A RHETORICAL STUDY OF HUGH SWINTON LEGARE: SOUTH CAROLINA UNIONIST

By
MERRILL GUERDON CHRISTOPHERSEN

A DISSERTATION PRESENTED TO THE GRADUATE COUNCIL OF THE UNIVERSITY OF FLORIDA
IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

UNIVERSITY OF FLORIDA
January, 1954
ACKNOWLEDGMENTS

The writer readily confesses a great indebtedness to all those persons whose help has made possible the completion of this study. He thanks those members of his graduate committee whose criticisms have effected changes beneficial to the work. He is fully cognizant of and grateful for the continuing efforts of his committee chairman, Professor Dallas C. Dickey, who first suggested the subject and who has worked untiringly to guide the project. The writer is also aware of the debt he owes to Professor Lew Sarett and hopes that the rhetorical principles which he learned under that teacher will at times be apparent in this work. He is grateful for the genial sympathy evidenced by Professor H. P. Constans, Chairman of the Department of Speech; for the pertinent suggestions offered by Professor Douglas Ehninger; and for the notations made by Professor Delwin Dusenbury. He is grateful as well for the advice given to him by Professor Harry Warfel, and for the friendly cooperation of two other members of the Department of English, Professor Thomas Walter Herbert and Professor James R. Hodges.

The writer wishes also to acknowledge with deep and grateful sincerity the generosity of Mr. William Garnett Chisolm who cheerfully permitted an invasion of his Leesburg, Virginia, home so that his large Hugh Swinton Legare collec-
It is a pleasure for the writer to express his appreciation to the many library staff members who made the resources of their institutions readily available for the purposes of this study. Those institutions are: American Antiquarian Society; Auburn (N.Y.) Public Library; Boston Public Library; Charleston Library Society; Clariosophic Society of the University of South Carolina; College of William and Mary Library; Cornell University Library; Duke University Library; Emory University Library; Hudson (N.Y.) Public Library; Ithaca (N.Y.) Public Library; Library of the College of Charleston; Library of Congress; New York Historical Society; New York Public Library; Office of the Attorney General of South Carolina; Office of the Treasurer, University of South Carolina; Pennsylvania Historical Society; Philadelphia Public Library; Poughkeepsie (N.Y.) Public Library; Rhode Island Historical Society; Historical Commission of South Carolina; South Caroliniana Library; Syracuse (N.Y.) Public Library; University of Florida Library; University of Georgia Library; University of North Carolina Library; University of Pennsylvania Library; University of South Carolina Law Library; University of South Carolina McKissick Library; University of Syracuse Library; University of Virginia Library; Virginia Historical Society; Yale University Library.

The writer would like also to give special thanks to
certain persons who gave particular help when it was needed. Those persons are: Dr. Robert Lee Meriwether and other staff members of the South Caroliniana Library; Mr. Frank Fitzhugh Welbourne, Treasurer of the University of South Carolina, who made available important early South Carolina College manuscripts; Miss Sarah Elizabeth Leverette, Librarian of the School of Law Library, University of South Carolina; Mr. Alfred Harris Rawlinson, Mrs. Caroline H. Ryan, and Miss Ronda Sawyer, all of the University of South Carolina Library; Mr. Stanley LeRoy West and Miss Margaret Dickinson Duer of the University of Florida Library; Dr. J. Harold Easterby of the Historical Commission of South Carolina; and Dr. Clifford Shipton of the American Antiquarian Society.

The writer wishes also to thank his wife, Dorothy, who altered her way of life for many months that this work might be completed.
TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>THE RACE WITHIN ITS CITADEL</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>The Low Country Planters; Their Independence of Mind; The Mud-Sill</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Theory of Civilization; The Orator as a Natural Product of Such a</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Society.</td>
<td></td>
</tr>
<tr>
<td>II.</td>
<td>CHARLESTON AND WILLINGTON ACADEMIES</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>The Illness Which Left Legare Deformed; His Mother's Influence;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>His First Schooling; Charleston Academy, Dr. Gallagher and Mitchell</td>
<td></td>
</tr>
<tr>
<td></td>
<td>King; Early Training in Oratory; Willington and Moses Waddell;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Classical Learning and Speaking.</td>
<td></td>
</tr>
<tr>
<td>III.</td>
<td>SOUTH CAROLINA COLLEGE</td>
<td>39</td>
</tr>
<tr>
<td></td>
<td>Legare's Compulsion Towards Intellectual Excellence; College</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Regulations, the Faculty, the Courses; his Own Strenuous Schedule;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Speech Education and Dr. Maxcy; the Clariosophic Debating Society;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Academic and Society Honors.</td>
<td></td>
</tr>
<tr>
<td>IV.</td>
<td>LITERATURE OR LAW?</td>
<td>74</td>
</tr>
<tr>
<td></td>
<td>Legal Studies on John's Island; James Ogilvie and Francis Walker Gilmer;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>First Journey to Boston; Correspondence with Gilmer; Near Blindness;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Paris and New Learning; Edinburgh University; Studies and Permanent</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Friendships; European Tour and Return Home; First Meeting with John</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Tyler.</td>
<td></td>
</tr>
<tr>
<td>Chapter</td>
<td>Page</td>
<td></td>
</tr>
<tr>
<td>---------</td>
<td>------</td>
<td></td>
</tr>
<tr>
<td>V. A PLANTER IN POLITICS</td>
<td>96</td>
<td></td>
</tr>
<tr>
<td>VI. THE PROTEST</td>
<td>122</td>
<td></td>
</tr>
<tr>
<td>VII. SPOKESMAN FOR THE SOUTH CAROLINA UNIONISTS</td>
<td>175</td>
<td></td>
</tr>
<tr>
<td>VIII. LEGARE'S SOUTHERN REVIEW</td>
<td>213</td>
<td></td>
</tr>
<tr>
<td>IX. OPPONENT OF THE SUB-TREASURY</td>
<td>265</td>
<td></td>
</tr>
</tbody>
</table>

Legare's Principles of Government; Planter on the Ashley River; First Term in the South Carolina Legislature; First Essays on State Rights; McDuffie's Position Vindicated; Early Law Practice; First Occasional Address.

The Impending Conflict of Nullification; Slavery, the Elkison Case, Legare's Speech; Codification of the Laws of South Carolina; Legare's Opposition; Judicial Reform, Legare's Defense of the Judges; The Tariff, Legare's Final Victory in the South Carolina Legislature.

The Unionist Party in South Carolina; Relations with the Nullification Party; Widening of the Differences; the "Plain Man" Essays; Party Alignments After 1830; Fourth of July Speech, 1831, Before the Union Party; Washington Birthday Speech, 1832.

The Launching of the Southern Review; the Objectives Sought; Articles by Nullifiers, College Professors, Newspaper Editors, Lawyers; Essays in the Field of the Fine Arts, in the Field of Pedagogy; the Authenticity and Style of Legare's Contributions; His Essays, Classical, Political, Literary, Legal; an Estimate of the Cultural Contribution of the Southern Review.

Charge d'Affaires at Belgium; the Progress of Nullification, Convention, Compromise; the Test Oath, Unionist Reaction; Legare's return, Speech at Harvard; Election to Congress; his
Chapter  X.  CONGRESSIONAL INDEPENDENT  

Single Campaign Speech; Condition of the Country, Need for Monetary Reform; Mississippi Election Speech; Sub-Treasury Speech, Influence and Results; December Speech on Slavery; Speech in Defense of Poinsett; Calhoun’s Proscription of Legare.

X.  CONGRESSIONAL INDEPENDENT  . . . . . .  317

Legare’s Opposition to Calhoun and Van Buren; Speech on the Recognition of Hayti; Speech on the Swartwout Defalcations; Speech on a Charleston Naval Depot; Speech on the Maine Boundary Dispute with England.

XI.  THE HARRISON CAMPAIGN  . . . . . . . . .  349

Legare’s Political Beliefs; Association with William Cabell Rives, the Madisonian; the Syracuse Convention Speech in 1839; the Baltimore Convention, May, 1840; Legare’s Northern Trip in Behalf of Harrison; Richmond Speech; Auburn Speech; Attack upon Calhoun in New York Review; National Hall Speech in New York City.

XII.  LEGARE’S JURISTIC SPEAKING  . . . . . .  390

The Completeness of Legare’s Legal Preparation; Pell v. Ball; The Bank Case; Attorney General of the United States; United States Supreme Court Cases; Private Practice in Washington; Legare’s Part in the Ashburton Treaty Negotiations; Death of his Mother; Secretary of State of the United States; the Hawaiian Problem; Bunker Hill Celebration, Death.

vii
Chapter XIII. LEGARE THE SPEAKER: AN ESTIMATE

The Opinions of Public Men; National Mourning at Legare's Death; Legare's Method of Speech Preparation; His Didacticism; His Sincerity; Ethical Appeal; Logical Appeal; Emotional Appeal; Arrangement; Style; Delivery; Final Appraisal.

BIBLIOGRAPHY
CHAPTER I

THE RACE WITHIN ITS CITADEL

On January 2, 1797, in Charleston, South Carolina, Hugh Swinton Legare was born into a race of men in the Carolina lowlands the like of which has long since disappeared. Planters and lawyers and statesmen, they ruled all other men about them. Today one sees their names on monuments, on the older streets, and on public buildings. Here and there a thin trickle of their blood flows on in men, but the driving force of their characters, spiritually and intellectually, is gone. They were the spokesmen of the thoughts of a land for long years after its founding. They welded and formed the polity of their state. Though their counterparts were in many a parish and county along the Atlantic coast, the race that claimed Legare lived, for the most part, in and around a citadel called Charleston where fluent speech was the sign of their culture.

Most of the facts about Legare's early life are taken from a fragmentary, unpublished "Memoir of Hugh Swinton Legare," written by his sister, Mary Legare. The work is incomplete. That portion dealing with Legare's life after 1828 is missing. The manuscript is in the possession of W. Garnett Chisolm of Leesburg, Virginia, a collateral descendant of Legare. Hereafter cited as Memoir.
This study of Legare is concerned with "whatever it was" that gave these men their power over other human beings. For Legare, in his conscious preparation for life, in his developed knowledge, in his attainment to high places, and in the eloquence of his speech, shows us well what was great in that race.

A difference of opinion with Louis XIV concerning the reversal of the Edict of Nantes in 1685 brought the Huguenots, which included the Legares, to Carolina. The first of the name in America, Solomon Legare, called "The Huguenot" by his descendants, was a successful man of business, for he acquired large tracts of land in Charleston, sufficient to leave substantial portions to each of four children. So large was the share bequeathed to the great grandfather of Hugh Swinton, another Solomon, son of "The Huguenot," that he was able to sell a part of his holdings to buy a plantation on John's Island, which, from then on,

2"The revocation of the Edict of Nantes, fifteen years subsequent to the settlement of Carolina, contributed much to its population. To it, soon after that event, were translated from France the stocks from which have sprung the respectable families of Bonneau, Bonetheau, Bordeaux, Benoist, Boisseau, Rocquet, Bacot, Chavelier, Cordes, Courterier, Chastaignier, Dupre, Deslysle, Dubose, Deveau, Dutarque, De La Consiliere, De Leisiline, Douxsaint, Du Pont, Du Bourhieu, D'Harriette, Faucheraud, Poissin, Faysoux, Gailliard, Huger, Jeannerette, Legare ... " David Ramsay, The History of South Carolina from Its First Settlement in 1670 to the Year 1808, 2 vols. (Charleston, 1809), I, 5.
"became the chief seat of that branch of the family."³

Like many of these French immigrants, the Legares intermarried with the English and Scotch dissenters and thus became a part of the "parish" community which was more English than anything else. Solomon, the son of "The Huguenot," married Mary Stock; Thomas, the grandson, wed an Elizabeth Barnet; and Solomon the third, the great-grandson, married Mary Swinton, and "became the father of Hugh Swinton Legare."⁴

The group with which the Legares became identified was the small, land-owning class, integrated by intermarriage and common economic problems. These low country planters were, in Legare's own words, "the last of the race of South Carolina."⁵ These planters were the descendants of Landgraves and Cassiques and the Rule of the Proprietors. They were immigrants from England, Scotland, Ireland, and

---


⁵Thinking of the future struggle that lay ahead for this "race," Legare said, "I see nothing before us but decay & downfall." Legare to I. E. Holmes, Brussels, April 8, 1833. William Garnett Chisolm collection. Hereafter cited as Chisolm Papers. See, also, Writings of Hugh Swinton Legare, I, 215. Hereafter cited as Writings.
France, "some Dutch, a few Swiss and Belgians, some Quakers," and the Huguenots. They still showed many traces of baronial independence in their manner of life on their landed estates and in their town houses. The baronies and seignories of the landed nobility had been replaced by plantations, which in themselves were often vast holdings. "Throughout the lifetime of Hugh Legare one could wander all day on one of the lowland plantations and never set foot upon a neighbor's ground." 7

Though the law of primogeniture had been abolished, the constitution of 1790 was designed to allow such men as Legare complete control over the state. The instrument was not democratic. // Skillfully designed to preserve to the wealthy and intelligent coast planters their predominant powers in the government, it established an aristocratic republic. // To become a member of the legislature a man had to own at least five hundred acres of land and ten Negroes or else possess an estate of a thousand dollars, clear of debt. Thus, though the up country of South Carolina contained four fifths of the population, the low land, with one fifth of the people, paid half the taxes. 8

8 S. C. McCants, History, Stories and Legends of South Carolina (Dallas, 1927), 299.
At the time of Legare's birth the strong political figures were John and Edward Rutledge, Thomas and Charles Cotesworth, and Charles Pinckney. Four of them were outspoken in support of Washington's Administration and were acquiescent to whatever would strengthen the central government. But when the state turned to Jefferson in 1800, the fifth Pinckney, Charles, took control. He was elected governor four times between 1789 and 1808.

The fact that Charles Pinckney, a Charlestonian, was strongly anti-Federalist is not in itself important. The masses of the people of South Carolina had always been anti-Federalist. But that Charles Pinckney, a planter, cousin to Charles Cotesworth Pinckney and Thomas Pinckney, had turned against his class to assume a leadership of the common people is significant. He came to be hated by the low country aristocrats for his treason to them, but he was loved by the masses. Between 1800 and 1818, while Legare was receiving his early training, Charles Pinckney, with the help of Pierce Butler, Thomas Sumter, and Colonel Wade Hampton, established a political pattern in South Carolina which Legare was later to combat: the use of the masses and

---

9 Robert Goodwyn Rhett, Charleston, an Epic of Carolina (Richmond, 1940), 171.
11 Ibid., 357-358.
their easily aroused sentiments to serve a leader advocating extreme Jeffersonian principles. The up country, with the exception of Greenville and one or two other areas, obtained control by following Pinckney and, later, John C. Calhoun, who helped them overthrow the power of the Charleston aristocracy. It was of this that one of Legare’s closest friends, James Louis Petigru, was thinking when he said in 1858: "Sixty years ago the Upper country was . . . peopled . . . by a different race; and its inhabitants maintained few relations with the people of the Low country, from whom they differed in manners as much as in origin; and with whom their sympathy was as limited as their intercourse."

Legare’s planter neighbors, living on the great estates near Charleston, extending up the coast to Georgetown and down the coast to isolated Beaufort, subscribed to the mud-sill theory of civilization, which is, as Parrington says, the postulation "that all fruitful civilizations rest on the exploitation of labor." Accordingly, the Negroes were an inferior race which would never rise above its servile economic station. The people of that

---


13 Vernon Parrington, Main Currents in American Thought, 3 vols. (New York, 1930), II, 100.
race were intended to be slaves to higher intellects, the Caucasians, who, in turn, would deliver to the earth store the fruits of their minds and talents in greater abundance.\textsuperscript{14}

An outspoken man from the North, Thomas Cooper, president of South Carolina College shortly after Legare's student days, expounded most strongly this theory: "I do not say that the blacks are a different species, but I have not the slightest doubt of their being an inferior variety of the human species; and not capable of the same improvement as the whites."\textsuperscript{15} William Harper, an early leader of the nullification movement, declaimed: "It is the order of nature and of God that the beings of superior faculties should control and dispose of those who are inferior." And he added: "Where there exist equality in property and social intercourse, there would be little misery and little happiness—little vice and little eminent virtue—nothing to call forth the highest powers of man—a sort of deadening mediocrity."\textsuperscript{16}

The mud-sillers believed in a superstructure of men

\textsuperscript{14} Rosser H. Taylor, "The Mud-Sill Theory in South Carolina," \textit{The Proceedings of the South Carolina Historical Association}, Ninth Anniversary Meeting (1939), 34.

\textsuperscript{15} Dr. Thomas Cooper to Mahlon Dickerson, Columbia, March 16, 1826, in "Letters of Dr. Thomas Cooper, 1825-1832," \textit{American Historical Review}, VI (July, 1901), 129.

\textsuperscript{16} William Harper, \textit{Memoir of Slavery} (Charleston, 1838), 11.
and women "favored by circumstances of birth and station, who would adorn society and contribute to the sum of human knowledge and happiness." After visiting the South, Frederick Law Olmstead, a traveller and writer, critical of the theory, said: "Educated South Carolinians perhaps more than any other people in the United States possessed refinement and social graces to an unusual degree." Conversation that was brilliant was one of the chief social graces. The talk might be punctuated here and there by too forceful an expletive, yet "the general effect was intoxicating." One immediate product of the South Carolina plantation civilization was the orator. Legare was shaped into eloquence by his environment. Sons of planters were expected to become good speakers as an essential to participation in public life, and were trained in the academies to speak. Cicero and Hugh Blair were an integral part of the college curricula. Fourth of July celebrations, frequent political meetings, and school commencements all demanded eloquent speaking. "Nowhere was the urge to excel in eloquence more compelling. The best orators, such as Robert Y. Hayne, William C. Preston, and Hugh S. Legare, rose above

platitudes, speaking with a logic and a knowledge of historical backgrounds to a degree rarely encountered today."\(^{20}\)

The Fourth of July was speaking day in South Carolina. On that day the orators of the aristocrats spoke before the '76 Association,\(^{21}\) the South-Carolina State Society of Cincinnati,\(^{22}\) or the Revolutionary Society,\(^{23}\) either at St. Michael's Church or at St. Philip's Church.\(^{24}\) The speeches were then printed in pamphlet form by order of the societies, in one or another of the dozen printing

\(^{20}\)Ibid.

