THE SUPREME COURT
HISTORICAL SOCIETY

Quarterly

VOLUME VII NUMBER 1

Membership Committee Appoints Twenty-Eight Additional State Chairmen

According to its Chairman, Justin A. Stanley, the Membership Committee has appointed twenty-eight new state membership chairmen to assist in this year's membership drive. This brings the total number of state chairmen to forty-eight, including those listed in the last issue of the *Quarterly*.

Mr. Stanley, and fellow committee members Griffin B. Bell and J. Roderick Heller, III, are recruiting volunteers to serve as state membership chairmen as part of the most significant membership drive undertaken since the Society's inception. The goal of this campaign is to increase the Society's membership from its current 2,500 to approximately 4,000 members. Additional announcements concerning the state chairmen will be published in the *Quarterly* as they are appointed. The most recent appointees are as follows:

Alabama	**N. Lee Cooper, Esq.** Maynard, Cooper, Frierson & Gale Watts Building, 12th Floor Third Avenue & Twentieth Street Birmingham, AL 35203
Arizona (Tucson)	**Thomas Chandler, Esq.** Chandler, Tuller, Udall & Redhair 1700 Arizona Bank Plaza 33 North Stone Avenue Tuscon, AZ 85701
Arizona (Phoenix)	**Calvin H. Udall, Esq.** Fennemore, Craig, Von Ammon, Udall & Powers Suite 1700 100 West Washington Street Phoenix, AZ 85003
California (Los Angeles)	**Stuart L. Kadison, Esq.** Kadison, Pfaelzer, Woodard, Quinn & Rossi 707 Wilshire Boulevard Los Angeles, CA 90017
California (San Francisco)	**Burnham Enersen, Esq.** McCutchen, Doyle, Brown & Enersen 40 Arguello Boulevard San Francisco, CA 94118
Connecticut	**James R. Greenfield, Esq.** Greenfield, Krick & Jacobs 205 Church Street P.O. Box 1952 New Haven, CT 06509

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Annual Meeting Notice

Invitations to the Society's tenth annual meeting, on May 13, 1985, will be mailed to members in the first week of April. The invitations will include a schedule of events and a reservation card for the evening's annual reception and dinner. Members who wish to attend those two events should return their reservation cards and payment promptly to assure acceptance.

No reservation or advance notice is required for events other than the annual reception and dinner. However, due to the limited seating capacity in the Capitol's Restored Supreme Court Chamber, members who wish to attend the annual lecture held in that room at 2:30 p.m. are urged to arrive early to assure seating.

This year's annual lecture will be delivered by Judge Antonin Scalia of the U.S. Court of Appeals for the D.C. Circuit. Judge Scalia is a graduate of the Harvard Law School and a former Assistant Attorney General. Prior to his judicial appointment he served on the faculties of several of the nation's prominent law schools, including the University of Virginia, the University of Chicago, Harvard, and Stanford.

Following the annual lecture, members are invited to visit the Society's headquarters building at 3:30 p.m. where refreshments will be served. The membership meeting will be held in the courtroom of the Supreme Court building at 6:30 p.m. following the meeting of the Board of Trustees.

