of 1787, was the composite product of many cross-fertilizations and graftings; but the parent stem was “the Grand American Tree of Liberty, planted in the center of the United Colonies of North America,” which now flourishes, said the Boston *Constitutional Gazette* of September 9, 1775, “with unrivalled, increasing beauty.” Liberty and budding sovereignty went together in thought, though often to peculiar ends. Madison, with his threats against Tory preachers, did but share the spirit of Parson Buel's daughter, who, with her girl friends, laid hold of the solitary male guest at a Kinderhook quilting party, stripped him to the waist and tarred and feathered him with molasses and cat-tail down, as a punishment for impudent “aspersions on Congress” by “an enemy to the liberties of America.”<sup>29</sup>

If the loyalty of James Madison was the loyalty of the men of Lexington and Concord, Valley Forge and Yorktown, of teamsters, mechanics, farmers, tradesmen, housewives and merchants, then

it may be said that there was a natural development along continental lines, both in thought and emotion from the Declaration on Taking Arms to the Declaration of Independence, from the United Colonies to the United States. To go back to the beginning, it was a development from Committees of Correspondence to the Continental Congress, from tar and feathers to sovereignty.

## CHAPTER IX

## AN INTRODUCTION TO PATRICK HENRY

JAMES MADISON was one of the most voluminous letter writers of his day. His correspondence with Virginia political leaders during the period of the Confederation was especially heavy. After his entry into public affairs he was in constant or periodic communication with Thomas Jefferson, Edmund Pendleton, Edmund Randolph, James Monroe, Joseph Jones, and to a lesser extent with George Washington, George Mason, Richard Henry Lee, Henry Lee, Jr., John Francis Mercer, David Jameson, James Ambler and many other Virginians. There is no evidence that he ever in his life wrote a letter to, or received one from, Patrick Henry. On one occasion, however, Henry acted as letter carrier for Madison. The circumstances mark the beginning of their relationship—a beginning very different from its later phases—and the letter itself adds to the story of Henry's famous reprisal for the seizure of the colony's gunpowder by Governor Dunmore.

On May 9, 1775, the Orange County Committee held a meeting and adopted the following address of praise "To Captain Patrick Henry and the Gentlemen Independents of Hanover" in the affair of the powder:

"Gentlemen: We, the committee for the county of Orange, having been fully informed of your seasonable and spirited proceedings in procuring a compensation for the powder fraudulently taken from the country magazine by command of Lord Dunmore, and which it evidently appears his Lordship, notwithstanding his assurances, had no intention to restore, entreat you to accept their cordial thanks for this testimony of your zeal for the honor and interest of your country. We take this opportunity also to give it as our opinion that the blow struck in the Massachusetts government [at Lexington and Concord] is a hostile attack on this and