\(^{21}\)Charleston Mercury, June 23, 1834; Charleston Messenger, July 9, 16, 30; August 13, 1834. The three leading societies of the city were the Revolutionary, the Cincinnati, and the '76 Association. The State Rights and Nullification Party gained control of the last two in 1831. In 1834 the Revolutionary and the '76 Association coalesced and formed the Whig Association.

\(^{22}\)A pamphlet published by the society in 1808 states: "The Original Institution of the General Society of the Cincinnati, as formed by the Officers of the Army of the United States, at the conclusion of the Revolutionary War, which gave Independence to America, together with the rules and By-Laws of the State Society of South-Carolina, as adopted at an extra meeting, July 13, 1803." Essay in South Caroliniana Library, University of South Carolina.

\(^{23}\)Organized in 1794, by 1796 it had become a Federalist organization. E. P. Link, "The Republican Society of Charleston," The Proceedings of the South Carolina Historical Association, Thirteenth Meeting (1943), 23.

\(^{24}\)The Cincinnati and the Revolutionary Societies usually assembled for their orations at St. Michael's Church. The '76 Association met at St. Philip's Church. This is evident from an examination of the printed pamphlets containing the speeches.
establishments of the city. At least sixty speeches were printed, in pamphlet form alone, between 1809 and 1820.

There were many occasions besides the Fourth of July celebrations which demanded the services of the orator. Thomas S. Grimke spoke before the Charleston Moot Society, taking as his subject, "On the Character of the Accomplished Orator." Benjamin A. Markley gave an oration to the Palmetto Society on June 28, 1809, commemorating the anniversary of the victory over the British at Sullivan's Island. Joseph Glover spoke before the Medical Society of South Carolina the same year.

25 The printers were G. M. Bounetheau; E. Morford, John Hoff; E. S. Thomas; W. P. Young; John L. Wilson, at the Charleston Gazette Office; A. E. Miller; T. B. Stephens; James Elford; Peter Freneau; Willington & Co.; the office of the Courier; the office of the Southern Patriot; and John Mackey & Co.

26 These speeches, and the imprints of many more, may be found in the South Caroliniana Library.

27 "An oration delivered in the South-Carolina Society room, on January 28, 1809; being the anniversary of the Charleston Moot Society, and published at their request, by Thomas S. Grimke, a member of that society." (Charleston, 1809), ibid.

28 An advertisement of "An oration on the victory at Sullivan's Island, the twenty-eighth of June, 1776, delivered on June 28, 1809, before the Palmetto Society of Charleston, S. C., and published at their request. By Benjamin A. Markley, Esq., a member of this Society." Charleston City Gazette, August 7, 1809.

29 "An Oration delivered by Appointment before the Medical Society of South Carolina ... published at their request. By Joseph Glover, M.D., president of the Medical Society of S. C." (Charleston, 1810). South Caroliniana Library.
of the *Southern Patriot*, and a friend of Legare, addressed the Methulogic Society, taking as his subject, "On the Literary Character." Many spoke vehemently at a meeting of the citizens which resulted in the adoption of resolutions favoring an immediate declaration of war against England in 1812. These were the patrician groups.

There were other societies for the advocates of democracy and for the trades, however, who devoted much of their energies to eloquence. The Republican Society of Charleston, strong at the turn of the century, was engendered by the rampaging democratic enthusiasms of the French Revolution. As a distinct organization it disappeared several years later, with the reaction against the results of the French catastrophe. "Too much democracy talk was dangerous to a slave system. There was a threatened Negro insurrection in September, 1793, again in 1795," and the great Vesey Rebellion Plot of 1822. There was also "an unrelenting

---


31 A broadside, published in 1812, entitled "Adjourned Meeting of the Citizens," which lists grievances against foreign powers, favors immediate declaration of war, and calls for defensive measures against invasion. South Caroliniana Library.

32 "In 1822 occurred the most serious plot since 1739. . . . Charleston negroes had developed a spirit of insubordination from laxity of discipline. . . . A faithful slave's informing revealed that the stroke was to fall at midnight, July 4th. Denmark (corrupted from Telamaque) Vesey, the leader, . . . had corrupted perhaps more than six
attack upon the Democratic clubs throughout the United States by the Federal National leaders . . . "33

Another of the organizations, the Patriotic Society, is interesting, if only for the names of its membership. The members were mostly French or French descendants, ardent lovers of liberty: "Peigner, the hairdresser; cit. Paris, our baker; cit. Pencil, the tinsman; cit. Anthony, the sadler; Dubard, the hairdresser; Olman, the sadler; Matin, the tailor; Maziere, the barber; and Dudie, the maker of segars for our city."34 In the listing there occurs also three striking names. One was Robert G. Harper. A second was David Ramsay, an early historian of South Carolina. A third was Thomas Lee, later a judge and Unionist leader.35

The important clubs were, of course, controlled by the ruling class: landowners, lawyers, doctors, and a few teachers. So firmly was this group entrenched that it was at all times able to dominate the low country and to resist the demands of newcomers. "The intermarriage of wealthy thousand slaves in Charleston . . . . The city was to be burned, the banks robbed, the men killed, the women ravished, and the ships seized for sailing to San Domingo. Every detail had been arranged, even to whiskers and wigs to enable their wearers to approach unsuspected the guards of the arsenal." Wallace, History of South Carolina, II, 415-416.

34 Charleston City Gazette, July 6, 1792; July 20, 23, 1793.
35 Ibid.
families and the formation of exclusive clubs and societies knit more closely the bonds which became more conscious of its superiority, more confident of its ability to rule."

The limits of the aristocracy had some elasticity, however slight. Members of the lower classes could enter into it at times by way of the professions. During the early nineteenth century, only the mercantile proletariat were barred from the highest social stratum, unless one were engaged in a large brokerage or shipping enterprise. Two young men of Legare's acquaintance, both of whom had been born into the lower middle class, after achieving fame as lawyers, became socially acceptable, and entered into the ruling class through marriage. James Louis Petigru, born in comparative poverty, was able, "by virtue of his talents and ambition, to marry Jane Amelie Postell, daughter of a planter of Coosawhatchie." George McDuffie, born in obscurity, married the daughter of Colonel Richard Singleton, a wealthy planter.

The Charlestonian was arrogant. He reacted to the

36 Herbert Levi Osgood, American Colonies in the Eighteenth Century, 4 vols. (New York, 1924), IV, 116. Every governor from the beginning of the state until 1802 was from Charleston. See, also, Wallace, History of South Carolina, III, 496-497.

37 Carson, Petigru, 34, 59.

38 Edwin L. Green, George McDuffie (Columbia, 1936), 8, 160.
world's opinion of him and of his city. "It was impossible that a society so rich, so polished, so ignorant of the State except in its own then favored region, so haughtily despising any sort of labor, and so constantly praised ... should entirely restrain its just sense of distinction from at times splashing into arrogance toward the crude society of the back country." There was little tendency to pass the higher ideals of culture on to the masses; but the aristocracy of Charleston did a very thorough service in passing their culture on to their own descendants. Legare was always conscious that he was a member of a group, a race, whose homeland was on a peninsula between the mouths of the Cooper and the Ashley Rivers.

Characteristically, the civic leaders of Charleston accepted their social obligations. They recognized their responsibilities to orphans, paupers, and the physically and mentally afflicted. In 1828 there were sixteen benevolent societies within this small town of forty thousand. All were supported by voluntary contribution. As an example of their benevolence, when John C. Calhoun was approaching

39. Wallace, History of South Carolina, II, 363. "In Virginia and the Carolinas ... freedom ... is not only an enjoyment, but a kind of rank and privilege—in such a people haughtiness of domination combines with a spirit of freedom and renders it invincible." Quoted in Southern Literary Messenger, XXIV (March, 1857), 161.

40. Robert Mills, Statistics of South Carolina (Charleston, 1826), 386.
death, almost poverty-ridden, with huge debts, his friends raised the sum of $35,000. Although he died before receiving the money, his widow used it to retire the indebtedness.

The St. Andrews Society and the South Carolina Society were probably the most active of the charitable organizations. During Legare's boyhood there were many others. "The St. George Society undertook all sorts of good works; the Fellowship Society . . . had as its object the building of a hospital for the insane; and the German Friendly Society provided for its impoverished countrymen, their widows and orphans." Perhaps the most active of all of them was the South Carolina Society, "known originally as the Two-Bitt Club . . . , composed almost exclusively of well-to-do, philanthropic gentlemen, who typified the civic spirit and charitable ideals of the Charleston aristocracy."

It was not by chance that the sense of responsibility appears so often in the words and in the writings of Legare. Nor was it accidental that his mother instilled within him during his formative years a serious social sense.

---


43 Frederick P. Bowes, The Culture of Early Charleston (Chapel Hill, 1942), 119-120.
It was a part of the very pattern of the city which gave him birth.

The ruling minority of planters, of course, determined the cultural character of Charleston. This was the group that kept fine houses in town, spent their summers at Saratoga or Newport, and generally governed the political affairs of the low country, and, for a long time, the state. These were the Federalists, who, with the Rutledges, the Pinckneys, and the Elliotts, set the tastes of the lowland, shaped Charleston society, and formed the pattern for the early thoughts of Legare.

Few of them there were who did not at one time or another serve in the General Assembly, either in Charleston, or in Columbia, after the capital was moved. It was necessary that they do so, for the very words that these men uttered in the state legislature formed the bulwark of their life ties. They were compelled to control their state by the combined strength of their voices lest the numerical superiority of the masses change their way of life. Until the time Legare was graduated from college in 1814, no governor had

---

44 Some of the larger plantation owners acted as their own brokers of cotton and rice. Such were the Hugers, Bulls, Middletons, Wraggs, and Draytons, who owned a number of plantations and hundreds of slaves. Ibid., 115-117.


46 Bowes, The Culture of Early Charleston, 120.
been elected from other than the low country districts, and all but two of the twenty-one governors had come from Charleston. 47

The Assembly itself might well have been another of Charleston's clubs; the members attending "conversed, lolled and chatted, much like a friendly, jovial society." They sat with their hats on, removing them only when they rose to speak. 48 After observing them, Josiah Quincy commented: "It may well be questioned whether in reality there is any third branch in the constitution of this government. 'Tis true they have a house of assembly: but who do they represent? The laborer, the mechanic, the tradesman, the farmer, husbandman or yeoman? No. The representatives are almost if not wholly rich planters." 49

But "despite the fact that elections were largely a matter of wealth and influence," the members of the legislature were serious about their duties. Control of the state "required education, ability and intelligence. Without a fair measure of these qualities, a flair for oratory, and a smattering of law," even the rich could not maintain control. "The education of the young aristocrat in public speaking, history, logic, and the classics had this in

47Wallace, History of South Carolina, III, 496-497.
48Josiah Quincy, Memoir of the Life of Josiah Quincy, Jun. of Massachusetts (Boston, 1825), 112.
49Ibid.
These were the cultured men who surrounded Hugh Swinton Legare in his formative years. They were men who gave their entire devotion to their state before they were to disappear as a race. It was their state. They controlled it. They loved it. Alfred Huger of Charleston, in an address to the Constitutional Convention of 1868, spoke words that must have been in the hearts of his forebears and his ante-bellum contemporaries:

She is my mother. I have all my life loved what she has loved and hated what she has hated; everything she had I made my own and every act of hers was my act. As I have but one hope, to live with her, so now I have but one desire, to die on her soil and be laid in her bosom. If I am wrong in everything else, I know I am right in loving South Carolina.51

To the members of its inner circle Charleston was always the most delightful of cities, its society the most distinguished; "but underneath this gay life was a more serious Charleston, which in certain of its aspects was not unlike Boston. . . . Calhoun was far more Puritan than Fisher Ames, and Hugh Legare than Edward Everett."52 This was true because, in large part, Calhoun, Legare, and others of this aristocracy spent a great amount of study and intense

50 Bowes, The Culture of Early Charleston, 121-123.
52 Parrington, Main Currents in American Thought, II, 109.
labor in preparation for the public places they were to occupy. Even the gayest of the pleasures of their city were never allowed in any essential way to interfere with that preparation.

Socially, the planters of the lowland were delightful persons, with an easy grace in conversation. Masters of all forms of occasional address, they spoke often before social and political societies, and on days of civic celebration. They were adept at deliberative speaking in the state and the national legislatures, and many of them were powerful advocates when engaged in forensic speaking before the courts of law.

The planter was eloquent, in part at least, from sheer necessity. He was compelled to rule the state in order to maintain his way of life against the encroachment of the masses. Arrogance was a concomitant; but his arrogance was a responsible one, based upon a belief that his way of life was a good and intelligent one. Located at a distance from the northern centers of growing population, isolated on a small peninsula between two rivers, the planter lived with an ever growing fear: fear of the up country people who would take away his political power; fear of the black within his city and on his plantations, who would strike for freedom at any moment; fear that the dividing of his lands would reduce him economically so that wealth would no longer be his.
To safeguard himself the Charleston aristocrat went through the rigors of a thorough training. He attended the best schools where he studied with the determination to develop a mind capable of meeting the realities of his time. Socially, too, the Charlestonian made himself a gay companion, offering stimulating conversation and an understanding of the world's problems. He attended the theatre and the concerts. He danced and charmed the lovely women with whom he surrounded himself.

He ran his plantations and usually made money from them. He built fine houses in town and in the country. He travelled the seas and the world's roads and was at home on any of them. His way led him toward Washington where he advanced the growth of our national institutions. Whether in convention or in the halls of Congress his words often became the doctrine of the country. When on the eve of the Civil War his last sons made their farewells in House and Senate, those halls must have seemed strangely silent and empty to the men of the North who remained.

Of the race of these planter men was Hugh Swinton Legare, with the same striving for excellence as a part of his nature. A strange will drove him on deeper into the secrets of the world's past. For thirty-nine years he strove to complete himself, widening his mental horizon, seizing upon the wisdom of ancient lands, learning the philosophies of a reawakened Europe, and penetrating the
minds of the world's poets until their thoughts were his. He encompassed the realms of the law, common and civil, Roman, Napoleonic, English.

He learned the world's languages. Latin and Greek were as simple tongues to him. German, both literary and the vernacular, French and Old French, Provençal, Italian, Spanish, all became his. And he spoke them easily and perfectly that he might converse with the learned in all lands. For thirty-nine years he studied, until his knowledge was a brilliancy that became him.

When Legare had done with his studies he entered into the struggle that was tearing his country and his race apart. But he had only seven swift years to live. Within that time he became a member of Congress, achieved fame as a lawyer before the Supreme Court, and was appointed Attorney General of the United States and Secretary of State. Thirty-nine years against seven. He might have left his studies sooner had he known.

Probably not—for there was something in Legare that is not found in all men. Some force drove him ever further in his search for knowledge. But as he strove intellectually, he learned an exultation of the spirit which comes only to him who reads much from the writings of men who thought.
CHAPTER II

CHARLESTON AND WILLINGTON ACADEMIES

Justice Joseph Story, in a tribute to Legare shortly after his death in June, 1843, named three elements that had fortified the strength of the late Attorney General and Secretary of State of the United States: "Do you ask what was the secret of his eminence? I answer it with diligence, profound study, and withholding his mind from the political excitements of the day." Of these attributes the first two were fostered in Legare from the time he was four years old by an intelligent mother who carefully directed his early strivings after knowledge.

A beautiful and a gracious woman, she thrust aside her own grief after the death of her young husband and from then on exerted a strong will in the guidance of her almost equally strong-willed son and his two sisters. Financially the path was eased for her. Her father-in-law, Thomas Legare, accepted the family as his own. When he died a short time later he gave to the widow of his son the full

---

1 "Tribute to the Memory of Mr. Legare, by Mr. Justice Story." Philadelphia Christian Observer, July 22, 1843.

2 Memoir, 4.
control of his estate and the care of the children's money. Then occurred the tragedy which shadowed all of Legare's short life. In his fourth year he was inoculated for small-pox; but the intended preventive actually induced the disease with extreme virulence. For three months he suffered severely. Great sores appeared upon his arms and legs which had to be dressed twice a day, and which finally destroyed the vitality of his limbs. He was watched over by his mother and by his two grandfathers, Thomas Legare and Hugh Swinton, whose united names he was to carry.

Night and day saw them at his bedside. His mother never despaired of his recovery. For three weeks she "never took off her dress to lie down." Finally, he was declared "out of immediate danger," but was still "shrunken to a skeleton and so tender that he could be carried only on a pillow." This duty the mother "always performed herself. Hence that devoted attachment of Legare to his mother that continued with him to his death." When finally cured he was left with a strong body, but his legs, though sturdy, "never afterwards grew to their proper length or shapeliness, and his arms were for some time difficult for him to manage

---

3 Solomon Legare died in 1799 when Hugh was only two years old. *Ibid.*, 6.
gracefully."

The mother, who had so devotedly nursed him through his illness, had the courage to proceed immediately with Legare's education. Before he was able to stand, but after his strength had sufficiently returned for him to sit up, she began to teach him to read such books as Tom Thumb, Gulliver, The Arabian Nights, and Robinson Crusoe. That he later appreciated the subject matter which his mother chose is indicated by his remark that for the child "the compositions which captivate the most are the fittest."