State Chairmen *(continued from page one)*

Delaware	**Charles F. Richards, Jr. Esq.** Richards, Layton & Finger One Rodney Square P.O. Box 551 Wilmington, DE 19899
Kentucky	**Joseph E. Stopher, Esq.** Boehl, Stopher, Graves & Deindoerfer One Riverfront Plaza Suite 2300 Louisville, KY 40202
Maine	**Ralph I. Lancaster, Jr., Esq.** Pierce, Atwood, Scribner, Allen, Smith and Lancaster One Monument Square Portland, ME 04111
Massachusetts	**Robert W. Meserve, Esq.** 109 Worcester Lane Waltham, MA 02154
Missouri	**Robert L. Hawkins, Jr., Esq.** Hawkins, Brydon & Swearingen P.O. Box 456 312 East Capital Avenue Jefferson City, MO 65101
Nebraska	**James W. Hewitt, Esq.** Nebco, Inc. P.O. Box 80268 Lincoln, NE 68501
New Mexico	**Seth Montgomery, Esq.** Montgomery & Andrews 325 Paseo De Peralta P.O. Box 2307 Sante Fe, NM 87504
New York	**Leon Silverman, Esq.** Fried, Frank, Harris, Shriver & Jacobson One New York Plaza New York, NY 10004
North Carolina	**William F. Womble, Esq.** Womble, Carlyle, Sandridge & Rice P.O. Drawer 84 Winston-Salem, NC 27102
North Dakota	**Richard H. McGee, Esq.** McGee, Hankla, Backers & Wheeler First National Bank Bldg. P.O. Box 998 Minot, ND 58701
Ohio	**John C. Elam, Esq.** Vorys, Slater, Seymour & Pease 52 East Gay Street Columbus, OH 43215
Oklahoma	**William G. Paul, Esq.** Phillips Petroleum Company 18 Phillips Building Bartlesville, OK 74004
Oregon	**John L. Schwabe, Esq.** Schwabe, Williamson, Wyatt, Moore & Roberts 1600 Pacwest Center 1211 Southwest Fifth Street Portland, OR 97204
Pennsylvania (Philadelphia)	**Robert M. Landis, Esq.** Deckert, Price, Rhoads 34 Centre Square West 1500 Market Street Philadelphia, PA 19102
Pennsylvania (Pittsburgh)	**Alexander Unkovic, Esq.** Meyer, Unkovic & Scott 1300 Oliver Building Pittsburgh, PA 15222
Puerto Rico	**Hector Reichard De-Cardona, Esq.** Lasa, Escalera & Reichard G.P.O. 4148 San Juan, PR 00936
South Carolina	**Wesley M. Walker, Esq.** Leatherwood, Walker, Todd & Mann 217 East Coffee Street Greenville, SC 29602
South Dakota	**Charles M. Thompson, Esq.** May, Day, Gerdes & Thompson 503 South Pierre Street Pierre, SD 57501
Texas	**E. William Barnett, Esq.** Baker & Botts 3000 One Shell Plaza Houston, TX 77002
Virginia	**R. Harvey Chappell, Jr., Esq.** Christian, Barton, Epps, Brent & Chappell 1200 Mutual Building Ninth and Main Streets Richmond, VA 23219
Washington	**J. David Andrews, Esq.** Perkins, Coie, Stone, Olsen & Williams 1900 Washington Building Seattle, WA 98101
Wisconsin	**Steven E. Keane, Esq.** Foley & Lardner 777 East Wisconsin Avenue Milwaukee, WI 53202

The Society greatly appreciates the willingness of these individuals to volunteer their time and energy, and urges members to lend them their full support and cooperation.

Benjamin Robbins Curtis: The Yankee Who Stepped Down from Olympus

When Justice Levi Woodbury of New Hampshire died in 1851, President Millard Fillmore determined to replace him with someone of the Whig party to counteract the preponderance of southern Democrats on the high bench. He wrote to Daniel Webster, his Secretary of State, setting out the qualifications he was seeking:

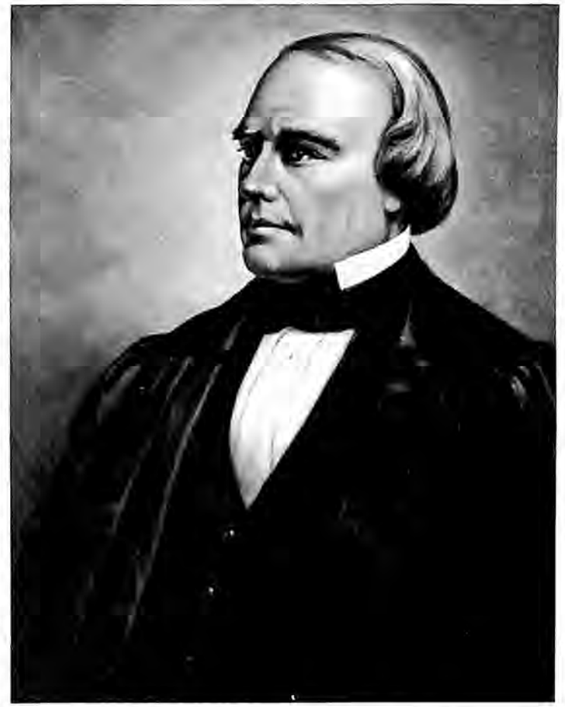
> [I am] desirous of obtaining as long a lease and as much moral and judicial power as possible from this appointment. I would therefore like to combine a vigorous constitution with high moral and intellectual qualifications, a good judicial mind, and such age as gives a prospect of long service.

