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# Futility of Prejudice

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# THE NOTRE DAME LAWYER

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## THE FUTILITY OF PREJUDICE

The one hundred and fiftieth anniversary of the signing of the American Declaration of Independence was the signal for all of the lecturers and after-dinner speakers to revive their eulogies of the founders of our government, and offered new opportunity for theatre-seat patriots to express their thanks for being favored with such a blessed country as ours. George Washington, Thomas Jefferson, Alexander Hamilton, Patrick Henry, James Madison, John Marshall—all are given their share of the glory, and each is reverently elevated to beatific heights by zealous orators. Not one is forgotten; all are lauded and extolled—Henry as the voice of the embryo republic, Hamilton as the founder of the American banking system, Jefferson as the philosophic oracle of the Anti-Federalists, Marshall as the greatest expounder of the Constitution, Madison as the father of "the greatest document struck off at a given time by the brain and

purpose of man", and Washington once more as the "father of his country". It seems that to each of these sterling patriots was consigned some specific duty, and each acquitted himself with honor and glory. There were no petty squabbles to impede the progress of the infant nation, and no differences to disturb the equanimity of the country's founders. Personal interest, according to our most popular speakers, was discarded in favor of national advancement; philosophic calm pervaded everyone, and the country was founded, and grew.

When we look backward over a span of a hundred and fifty years, we easily discover superhuman qualities in our fathers, and we are inclined to glide over some slight frailties which may have actuated them. The work accomplished by Washington and his compatriots was tremendous certainly, transcended perhaps by no other galaxy of men,—but our first statesmen were not quite the saints that are sometimes made of them today. John Marshall, for instance, would be rather astounded to hear that Thomas Jefferson entertained the greatest reverence for his decisions. Even Washington was not universally considered the American Moses leading his people out of bondage: the Continental Congress at one time seriously contemplated removing him from the generalship of the Colonial troops. The human qualities of the men at the head of our government during the first fifty years were not remarkably unlike those of our own time. Men are not endowed with godlike qualities one generation, and given disappointing frailties the next. Washington, Jefferson and company were not superhuman; they were as human and as real as we are.

Washington, Jefferson, Henry, Hamilton, Madison and Marshall: these were the recognized leaders of the constitutional period. Yet it can scarcely be said that all of these men were friends. Washington was often accused of being too reluctant to express his own ideas; his conduct during the pendency of the Bank bill showed lack of decision. Jefferson was considered by his contemporaries as being almost a demagogue; Hamilton was condemned as a hater of republicanism and a worshipper of ostentation; Henry, although his speech before the Burgesses is conceded to be one of the immediate causes of the Revolution, argued vehemently in the Virginia Convention against the

adoption of the Federal Constitution; Madison fought the Alien and Sedition Laws too earnestly to please his Federalist countrymen; Jefferson graciously called Marshall's *Life of Washington* a "five-volumed libel", and was forever incensed that Adams should appoint a "Federalist politician" to the highest judicial position in the land. Marshall himself always tactfully avoided reference to his Republican critic, except during the Burr trial, when he nonchalantly remarked that the duties of a President could not take so very many hours of the day, and calmly ordered a writ of *subpoena duces tecum* issued against him. When Jefferson ignored the order, the chief justice did not press the point.

All of these antipathies were carried to a bitter conclusion, and some of them to a disastrous one. A newspaper existing at 1797 rejoiced at Washington's retirement, declaring that the first President could serve the country better by silence. Jefferson and Hamilton became so unbearable to each other in the first cabinet that both resigned, each taking a recess before renewing the battle. Hamilton was later removed from consideration by a wound received in a duel, and there were many who did not mourn his death. Henry was soon eclipsed by the constitutionalists, never to return to the limelight. Madison received but scant sympathy for the War of 1812. And John Marshall, the last of the Federalists, saw his own associates on the bench take issue with his views and decisions . . . . . The theory that the foundation of our government was a peaceful one is not tenable. The after-dinner speakers are too eulogistic.