The very nature of his training emphasized oral reading, and this exercise helped him develop a fine flexibility of voice. As he grew stronger his mother left him more to himself, although "a faithful servant was in constant attendance." Alone, he would read aloud the new words he had learned, thus beginning a practice which he enjoyed throughout his life. He also liked to read to others. Mrs. Julien Ravenel, when a child, knew Legare as a visitor to

5 Later in life "his chest, bust, and head became those of a very fine torso," but his legs "remained those of a very short man. Seated, his length of body set off by a broad and manly chest, a noble head, and an air unusually imposing—he looked a commanding person; but risen, he seemed suddenly to have shrunk." Johnson, "Biographical Notice," vii.
6 Ibid., viii.
7 Ibid., xi.
8 Memoir, 7.
her Charleston home where he often read poetry to her aunt. Mrs. Ravenel later wrote of him: "He loved to read poetry aloud, and nothing could be finer than his tones in Manfred's soliloquy, or Dryden's 'long-resounding line.' His voice was an organ of many stops." 9

Two years after Legare's illness his mother sent him to a "lady's school under the protection of his older sister then in her ninth year." 10 But so well had he profited by his mother's teaching "that he soon got beyond his class there & his childlike ambition was to compete with 'boys' older than himself . . . " 11 His mother, therefore, transferred him to Ward's Seminary, which "stood next to Ruddock's School in Charleston." 12 Its president and Legare's first master was a Mr. Ward, an Englishman. Under him Legare received "a substantial foundation for an English education in all its branches." A precocious boy, his progress was good, placing him in high favor with his teacher.

By the time Legare was nine years old his ambitions had grown beyond "mere English." He "insisted" on learning Latin. Cautious about starting him in that language at such

9 Mrs. Ravenel was, before her marriage, Harriott Horry Rutledge. Ravenel, Charleston, The Place and the People, 471.
10 Memoir, 8.
11 Ibid.
12 Charleston Courier, July 25, 1803.
an early age, his mother called upon Mr. Ward for his counsel. Ward told her that "Hugh was . . . an excellent English scholar—spelt & read admirably & parsed with extraordinary facility." Thus Legare began the study of Latin.\footnote{Memoir, 8.}

Soon after this, Ward returned to England and Legare was transferred to the academy of Dr. Simon Felix Gallagher, a learned Catholic priest, described as "an Irish gentleman . . . of great popularity (but no Jesuit)."\footnote{Ibid.} The discrimination against Catholics had been removed in 1790, and Dr. Gallagher, a native of Dublin, Ireland, had been appointed to the new church. A short time later he was elected a professor in the Charleston College\footnote{Although the Charleston academy was called a college, its curriculum would correspond to that of a present day high school. It offered no advanced studies until several years later.} and used his salary to support the poor within his congregation. Though the duties of his priesthood "were his primary consideration," he soon came to be known as the foremost teacher and classical scholar of Charleston.\footnote{Rev. Dr. J. J. O'Connell, O.S.B., Catholicity in the Carolinas and Georgias: Leaves of Its History (New York, n.d.), 1142.}

Dr. Gallagher evidently exercised considerable selection as to his students, for he limited them to fifteen.\footnote{Charleston Courier, July 25, 1803.}
It was, perhaps, due more to this priest than to any other teacher, with the possible exception of Dr. Jonathan Maxcy, that Legare acquired his love for "cultivating his natural powers of oratory." Dr. Gallagher took a fancy to him, detecting in him "the embryo orator, & encouraged as well as guided his studies in that line." Legare, consequently, began a serious study of the art of eloquence at an early age, and as a result his voice became a natural and adequate instrument for the expression of his knowledge.

His teacher was high in his praise, saying that Legare "was the most remarkable boy he had ever met with, not only for diligence in learning but for the solidity of his studies." Before he was ten, Legare was able to recount all the principal events in Greek and Roman history.

Training in declamation was an integral part of Dr. Gallagher's system. Selections such as "Norval" were abandoned for Burke and Curran. Large portions of the speeches of the famous British orators were memorized and presented in class. Often Legare would practice by speaking to the rivers or the ocean about his city as the waves washed in for his accompaniment. After the English orators came Cicero, "for now he could read Latin & his taste for

---

18 Memoir, 8.
19 Ibid.
20 Ibid.
the ancient classics formed."  

His continuing interest in his studies and in his speaking was in large part due to the understanding of his mother. During the evenings "she would sit with her knitting quietly at the head of the round table & listen to the discussions on grammar carried on by the two eldest children, correcting each other, & disputations as to the definitions of words . . . ."  

Legare's older sister, Eliza, remarkable even then for her beauty, "was also possessed of a well-balanced mind," and, with her wit, was an adequate foil for the growing forensic ability of the boy.  

With all his enthusiasm and developing abilities as an orator, Legare had a native shyness which his teacher knew would mar the powers of a great natural speaker. Gallagher tried various means to correct the flaw, at first to no avail. When the boy spoke before his teacher and fellow classmates his self-possession was perfect. But the presence of one stranger would so embarrass him that he could not proceed. Finally Dr. Gallagher succeeded in overcoming the fault by assuring his pupil that great oratorical powers

---

21 Ibid., 9.
22 Eliza Legare was three years older than Hugh. She married John Bryan at an early age and raised a large family. His other sister, Mary Legare, who became his biographer, was one year younger than Hugh.
23 Memoir, 9.
24 Ibid.
were his, and that "nothing could neutralize them but this childish shyness." Nevertheless, throughout his life Legare's "inherent diffidence resisted, as far as the subject matter or sense of public duty would let it, any public or voluntary exhibition of those powers." In his later life this reticence about public utterance, in some ways, reduced Legare's reputation as one of our national orators.

Dr. Gallagher died when Legare was in his twelfth year, and the boy came under the guidance of Mitchell King, a fine classic scholar, who had agreed to take over the Charleston academy for one year. Legare was thus to meet and be influenced by another man of intelligence and complete integrity. He remained at the academy for only a year, but within that short time the boy and his teacher formed an attachment which lasted until Legare's death. Because his pupil was so young, King, at first, "put him under the care of an usher." That person, possibly inexperienced in the management of boys, "on the discovery of an offense committed by one of the class, without further inquiry, chastized the whole." Legare was so indignant at

25 Ibid.

26 Mary Legare and Dr. O'Connell disagree upon the date of Dr. Gallagher's death. O'Connell states that there were two Gallaghers and that both left Charleston.

27 Charleston Courier, October 25, 1845, says of King: "That erudite scholar, eminent lawyer, and benevolent gentleman."
the injustice that he declared "he would not return to the college." His mother, with the foresight of a wise woman, "was not ready to enter into sympathy with this rebellious spirit." But she knew her son and his seriousness about school, and was aware that he had never before been humiliated. She talked the matter over with King, who, learning of the circumstances for the first time, remarked: "Who strikes that boy ruins him . . . . Tell him to come back to the college & I will take him under my own care." 28

Legare, of course, returned and continued his study of Latin and Greek which he had so well begun under Dr. Gallagher. At the end of the year, however, King retired from teaching in order to enter the practice of law, and again the mother had to look for a school in which her son might continue his education.

She chose Willington Academy, in the upper part of the state near the Savannah River, deciding that, before her son entered college, he should live for a time away from Charleston, removed not only from teachers who already admired him but also from the protection which she gave him by the immediacy of her presence. Willington was a school which had attained to a high reputation for its development of scholars, an institution apparently given to the molding of great human spirits, for from it was coming a steady stream of men soon to be known for their abilities through-

28 Memoir, 9-10.
out the land: such men as William H. Crawford, John C. Calhoun, George R. Gilmer, George McDuffie, and others. Its master, Moses Waddell, later to be president of the University of Georgia, had already made a reputation for himself as a sound, somewhat rugged, teacher of the classics.

Willington Academy, as Legare first saw it, was set along a street "shaded by majestic oaks," faced on each side by a double row of log houses. These varied in size from the smallest, which was six feet square (occupied by "a very whimsical fellow by the name of Dredzel Pace"), to those which were sixteen feet square. The street itself was "about forty yards wide, and its length perhaps double its width; and yet the houses on either side did not number more than ten or twelve." They had all been built by students and served only for study rooms in cold or rainy weather. Scattered among the trees in the distance were other huts, built and used by the "literary recluses." At the east end of the street "stood the Academy" which was the same as the other buildings except in size and number of rooms. It had two rooms; "the larger was the recitation room and general convocation room for all matters concerning the school."^30

Although the wisdom of sending Legare to Willington

29Augustus Baldwin Longstreet, Master William Mitten (Macon, 1889), 150n; J. D. Wade, Augustus Baldwin Longstreet (New York, 1924), 25.

30Longstreet, Master William Mitten, 100-101.
was evident, the boy, for a time, was unhappy in the new environment. A strong antagonism existed between the boys from the up country and those from the plantation areas, and Legare, meeting the outward manifestation of it for the first time, was disturbed. The trouble culminated in a group of low country boys conspiring to set fire to the headmaster's building. When apprehended they asserted that Legare was one of them. Although he successfully refuted the charge and the conspirators were expelled, Legare was so disgusted that he wrote his mother begging her to allow him to come home. The mother's answer, as she denied his plea, shows a sensitive understanding of her son's problem. It reveals also a persuasive logic and foresight in using reason rather than coercion to keep Legare on the course she desired:

Have patience, my dear son. You know I would do nothing to oppress you or even coerce you with the authority of a parent. But I wish you to reflect. Those wicked boys, self-condemned, have given your name as one of the conspirators. You have refuted the charge successfully; all very well for Abbeville & the boys of the Academy; but this slander is come down to this city; they are to be expelled; if you come at the same time their falsehoods will be confirmed & your reputation ruined in the State. Wait. Your uncle in whom I have great confidence is going up for his son--will see Dr. W. & undeceive him with respect to the falsehood told him.  

The uncle succeeded in his mission. Dr. Waddell was reconciled to the boy, and Legare was pacified. Again his mother

31 Memoir, 11.
had been the directing force. Throughout his early training, fully aware of her son's physical handicaps, she had with exquisite tact, penetrating wisdom, and warm understanding, encouraged him to "take it," mentally, in situations which he could not meet as other boys did, with their fists.

Studying with the other students under the great trees Legare learned the lines of Homer, Virgil, Cicero, and Horace. From time to time all the students changed their occupations simultaneously "at the sound of a horn, hurrying to the big house as they were called for, by the name of the Virgil class, the Homer class, or by the name of any particular author they were at the time studying." 32

Moses Waddell, 33 the master, was not a great scholar, but the results of his teaching carried far across the land into the assembly halls and colleges of the country. Longstreet called him "a very grum looking man." 34 His philosophy of education seemed as "grum" as the man: "Plain dressing, plain eating, hard working, close studying, close watching--and, when needful, good whipping." 35

He seldom whipped, and then only following a re-

32 W. B. Sprague, Annals of the American Pulpit, 4 vols. (New York, 1858), IV, 66-68.
33 Moses Waddell signed his name with two 1's. Miscellaneous Papers, Reports of Committees. Historical Commission of South Carolina.
34 Longstreet, Master William Mitten, 124.
35 Thomas M. Gilmer, quoted in ibid.
port by a monitor, and after a verdict by the students themselves. When he did whip, "he applied it to the extremities, and drove it into the head and heart by percussion." The jury was made up of five students, presided over by Waddell. The accused, together with the witnesses, was present during the entire proceedings. Waddell would read the charges as given to him by a monitor. The accused then spoke in his own defense, after which the monitor gave his own version of the affair.

Varied were the cases brought before the docket. Austin B. Overstreet was charged with following a monitor about as he studied his Greek Grammar. He conjugated aloud the future tense in the following manner (loudly, for the monitor's benefit): "\textit{Tupto, tupteis, tupte}i (of all the monitors) \textit{tuptet}on, \textit{tuptet}on (that I ever saw in my life), \textit{tuptomen}, \textit{tuptete} (John Freeman takes the cake), \textit{tuptousi} (rather rousy)." For this crime Waddell warned, but he did not whip. To Ned Brace, whose crime was in seeing how hard he could drive his fist at the noses of other boys without actually hitting them, he gave merely a speculative look. When it was proved that Ned had also dropped lightwood knots upon other boys' feet, the look became grimmer. When it was found that Ned had also fastened a dead cat to the end of a pole and had gone about swinging the corpse near to the

\cite{Ibid.}, 128-129.
noses of the other boys, Waddell spoke, still good humoredly: "You have no right to sport with the feelings of others, for your fun. So I'll give you a little for your nose-fun, and two or three littles for your foot-fun, and the usual price of idleness repeated." And the master gave ten swipes of the whip with telling effect. 37

Legare must have banished much of his shyness in the convocation-court-recreation-recitation room of Moses Waddell. That room was without seats "and just large enough to contain one hundred and fifty boys standing erect, close pressed, and leave a circle of six feet diameter at the door," for the teacher or student to use as a speaking platform. There was no speaker's table; there were no desks. Everyone within that room stood at all times. The master frowned upon the use of notes. He never read his sermons, nor even rehearsed them, "holding that the subject was so solemn and grand in its importance that a man should preach with freedom and power extempore." On one occasion, when a visiting minister was reading his sermon to the assemblage the house became so dark that he was forced to cease abruptly. The powerful whisper of Dr. Waddell then broke the silence: "He is served right!" 38

37 Ibid., 112-119.
Under Waddell's supervising eye his pupils, of necessity, avoided the use of notes. They spoke extempore or from memory, with their feet firmly planted beneath them, whether they were reciting or debating or speaking in self-defense in a trial.

Debating was a weekly activity fostered by Waddell. That competition was probably enthusiastic is evidenced by a query proposed by George McDuffie, a classmate of Legare. The query was a jargon of words, but they were, nevertheless, presented as a subject for discussion: "Whether at Public Elections Should the Votes of Faction Predominate by Internal Suggestion or the Bias of Jurisprudence?"

The main speaking events of the year were the annual examinations and exhibitions. The exercises continued for several days, and were attended by thousands of people. All the events were conducted in the open air. Although the final day was considered the most important, and was directed to the entertainment of the visitors, tenseness started for the students on the first day when the individual examinations of Waddell's pupils began. All the examinations were oral, and the questions were asked by members of the audience. For two days the students submitted to whatever grilling the visitors chose to give them. As the boys had stood up under Waddell's stern eye all year, they had little to fear.

---

39 Ibid., 48.
40 Longstreet, Master William Mitten, 186-187.
from the average visitor. As the questions had to be asked in either Latin or Greek, most of the persons attending were too handicapped through ignorance of those tongues to participate in the questioning.

During their stay in Willington, parents and friends were lodged in neighboring houses for miles around, as well as in the nearby towns of Lisbon, Petersburg, Vienna, and Richmond. Many of the visitors found the nights vocal with rehearsals of speeches to be given on the final day in competition.

On the morning of "Exhibition Day" over three thousand persons gathered in front of the schoolhouse, and adjusted themselves as comfortably as they could under the great oak trees. Plank seats had been constructed immediately in front of the speakers' stand, and they were soon filled by the ladies, "several hundred in number." The dignitaries sat upon the speakers' platform. On the day of Legare's commencement in 1811, John C. Calhoun, William H. Crawford, and William Bibb were among the celebrities. Each of the three had attended the Academy, and, following their own graduation, "hardly ever failed to attend the public exercises" of Dr. Waddell's school. 41

Many boys spoke that day, among them Legare. The words he said are lost, as are those of the others, but he

41 Ibid., 191.
evidently did well in the contests, as he went on to South Carolina College the next month "with a reputation already made in the state" by his speaking and by his learning. On this occasion Waddell lost his "grumness" long enough to remark that his pupil "would become a great scholar."^2

^2William C. Preston, "Eulogy on Hugh Swinton Legare; delivered at the request of the City of Charleston, November 7, 1843." (Charleston, 1843), 7.
CHAPTER III

SOUTH CAROLINA COLLEGE

When Legare entered South Carolina College in January, 1812, he brought with him two intellectual drives. The first was his desire to achieve scholastic superiority in competition with his fellow students. Consequently, during the next three years he sought to enlarge his reputation for learning which he had brought with him from Willington Academy. Waddell had written a letter to Dr. Jonathan Maxcy, almost effusive in its praise, stating "the uncommon acquirements of the youth in Greek & Latin and other necessary studies." Governor Perry commented on Legare's early reputation in his Reminiscences: "I have frequently heard it said that Legare entered college with more learning and scholarship than McDuffie had when he left college, though the one was a boy who came to be educated, and the other was a man grown who had finished his education."

1Memoir, 12.
2George McDuffie, classmate of Legare at Willington, was twenty-two years old when he entered South Carolina College.
The second drive within Legare was eventually to enlarge and dignify his whole being. It was the reaching toward intellectual excellence for its own sake. Within his third floor room where his candle burned deep into the night, he set a pattern of solitary study that never left him.

Certainly he attracted attention. His youth, his learning, and his shortness of stature all contributed to make him "an object of curiosity and interest to the students." Reacting to this reception "with boyish ingenuousness, he was not indisposed to exhibit his acquisitions, or backward in permitting it to be known that he intended to run for the honors of his class." 4

Although his showing on the entrance examinations would have permitted him to enter as a junior, Legare asked to be admitted as a sophomore. 5 He wished the extra year's time to make further use of the facilities of the college, especially the library. The faculty seem to have excited him intellectually, and "for a time he rioted through his studies happily." 6

The student body was governed by a set of regulations that often brought strong resentment and flares of

---

5 Legare had reached his fifteenth birthday two weeks before entering college. South Carolina College Catalogues, 1806-1835. Unpublished manuscripts in South Carolina College Collection, South Caroliniana Library.
6 Memoir, 17.
violent reaction from hot-blooded young men. The first by-laws, adopted in 1804 by the trustees, established a daily program meant to consume the whole time of the student:

Whilst in session, the students shall convene at 6 o'clock in the morning, in the College Chapel, to attend prayers; from thence they shall return to their rooms, and continue to study until 8 o'clock. At 8 o'clock, upon being summoned, they shall repair to breakfast; at 9 o'clock they shall return to study, and continue in their rooms until 12 o'clock, unless summoned to recitation; at 1 o'clock on being summoned, they shall repair to dinner, and at 2 o'clock return to their studies until 5; and at 5 o'clock they shall attend prayers, and be dismissed until 9 o'clock; at which time they shall again return to their rooms, and remain there for the night; except on Saturdays, on which days they shall be dismissed at noon, until 9 o'clock in the evening.7

The recreation of the students and their physical well-being were not much on the minds of the trustees who established that set of rules. The Calvinistic denial of the desires of the flesh in the following list of things-not-to-do showed that the trustees themselves were men of the world or that the practices of the students were certain to take interesting turns. The students were forbidden

- To play at cards
- To visit taverns without liberty
- To appear in women's apparel
- To keep or fire gunpowder and firearms
- To play on any instrument of music in the hours of study or on the Sabbath
- To entertain in their rooms during the hours of study

---

To bring spiritous liquer into the college, unless given permission to do so in advance by a member of the faculty
To take part in any festival entertainment in the college or in the town without the special permission of the president
To smoke pipes or cigars except in their rooms
To make a bonfire within or near the campus
To carry a pistol, dirk, sword-cane or bowie knife
To blow any horn or trumpet, or beat any drum
To ride a horse on or near the campus
To visit any grog or eating shop
To lounge under the trees on Sunday
To collect in groups on Sunday about the campus for the purpose of amusement or conversation.