After setting forth these requirements President Fillmore asked Webster for his opinion of "Mr. B.R. Curtis. What do you say of him? What is his age? Constitution? Legal attainments? Does he fill the measure of my wishes?"

Benjamin Robbins Curtis filled the measure of Fillmore's requirements in every way. Born in 1809 in Watertown, Massachusetts, Curtis, in 1851, was 42 years old and the epitome of a successful Boston lawyer. Like many prominent New Englanders, Curtis was something of a self-made man. His father, Benjamin Curtis, III, a ship's captain, was lost on a voyage to Chile when Curtis was only five years old, leaving Benjamin's mother, Lois Curtis, to care for him and his brother. She accomplished this by starting a dry goods business and a circulating library. While the dry goods store probably supplied the majority of the family's income, it was from the library that Benjamin derived most of his intellectual sustenance, devouring books as rapidly as they became available. Not surprisingly, Curtis proved to be an apt and dedicated student. He studied with several outstanding teachers, including John Appleton, who later became the chief justice of Maine, and qualified for admission to Harvard. He entered Harvard in 1825, his tuition paid by his faithful mother who ran a boarding house for undergraduate students in Cambridge. Graduating in 1829 with highest honors, Curtis decided to continue his studies. Perhaps due to the influence of his uncle, Harvard Professor George Ticknor, Curtis enrolled in Harvard Law School which was under the direction of Joseph Story. In addition to his judicial responsibility, Justice Story was also serving as the Dane Professor of Law at Harvard Law School. Under his supervision the Law School became an effective, professional school. The students held moot courts, charged juries and approached all aspects of legal education from a practical and realistic viewpoint. Professor Story even had the students render decisions on cases that were currently pending before the Supreme Court.

Curtis took a break from law school to prepare himself financially for marriage by taking over the law practice of a lawyer in Northfield, Massachusetts. There, he later reported, he was "obliged to rely upon my own investigations —often my own inventions—to help me through difficulties and novelties." Returning to Harvard briefly, Curtis finished his studies and was admitted to the local bar in August 1832.

In 1834 Curtis joined the law firm of a distant cousin,



Associate Justice Benjamin R. Curtis (1851-1857)

Charles Pelham Curtis, and proceeded to earn himself a place of respect and standing in the bar and in Boston society. He soon became famous for his powerful, well researched legal arguments, and, as early as 1836, Story remarked on their "learning, research and ability" and stated they were as "thorough and exact" as any he had ever heard. Indeed, it was said that his careful, exhaustive, logical arguments seemed to get to the very heart of a case, arguing only the pertinent laws and issues, and covering them comprehensively. One of his contemporaries commented that:

> his clearness of thought and precision of statement were the delight not only of the bench and bar, but even of the educated laity who would be drawn into the courtroom for the mere pleasure of listening to him as he unfolded an argument.

Much of Curtis' power lay in his ability to determine what was germane and to cover it fully, while refusing to address any issue which was not directly essential to the case. By narrowing his focus he was able not only to cover his material exhaustively, but also to resist the temptation to give the opposition any point which could accidentally prove useful to them. Curtis spelled out his success formula as follows:

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Curtis *(continued from page three)*

Pay little attention to the good side of the case at first, that side will take care of itself, but be sure you look well into the bad side—not forgetting to explore the strongest form of proof, and knowing that an opportunity to prove even what is false may be used by your adversary, unless you have certain means to refute it.

Never try to disprove what has not been proven, and supply thereby the missing link in the enemies' chain of evidence.

Never forget that an innocent person, with enemies, may be in a more dangerous position than a guilty one with friends and influence.