But the after-dinner speakers are not the only pedants. There are many who have veered to the other extreme, and while extolling one particular person, they are apt to vilify his contemporaries. There has been an epidemic of biographies lately, particularly of the Revolutionary period, and each statesman is considered a scholar by one writer, and a villain by the next. Each patriot has his protagonist; Jefferson has his Hirst, Hamilton his Oliver, and even poor, misunderstood Burr has a defender in Mr. Minnigerode. Now, since all three of these subjects were ardent enemies, it is obvious that all of them could not be right in their conflicting opinions. Therefore to defend Jefferson, Hirst disparages Hamilton, to excuse Hamilton, Oliver

abuses Jefferson, and Mr. Minnigerode, since the difficult Burr enraged Jefferson and killed Hamilton, cordially reviles both. Altogether, a spirit of avowed hostility seems to prevail. If we believe these biographers, it is difficult to see how the country was established at all. The work of each leader was belittled by at least one writer, until we read that Jefferson's Declaration was almost a plagiarism, Hamilton's Bank a monopolistic venture, Burr's campaign traitorous, and Washington's success as general but little more than a series of accidents. And since the diarists of that distant day are cited by each author, every contention seems to bear at least the semblance of truth. The manuscripts of Giles and Plumer are quoted reverently,—although, of course, each biographer uses different excerpts.

Whom then are we to believe? Surely some of our revered forefathers must have been right. Indeed, if we examine our modern institutions we discover, paradoxically enough, that they all were. . . . The country was founded, and it did grow. Somehow out of the chaos came order and system. As the country expanded and interest became more widely separated, it developed that each of the founders was correct in many policies, after all. Contrary to the belief of that time, there was room for conflicting opinions. The nation prospered in spite of the enmities. Washington's conciliatory manner, although not appreciated at the time, did promote security and ease. Jefferson never did meet Hamilton in a duel (possibly because he didn't need to), and the policies of each still prevail today—Jefferson's by a whole-hearted approval of his republican ideals, and Hamilton's by a recognition of the Federal banking power. Madison's objection to the Alien and Sedition Laws is perpetuated by a recognition of the theory that Congress can not still opposition by making criticism unlawful. . . . And what lawyer does not admit that Marshall's decisions in *Marbury v. Madison* and *Dartmouth College v. Woodward* are sound interpretations of the fundamental Law? Thus, each statesman is justified. Even Aaron Burr must be given credit; his campaign into Mexico anticipated the independence of Texas by only thirty years. Almost all of our modern institutions are sharp illustrations of the correctness of some strongly opposed ideas.

Thus it seems that both classes of modern critics are in

error—the popular lecturers because they attribute the foundation of the United States to an inspired zeal, and the biographers because they sacrifice unorthodox believers at the altar of their own particular idol. The truth is somewhere between; our first statesmen did have differences, but the country lived on in spite of them. Great men have always been rather intolerant, and bitter personal warfare has often resulted, but the conflicts of opinion can not be snuffed out by a duel.

But it is urged that no one to-day believes personal enmities are effective in eradicating political differences. Wayne B. Wheeler and Alfred E. Smith have not yet engaged in intense personal conflict, and it is not likely that they will; yet the policies of Wheeler and Smith are diametrically opposed. Nor does Len Small toss a glove at the face of the editor of the *Chicago Tribune*; yet Small is anathema to the Tribune. Duels are out of date; disagreeable physical encounters are avoided today. The contrast of modern with early times stops here, however. Wheeler and Smith very probably do not fire shots at each other because there is a more effective—and much safer—way to meet opposition. The ever-reliable press is found to be a very efficient medium to circulate arguments, and words are often convincing when a sword-thrust or a pistol-shot wouldn't be. Pistols always were rather dangerous instruments in the hands of a bitter opponent, and honor was not always vindicated; the victory usually went to the skilled marksman, and not to the deep thinker. On the other hand, there is not much personal danger in circulating a campaign speech. . . . There is as much enmity to-day as there ever was, but the weapons have changed.

Now, if the ardent enmities of the Revolutionary period were futile, is it not reasonable to conclude that intolerance to-day is equally futile? Hamilton's hatred for the people did not prevent them from voting; Jefferson's strong arguments against a National Bank did not stop Washington from granting a charter; Henry's antipathy to the Constitution did not obstruct its ratification; and the Federalists' bitter denunciation of the War of 1812 did not cool the ardour of the younger members of Congress. The useless gestures of intolerance during that period were at length curbed, and the stupidity of bigotry dis-

covered; will the same gestures to-day be effective in diverting attention from the truth? Will the bitter animosities of capital and labor end in an absolute victory for one side or the other? Will the mutual hatred of the wets and drys exterminate either? Will not the outcome more probably be a recognition of the merits of each party, and an admission of a category of correct doctrines in neither? . . . The people who participate bitterly in the warfare of capital and labor, of liberalists and paternalists, may well study the eternal result of differences. Truth is not generally limited to one party; prejudice eventually will be cleared away, and when it is, each contentionist will be shown to have his share of reason.

C. J. R.