Probably no state college was ever more the petted child of a legislature than was South Carolina College. The legislature, which established the school, maintained a constant control over it, under the stimulation of Governor John Drayton and his successors. The act which established the institution placed not only the governor and the lieutenant governor upon the board of trustees, but included the President of the Senate, the Speaker of the House of Representatives, and the associate judges of the Supreme Court as well. The judges of the court of equity sat ex-officio as members with the duly appointed Board of Trustees, thirteen in number, to serve for a term of four years.

8 Ibid., December 6, 1804.
9 While the University of Georgia was chartered in 1785, and the "Institution of Chapel Hill" was given ten thousand dollars in 1791, as a loan, neither was assured of annual appropriation from its legislature. See Daniel Walker Hollis, South Carolina College (Columbia, 1951), 23.
10 Proceedings of the Board, December 6, 1801.
The president and teachers of the new college made weekly reports to this board, telling in writing the progress each class had made in its studies, what material had been covered and reviewed, and even how attentive and punctual the students had been. The board reported directly to the state legislature and in turn acted as that body directed.  

At the time of Legare's advent upon the campus Dr. Jonathan Maxcy was president of the college, a man eloquent in speech, charitable to all mankind, and a former president of Rhode Island College and of Union College. He had been selected largely on the recommendation of "his fellow Federalist, Dr. [Richard] Furman . . . and General [Wade] Hampton." His "genius was aesthetic; persuasion flowed from his lips . . . . His elocution was equally winning and peculiar. He spoke in the most deliberate manner; his voice was clear and gentle; his action composed and quiet; yet no man had such command over the noisy sallies of youth."  

The faculty, including the president, was made up of six men. Benjamin R. Montgomery occupied the chair of

11 This is shown by written reports of the faculty members. Miscellaneous manuscripts in South Carolina College Collection. South Caroliniana Library.

12 Wallace, History of South Carolina, III, 27.

13 "Oration by James L. Petigru," Semi-Centennial Celebration of the South Carolina College (Charleston, 1855), 55.
moral philosophy and logic. A Presbyterian minister, he served also as college chaplain. On Sundays he preached in the chapel to the large majority of students who accepted, or preferred to attend, the Presbyterian services. So persuasive was Montgomery's preaching that on a Sunday morning a considerable congregation of townspeople filled the balcony from which altitude they could note the Sunday decorum of the students in the main auditorium below. Among these townspeople were many of the trustees themselves.14

Edward D. Smith was professor of chemistry until 1819, when he was replaced by the controversial Dr. Thomas Cooper. Professor George Blackburn taught the classes in mathematics. He took his responsibility so seriously that his disciplinary strictures upon the students brought about rebellion on the campus as well as pressure for his dismissal. He resigned in November, 1814, shortly before Legare was graduated. Thomas Park served as professor of languages and as librarian.15 A sixth member, on a part-time basis, was a Mr. Nicholas Herbemont, who taught classes in French.16

14 Hollis, South Carolina College, 43-44; George Howe, History of the Presbyterian Church in South Carolina, 3 vols. (Columbia, 1833), II, 256-258.
15 Hollis, South Carolina College, 43-46.
16 Minutes of the Faculty of South Carolina College, December 1, 1813. Manuscript in South Caroliniana Library. Hereafter cited as Minutes of the Faculty.
The need to orient himself to college life before he commenced his serious studies never occurred to Legare. He immediately "placed himself under harness, determined to use every effort to insure him the highest honors of his class." This objective demanded an early decision on his part, for, during his first days at the college, boys with time on their hands and curious about him and his reputation, "broke in upon his hours and infested his rooms." He knew that if he were to "rid himself" of his irritators he would make himself unpopular and risk the loss of congenial companionship. Yet this he seems to have done, for his letters indicate that he actually became a recluse for the first two years of his college life. He divided his time so that seven hours were given to his classes and recitations and eight hours to his own voluntary studies. Two hours were given to meals and the rest to sleep. Even after leaving college Legare maintained a rigid schedule, with only slight variations. Not until 1818, when he was forced to consult a physician, could he be persuaded that moderation was imperative.

The projected curriculum of 1804 had been modified considerably by the time Legare entered South Carolina.

17 Memoir, 13.
18 Ibid., 17.
19 Ibid., 14.
College. The addition of a professor of moral philosophy in 1809 brought a stress on fields other than the classics. Greater attention was also given to mathematics and chemistry. Maxcy, stating in a message to the Board of Trustees in 1810 that Greek texts were almost unobtainable and that Cicero's *de Oratore* was nowhere available, urged the trustees to establish chairs of chemistry and law. The board immediately took steps to comply with his recommendations, and the measure, as proposed in the Houses of the legislature, met with no opposition. For this reason Latin and Greek were not taught the upper classes during the remainder of Maxcy's presidency, and the emphasis on science continued long after 1811. This shift in educational emphasis meant that entering freshmen must have obtained their classical training previously, for the action of the board required that "candidates for admission" be "more advanced in the languages" and be able to "render into English "the whole of Virgil, the four Evangelists in the Greek Testament, four books of Xenophon, and Cicero's Orations against Cataline." As Legare entered as a sophomore, he was also examined on the freshman subjects which were: Homer, Horace, English grammar, arithmetic, "Vulgar and Dec-

20 Proceedings of the Board, November 30, 1810.

21 Hollis, South Carolina College, 47. The Proceedings of the Board, November 27, 1811, show that the trustees realized "the propriety of affording more time for the study" of mathematics, natural philosophy and chemistry.
imal Fractions with the extraction of roots," Sheridan's
Lectures on Elocution, and "Roman Antiquities."22

A typical report, written by Professor Park to
Judge William DeSaussure, Chairman of the Standing Committee
of the Board of Trustees, reveals the subject matter taught
and suggests the manner in which classes were conducted:

Since the second Monday in December last to this
time the Sophomore Class recited to me twice a day;
if has read nearly the whole of the third book and
all of the fourth of the Odes of Horace, once, the
first book of the satires, twice, and his art of
poetry. It has also studied and reviewed the
geography of the British Provinces and of the
Eastern and Middle States of Independent America,
and made some little progress in Homer's Iliad.23

All of Legare's professors submitted weekly reports, Blackburn
in algebra, Park in geography and the classics, Montgomery
in logic and criticism, and Maxcy in rhetoric. 24 It is
apparent from the comments which he wrote on them that
Judge DeSaussure read these reports. Indeed, the board
kept a close watch not only over the students' progress but
over the professors' efficiency.

In December, 1812, Legare, along with the rest of
the sophomore class, was "examined by the faculty in public

---

22 Proceedings of the Board, November 27, 1811.
23 Miscellaneous Papers in South Carolina College
Collection. South Caroliniana Library.
24 Proceedings of the Board, November 27, 1811. These
reports can be found throughout the files of Miscellaneous
Papers, South Carolina College Collection.
examination, on the first day in Algebra and in Homer," and on the second day in geography and upon his work in Horace. There is only the blanket statement that the whole class did well, with a few exceptions. It can be presumed that Legare was one of those who did well.

During his junior year Legare came into closer association with President Maxcy and Professor Montgomery, and his course of study was somewhat changed. Maxcy reported to the board of trustees: "The Junior Class began with me their studies in Elements of Criticism last week and have proceeded about sixty pages in the first volume. Their attendance has been punctual and orderly." Montgomery's words are similar, although they reveal a difference in the character of the teacher:

Since my last report the Junior Class continued reviewing Logic. They appear to pay laudable attention to their studies. That portion of the class whose turn it was to exhibit composition to me, last Saturday, have done their duty without a single delinquency. Their compositions were generally written with care; some of them with unexpected accuracy.

Succinctly, these reports emphasize the fact that the youth of the state were being properly and seriously readied for a life of sober citizenship.

---

25 Minutes of the Faculty, November 30, 1812. Because of the shortness of the fall term fewer subjects were offered.
26 Jonathan Maxcy Papers, February 2, 1813. South Carolina College Collection. South Caroliniana Library.
27 Miscellaneous Papers, January 11, 1813. Ibid.
The faculty minutes of March, 1813, indicate that mid-semester testings were in order then as well as today:

The Faculty met in the Chapel for the purpose of examining the Junior and Sophomore Classes, in the several studies pursued \([\text{sic}]\) since the last Commencement. The Juniors were prepared on Criticism, Logic, and the first three books in Euclid's \(\text{sic}\) Elements of Geometry and Algebra. \(^{28}\)

Five days later four of the juniors were placed under stricture as a result of the examination, but the rest, including Legare, were "approved and suffered to hold their standing." \(^{29}\)

Two weeks later Legare started the study of moral philosophy under Professor Montgomery, reciting "at four o'clock in the evening." \(^{30}\) There exists an odd report from this good professor concerning that class, written in April: "The Junior Class since my last report has proceeded regularly in the study of Mor. Phil. They are now advancing in the fifth book. They \([\text{make}]\) little noise, and \([\text{pay}]\) considerable attention to study . . . ." \(^{31}\) Judging from this report there must have been actual room-to-room inspection by the proctors.

Nor did this control exerted over the students'"
lives end on Saturday. In April, 1813, at a "meeting called by the President . . . the Faculty entered into some arrangements for carrying into effect the resolution of the Board of Trustees, regulating the attendance of the students on public worship."  

From that time on the boys were required to enter their names on church lists. They were not forced to attend any particular church; the listing includes Presbyterians, Baptists, and Episcopalians. Seemingly there were no Methodists at the college at the time, nor members of any other denomination than those shown. Legare signed as a Presbyterian, along with forty-four seniors, including McDuffie, Waddy Thompson, and seventeen other juniors. The list for the Episcopalians, which included Legare's cousin, Thomas, and the list for the Baptists were much shorter. The Presbyterian roll was possibly the longest because Professor Montgomery was a Presbyterian minister and held the Sunday services in the chapel. He was popular with the students, who went by choice to listen to his preaching in preference to that of other ministers.

Legare took his junior examination with his class on the last day of November. On December 4 he and the others who had studied French were examined in that language

---

32 Minutes of the Faculty, April 30, 1813.
33 Ibid.
34 Ibid., December 1, 1813.
by Mr. Herbemont, as the rest of the faculty listened. A week later the faculty, "having taken into consideration the late examination of the Junior Class, it was Resolved that the members of this class, in general, acquitted themselves in a satisfactory manner, and that they all be permitted to take their standing as Seniors."

These first two years at college had been passed by Legare in a sort of monastic seclusion. He had taken part in the debates of the literary society; but, aside from that, the only society he had had was that of men long dead, whose thoughts illuminated the pages of the world's great books. From these books he read aloud, night after night, by candlelight. The beam of that candle shining into the darkness became almost symbolic in the minds of the other students. Years later a former classmate of Legare, reminiscing, said:

Often when returning with the jovial fellows of our class from ball or party, perhaps from a secret and less legitimate expedition, to our quarters, have I remarked Legare's candle burning long after midnight, and heard his voice, in sonorous recitation, rolling over the campus. But the moment our noisy approach caught his ear, (if it happened that we dared be noisy,) the recitations ceased; the light however, burned on; oh, he was indefatigable; nothing could wear him down.37

35 Ibid., December 4, 1813.
36 Ibid., December 11, 1813.
37 Paul Hamilton Hayne, Lives of Robert Young Hayne and Hugh Swinton Legare (Charleston, 1878), 103-104.
Legare laid the foundation of a vast learning in that dormitory room, with its flickering candle throwing pale light down the centuries of knowledge that lay in books.

There, during the two years just past, Legare had carried out a set program of reading. He had sat at his desk "with a determination to go through Livy's History . . . twice, faithfully and laboriously, referring to the notes for an explanation of whatever might be obscure in the text, and reserving for future investigation and comparison those passages which he [was] immediately unable to understand." Each day he gave an hour to "double translation" until that drudgery finally gave him mastery over all the passages except those which were "the subject of dispute, even among veteran philologists." When he had finished Livy he proceeded "to read in the same manner all the writings of Cicero, but especially the Epistles, the Rhetorical works, and the more familiar treatises on philosophical subjects . . . ." That completed, he moved on to Tacitus, Sallust, the Plinies, and the other writers of Rome, until the ancient world of those men became as a street he lived upon and knew.38

Such a course of study meant that one must separate himself from the world to gain a world—so that he might hold a universe within his mind. Why did Legare do this?

He advanced a strong argument:

The study of the classics is and ought to be, an essential part of a liberal education—that education of which the object is to make accomplished, elegant and learned men—to chaste and discipline genius, to refine the taste, to quicken the perceptions of decorum and propriety, to purify and exhaust the moral sentiments, to fill the soul with a deep love of the beautiful both in moral and material nature, to lift up the aspirations of man to objects that are worthy of his noble faculties and his immortal destiny—\(^{39}\)

These were the thoughts in Legare's mind as he worked night after night while the other students went about the more normal pleasures of adolescence.

During his senior year his class work, for the first term, encompassed geometry, chemistry, mechanics, and metaphysics. In the short fall semester, under Maxcy, he went further into metaphysical philosophy. He read the "whole of Locke's Essay" and "the most important of Blair's lectures and elements of criticism." Under Montgomery he studied logic and read Paley's Moral Philosophy. Under Blackburn he continued "in mathematics, mechanics, astronomy," and optics; under Smith, chemistry, "the treatise on electricity (including several lectures on Galvanism), pneumatics & magnetism."\(^{40}\)

His extra-curricular studies had continued as well. Throughout his senior year he read contemporary literature.

\(^{39}\)Ibid., 24.

\(^{40}\)Proceedings of the Board, November 26, 1814.
He also read in French the works of Rabelais and the essays of Montaigne. He studied the rich old Chronicles and delighted in the fabliaux of the Provencal song. In English Literature part of his time was devoted to the sixteenth and seventeenth century writers: Marlowe, Marston, Heyward, Jonson, Beaumont and Fletcher, Herrick, and Milton. It was not that he neglected their contemporaries, but these he loved more.\footnote{Milton, especially through his prose works, affected strongly the style which Legare was to develop in his writings.}\footnote{Hayne, Lives of Robert Young Hayne and Hugh Swinton Legare, 104.} Legare, especially through his prose works, affected strongly the style which Legare was to develop in his writings.

Legare took his senior examinations with his class, starting October 31, 1814.\footnote{Minutes of the Faculty, October 31, 1814.} They lasted until November 8. At a meeting of the faculty on November 9, "after careful deliberation," it was "determined that, in their opinion, the Class with some exceptions acquitted themselves in a satisfactory manner . . . ." The faculty also were "of the opinion that public mention shall be made of the following students as having peculiarly distinguished themselves, in their studies, obedience to the laws and general good conduct, viz. Carnak, Gibson, Hugh S. Legare, and Trescot in the first rank . . . ." Legare was named Valedictorian.\footnote{Ibid., November 9, 1814.}

Scholastically Legare had achieved his aim. He had
met the challenge of every other student of his class and was graduated at their head. But his larger goal had been to grasp every educational advantage the college had to offer. One of the finest of those advantages was the speech training which the institution encouraged, both through class training under the critical eye of Maxcy and his professors and through the competitive forensic activities of the two debating societies on the campus.

Since the time his speech training began with the guidance of Dr. Gallagher in Charleston, Legare had constantly endeavored to perfect his voice and his gestures. His audiences had enlarged somewhat since he had memorized the speeches of Burke and Curran and delivered them with great pretense before a servant or two. He had practiced, through the years, every exercise that would help overcome his physical handicaps. His naturally fine voice, inherited from his mother, covered two octaves and was striking even as it gave pleasure. Under constant training at home, in the fields, at the seashore, and under the eyes of his teachers, Legare's voice came to have a clear articulation, a freedom from false cadences, and a complete purity of tone. 

Even during his college years his actions in speaking were stiff. Besides the awkwardness which came
from the shortness of his legs, his left arm was not easily controlled. A savage kick from a colt had permanently dislocated his elbow.\(^{45}\) It was only by a strong will that he kept at his exercises, year after year, working with the arm until he could finally move it with a semblance of grace. Nothing, however, ever completely removed the stiffness. But, to a large degree, the expressiveness of his face redeemed the lack of ease in his movements. Under any excitement his naturally sad eyes became brilliant. His features would leap to the portrayal of his thought. Both face and voice commanded intent response to his words, which reached without effort to the farthest corner of any legislative hall.\(^{46}\)

Jonathan Maxcy was the principal actor in the speech education of Legare at college. In a very real sense the first president was the college, for Maxcy's attitudes and abilities were reflected in the institution throughout his administration. He was small in his person, but, according to Judge John Belton O'Neall, he had a peculiar majesty in his appearance. "When he entered the chapel for morning or evening prayers, every student was erect in his place, and as still as death to receive him. . . ." Seldom did there exist any misunderstanding between this man and the students whom he taught, for "he was able

\(^{45}\)Ibid., 14.