The pulse of the people beat nearest together through the columns of the press, and a few wicked papers may tell a jury much in half-accounts of an occurrence that will shade the whole story of it unawares.

Curtis was also careful to limit himself in his practice so that he never felt he was over-extended and unable to give each case the attention it deserved. He once criticized a contemporary, saying, "He has always had too much business to be a good lawyer."

Although Curtis became adept in virtually every type of law, he specialized in questions of commercial law, maritime and insurance law, and bankruptcy proceedings, and he argued so many patent cases, that he became known as one of the first patent attorneys in the United States. His reputation as an able advocate grew as he argued over one hundred cases before the Supreme Judicial Court of Massachusetts, and almost as many before the First Circuit Court of the United States in Boston. As testament to his reputation and standing, Curtis was appointed at the age of thirty-six as a fellow of the Harvard Corporation to replace the late Justice Story; indeed an indication of his professional and social standing in the Boston community.

Associate Justice Joseph Story (above) was on Harvard's faculty when Curtis attended that school. Curtis later succeeded Story as a fellow of the Harvard Corporation.

Reverdy Johnson, a distinguished advocate himself, praised Curtis for his professional techniques, stating that his:

> arguments at the bar possessed ... sterling merit. The statement of his case, and the points which it involved were always transparently perspicuous, and when his premises were conceded or established, his conclusion was necessary sequence. His analytical, and logical powers were remarkable. In these respects, speaking from the knowledge of the great men whom I have heard during a very long professional life, I think he was never surpassed ... He was always calm, dignified, and impressive, and, therefore, persuasive. No lawyer who heard him begin an argument ever failed to remain until he had concluded.

Contemporary accounts tell us that this legal genius was of rather average appearance, being of average height, somewhat stocky in build, with a pleasant, but basically unremarkable face enlivened by expressive eyes. His voice was well modulated adding immensely to his calm, reasonable, dispassionate presentations in court. He was by nature, sedate and sober, and while he was generous and warm with his family and close friends, he maintained a certain detachment and distance from outsiders. He was an active member of the Boston community, supporting its civic institutions and contributing generously to charitable institutions from his growing income.

Curtis married three times, producing twelve children. His first wife, Eliza Maria Woodward, was his cousin. They were married for eleven years and had five children before she died of tuberculosis. Eliza's death was a serious blow to Curtis. About eighteen months later, he married Ann Wroe Curtis, who was a distant cousin and the daughter of his law partner. They had three children and were married fourteen years before she died. A year after Ann's death, Curtis married Malleville Allen from Pittsfield, Massachusetts, with whom he had four children. His family and friends were of great importance to Curtis and he found within his family and social circles:

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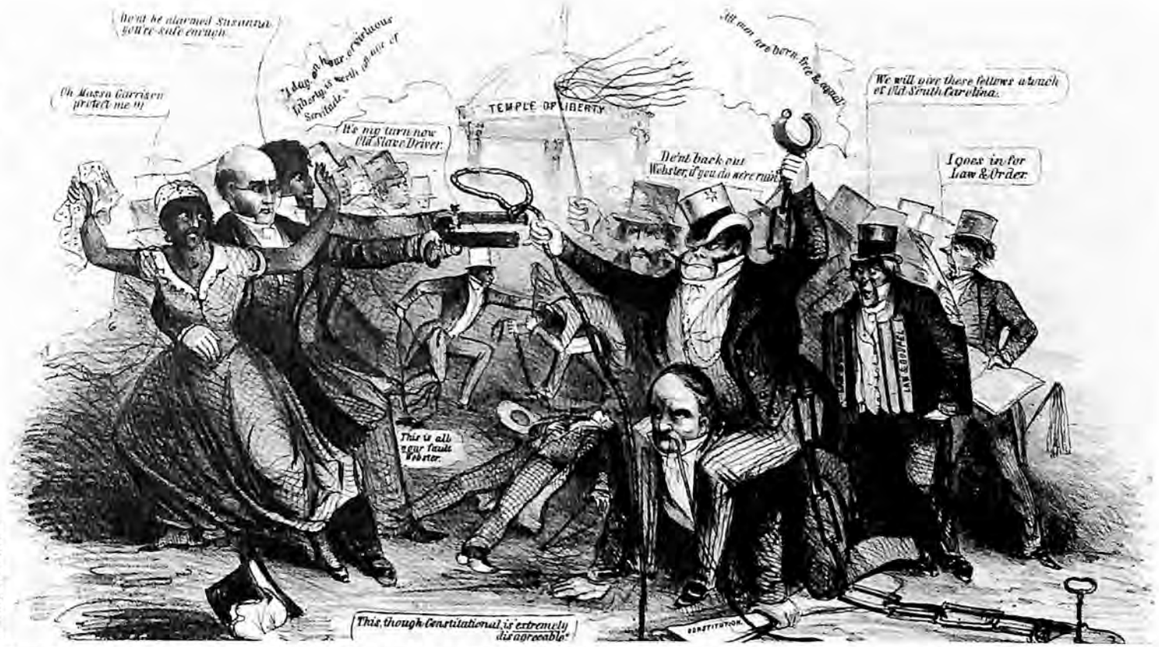
Published four times yearly, in Spring, Summer, Fall, and Winter by the Supreme Court Historical Society, 111 Second Street, N.E., Washington, DC 20002.

