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JOHN DICKINSON AND THE FEDERAL CONSTITUTION

by

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Supreme Court of Delaware

(An address to the Colonial Dames, Sons of the American Revolution, and other patriotic groups of Delaware at a dinner following the ceremony of donation of the John Dickinson Mansion to the State of Delaware, September 17, 1952.)

Strictly speaking, our federal constitution has its roots in the very earliest struggles of mankind for liberty and property. In such a broad sense, of course, it would not be possible here to recite even the names of all those who materially contributed to its genesis. Expediency, therefore, thrusts upon us a much narrower view, one in which we may sensibly say that the first step toward the formulation of our Constitution was taken on the 21st day of January, 1786, when the Assembly of the State of Virginia called for a general convention of commissioners to consider the unsatisfactory conditions of commerce among the states. From this call -- which, by the way, totally ignored the amendment procedure specified in the Articles of Confederation -- resulted what we know as the Annapolis Convention (11 Sept. 1786), presided over by John Dickinson, one of the commissioners from Delaware.

The Annapolis Convention, in turn, concluded in a resolution that another convention, which it was hoped would be better attended, should be held in Philadelphia on the second Monday in May of the following year, 1787, and suggesting -- albeit with some diffidence -- that the proper regulation of commerce might lead to consideration of "other important matters." Congress at once concurred and legally called such a general convention, directing it to consider not merely matters of commerce, as the Virginia Assembly had suggested, but "to take into consideration the situation of the United States" and to design a revision of the Articles of Confederation which would "render the federal Constitution adequate to the exigencies of the government and the preservation of the Union."

To that, the great convention, as a deputy from Delaware, came John Dickinson, the "Penman of the Revolution," whose writings had at first done so much toward implanting into colonial British subjects

1. The biographical references, unless otherwise noted, are based upon Dr. Stillé's Life and Times of John Dickinson.

some understanding of their own rights, as opposed to those of the mother country, and had later done so much toward instilling into free Americans the first vague sense of a national character.

Bred to the law, privately tutored by the young Irishman, William Killen, who himself went on to achieve eminence in later life, saturated with classical, medieval and modern political science, schooled in the Middle Temple of London in the intricacies of English law, polished at the Philadelphia Bar, John Dickinson had somehow acquired and retained the gift of writing on subjects of the most monumental difficulty with remarkable directness and simplicity. In some mysterious way he was able to give to the written word that vitality which others were rarely able to supply in conversation, debate, or oratory. Far from being robust in physique, he was, nevertheless, in 1787, at the height of his mental powers.

Candor compels us to acknowledge that, while he was an effective speaker, his oral utterances failed sometimes to share the unanimous acclaim enjoyed by his writings.¹

From the time, at the age of 28, when he had been elected Speaker of the Assembly of the Lower Counties, he had, with only a very brief interval, been continuously engaged in public life, serving in the Assemblies and Councils of both Delaware and Pennsylvania, and serving as president of each of those states. None was more intimately acquainted with men of influence throughout the land. None had a more detailed first-hand knowledge of all such political activities on our side of the Atlantic as might in any sense be termed national. He had been the sole or a collaborating author of every state paper of the first order of importance, with the single exception of the Declaration of Independence. He had been a member of the Stamp Act Congress in 1765 and had drafted the petition of that unhappy senate to the king. He had been elected to both Continental Congresses and had there served during four years of the Revolution. He had drafted the second petition of the Congress to the king. He is acknowledged by all to have had the principal hand in drafting the Articles of Confederation, and some historians give him sole credit for the composition of the original draft.

In respect to the Declaration of Independence, although he had strenuously opposed it, he had, of course, necessarily concentrated his closest and most conscientious study upon it and had deliberately sacrificed his immense popularity -- even to the point of being at times subjected to acute personal humiliation -- in leading the "moderates" in their fight against it.

There was, in short, nothing in the circumstances of the severance of the colonies from the British Empire, or in the first

1. See Major William Pierce's Sketches in The American Historical Review, Vol. III.

halting steps which they took alone, with which John Dickinson was not intimately acquainted. He was a conspicuously strong and well-informed man in that famous company of strong, well-informed men.

It is a mark of the measure of John Dickinson that he frankly regarded the prospect of being longer left to drift under the Articles of Confederation as the threat of a great calamity. Yet the Articles of Confederation, as we noted a moment ago, were to a very large extent his own handiwork.

In some respects, I suppose, it is regrettable that there is no transcript of the debates of the constitutional convention. Historians would have found in them tense drama. But the object of those devoted men in Philadelphia was to frame a constitution, not to declaim for the edification of posterity. They desired most of all ultimately to stand together for ratification, and they did not propose themselves to furnish the criticisms which, when repeated by others, might become the means of defeat.

And it takes little reflection to appreciate that their course of preserving maximum secrecy was wise on another count. Not the least virtue of that noble instrument has been its quality of elasticity, from which it derives its capacity, a century and a half after its ratification, to give immense satisfaction to the people of the United States and inspiration to persons everywhere who are free or who aspire to freedom. Certainly a transcript of the debates would have impaired that elasticity.