\(^{46}\)Ibid.
to explain himself upon any subject he undertook to discuss, with clearness, facility, and precision."\(^7\)

Repeatedly Maxcy emphasized to the trustees the need for giving more time to the training of speakers. He demanded that every student in the college each week speak a piece of his "own composition which shall have been previously inspected and approved by a member of the faculty." He also saw to it that sufficient time was "allowed for a critical examination" of the students' speaking. It was upon Maxcy's suggestion that all examinations, except those for admission into the college, were given orally before the public, with the complete faculty in attendance.\(^8\)

Maxcy had made a study of oratory; "he felt that it had its philosophy, and strove to master its principles, that he might give it its greatest efficiency." He thought that eloquence "was laid in nature—that the appeal must be to the man as he is." Thus, the speakers that Maxcy taught learned to arouse "a feeling of common sympathy" between themselves and their audiences. He worked to improve his students' diction—his own was "simple and elegant"; but his chief gift to them as a teacher of speech was his insistence that earnestness, "good sense, and logic"

\(^7\)John Belton O'Neall, as quoted in Maximilian Laborde, History of the South Carolina College (Columbia, 1859), 110.

\(^8\)Proceedings of the Board, November 27, 1811.
should pervade the whole body of their discourse.

That this speech training led to excellent results is indicated by the distinguished orators of the South, in the pulpit, on the bench, at the bar, and in the legislative halls who had been taught to speak by Maxcy. William G. Preston was graduated in 1812, McDuffie in 1813, and Legare in 1814. Few schools can boast of so eloquent a trio in a parallel three years.

Intent upon mastering everything necessary to oratorical success, Legare made the utmost use of Maxcy's instruction and criticism. Whenever possible, away from his classes, alone in his room or at home during his vacations, he kept up his special exercises. On John's Island, standing upon a stump, "he declaimed with passionate gesticulation" until he had by his very will forced the beginnings of easy gestures upon his unyielding arm. "He loved to chant the solemn hexameters of Homer." Anyone who has ever heard Homeric poetry recited as it should be, with its greater proportion of vowels to consonants, will understand the beauty which Legare sought and learned to express. He became excited also by the lines of Milton, and when speaking them aloud "his articulation became golden in its distinctness, his tones pure as Italian song." His speech

---

49 LaBorde, History of South Carolina College, 114-115.

50 South Carolina College Catalogues, 1806-1835, 21, 25, 33. South Carolina College Collection.
became "a system of sound" under rigid management, "true in its minutest inflections; while in his most vehement outbursts it grew capable of filling the air with its absolute thunders." 51

He studied oratory, believing that it was a necessary science. He mastered the epic writers of Greece and Rome, reading them aloud in their own tongues; and in the same way he emulated the lyric poets, the philosophers, and finally the greatest of the orators. While speaking, he sought to become as Greek as Demosthenes, as Roman as Tully.

Probably the finest speaking opportunities the college had to offer were in the debating societies. There were two, the Clariosophic and the Euphradian, both still in existence today. The Clariosophic Society now occupies the top floor of Legare College, named after Hugh Swinton Legare, on the south side of the University of South Carolina "horseshoe." The Euphradians hold forth in a similar location directly north across the campus. A portrait of Legare, presumably painted by the English-born artist, Thomas Sully, hangs above and to the right of the ornate officers' rostrum in the Clariosophic Hall. 52

In 1812 both societies met in the college chapel,

51 Johnson, "Biographical Notice," xxiii.
52 The Clariosophic Society changed its name some years later to The Clariosophic Literary Society.
one at two o'clock in the afternoon, the other after supper, alternating the time on succeeding Saturdays. These meetings formed the chief recreation of the students. At a time when athletics and swift means of transportation to places of amusement were not a part of college life, the debating societies had no rivalry for the interest of the students except that which existed between themselves.

As both groups used the same quarters on the same day, friction necessarily developed. "Orators and debaters scheduled to speak for fifteen minutes preferred to carry on for thirty-five or forty," and frequently the society meeting in the afternoon would become so absorbing that the members "gladly went without supper." When the Clariosophics were "under the influence of a James L. Petigru, George McDuffie, or Hugh Legare," they might easily not hear the supper bell. But in a short while "they would be interrupted by the thundering clamors of impatient Euphradians." This source of irritation lasted until each society had a hall of its own. Each member felt that "it was not to be endured that he who had spent a whole week preparing a speech, and felt himself ready for safe delivery should be held up by the other fellow's speaking." 54

In March, 1812, Legare's name appeared for the

53 Hollis, South Carolina College, 232.
54 Ibid., 232-233.
first time on the secretary's minutes of the Clariosophic Society. He was listed as being paired with John M. Lee on the negative side of the proposition, "Whether our extensive territory is beneficial to a republican government." 55 A notation suggests that they won the decision. A week earlier McDuffie had also debated, paired with Robert Nance. In view of his later political beliefs it is interesting to note that McDuffie took the affirmative side of the query, "Should the slaves of the United States be emancipated?" 56

Judge O'Neall described Legare as he must have appeared to the Clariosophics at that time: "He was then fifteen years of age. I was in the senior class, and recollected Hugh perfectly; his undersize, and his fine attainments attracted the attention of everyone. He joined the Clariosophic Society, and soon became a regular speaker in the debates." 57 It was not customary for sophomores to be allowed to participate in the debating, but precedent was evidently put aside in Legare's case. O'Neall's estimate of the reactions of the Society seems reasonable: "His course, at first, was regarded as presumptuous; but as acquaintance ripened, and it was seen that his knowledge

55 Minutes of the Clariosophic Society, March 12, 1812. South Caroliniana Library.
56 Ibid., March 5, 1812.
57 John Belton O'Neall, Biographical Sketches of the Bench and Bar of South Carolina, 2 vols. (Charleston, 1859), II, 35.
was beyond his years, he was not repulsed from the higher position he was seeking." 58

Not only did the societies absorb much of the creative energies of the students, but they were exacting in a financial way. The treasurer's account book of the Clariosophic Society between 1812 and 1814 lists a diverse form of special assessment:

<table>
<thead>
<tr>
<th>Assessment</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initiation fee</td>
<td>$1.00</td>
</tr>
<tr>
<td>Fine for non-performance</td>
<td>.25</td>
</tr>
<tr>
<td>Fine for neglect of duty</td>
<td>.50</td>
</tr>
<tr>
<td>For absence from meeting</td>
<td>.50</td>
</tr>
<tr>
<td>For absence from first roll call</td>
<td>.12-1/2</td>
</tr>
<tr>
<td>For absence from last roll call</td>
<td>.12-1/2</td>
</tr>
<tr>
<td>Fine for impropriety</td>
<td>.18-3/4</td>
</tr>
<tr>
<td>Fine for being out longer than fifteen minutes</td>
<td>.18-3/4</td>
</tr>
<tr>
<td>Fine for non-performance of oration</td>
<td>.50</td>
</tr>
<tr>
<td>Fine for being in an indecent posture</td>
<td>.25</td>
</tr>
<tr>
<td>Fine for neglect of duty as critic</td>
<td>.50</td>
</tr>
<tr>
<td>Fine for omission of a debate</td>
<td>.50</td>
</tr>
<tr>
<td>Fine for being asleep</td>
<td>.25</td>
</tr>
</tbody>
</table>

Assessment of fines induced members to be present and to perform on schedule. These fines, together with the members' dues, gave the Society a sufficient fund to perform charitable services and, later, to authorize well-known artists to paint portraits of Calhoun, McDuffie, Preston, and Legare as well as to buy carved furniture for their debating halls, which were built a few years later. 59

58 Ibid.
The Clariosophic Society did not assess any great amount of gold from the pockets of Legare. During the three years of his membership he paid into the treasury as fines only $2.62½. Contrasted with the two-figure sums charged against several of the members in a single semester, Legare's offenses were few indeed. One, at least, was for non-performance of an oration. Another was for the impropriety of uttering a "strong oath." 60

The admiration and respect that a boy of sixteen may have for a grown man eight years his senior was shown in a resolution which Legare introduced during a meeting of the Society in February, 1813: "That in testimony of the respect we bear a gentleman who has done so much honor to the Clariosophic Society, the oration of Mr. McDuffie be published by order of the same." The resolution was unanimously agreed to. 61 The speech referred to was McDuffie's oration before the Society, after having been named the most eloquent among the seniors of the group. Significantly, the speech was on the "Permanence of the Union." 62 Ironical it is, when one thinks how the speeches of the same man, after 1828, helped to impair the permanence of the Union.

In 1813 Legare was expanding in devotion to the United

---

60 Ibid.
61 Minutes of the Clariosophic Society, February 13, 1813.
62 O'Neill, Biographical Sketches of the Bench and Bar of South Carolina, II, 463.
States as a mighty nation and could then wholeheartedly extol the orator who so glowingly expressed his own opinions.

A committee report made at the same meeting suggests that the purposes of the societies often went beyond the abstractions of debate and oratory:

Mr. John M. Lee, Chairman of the Committee which was appointed to make arrangements for the education of a youth in this society that the committee was of the opinion that the funds of this society are fully adequate to effect their intention. They recommend to the Society that the youth they educate enter into the Junior class; that he should not be under 17 years of age; that they allow him but 200 dollars annually, a sufficiency to pay all the collegiate expenses. That the money for that purpose be deposited in the hands of one of the faculty of the college. They also recommend that a committee be appointed to whom application may be made and who shall have power to choose from the applicants the one whom they deem to be the most deserving—Which report was agreed to, George McDuffie, Hugh S. Legare, Josiah Pope, F. W. Dalton, John M. Lee, Andrew Govan, appointed a committee for the aforementioned purpose.63

The fact that Legare, then just sixteen years of age, was named on a committee to judge the merits of boys older than he, indicates that he had come to be honored and respected by his fellow students.

Two debates were usually held at each meeting of the societies. The audience acted as judge, and a debate could be stopped after any speaker had finished if, in the minds of the audience, his side had definitely established

63Minutes of the Clariosophic Society, February 13, 1813.
a superiority. During the spring term of 1813 Legare, paired with his cousin, Thomas, participated in two debates, winning both of them. He debated affirmatively on the question: "If the provinces in South America establish a republic is it probable it will continue long?" The second query had lasting implications, especially today: "Is it possible that a general congress of Europe and the American States would at this time produce a lasting peace?"\(^64\) Debate topics do not change much in a century and a half.

At times parliamentary business became so interesting that the entire meeting was devoted to it. This happened at a December meeting in 1813 when the secretary recorded in the minutes: "Resolved by H. S. Legare (Mr. Lee in the chair) That it shall require two thirds of the Society to sanction the expulsion of a member."\(^65\) It was fortunate for Legare that he introduced this motion and obtained its passage, for, within a year, when he himself was subject to expulsion, he was to benefit from it. The members of the Society loved to debate "risky" parliamentary points, and the motion to expel a member was the sort of business that has many times added zest to many meetings throughout the one hundred and fifty years of the Clario-

\(^{64}\)Ibid., March 20, 1813.
\(^{65}\)Ibid., January 9, 1813.
sophics' existence.

In the autumn of 1813 McDuffie was elected president of the Clariosophic Society. He showed his esteem for Legare by appointing him critic, along with I. I. Murray and A. B. Gilchrist. Moreover, the Society itself honored Legare by naming him as the orator of the year to deliver the anniversary speech before the Society. This speech, however, was never delivered, for in the book of minutes is written: "The president ... informed the Society that ... Mr. Hugh Legare had resigned the appointment of the anniversary oration."  

No reason was given. Possibly Legare felt that he could not spare the time from his studies to prepare two speeches, for he, along with seven other juniors, had been assigned orations to be given on December 9. Shortly after the October examinations the faculty had chosen the juniors with the highest standing "for an exhibition ... to be held on the Friday immediately succeeding Commencement."  

Although he was only sixteen years old, Legare's study and practice of eloquence had already become fruitful. He had achieved a mastery in debate among his classmates. The increased emphasis upon speech training instigated by

---

66 Ibid., November 6, 1813.
67 Ibid.
68 Minutes of the Faculty, October 25, 1813.
Maxcy had assuredly been an important factor in Legare's development as an orator. The debating society had broken down his shyness in forensic dispute. Yet all diffidence in his attitude toward speaking had not entirely disappeared, for he had an aversion for making occasional addresses to strange audiences. It was not the reaction of his listeners that he feared but the uncertainty as to whether or not his efforts would fall short of his own standard of excellence.

President Maxcy, encouraged by the success of his speech program, again gave to the Board of Trustees his views on the importance of speech in the college curricula and the policy he was to carry out during Legare's senior year:

I would recommend that the study of Blair's lectures be removed into the Junior Class, and the study of them continued, in conjunction with the elements of criticism, into the Senior Class, if it shall appear to be expedient. The mathematical and philosophical studies are now so far advanced, that it will be practicable to introduce into the two upper classes additional exercises in speaking. . . . My object is to accustom the students to reduce to practice, the principles which they learn in books. To acquire a just and graceful delivery is surely an object of the first importance to the youth of this institution. This object, I am persuaded, may be obtained by proper discipline and care. . . .

I beg also to support the propriety of carrying into effect the law concerning prizes in composition and speaking.69

The suggestions were accepted and acted upon. The board

69Proceedings of the Board, November 24, 1813.
agreed "to the publication of the names of those students who shall particularly distinguish themselves," and they permitted Maxcy to enlarge his speech program.

Legare began his senior year "with a reputation established." He had learned to control his voice and his gestures, but he had yet to master his temper. During his youth, whenever he was thoroughly aroused, he would "let go in good round oaths." This occasionally caused him embarrassment, particularly on one occasion. The incident occurred during a meeting of the Clariosophic Society in February. The secretary of the Society wrote in the minutes that day: "The following resolution was introduced by Mr. White, seconded by Mr. Brennon. RESOLVED that Hugh S. Legare if he does not apologize to the Society for his improper conduct at the last meeting be expelled." That afternoon the Society forgot its supper. Mr. White explained his resolution by stating that Legare "had insulted the Society by profane language," and that "conformable" to the by-laws should be expelled. But Legare had good men, hard-hitting with words, who came to his aid. McDuffie opposed the motion on the grounds that Legare "was influenced by passion and that the oath he uttered he did

---

70 Memoir, 13.
71 Minutes of the Clariosophic Society, February 5, 1814.
not intend as an insult to the Society."

Maurice H. Lance of Charleston, and Waddy Thompson of Greenville, argued for Legare. George Chisolm, critic of the Society, said he was innocent, as did his cousin, Thomas. The motion "was lost, and agreeable to the request of Mr. Legare, the roll was registered." The vote was eleven for expulsion and forty opposed.

This incident probably taught Legare a lesson, for, from that time on, he consciously sought for moderation in all things, except in his search for knowledge. A few years later he was able to write to his mother:

I have lived in a way to make me know by experience (the only way of coming to that conclusion) ... that nothing, absolutely nothing, is worth a thought from a reasonable human being, except making his own character and conduct approach as near as possible to the highest perfection of his nature.

The repercussions arising from the attempted expulsion of Legare were not lasting. Two months later he was elected President of the Society.

---

72 Although McDuffie had graduated in December, he remained in Columbia for six months, studying law. Green, George McDuffie, 17.

73 Minutes of the Clariosophic Society, February 5, 1814.

74 Legare to his mother, Brussels, March 14, 1833. Chisolm Papers.

75 Minutes of the Clariosophic Society, April 9, 1814.
day he delivered his inaugural address. His speech was an extemporaneous "oration in praise of eloquence and its uses." His audience hailed it with "delight, as having not only admirably explained the art but singularly illustrated it in his own person." The boy who had entered the Society two years before as a curiously short-legged student, known to have a brilliant mind with a challenge in it for the whole student body, had won the highest trophy the Clariosophic Society had to offer.

During the short fall term Legare did not participate in any of the debates. His senior examinations, starting in October, occupied his full time. He came through this final test as he had the previous ones, leading his class. At the last faculty meeting of the year the valedictory oration was assigned to Legare, the salutatory oration to Henry G. Tresco.

Forty-three students received degrees on Monday, December 5, 1814. On that day "the Trustees with the Faculty and students, accompanied by his Excellency Governor David R. Williams, walked in procession from his Excellency's house to the State House, where they were received by both branches of the Legislature, headed by the President of the Senate and the Speaker of the House. The

76 Ibid., April 17, 1814.
77 Memoir, 17.
78 Minutes of the Faculty, November 9, 1814.
procession then moved on to the College, where the usual exercises of the day were performed by the students, selected from the class which was to graduate . . . ."  

Although Legare was the center of considerable attention at this commencement his mood was not a happy one. He felt no exaltation over having achieved a hard-sought goal. Indeed, a few days previously he had written to his sister: "I am almost always in company with dead men. . . . I feel weary of everything about me." Thinking of his studies, he added: "I cannot say that they repay me in gratification for the toil I bestow upon them."

Although he had written the oration, he was not satisfied with it. "In spite of the continual applause which had been gathering upon him during the year, his reluctance to perform the leading part at Commencement . . . was extreme, & not to be vanquished until the President & one of the Professors next in his confidence, had insisted the oration 'was far above his own estimate & would do him the highest credit.'" The subject he had chosen was "The Influence of Imagination on Human Happiness." It was,

79 Proceedings of the Board, December 5, 1814.
80 Legare to Mary Legare, Columbia, November 4, 1814. Chisolm Papers.
81 Memoir, 18.
82 Legare to his mother, Columbia, November 25, 1814. Chisolm Papers.
no doubt, complementary to his melancholy of the moment, and in keeping with his whole youthful nature, which veered too easily from dejection to the most enthusiastic ardor.