Distributed to members of the Society, law libraries, interested individuals and professional associations.

Editor ..... Alice L. O'Donnell
Assistant Editor ..... David T. Pride



Library of Congress

Entitled "Practical Illustration of the Fugitive Slave Law," this 19th Century political cartoon depicts some of the political controversy which surrounded this legislative compromise on the slavery issue. Curtis' public defense of the Act helped bring him to President Fillmore's attention and in 1851 Fillmore nominated Curtis to the High Bench.

> protection from that hardness and dryness of mind which a perpetual contact with the actual affairs of life, and a constant struggle with the interests and passions of men, almost inevitably produce.

One of Curtis' greatest achievements during his career as a practicing lawyer was the passage of legal reforms which he was able to bring about while serving in the Massachusetts legislature from 1849 to 1851. After introducing legislation to create a commission for judicial reform, he was subsequently appointed chairman of the commission. Taking his characteristic reasonable, realistic approach, Curtis proposed attacking initially not the entire problem, but only the worst part of it. His proposal sought to frame "a new code of court procedure, which rationalized and streamlined common law actions by simplifying issues, eliminating witnesses, speeding up trials, and increasing direct examination." After two years of hard work this plan became the basis of the Massachusetts Practice Act of 1851, which not only furthered Curtis' standing, but also brought Massachusetts to the forefront of those states working for legal reform.

While basically remaining on the fringes of politics, Curtis nevertheless was much affected by the American political scene. The political arena was becoming increasingly volatile and factionalized, with slavery being the most controversial and divisive issue. Compromises had been struck in the hopes of avoiding outright conflicts, but the basic issues remained unresolved and threatened to erupt at any moment. The Whig Party had become essentially a party predicated on compromise for preservation of the union and its power and influence were already waning. Upon succeeding to the presidency after the death of Zachary Taylor, Fillmore, a Whig, thus found himself a president without a viable political base. Undermining his political coalition were such varied factions as the "Know Nothing" Democrats, Free Soilers, Abolitionists and pro-slavery Democrats.

At this juncture, President Fillmore found himself with the opportunity to appoint an associate justice of the Supreme Court. His desire to find a person politically acceptable and eminently qualified in every other way was heightened by his sense of the growing unrest in the country. Many Americans had begun to feel that the issue of slavery would have to be resolved in the judicial system as the legislative and executive branches of the government seemed powerless to solve the problem. The latest compromise had been the unpopular Fugitive Slave Act. As Curtis had publicly defended the constitutionality of the Fugitive Slave Act in the very heart of New England where its opposition was the strongest, he seemed eminently suitable to the followers of the Whig Party for an appointment to the Supreme Court bench. His legal accomplishments made his appointment easily attainable, with the only real protest being voiced by the abolitionists. After a minor delay of eighteen days, Curtis' nomination to the Supreme Court was confirmed on December 20, 1851.