The incomplete records of the Convention which we do have, however, are sufficient to disclose that John Dickinson was a consistently hard and effective worker. James Madison, in his private journals -- not published until 1840 -- mentions Dickinson's actions or attitudes something over 50 times. As to many features of the Constitution, his voice appears to have been controlling. As to others, of course, his views were not adopted, as, for instance, his proposal to extend to a majority of the state legislatures the power to remove the president; or his proposal to have each of the several states in every presidential year elect one of its citizens as its candidate for the national presidency, and then to have the electoral college make the final choice from this list of favorite sons; or his suggestion that each state's representation in the lower house of Congress be in proportion to the amount of tax money its citizens pay into the federal treasury. But whether or not his views happened to meet with the approval of others, he was constantly at work, both privately and in public, from time to time putting searching questions, directing shrewd criticism, or lending powerful support, according to his judgment of the merits of the matter at hand.

At one point in particular failure of the convention's purpose seemed inevitable. The factual details are too familiar to require elaboration in this company, but I refer to the conviction of the large states that the very essence of democracy required the several

states to be represented in the National Congress in proportion to their respective populations, and to the determination of the small states that representation must be by states. Delaware took an extreme position. When it appeared that the large states might attempt to force their will upon the small ones, John Dickinson himself said to James Madison that Delaware "would sooner submit to a foreign rule than be deprived in both branches of an equality of suffrage and thereby be thrown to the domination of the larger states."

Some would find these words of Dickinson inflammatory. To understand them so, however, would be a severe injustice to a keenly conscientious man. John Dickinson was not merely confining himself within the powers defined in his credentials; he sensed the public will. He knew what the people of the small states would agree to. A realist, he considered that any workable system was necessarily limited by the bounds of the people's patience.

At this stage of the debate, when defeat seemed imminent, it was John Dickinson who ultimately made the motion which put into the American Constitution the unique feature of popular legislative representation on two bases. It is not possible to say whether or to what extent the idea was original with Dickinson, but it is not exaggeration to say that his motion saved the constitutional convention. The ingenious device thereby installed into our government stands as striking evidence of the resourcefulness and common sense which it is possible for a republican form of government to exercise when the people are ably and honorably represented.

John Dickinson's vigor in striving in behalf of the small states is the more remarkable when we recall that he himself could at any time draw comfort from the prestige of the great State of Pennsylvania, where he had pursued his profession and spent the greater part of his adult life, a state which had conferred upon him all the varieties of honors within its power to bestow.

But, as great as was his undoubted contribution to the framing of the Constitution, it is not certain but that those services were exceeded in value by what he did for its ratification. Some elements entirely loyal to America were working with apparent effect to defeat the proposed new constitution. The issue was in serious doubt. The principles involved were basic and of a character incapable of mathematical demonstration. It was at this stage that John Dickinson again took up his pen in a series of articles signed "Fabius," which were widely published at home and abroad, and which are everywhere acknowledged to have had a powerful influence in turning the scale in favor of ratification. Though his feelings on the subject were intense, yet his style was never more dispassionate, never more logical, never more disarmingly persuasive. Our debt to John Dickinson for this, the first series of Fabius letters, is incalculable.

Viewing the entire scene in retrospect, it is not melodramatic to say that the life and character of John Dickinson had apparently been designed toward his participation in framing our Constitution as the climax of his public life. He may, indeed, have sensed the same, for after that Convention, concluded 165 years ago today, though he was aged only 55, a man of handsome fortune and ample leisure, restored in popularity, he never afterward sought or would accept public office. When his name was urged for a place in the new United States Senate, he gratefully, but nevertheless, firmly, declined to be considered. Afterwards, except for occasional writings, he lived in retirement.

There is one postscript which justice to the stature of John Dickinson makes it appropriate for us to append. Sixteen years after his retirement, the Louisiana Purchase was consummated. He desperately desired slavery not to gain a foothold in the new west, so in 1804 he wrote to his kinsman, Senator Logan from Pennsylvania, assailing the entire institution of "bondage," as he referred to it, in tones as vigorous as those of his youth, and concluded his letter with these words:

"The theme is inexhaustible. Let the pernicious project, the detestable precedent never be sanctioned by votes of sons of liberty."

John Dickinson then was old. He had witnessed and fought in our first great civil war, the one which resulted in division. It was not for him or his generation to witness the next, the one which would result in union. It was characteristic of the man, however, that his mind unerringly reached out for the next great issue in the evolution of freedom. For in the mind and heart of John Dickinson dwelt not merely the form of the Constitution, but also its living spirit.

KINGSTON-UPON-HULL

Although it is definitely aside from the theme assigned to me, perhaps I can be forgiven, because of the events of this day, which, after all, were the product of sentiment, for taking the time to mention that John Dickinson must have loved Kingston-Upon-Hull.

When the unpopularity of his refusal to sign the Declaration of Independence was high, even though he was demonstrating his unshakable loyalty to his country by personally taking up arms in the defense of New York, he was, nevertheless, by prejudice, ousted of his command of the Philadelphia Associators. When he was thus wounded in spirit, lonesome and unhappy, regarded by others, as he thought and said, as having outlived his usefulness, he traveled alone to Kingston-Upon-Hull, seeking to draw comfort from the society of the fields, marshes, and forests of his youth.

We may be proud that the Delaware Assembly instantly elected him to Congress, although in his state of desolation he declined the office without a word of explanation. You will recall that within a few months he volunteered as a private in the Delaware militia and served in that capacity until he was promoted to the rank of brigadier-general. Shortly thereafter he was elected president of Delaware, soon being taken up again with enthusiasm by the State of Pennsylvania, which thereupon also elected him its president.

Kingston-Upon-Hull and its people had healed his wounded spirit and sent him away once more, this time to render his finest service.