Besides the valedictory address Legare had been called on to give other speeches at the close of the year. He wrote to his mother about an exhibition of his class "in addition to the ordinary performances of the Graduates at Commencement."\(^{83}\) This meant, on Legare's part, the giving of a half dozen speeches besides his long oration. "I have never been able until now," he wrote, "to take time free from my labours for Commencement. I have, however, finished my oration, tho' six addresses are still on my hands. I shall be done with them before the middle of next week."\(^{84}\)

Legare gave the valedictory before a large audience. Many of the listeners were eminent men and women who had come for sentimental reasons, not expecting to listen particularly to student speaking. One such visitor was Judge Daniel Huger, who later declared to Governor Perry that he had gone to the commencement out of respect to the college and to see the ladies, but that while chatting with some of them, his ear had been attracted by a sentence of Legare's valedictory. He became interested, he said, and

\(^{83}\)Ibid.

\(^{84}\)Ibid.
his attention remained riveted upon the orator until he was finished. So impressed was the Judge that he inquired of a professor who the young man might be. Upon being told, he then asked who had written the speech for the boy. The professor replied that Hugh Legare had written it himself and that he was the only one in the whole college who could have written it. 85

---

85 Perry, Reminiscences of Public Men, 251.
CHAPTER IV

LITERATURE OR LAW?

After graduation, Legare left the seclusion of South Carolina College for the deeper caverns of his own library. His labors were not to be changed, but they were to encircle another vast area, that of the law, and bring it into the universe he was building within his mind.

Shortly after his return to Charleston he sought the advice of his former teacher, Mitchell King, one of the foremost lawyers at the Charleston bar. King pointed out the course of study and the books that would be necessary. Legare obtained the books and retired to the family winter residence on John's Island.

At once he fell into his familiar routine of learning, following the pattern of his college years. With his books scattered before him on his bedroom-study desk, he read each night until one o'clock in the morning. He slept but a few hours and invariably commenced again at five o'clock, often before the sunlight had reached his window. During the winter he would read in bed until eight o'clock, at which time he would summon a servant to build a

1 Memoir, 14.
For three years he studied the common law in this fashion, going into Charleston now and then to consult with King. When his adviser sailed for Europe in the summer of 1815 Legare was thrown still more upon his own. He did not allow either political or social events to interrupt his studies. Neither the danger of a British advance from Savannah, the work going on at the Charleston fortifications against an attack by sea, nor the pleasures of the Jockey Club ball, the playing of Lillo's George Barnwell in the theatre, a musical evening at Concert Hall could draw him away from his study on John's Island.

Only one semi-social event commanded his attendance. On March 2, 1815, he broke away from his books and went across the Ashley into Charleston to hear "an Oration entitled 'The Rostrum,'" by the eccentric and brilliant James Ogilvie, Scottish teacher of eloquence and lecturer.

---

2 Ibid.


4 *Charleston Courier,* January 25, 1815.

5 Ibid.

6 *Charleston Southern Patriot and Commercial Advertiser,* March 1, 1815.

7 Ibid.

8 *Charleston City Gazette and Commercial Advertiser,* March 2, 1815.
extraordinary. Thomas Jefferson had attended one of Ogilvie's courses in public speaking at Richmond and had been so pleased that he later presented the teacher with a set of Cicero. From 1809 to 1813 Ogilvie had traveled up and down the Atlantic coast giving orations which received great public response. He had developed a plan "for establishing in all American colleges professorships of rhetoric, and of having erected in each of the large cities a spacious and magnificent hall for the exhibition of oratory."

In 1815 he was in Charleston on another lecture tour. Legare met the stinging impact of his personality and the stimulating perspective of a mind that had known the thinkers of Europe and the literati of the North. Through Ogilvie, Legare met Francis Walker Gilmer, as well as the distinguished Abbe Joseph Francisco Correa, a Portuguese scientist. Each of these men had that keenness of mind which attracted Legare. Gilmer and Correa were travel-

ing southward, studying the flora of the Carolinas and Georgia. Blossoms and seeds, leaves and stone implements, everything they met with of a botanical nature interested the two travelers. They visited Ogilvie in Charleston and stayed long enough to meet several of the young intellectuals of that city. They brought with them Jefferson's blessings and a letter of introduction from him to Governor John Milledge of Georgia. In the letter Jefferson explained that Correa was "a gentleman of the first order of science," but was particularly interested in botany. "Gilmer," he added, "travels with his friend Correa, as with a Mentor, for the benefit of his conversation and the information he may derive from it." Gilmer considered Correa "the most extraordinary man" then living. Jefferson's opinion of him was much the same: "... without exception the most learned man I have met in any country."\(^1\)

While in Charleston, Correa and Gilmer were especially attracted by such young minds as those of Robert Y. Hayne, William Crafts, Frederick Grimke, and Legare. An intellectual rapport was immediately established between Legare and Gilmer which led to a mind-revealing correspondence between them. Moreover, there was a similarity of situation. Virginia had already accepted Gilmer as its

\(^{13}\) Ibid. See, also, Thomas Jefferson to Governor Milledge, Poplar Forest, near Lynchburg, September 22, 1815. Thomas Jefferson Papers. Library of Congress.
young prodigy; Charleston was beginning to have a like opinion of Legare. Jefferson had called Gilmer "the best educated subject we have raised since the Revolution."^{14}

The impact of Correa and Gilmer served to rouse Legare from the local character of his labors, which for eighteen years had been merely a departure in time. He had been sitting still, with an ancient book in his hands. Correa now held before him, through his conversation, the panorama of a contemporary intellectual world. Gilmer gave him the call of youth to youth from the ardor of a mind with like enthusiasms.

The visitors finally left and Legare went back to his studies, keeping at them for seven months longer. But the overbalance of intellectual labors, with no recreation to lighten his mind, finally slipped the testing noose of sickness upon him. His friend and physician, Dr. James McBride, told him frankly that he must completely break his rigid schedule and even discontinue his studying for a while. His mother and his sister pleaded with him to follow the doctor's orders. This he finally did, taking ship in August for Baltimore, and going by land from there to Boston. He spent two months in New England and "other Northern States."^{15}

---


^{15}Ibid., 196-199; Memoir, 14.
Studious habits were so strong in Legare that he could not for long remain away from his books, even while on a vacation. His destination was the Harvard Library. There, even as he pored over manuscripts new to him, he wrote to Gilmer warning him about his health: "For God's sake take care of that one thing needful to all others." As to his own condition, he added: "I do not know whether I shall ever recover from the shock I have given my constitution. . . . I hope, however, that no pains or afflictions will ever be a discouragement to me in the 'race that is set before me.'"16

In this letter Legare also discussed the problem of his own future vocation and the choice he would soon have to make between literary and professional studies. He made no decision at the time, nor was it imperative that he do so. He wrote Gilmer: "The last three or four years of my life have been devoted to the most vigorous seclusion & study, & I have regulated my studying in such a way as to enable me to adopt any avocation I might see fit."17

At this time he was merely weighing the advantages and disadvantages of both law and literature. His objections to pursuing a literary career were that there would

16Legare to Gilmer, Boston, August 24, 1816, in Davis, "The Early American Lawyer and the Profession of Letters," loc. cit., 197.

17Id. to id., Philadelphia, October 1, 1816, ibid., 200-202.
be no market for his writings and very little opportunity for social contact. He thought of the literary man as an "insulated being, without living cooperation & almost without sympathy, . . . shut out from all pleasures but those which solitude affords him." Against this he weighed the advantages of such a life and decided that it would give more leisure for "liberal scientific studies." 18

On the other hand, time "at the Bar" would be spent in "the observance of artificial rules & the acquisition of technical knowledge." Nor did "the quibbles of special pleading & the drudgery of an office" hold any charm for him. "One signal advantage," he pointed out was "that the practice of law gives the greatest skill and dexterity in the management of the weapons of controversy. There is nobody more powerful in debate than a regularly disciplined lawyer. . . . He has a quickness of perception . . . that the greatest men whose studies have been abstract & solitary have not." 19

Mediocrity in any field, literary or legal, would not satisfy Legare in his continual drive towards excellence. In law, if that should be his choice, he would be more than the ordinary pleader, for, he said "a comprehensive view of the whole field of jurisprudence is indispensable. Other-

18 Id. to id., ibid., 202.
19 Id. to id., Boston, August 24, 1816, ibid., 198.
wise it has not the necessary importance as a branch of knowledge."  

With his mind thus candidly considering his past labors and the future already pressing upon him, Legare then stated the credo which was to guide him the rest of his life:

The learning that I would aim at is that of Cicero—a learning that can be instrumental in promoting the purposes of active life, in elevating the man of business into the sage, & the mere statement of wholesome truth, into sublime & touching eloquence—and in case there be no demand for our services in practical affairs, can embellish retirement & multiply before us the most practical & elevated enjoyments.  

Though goaded by the challenge of his still incomplete knowledge of the law, by his desire to move further into pure literature, by the call of a distant renown, and by the seductive thought of a present pleasure in convivial intercourse, he ever knew deep within himself that his "race was set" on the highest goal—the mastery of the world's knowledge.

After his brief vacation in the North, Legare again returned to the plantation he had left, lit his candle, opened his books, and forced himself into the harsh routine he must yet follow for several years. But in the spring of 1817 his eyes began to fail from the long strain he had

---

20 Id. to id., Philadelphia, October 1, 1816, ibid., 200.

21 Ibid., 202.
placed upon them. He again consulted a physician, who warned him "that if he persisted in the practice, total blindness would ensue."\textsuperscript{22}

Frantically he wandered over the plantation, seeking an escape. Then habit led him to his study. He picked up a book, but the Latin was blurred and had no meaning for him. Fortunately, he was saved from despair by the declaration of his sister, who said, "I will read it for you." She read to him one book after another through the rest of the year and into the spring of 1818, although many of the works were written in Greek, Latin, and French. Thus Legare's eyes were saved.\textsuperscript{23}

He had by this time studied the "Common Law with effect & Mr. King thought he should not defer his entrance at the Bar any longer; but as he wished to study the Civil Law, of which he already saw the importance, he thought it best to postpone doing so" until he returned from Europe. His doctor's insistence that "a change of climate was imperative" and that his eye strain must be relieved had induced Legare to plan a European trip. He was looking forward to legal studies at the University of Gottingen, which was at that time "one of the very best institutions in Europe."\textsuperscript{24} Accordingly, he sailed in May. The thirty-

\textsuperscript{22}Memoir, 21.
\textsuperscript{23}Ibid., 22.
\textsuperscript{24}Ibid., 18.
four day ocean voyage must have been beneficial, for, upon his arrival in Bordeaux in June, 1818, he wrote his mother: "The restoration of my health and strength . . . has been, in a great measure, attained; or, at least, I have good reason to hope, will be attained before long."25

Europe was a land filled with intellectual promise for Legare, and he intended to waste no time in setting out to reap a mental harvest:

On Monday . . . I set off upon my journey to Paris, where I think of remaining until the latter end of September. I intend to perfect myself there in the French language. . . . Thence I proceed to the University of Gottingen.

. . . As soon as I settle there, . . . I will employ three teachers, who shall attend me at my lodgings every day; an Italian, a scholar who is thoroughly versed in Latin and will assist me in French; and perhaps a drawing master, for I have already had cause to regret that I had not the use of the pencil, as I passed along those enchanting scenes that adorn the banks of the Garonne.26

After Legare reached Paris he established himself in comfortable quarters and went to work. Besides studying French and Italian, he had sufficient time for purely cultural activities. He was fluent in literary French, but he wished to speak like a Parisian, using the idiom of informal speech. He had changed his mind about learning to draw, and the only difficult work for him was the Italian language.

26 Ibid., xl-xii.
Consequently, he had plenty of time to visit the famous galleries and theatres of Paris. He frequently listened to the debates of the French Chambers, especially when Foy or Chateaubriand was speaking. 27

The theatre was for Legare both an amusement and a critical study. Already "well acquainted with French drama as literature," he delighted in the "picture acting" of Talma and Duchenoise as they presented classic drama. He went often to watch the graceful bodily movements of the two in their declamatory delivering of their speeches. He enjoyed Mlle. Mars in the comedy of manners, and even more, the farce of Potier, for there was a "vein of fun" in Legare "with a keen perception of the ludicrous. . . ." 28

He was fascinated by the dancing of Taglione; "her grace bewitched him, and he went to watch her time and again.

Many of the pleasures of Paris were shared with William C. Preston, who had also traveled to Europe to continue his studies. They made arrangements to dine each day with the family of a "literary lady" where the conversation "would be entirely in French." According to Preston, the woman complimented Legare highly, then turned to him and said bluntly: "You, Mr. Preston, do not make so much progress. . . . I think Mr. Legare sets up to be correct in

27 Ibid., xlii.
his own language."\(^{29}\)

The two of them wandered from place to place in the ancient city, feasting their senses. One evening, when they were together in the Palais Royal, a Negro named Jack, "who having known Legare in Charleston, rushed on him like a lost dog who finds his master, and caressing and fawning upon him, manifested the utmost delight." Jack claimed that, although he had eight dollars in his pocket, he hadn't eaten for days, because those "folks don't understand nuthin' but their own gibberish." From then on the party became a trio, Jack staying with them wherever they went.\(^{30}\)

As the University of Gottingen was closed for the season, "owing to a fracas, not uncommon to the colleges of Germany, between the students & the citizens," Legare and Preston left Paris and traveled to Edinburgh, by way of London, intending to enroll at the University of Edinburgh in November.\(^{31}\) The Matriculation Album of the University of Edinburgh shows that Legare registered in the School of Law for two courses, "Natural Philosophy and Civil Law,"

\(^{29}\)Minnie Clare Yarborough, The Reminiscences of William C. Preston (Chapel Hill, 1933), 54-55.

\(^{30}\)Ibid., 65.

\(^{31}\)Memoir, 15.
and that he paid a fee of ten pounds.  

There were seventeen hundred students registered at the university, seventeen of them American. Those from the United States formed an interesting group. Among them were Joseph G. Cogswell, future editor of the New York Review; James Fenimore Cooper; Andrew Govan, who had been in the Clariosophic Society with Legare; A. H. Everett, future editor of the North American Review; George Ticknor; Preston; and Legare. This group, with the possible exception of Cooper and Govan, formed friendships with one another which continued throughout their lives.

Legare attended four lectures a day. His major course was the civil law, and to this he gave most of his energies. He entered the classes in natural philosophy and mathematics, and also became a member of a private class in chemistry. Besides these, "as a relaxation from severer occupations," he set for himself "a course of Italian reading." Again he adopted a schedule almost as rigid as the one he had followed at South Carolina College. Four hours a day were spent in attending lectures. From eight to ten

32 Certified Extracts from Record of the University of Edinburgh relative to Hugh S. Legare. From index to Matriculation Album of date 1818-1819, dated August 21, 1890. Hugh Swinton Legare Papers. South Caroliniana Library.

33 E. S. Thomas, Reminiscences of the Last Sixty-Five Years, 2 vols. (Hartford, 1840), I, 147.

34 Thomas L. Preston, Historical Sketches and Reminiscences of an Octogenarian (Richmond, 1900), 139.
hours each day he read Heineccius, Cujaciua, and Terrason. Besides these books, there "lay upon his table Dante and Tasso, Guiciardini [sic], Davila and Machiavelli." 35

Civil law was taught in Latin. Daily examinations were given, but, as they were confined to the "technical language of the text books," a complete Latin vocabulary was not necessary to the average student. At one time, however, when Legare was being examined, a "difference of opinion arose between him and the professor on the construction of a passage in the Institutes." Legare proved his point, maintaining "his opinion with warmth, and at length astonished the class and the professor by the elegance and facility of his diction and the extent of his reading." 36

As a text, Heineccius 37 was a fortunate choice for Legare. "The terse and elegant style of this great writer, his lucid method and exact and full learning were sufficient of themselves to lure a man of cultivated taste . . . to the study of this science." It was probably this author, more than any other, who drew Legare further into the pursuit of

35 Preston, "Eulogy on Hugh Swinton Legare," 11.
36 Ibid., 12.
37 Johann Gottlieb Heineccius (1681-1741) was a German philosophical jurist, a professor of philosophy and jurisprudence at Halle. He endeavored to treat law as a rational science rather than an empirical art. Encyclopedia Britannica, XI (1952).
the civil law, although "it was not until many years later," from 1832 to 1836, "that it became a primary object with him." 38

The dour Scots winter came down on him. It was his first experience in a cold country and he found it disagreeable. "Our heavenly climate is not the only things I miss. I am tired of large cities,—of pomp & circumstances & artificial beauty & hollow magnificence & sigh for my own wild woods & the sweet simplicity of our country." 39 By Christmas he had almost had his fill of Scotland. The difference between the Edinburgh and the Carolina attitude toward the holiday season had impressed itself upon him, and he wrote his sister: "The days, like most of the days in this northern climate, have been gloomy and dark,—no merriment, no song of joy, no dancing and revelry as is common with us on a like occasion, had enlivened it." 40

Good fortune, however, had given him an excellent roommate, for whom he expressed his appreciation: "My friend Preston & myself live together, in the same rooms. We are like two brothers. The excellent fellow has the same regard for me that I have for him & as it is already six years since the mutual attachment was first formed, we may well ex-

39 Legare to his mother, n.d., Chisolm Papers.
40 Id. to Mary Legare, Edinburgh, Christmas Day, 1818, ibid.
pect that the friendship will last all our lives." 41

Legare's friendship with George Ticknor, begun that year, was also a lifetime tie. Ticknor had attended Gottingen University, and he told Legare it was that institution which had been the determining factor in diverting him from a career in law. 42 Had Legare gone to that school as he had planned, he too might well have shifted toward a literary vocation. Ticknor tried again and again throughout the years to entice him away from the field of politics and law, believing that Legare was essentially a literary man.

While Legare was warm in his friendships, he seldom, except in Paris and later in Brussels, gave himself time for aimless congeniality, such as his roommate experienced when he wandered about the Scottish hills with Washington Irving. 43 Legare evidently met Irving, as well as Sir Walter Scott, both of whom were friends of Preston.