(Part II concerning Curtis' career on the Supreme Court will appear in the next issue of the Quarterly)

The Anti-Federalists: Our Other Founding Fathers

Dr. Bradford Wilson, California State University, San Bernardino, Cal.*

The United States nears the bicentenary of the drafting and ratification of its Constitution, and of the erection of its first national government under that Constitution. A thirst for knowledge of the words and deeds of America's founding statesmen is appearing in a significant part of the population, as one of the greatest opportunities for civic education ever to arise in the nation's history is seized upon. The names of Washington, Hamilton, Madison, and Wilson will be preeminent once again, and the thoughts and actions of those men will be the objects of many cerebrations and celebrations. For it is that remarkable generation of pro-Constitution, or Federalist, statesmen that must shoulder the lion's share of responsibility, and accompanying glory, for the constitutional design of the nation, with its far-reaching consequences.

To most, that design was then, and remains still, an unmitigated blessing for the American people. Simple truth, rather than pious hyperbole, is perceived in testimonials such as that offered in 1823 by William Johnson, Jefferson's first appointee to the Supreme Court:

> In the Constitution of the United States, the most wonderful instrument drawn by the hand of man, there is a comprehension and precision that is unparalleled; and I can truly say that, after spending my life in studying it, I still daily find in it some new excellence.

A shadow of skepticism, however, has followed the Constitution in its historical journey. The original skeptics, or "men of little faith," as one scholar dubbed them, were those who opposed the adoption of the Constitution in the ratification struggle of 1787-1788. The pro-ratification party referred to them as "Anti-Federalists," a name which created as much confusion as it resolved. What is certain is this: the drama of the American founding cannot be adequately understood without an understanding of the indispensable role played by the arguments of the Anti-Federalists.

Fortunately, constitutional pedagogy in this bicentennial era is no longer bereft of a comprehensive collection of Anti-Federalist thought. The University of Chicago Press has published a seven-volume annotated edition of all the substantial Anti-Federal writings in their complete original form. Entitled *The Complete Anti-Federalist*, the collection is masterfully edited by Herbert J. Storing, now deceased. Volume 1 consists of Mr. Storing's thorough introduction to Anti-Federalist political thought, which also has been published separately as a paperback under the title *What the Anti-Federalists Were For.* This first volume also contains the Articles of Confederation, the Constitution, and the first ten Amendments, all keyed to the Anti-Federalist writings in subsequent volumes. The next five volumes comprise the *corpus* of Anti-Federalist literature, with each item unabridged, and preceded by an introduction providing background information and a summary of the contents of the essay or series. Incredible as it may seem, about two-thirds of the items have not been printed since their original publication in 1787 and 1788. The final volume is a complete index of the collection.

Brutus, Centinel, the Federal Farmer, Agrippa, Cato, A [Maryland] Farmer. These were some of the pen names of the Anti-Federalists, who included in their ranks such prominent men as George Mason, Luther Martin, Richard Henry Lee, James Monroe, and Patrick Henry. All of them, champions of a negative and losing cause. Mr. Storing's introductory volume strives to claim for the Anti-Federalists their rightful, though subordinate, share in the American founding. This he does by "providing for the first time a full and adequate account of the main lines, the principles, and the grounds of the Anti-Federal position," an account that demonstrates the weight, coherence, and not inconsiderable wisdom of that position, while at the same time pointing to its critical weaknesses.

What divided the Federalists and the Anti-Federalists? They did not differ in their basic views of human nature, or in their understanding of the ends of political life. What divided them were "the much less sharp and clear-cut differences within the family, as it were, of men agreed that the purpose of government is the regulation and thereby the protection of individual rights and that the best instrument for this purpose is some form of limited, republican government." But, as we all know, differences within the family are nonetheless real. What, then, were the Anti-Federalists *for* that inclined them against the Constitution?

In the first place, they stood for federalism, understood as the primacy and equality of the states, as opposed to what they referred to as the consolidating nature of the Constitution, which they argued would so subordinate the states to the national government as to in time, perhaps, destroy them. Mr. Storing points out that in this, as in many other respects, the Anti-Federalists were the conservatives in the debate, defending the status quo embodied in the structural principles of the Articles of Confederation. Indeed, the Anti-Federalists accused the Federalists of abandoning the principles of the Revolution as stated in the Declaration of Independence when they abandoned the doctrine of pure federalism.

The gravamen of this charge becomes fully intelligible when it is considered in light of the Anti-Federalist view that "there was an inherent connection between the states and the preservation of individual liberty," the latter being the reason governments are instituted among men. In accordance with the republican tradition, the Anti-Federalists argued that free popular government could only succeed when exercised over a relatively small territory with a homogeneous population. This argument for keeping primary governing power in the small republic (i.e., the state) rested on three considerations. First, a small republic allows for a voluntary attachment of the people to their government and a voluntary obedience to the laws. For in a small republic the people can have a familiar knowledge of those who govern them, and are amenable to the persuasion that accompanies respect. The alternative is government by force, the rigid rule of a large and varied territory through military force, or, as Mr. Storing suggests, through bureaucracy. Second, it is only in a small republic that a genuine responsibility of the government to the people can be achieved. Short terms of office, frequent rotation, and a numerous representation are crucial to ensuring a likeness between the representative body and the citizenry at large, upon which a responsive and dependent representative body ultimately rests. The large republic and its government as proposed by the Constitution would inevitably be unrepresentative and aristocratic. Finally, only a small republic can foster the kind of citizens who are capable of maintaining republican institutions. Self-government depends on civic virtue, understood as a devotion to one's fellow citizens and a deep attachment to one's country, together with a willingness to subordinate one's private interest to the public good when the two conflict. Such a citizenry presupposes homogeneity. In the words of Brutus:

> In a republic, the manners, sentiments, and interests of the people should be similar. If this be not the case, there will be a constant clashing of opinions; and the representatives of one part will be continually striving against those of the other. This will retard the operations of government, and prevent such conclusions as will promote the public good.

Such homogeneity is impossible in a territory the size of the United States, and is only possible within each state.

Implicit in this Anti-Federalist view of republican citizenship is a deep concern with civic education. As. Mr. Storing writes, "the small republic was seen as a school of citizenship as much as a scheme of government." Bills of rights were cherished for their didactic functions. And religious conviction was regarded as a necessary support of republican government. "[The Anti-Federalists] saw no inconsistency between liberty of conscience and the public support of the religious, and generally Protestant, community as the basis of public and private morality." The consolidated republic under the Constitution, with its multiplicity of religious sects, would substitute selfish interests held together by force for the moral foundations of the self-governing community.

When it came to the question of union, the Anti-Federalists were unequivocally in favor of it. Most admitted that the Articles of Confederation were in need of some revision so as to make the federal government more efficient at providing defense against foreign enemies, promoting American commerce, and maintaining order among the states. But they insisted that this be done without undermining the primacy of the states. They were less sanguine than were the Federalists that America's ills could be solved through constitutional reform. What was most in need of reform was the American spirit, which no amount of federal tinkering could accomplish.

In any event, the Anti-Federalists maintained, contrary to many of their Federalist opponents, that the central question of the proposed national government was not the organization of the powers of that government, as important as that issue was; rather, it was the extent of the powers themselves. Power should only be granted cautiously. The broad grants of power in the Constitution, taken together with the supremacy clause and the necessary and proper clause,

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Bureau of Engraving and Printing

Held in Philadelphia's Independence Hall, the Constitutional Convention of 1787 drew into sharp focus the contrasting Federalist and Anti-Federalist positions on the extent of power to be entrusted to the new Federal government. The Federalists emerged victorious from the debate, but later conceded the necessity of adding some individual protections in the Bill of Rights which took effect in 1791.

Bradford Wilson is Research Associate to the Administrative Assistant to the Chief Justice. He is on leave from his academic post as Assistant Professor of Political Science at California State University in San Bernardino.

Anti-Federalists *(continued from page seven)*

would create a government of virtually unlimited powers. The lack of sufficient democratic accountability in the representative body, especially the Senate, and the complex character of the institutional scheme, which waters down responsibility, further deprive the government of proper limits. The states themselves would be incapable of erecting any meaningful constitutional barriers to the excessive use of federal power, for, unlike government under the Articles of Confederation, there would be no participation of the states in the operation of the new government. The absence of explicit reservations in behalf of states' rights exacerbated the danger.