Legare saw Scott frequently when he attended the Scottish Parliament at Edinburgh to listen to the debates. There he thoughtfully observed the famous writer of romances "diligently hobbling up to his daily task" and seating him-

41 Ibid.
42 George Ticknor to Francis W. Gilmer, Gottingen, May 31, 1816. Francis W. Gilmer Papers, University of Virginia Library.
43 Preston, Historical Sketches and Reminiscences of an Octogenarian, 139.
self "at his clerk's desk." Although Legare's mind was upon the speakers, he contrasted Scott's "countenance of most demure and business-like formality" with Lord Byron, "the only man who had not been at that time totally eclipsed by his genius." Ten years later Legare depicted vividly the difference in the two famous men in an article on Byron, written for the Southern Review.

Legare did not confine himself to the Parliament in his desire to listen to famous speakers. He went often to Glasgow during the winter to hear the preaching of the celebrated Dr. Thomas Chalmers as he spoke to huge crowds from the pulpit of St. John's Church. Chalmers was a curious paradox in his contrast of a rude style with complete effectiveness. He entered the pulpit and his congregation saw "a pale, sickly face with eyes half-closed." His opening words came like "weak and grating sounds" in a "broad, provincial dialect," and were accompanied with equally "rude, awkward gestures." But as he proceeded, "his looks, his tones, his gestures" were warmed "by an imagination which roamed through heaven, earth, and hell," and then "everything speaks to the heart." All that was odd about the man heightened the effect; "in fact his rudest peculiarity in those moments of lofty enthusiasm" seemed but

---

44 "Lord Byron's Character and Writings," Southern Review, V (May, 1830), 465.
"to increase the effect." His face became strong and his eyes brightened "with the fire of inspiration . . . and his voice mellowed by the depth of intensity of his feelings, . . . and yet there is no trick about him . . . for he keeps himself in the background." 46

Legare regarded Chalmers "as the first orator of Europe." He was fascinated by "the vehement involution into which he seemed to be hurried by his impetuosity and fullness, and the admirable dexterity with which he extricated his sentences." That in itself would have been an interesting game to Legare, for style, both written and oral, had been, and would continue to be, a lifetime concern with him. 47

Legare's studies in the civil law, insofar as they could be furthered in Edinburgh, were completed by the spring of 1819. Then, as he had not allowed himself to do before, he "took excursions through Scotland and England," spending the latter part of May in London. 48 He visited the British House of Commons, which he thought reduced "the contests of orators to mere piquant conversations at close quarters, over a table." He believed "that the shape, size, and character of the Hall--if it deserves the name--" must

46 Observations of an undesignated writer in an editorial in the Pendleton Messenger, August 8, 1827.
48 Ibid., 14.
have had "something, and even a good deal to do with fixing the style of English Parliamentary debating." 49

Legare crossed the channel to Paris in June. After reaching that city he immediately engaged a teacher of Spanish. He also set about studying the history of Europe, especially the changes that the Napoleonic era had brought about in contemporary political relationships. He visited all the places in Paris which were in any manner connected with the empire so recently destroyed. Suspecting that he would return to America within the year, he bought many books from the bookshops and stalls of the city. He had previously written his mother:

During my short stay in Paris in the fall, I shall provide myself with a considerable stock of books, such as I shall need and as cannot be had in the United States—principally Latin law-treatises. They are astonishingly cheap there; and I shall never again have so good an opportunity of employing a small sum to a great advantage. 50

Legare decided to return to Charleston in the fall. Two years of crop failures had hit the Legare plantation, and his family was having a hard time economically. Although he was using his own money, inherited from his grandfather, he felt that he was needed at home. Writing to his mother, he asked, more to himself than to her: "Does it become one who

49Writings, I, 460-461.
is not rich to incur such heavy expenses?" Most men, he added, would consider his activities "as too elegant & agreeable to be of any substantial value."

The thrust of responsibility was strong.

Throughout August he remained in Paris, and then traveled south toward the Alps. He went over them, as he said, "a little way." He crossed the Simplon Pass and went on to Rome where Cicero had lived, and stood silently a moment in St. Peter's where the brush of Michael Angelo had left a shrine. From Rome he went north to Venice, and then to Florence where Raphael and Leonardo had given colored beauty to the Renaissance.

From Italy he went slowly northward, more or less following the western bank of the Rhine, stopping at each historic place, studying history as thoroughly on the actual scene as he had done previously on the pages of books. With the help of a guide he studied the military maneuvers at Waterloo, and then moved on to Belgium and Amsterdam. The historic movements of recent years were firmly in his mind as he quitted Europe.

Winter was upon him before he left England. He reached New York in December, and within a few days took the stage south, glad finally to be escaping the chill northern winters, even as he traveled along almost impassable roads.

---

51 Id. to Id., Paris, June 30, 1819. Ibid.
52 Ibid.
At Washington he met the man who, one day, would appoint him to high office. John Tyler, on his way to Virginia, entered the coach and sat beside him. As the two rode toward Richmond, the young Legare made a lasting impression upon the mind of the future president, who, years later, wrote:

I remember the first time I ever saw him . . . . Chance seated me by the side of a young man who, I soon learned, had but a few days before, returned to the United States from his European travels. The slow progress of the coach gave full leisure for conversation, and the passengers were indebted to the youthful stranger for much to interest them. 53

Legare was full of his travels and, according to Tyler, "spoke with graphic power." He told of the countries he had visited, the battlefields of the Napoleonic campaigns, and generally entertained the company by an imaginative description of the beauties of Europe until the coach reached Richmond. 54

Legare returned home, a man educated, ready for the responsibilities of running the Legare plantation and preparing himself for a legal career. He said of himself: "I have learnt to be an American, to feel an interest in my country, and to be proud of my privileges as one of its citizens. . . . I shall sit down to what is to be the business

53 Lyon Gardiner Tyler, Letters and Times of the Tylers, 2 vols. (Richmond, 1885), II, 385.
54 Ibid.
of my life, if not with the most hearty zeal possible, at least with a great deal of resignation and good will."\(^{55}\)

\(^{55}\) Legare to his mother, Edinburgh, February 15, 1819. Chisolm Papers.
CHAPTER V

A PLANTER IN POLITICS

The decade of the 1820's was a time of harsh decision in South Carolina. After Legare returned from European study and travel he became involved in the political affairs of his own state, arguing before legislative committees the questions of Federal usurpation, State Rights, and finally, nullification. As the day for the South Carolina Nullification Convention drew near, opposing voices became louder and louder, until Legare's words were heard only by those who called themselves Unionists.

As early as 1821 Legare endeavored to answer for himself the question: What is the real character of our Federal system? He agreed with both Alexander Hamilton and James Madison when he said: "The sovereignty of the States was expressly relinquished as to all those powers

---

1 The earliest writings of Legare, aside from comments in letters, appear to be a series of four essays which were printed anonymously in the Charleston Southern Patriot in October, 1821. Evidence of his authorship of these articles is the statement of James Hamilton, Jr., later Governor of South Carolina, who stated in the Columbia Southern Times & State Gazette, August 30, 1830: "Mr. Hugh S. Legare and myself . . . agreed between us, that I should arrange the numbers of "One of the People" for the press, prepare an advertisement, and that he should review the pamphlet in a series of recommendatory articles in the Southern Patriot."
which were expressly given to Congress, for the Constitutional acts of Congress are declared to be the supreme law of the land." In other words, the idea of saying there could be a "sovereignty under a government" was "a contradiction and absurd." ²

Legare believed that the powers given to the Federal Government did not come from the people as a whole but from "the people of the States, considered as such." This, however, did not mean, "as some Virginia writers have hastily asserted, ³ that the State governments are parties to the contract; else why was it not submitted to them for ratification?" The answer, he said, was obvious. The state governments were not consulted because at that time they had so many different forms, some of them so "fantastic" that they did not conform to the principles set down in the Constitution. They could not, therefore, participate in its construction. South Carolina was a good example of this "anomaly," for "one-half of our delegates represent not the people, but the property of the country." ⁴

Because the state governments had had no part in the making of the Constitution they had the same standing

² Charleston Southern Patriot, October 4, 1821.
³ Legare was referring to John Taylor of Caroline who joined Patrick Henry and George Mason in opposing ratification of the Constitution on the ground that it failed to provide for individual and state rights.
⁴ Charleston Southern Patriot, October 5, 1821.
before the Federal Government as did any "single individual." Therefore, "any actual interference of the State Legislatures" in the concerns of the Federal Government would be "as much an act of rebellion as any sudden insurrection of a particular district of country."^5

Through eight years of state legislative controversy Legare maintained the logic of this position as to the "rights" of South Carolina and the usurpation of those rights by the Federal Government. He fought to retain an equilibrium between the two "powers," because his greatest desire was to see the United States as a harmonious nation reaching for a "destiny that awaits our undivided Empire."^6

Union was a passion with him, because through it could come a realization of "unlimited progression." Anything that hurt the country's united effort was almost anathema to his mind. He had a full admiration for the authors of the Constitution, but he was not a Federalist, for he believed in a full representation of all classes of people,^7 save the Negro, in the National Government. Neither was he a Jeffersonian, because he saw no particular benefits from an agrarian aristocracy, although he was a planter him-

^5Ibid., October 4, 1821.
^6Ibid., October 2, 1821.
^7This conclusion is derived from his later statement: "The best form of government is undoubtedly that in which all the interests of society are fairly represented." "Cicero de Republica," Writings, II, 250.
self. Nor did he agree with the Utilitarian theorists attached to Jacksonianism. He would not admit their basic premise that "whatever is expedient is right," calling it, sarcastically, "the boast of Jeremy." As to slavery, he accepted it, though admitting it as an evil. He believed that any improvement in the Negroes' status must be brought about "exclusively by the people of the States immediately interested."9

In the spring of 1820 Legare became a planter, working to bring the family plantation back to productivity and profit. At night he was still the scholar, for he intended to take the bar examinations soon and start his law practice. Throughout the summer he combined the two occupations: purchasing, on the one hand, seventeen additional slaves to work the land, and receiving, on the other, packages of books from Paris and from Edinburgh to enlarge his studies.

Even as the land was being brought to fertility, he read such legal tracts as Heineccius' *Fundamenta Stili Cultioris*, *Antiquitatis Roman*, *Praelectiones Academicae*, and Grotius' *de Jure et Pacis*. He read also such political and

---

8 "Jeremy Bentham and the Utilitarians," *ibid.*, 479-480.
9 "Hall's Travels in North-America," *ibid.*, 284.
economic works as the *Lettres Originales de Mirabeau*, the works of Adam Smith, Ricardo's *Principles of Political Economy* and *Taxation*, Bentham's criticism of Blackstone, as well as the Federalist papers, and Taylor's *Construction Construed and Constitutions Vindicated*.  

The two years that Legare successfully managed the plantation strengthened his belief in two economic principles: that the entrepreneur can make his own way, and that free trade would be the salvation of the commercial world. Both beliefs he reiterated in many of his speeches, in South Carolina and, later, in Congress. It was because of these opinions that in 1824 he strongly urged a legislative protest to Congress against the protective tariffs which hampered the sale of planters' goods to England.

Although Legare expressed views which ran counter to the Federalist principles of his planter neighbors on John's Island, they asked him to stand for election to the legislature from the District of St. John's Colleton.  

Many of their own sons were turning to Republican views, and

---

11 *Catalogue of the Rare and Valuable Private Library of the Late Hon. Hugh S. Legare. To be sold at Auction on Friday and Saturday Evenings, December Fifteenth and Sixteenth, 1848, at the Sales Rooms of W. M. Morrison... Washington City." A twelve-page, printed pamphlet in Chisolm Papers.*

12 *Charleston Southern Patriot*, October 14, 1821.
those of Legare were more conservative than some. His election was almost a gentleman's agreement, for whomever the small group of wealthy whites in that parish decided upon as their candidate was invariably elected without opposition. So it was in this case. There was no campaigning; none was needed. 

The legislative session at that time was a month-long meeting in Columbia, conveniently arranged so that gentlemen from the plantations could arrive at the end of November and easily return home for Christmas, with no worry about unharvested crops.

The new member answered the roll call of the House on Monday, November 27, 1821, arriving the day after the session opened. Throughout his first session Legare attended quietly to the serious work of politics. He was appointed almost immediately to the Committee on Internal Improvements. At that time it was an important committee,

13"The sons of the gentry ... drifted inevitably into the Republican party, which was now no longer Democratic in the old doctrinaire sense, but was the one party of Action." Ulrich Bonnell Phillips, "The South Carolina Federalists, II," The American Historical Review, XIV (October, 1908 to July, 1909), 742-743.

14 John's Island and Wadmalaw were looked upon as "rotten boroughs," an English term for a political unit containing few voters.


16 Ibid., 8.
although Legare shortly became opposed to the entire project being underwritten. The state was enthusiastic about building roads and canals to facilitate transportation, entirely with its own funds. An attempt was made to "render the entire river system of the state available for transportation." A project of locks and canals and interlocking roads was started, and, in some cases, finished. But farmers became tired of poling boats back upstream after their produce had been delivered to the coastal markets. The cost of tolls along the constructed roads became so high that most of the people used the still poorer parallel roads and paths. Several millions of dollars had been spent, but even the road from Charleston to Columbia was unfit for travel. Several years later, when the same condition prevailed, Legare wrote an article which appeared in the Camden Journal: "It is high time for you to enquire how it comes to pass that a system so wasteful and injurious, has been so long pursued." 18

He was named to three special committees. One, on "The Missouri Question," was appointed to investigate state reactions to the Missouri Compromise, particularly in the light of a growing opinion that the South had harmed herself by consenting, through that act, to a geographic line beyond 17

---


18 The article was signed "A Plain Man." *Camden Journal*, September 6, 1828.
which slavery could not go. The second committee was appointed to consider "The Question of the Bank of the United States." The third committee was appointed after Pleasant May, a member of the House from an upstate district, had presented resolutions offering strong opposition to the tariff policies of the Federal Government. Thus, by his work on May's resolutions, Legare was associated with one of the earliest state legislative considerations of the Federal tariff acts.

The committee was in complete agreement as to the recommendations which it offered to the House. It deplored the tariff restrictions "which were helping a few industrial areas at the expense of other parts of the nation." Yet it recognized the fact that "all states had given to Congress the power of enacting all laws relating to commerce." It condemned the practice of "the states, as distinct and independent sovereignties, arraying themselves" in opposition to the Federal Government. In short, the committee rejected the resolutions which had been referred to it.

Legare did little speaking during this session. Just before returning to Charleston he wrote his mother:

19Wallace, History of South Carolina, II, 415.
20Journals of the House, 1820, 27.
21Ibid., 28.
22Ibid., 139.
"I have made no long speech, but several sallies. McDuffie, who has seen a good deal of me, thinks, as I have been told, that if I choose, I shall realize all the expectations that have been entertained of me."\textsuperscript{23}

He had made "no long speech," nor had he sought the opportunity to do so. By this time there was in him an established habit that forced him always to seek first the knowledge that led to excellence. After he obtained that particular knowledge he wrote or spoke from a wide perspective. Therein lay his strength. In this very power of certainty, though, was a factor in his speaking which at times permitted Petigru or McDuffie or Preston to excel him. When these orators were at their best they had an excitement about them which was usually foreign to Legare. He was too aware of all the elements that made up his universe, and there was a calmness of the mind about him because of this, even as his voice spoke out in perfection of tone. Perhaps Judge O'Neall detected this flaw in the early speaking of Legare as he sat in the Speaker's chair in the House of Representatives, for he wrote:

His speeches were, beyond doubt, fine specimens of oratory; and yet, they wanted that practical force and application, which other less finished speakers gave, and, therefore, he was never regarded as the

\textsuperscript{23}Legare to his mother, Columbia, n.d., 1820. Chisolm Papers.
greatest among the great men of the South Carolina Legislature.\textsuperscript{24}

With the ending of the session Legare returned to John's Island and the second step in the program he had laid out for himself. He took the bar examinations in January.\textsuperscript{25} They were for him no task, just a step. Parrington depicted Legare's acquirements in the law when he wrote: "His legal erudition appalls the layman . . . . He quoted Vattel and Pufendorf and Bourlamaqui more readily than the South Carolina Digest . . . ."\textsuperscript{26} Legare knew the laws of the XII Tables which were the matrix of the whole corpus juris civiles, to which were added the edicts of the praetors and the Edile to form the written law. He was learned in the jus civile, the common law, and the opinions of the great interpreters of both early and modern jurisprudence. His written criticisms of Kent's Commentaries\textsuperscript{27} and the Memoir of D'Aguesseau\textsuperscript{28} summarize law and advocates from Gaius to John Marshall.

Although Legare gave most of his time during 1821 to completing the rehabilitation of the John's Island plan-

\textsuperscript{24}O'Neall, Biographical Sketches of the Bench and Bar of South Carolina, II, 35.
\textsuperscript{25}Charleston Southern Patriot, January 12, 1821.
\textsuperscript{26}Parrington, Main Currents in American Thought, II, 116.
\textsuperscript{27}Writings, II, 102-141.
\textsuperscript{28}Ibid., 550-598.
tation, he found time to cooperate with James Hamilton, Jr. on a literary vindication of the ideas of George McDuffie. The year before McDuffie had written a series of articles expressing his political views. In those essays he had defended the actions of John C. Calhoun in his measures as Secretary of War, particularly as to his expenditures of public money upon the army and upon coastal defenses. Calhoun had been attacked in an Augusta paper by a group who signed themselves "The Trio." Those authors had held up the virtues of William H. Crawford in contrast to the "ambitions" of Calhoun, whom they called "self-seeking and nationalistic-minded." 29

McDuffie had responded that "men who had no hope of being distinguished in the councils of the national government, naturally wish to increase the power and consequences of the state governments" so that they might have a better chance of acquiring "distinction." This, he said, was "a pride of the most alarming and dangerous tendency," for those "ambitious leaders" would criticize the policies and actions of the Federal Government which were beneficial to all the states. Moreover, he pointed out that under the influence of those "designing demagogues the people of particular States are liable to fall into dangerous morbid excitement . . . and affect by their proceedings the vital

29 George McDuffie, One of the People (Charleston, 1821). See, also Wallace, History of South Carolina, II, 421.
interests of the WHOLE UNION. If, he said, the Supreme Court had affirmed a law, "and it is still resisted by the State rulers, the Constitution is literally at an end; a revolution of the government is already accomplished; and anarchy waves his horrid scepter over the broken altars of this happy Union." McDuffie went on to defend the "great speech of Calhoun's on the right of Congress to construct internal improvements," declaring that the speech had shown the Federal Government to be "no object of dread," but conversely, that it was working out broad schemes for the benefit of the whole nation.