The major constitutional legacy of the Anti-Federalists is, of course, the Bill of Rights. In their view, unlimited power (particularly in the area of taxation) and inadequate representation in the legislature were leading features of the federal government under consideration. And, in the words of An Old Whig:

> who shall judge for the legislature what is necessary and proper?....No one; unless we had a bill of rights to which we might appeal, and under which we might contend against any assumption of undue power and appeal to the judicial branch of the government to protect us by their judgements.

It must be said, however, that the Anti-Federalists were typically somewhat pessimistic about the practical utility of this kind of "parchment barrier" against a government bent on usurpation. As Mr. Storing writes, "The fundamental case for a bill of rights is that it can be a prime agency of that political and moral education of the people on which free republican government depends." A bill of rights serves as a reminder of the ends of republican government and, if rightly understood, will strengthen the people's attachment to it.

Mr. Storing concludes that the Anti-Federalists lost the ratification debate because they had the weaker argument. They were in fact guilty, in Hamilton's (Publius') words, of "attempt[ing] to reconcile contradictions," instead of "firmly embrac[ing] a rational alternative." They wanted both union and state sovereignty, the great republic and the small virtuous community, a commercial society and a simple, moderate, sturdy citizenry. But, as Mr. Storing also suggests, the Anti-Federalists' honest recognition of the problematical character of this great constitutional experiment is part of their strength and even glory.

It is sufficient to point to the subsequent adoption of a Bill of Rights to establish the justice of ranking the Anti-Federalists among the Founding Fathers. There is a deeper reason for such consideration, however. While the adoption of the Constitution settled many questions, it did not settle in all respects the shape the American polity would take. As Mr. Storing writes:

> [i]f...the foundation of the American polity was laid by the Federalists, the Anti-Federalist reservations echo through American history; and it is in the dialogue, not merely in the Federalist victory, that the country's principles are to be discovered.

[In a future article, we will examine the Anti-Federalist views of the federal judiciary and its powers as provided for in the proposed Constitution.]

Society Activities

Admission to the Supreme Court Bar

Arrangements have been made with the Clerk of the Supreme Court for a mass admission of members of the Society who desire, and are eligible, to be admitted to the Supreme Court Bar on the day of the Annual Meeting, Monday, May 13, 1985, at the opening of Court at 10:00 a.m. Members of the Society desiring to be admitted should advise the Society office without delay, in order to receive, and return to the Clerk, the necessary application form and admission fee.

Capital Gifts

Through the effective efforts of Justin Stanley of Chicago, the Society has received contributions from the Gossett Foundation, Judge Griffin Bell, J. Roderick Heller, III, John Shepherd, Frank C. Jones, and Justin Stanley himself for the purchase of a two-terminal IBM PCXT computer system with printers and appropriate software programs. The system, which is now in place, will be used to support membership record-keeping and other Society functions.

Acquisitions

The Society wishes to thank Wilfred C. Varn, Esq. of Tallahassee, Florida for his recent gift of nine "galley opinions" of the Supreme Court from the 1913-1914 period. These galley opinions were distributed by the justice assigned to write the opinion to the other justices for their review, concurrence or dissent. Several of the opinions received by the Society from Mr. Varn contain the handwritten endorsements and comments of Justice Oliver Wendell Holmes, Jr.

Publications

The Society's publication, *Index to Opinions,* the first available resource identifying by each justice all of the Supreme Court's opinions over the last two centuries, has been reviewed by various publications and termed "essential" for those engaged in serious research on the Court.

The documentary history project, "The First Decade of The Supreme Court, 1789-1800," jointly sponsored by the Supreme Court and the Society with the support of the National Historic Publications and Records Commission, is moving toward the publication of Volume I, Parts 1 and 2, dealing with the first appointments to the Court and the official records of the Court, etc....Page proofs have been received from the publisher for final checking and it is expected that this long awaited volume will be available within the next few months to scholars and others interested in the early years of the Court.