McDuffie had clearly taken a stand by defending Calhoun, who was himself at that time a strong nationalist. Legare was delighted with McDuffie's political views, for he too desired the advancement of the Union in the ways of progress. Consequently, when Hamilton broached the subject of reprinting McDuffie's essays in the form of a book, Legare wholeheartedly agreed. They consulted with their mutual friend, Jacob Cardozo, editor of the Southern Patriot, who immediately fell in with the plan. Hamilton then wrote an advertisement for the book, which Cardozo ran in his paper. The essays were then taken to A. E. Miller for printing. Legare's part in the undertaking was the writing of four

---

30 McDuffie was probably referring to Calhoun's speech of April 4, 1816, Annals of Congress, 18 Cong., 1 Sess., 1327-1330.

31 [McDuffie], One of the People, passim.
critical essays on McDuffie's work. In doing this he went beyond a mere critical analysis; along with his praise of the essays, he interrelated his own political and economic views as a component part of his analysis. Thus, early in his public career, Legare expressed in writing the basic principles which he maintained throughout his life. McDuffie and Calhoun, on the other hand, had set themselves down in print with words which they later repudiated, for in 1828 they agreed in all essentials with the very "Trio" McDuffie had attacked in _One of the People._

The legislative fight over state rights, however, had not yet started in South Carolina. Consequently, when Legare returned to Columbia for the final session of his first term, heated arguments were not a part of the proceedings. In addition to his other committee work he was appointed chairman of the committee to build up the legislative library, for which responsibility he was admirably suited. A second appointment brought him into intimate contact with the state's most paradoxical figure, Dr. Thomas Cooper. Legare was given the task of reviewing "A Bill to establish a professorship of Geology & Mineralogy in the South Carolina College." The measure actually had the simple purpose of supplementing Cooper's salary, as he was soon to be appointed

---

32 Journals of the House, 1821, 34.
33 Ibid., 65.
president and would, in addition, teach those two subjects. Cooper was almost the antithesis of Legare. A "materialistic" philosopher, he believed that "utility" was the canon to be followed at all times, and that "self interest" was the only "criterion of human action." He became a champion of slavery, a vitriolic defender of nullification, and a stormy president of the state college. Legare respected Cooper's mental powers, however, and later published several of his articles in the Southern Review. It was upon Legare's recommendation that the chair of geology was established.

Near the end of the session an incident occurred which exemplifies Legare's integrity. The legislature held a caucus to nominate William Lowndes for President of the United States. Lowndes possessed qualities which would have made him a strong candidate. But, while chairman of the ways and means committee in the House of Representatives, which had reported the tariff bill of 1816, he had shared in statewide criticism, along with Calhoun and Clay, a criticism which had often been vituperative. Even though Lowndes had


35 "There was hardly a portfolio or a mission (as embassies were then called), which Monroe had not offered to Mr. William Lowndes, who refused them all, 'believing himself to be of most use to the public in the House of Representatives.'" Ravenel, Charleston, The Place and the People, 425.
opposed raising the tariff in 1820, his name was still associated with the wartime policy of 1812 which had fathered the measure.

Legare was aware of the abuse which Lowndes would meet in the election campaign. Although Lowndes was his friend, Legare, speaking in the caucus, argued "that no good results would come" if the state "which had criticized him the most" were the state that nominated him. While maintaining that he was partial "to the gentleman whose wisdom has been demonstrated so often in Washington," he, nevertheless, asserted that South Carolina "commanded only eleven votes" and that those votes would be only a token and nothing more. Also, if "his native state" should nominate him it would only "bring the ridicule" of the other states upon him. The same thing would happen, he said, if Kentucky should speak "in behalf of Mr. Clay or Georgia in behalf of Mr. Crawford." The nomination, he believed, "should come from some place other than here." 36

The death of Lowndes aboard ship in the Atlantic a few months later impressed their final relationship so strongly upon Legare's mind that he later exclaimed sincerely in a toast during a '76 Association dinner: "To the memory of William Lowndes . . . would that fate had spared

him for the times for which nature seems to have formed him."  

Thus far Legare had sponsored no bills of his own; he had, however, learned legislative business and had taken his stand on the political questions of the day. Although he had spoken very little in the assembly he had earned the respect of his fellow legislators. Occasionally he had shown "the great powers he possessed, flashing out in debate with that peculiar eloquence compounded of imagination and logic."  

January found him in Charleston starting his law practice. For the first few months he undertook an arduous and infeasible task in commuting from John's Island in order to supervise the plantation and live with his mother and his sister, Mary. The ferry schedule between the island and the mainland was a desultory thing. In bad weather the boat did not appear at all. Even in good weather the pilot paused so often along the coast to pick up passengers that reaching his destination was a hazardous venture at best. No lawyer could keep appointments under those circumstances. When a favorable opportunity occurred, Legare consequently sold the plantation, and the family moved back.

---

37 Charleston Mercury, July 7, 1830.
38 Hayne, Lives of Robert Young Hayne and Hugh Swinton Legare, 128-129.
to his childhood home in Charleston. 39

His practice developed slowly the first year and a half, perhaps too slowly, when his great legal talents are considered. It is unfortunate that Preston used the words he did in his eulogy on Legare delivered in 1843, for they have been misinterpreted by biographers ever since. Preston said:

The bustle of the bar [and] the manipulation of forensic business . . . seemed to require more alertness, than was consistent with the heavy armour with which he had provided himself for the sterner conflicts of the profession. Hence it was that he did not rise by the ordinary process of ascending efforts, but at length descended upon the very heights of the profession, from a more elevated region in which his ability and learning had placed him. 40

When Preston spoke of the "elevated region," he was referring to Legare's appearances before the Supreme Court of the United States. What Preston was aware of, but failed to point out specifically, was that the culmination of Legare's power as a lawyer occurred only seven years after he began the practice of law! Unfortunately Legare's biographers have taken too literally the words of this formal speech by an able friend and have repeated them without considering the implications. Johnson merely paraphrased Preston: "A very remarkable degree of reputation he at once created; but em-

3930 Bull Street. Johnson, "Biographical Notice,"

40 Preston, "Eulogy on Hugh Swinton Legare," 16.
ployment, which nothing but time can bring about at a bar thronged with competitors . . . , came slowly."\textsuperscript{41}

Paul Hamilton Hayne accepted the Johnson interpretation: "The very brightness of his parts and the variety of his knowledge, seriously interfered with his practical advancement."\textsuperscript{42} B. J. Ramage, writing in \textit{The Sewanee Review} in 1902, quotes Johnson.\textsuperscript{43} In 1934 Linda Rhea paraphrased the same author.\textsuperscript{44}

A consideration of the facts will reveal that Legare's progress was anything but slow. Beginning his practice in a city noted for the abilities of its lawyers—such men as Petigru, Hayne, Thomas and Frederick Grimke, William Drayton, Henry W. DeSaussure, and many others—Legare in seven years was arguing before the Supreme Court of the United States. In eight years he was Attorney General of the state, solicitor for the Bank of the State of South Carolina, trustee of several great estates, and generally handling as many cases as he could find time for. An examination of the Clerk of Court's records in the Court of Equity at Charleston reveals the hundreds of cases he brought

\begin{enumerate}
\item[41] Johnson, "Biographical Notice," 1111.
\item[44] Linda Rhea, \textit{Hugh Swinton Legare, A Charleston Intellectual} (Chapel Hill, 1934), 74-80.
\end{enumerate}
before the courts from 1822 until 1832. 45

As Legare again became established in Charleston
the citizens demonstrated in several ways the affection and
respect they held for him. In December, 1821, he was
listed as a trustee of a new academy, along with some of
the more distinguished members of the community, including
James Hamilton, Jr., Reverend Bachman, Thomas S. Grimke,
Reverend Gilman, William Crafts, Reverend Buist, and Joseph
Clark. 46 In 1822, although he had not offered himself for
office, his friends advertised his name in the paper as a
candidate for the legislature from St. Philip's and St.
Michael's Parish. 47 Because of his change of residence he
was no longer eligible to represent St. John's District.
When the returns came in, however, he had not won a seat
but had polled 511 votes, a good showing after a residence
of only a few months.

The final proof that Legare had been fully taken
into the heart of Charleston was offered the following
summer when he was invited to be the Orator of the Day for

45 Clerk of Court's Book, Charleston District, 1821-
1846. An unfiled manuscript now in the Historical Commission
of South Carolina. See, also, Gantt Register, 1821-1832.
Unfiled manuscript, ibid.; Rough Minute Book of the Clerk of
Court, Charleston District, 1821-1832. Unfiled manuscript,
ibid.

46 Charleston Courier, December 4, 1821.
47 Ibid., October 19, 1822.
the Fourth of July celebration of the '76 Association. This was Legare's first important speech in public life, and certainly of more importance to him than the few deliberate efforts he had made in the legislature during his first term.

The Fourth of July was a day of oratory in Charleston. All the patriotic, fraternal, military, and social organizations met at the market place and formed in procession for a grand march. The four strong patriotic societies, the Order of the Cincinnati, the '76 Association, the Revolutionary Society, and the Palmetto Society, composed mostly of veterans of the Revolutionary War and their sons, took the most prominent places in the activities of the day. Besides these, there were mechanics' organizations, societies of tradesmen, women's groups, and visiting dignitaries. All were placed in the proper positions in a long parade which moved off at noon to the accompaniment of fife-and-drum corps, the shooting of cannon, and the commands shouted to military escorts. After a march of some two miles through the city streets the various units separated themselves from the parade, each going to its respective meeting hall to listen to speeches and toasts.

In 1822 the '76 Association met with the Palmetto Society in St. Philip's Church. Both groups, together with

48 "Oration, delivered on the Fourth of July, 1823, before the '76 Association," Writings, I, 257-269.
their wives and children, filled the beautiful church to its capacity. The long hall, with its Graeco-Gothic supporting pillars, commanded solemnity from all who gathered there.

The occasion and the audience demanded a panegyric upon the heroes of the Revolution. Many persons sitting in the church facing Legare, including two of his own uncles, had carried guns or fired cannon against the British not too long before. Annually they had listened to declamations in praise of themselves, in this same church and on the same date. The young man was one of their own sons; he would speak in the traditions of his fathers.

But Legare had a message of his own to deliver. The theme which he developed was that the future of his country was of greater importance than was its past. He knew, as he rose to speak, that to stress the future he must first praise the past. Hence, much of his speech was laudatory. The first part was directed to the hearts of the older men before him.

He began by declaring that even Cicero, could he have spoken to free men such as were present on the occasion, would have spoken more eloquently than he did before the tyrants of Rome. That could he have seen "the incredible prospect... opening up around us today," he would indeed have uttered "mighty words."

We are in a "peculiar position," Legare told his audience, in that "we do not boast of triumph" over our
enemies, nor do we plunder other nations. "Our triumphs," he said, have rather been those "of reason--of happiness--of human nature," which "the good and the wise of the world acclaim." A continent was set apart for the cultivation of "happiness on rational principles" with the help of "modern science" and political liberty. In America, he pointed out, man could walk "in all the dignity of his nature--with none to intimidate," and "with no superior upon this earth."

Throughout the body of his speech Legare discussed the characteristics which distinguished this country from others. He asserted that the Revolution was primarily a work of reason, which differed from "most rebellions that came about only after long suffering." He quoted Burke's metaphor that our forebears had "augured misgovernment at a distance, and sniffed tyranny in every tainted gale." This statement, he said, was "just," for there had been no atrocities, no proscription, and "even the right of taxation was a prospective evil rather than an actual grievance."

That Legare was thinking of the society of Charleston, as it sat in front of him, is evident in the illustration of a second major point: "These men who resisted were all of most sensitive mind and best informed on the subject of their rights." They were, he added, the "devoted Huguenot" and the "austere Pilgrims who had quitted Europe because it was unworthy of a republic." They were men "who regarded liberty as a duty, who feared God and knew
no other fear."

A third point in the speech came straight from Thomas Paine: that the situation of the country at such a great distance from England contributed much to the success of the rebellion. His fourth, which he developed at some length, was that the Revolution "occurred in a new world."
The result, he told his audience, was that in this country "empires can start up in a period less than that between infancy and manhood." By "empires" he meant industry, agriculture, and the diffusion of knowledge. He predicted that "in less than a half century our population will have swelled up to fifty millions," and that with the enlarging population would come an "embellishment of the arts."

Moreover, "the Revolution," he said, "gave our fathers an opportunity of purifying society," which they had the courage to do, for it was "a special Providence that kept men from this continent until the mankind of Europe was enlightened." America, consequently, was "peopled by the elect of the earth," and this gave the human race an opportunity to begin "a new career in a new world."

In this, his first speech since his youthful college orations, Legare proclaimed to the adult audience before him his full faith in republican government. He brought forth, seriously and vigorously, his plea that citizens of the country should be aware of the mighty possibilities of their land and should avoid anything which would
destroy that future. He asked: "Can we be indifferent about the progress of those principles" of democracy? Only republicans, he said, "can know liberty," and "these apostles of despotism," who attempted to set up monarchies in Europe, "would have passed at Athens for barbarians and slaves." And "what land," he asked, "had ever been visited with the influences of liberty, that did not flourish like the Spring?"

Legare's next words were in defense of the country he had just been praising. He was aware, he said, that America "was systematically vilified by British critics," but it should not be necessary to answer "their shallow and vulgar sophistry." They had shown "contempt" for American manners and customs and had ridiculed "American Rusticity." Nevertheless, he did reply to the accusations:

Living, as we do, in the midst of a forest, we have been principally engaged in felling and improving it. . . . These arts, which suppose wealth and leisure and a crowded population, are not yet so flourishing amongst us as they will be in the course of a century or two. . . . Instead of exciting wonder and disgust, one is only surprised how it should even have attracted notice—nay, the vehement and irrepressible hatred, with which these revilers themselves have so abundantly honored us.49

The critics had asked whether America were "destitute of genius and sensibility and loftiness of character, and all the aspiring that prompt to illustrious achievements, and all the elements of national greatness and glory." Legare

49Ibid., 268.
answered their question:

We may appeal with confidence to what we have done and to what we are, to the Revolution we are this day celebrating, to the career we have since run, to our recent exploits upon the flood and in the field, to the skill of our diplomacy, to the comprehensive views and undoubted abilities of our statesmen, to the virtues and prosperity of our people, to the exhibition on every occasion of all the talent called for by its exigencies and admitted by its nature . . . .

There were many other arguments, he said, "to prove that the character of the nation is altogether worthy of its high destinies, but a sufficient answer would be "that we live under a form of government and in a state of society to which the world has never yet exhibited a parallel."

The glowing promise of American destiny and the glory of the past constituted his theme as he rationally moved to the peroration: "Can anything be more striking," he asked, "than the idea of an imperial republic spreading over an extent of territory more immense than the empires of the Caesars, in the accumulated conquests of a thousand years . . . , a Republic in which men are completely insignificant, and principles and laws exercise . . . a peaceful and irresistible sway!" He concluded with a grave warning, which he was soon to utter again: "The fortunes of the species are identified with those of the Republic--and if our experiment fail, there is no hope for man on this side

50 Ibid.
of the grave."

In this early oration of Legare there was a gravity of thought. It was more than a speech to stimulate an audience on a Fourth of July celebration. It was an expression of a political ideology, thoughtfully evolved, the product of a self-reliant, clear perception. The language was that of a young man uttering a plea which he earnestly hoped his audience would accept as a guide to their future actions.

---

51 Ibid., 257-269.
CHAPTER VI

THE PROTEST

During his three terms in the state legislature, from 1824 to 1830, Legare saw that body move toward measures which, to his mind, would forever separate South Carolina from the greatness that lay before the American nation. His course in the assembly not only protested the enactments of the Federal Government which hastened that separation, but he used the full powers of his eloquence and learning to prevent fatal action on the part of the state. When principles of nullification were angrily announced and emotional men no longer listened to reason, Legare worked to unite those who believed in union. From that group arose a political party called by themselves Union and State Rights, although more popularly known as Unionist.

Two major issues between the state and the Federal Government threatened to bring about a crisis. One had social implications, the other economic. Both were concerned with reflections of federal statutes upon state affairs, and arose from the use of the Federal Government's power to regulate commerce. The first was a question of a
state's right to regulate the institution of slavery within its own borders as it saw fit; the second, at the time the stronger issue, questioned the right of the southern planter to raise whatever products he chose and to sell them upon the most profitable market. Besides those questions, national in scope, two others with local implications demanded Legare's advocacy. These were brought before the legislature as a part of a state constitutional reform movement. The first was a project to codify the laws of South Carolina; the second was a demand that judges of courts be elected for a limited term instead of being appointed for life.

The problem of South Carolina's right to regulate the conduct of slaves and "free persons of color" was set firmly upon Legare's shoulders soon after he was returned to the legislature in 1821, this time representing the Parish of St. Philip and St. Michael in Charleston District. As chairman of the Committee on Unfinished Business he was called on to review the State Act of 1822 which demanded imprisonment of free Negro seamen while their ships were in the ports of South Carolina. This law had been but a step in the progressive hardening of the state's attitude toward slavery. The first step, of course, had been the Missouri Compromise. This was considered a political victory by many

---

1 Charleston Courier, September 24, October 18, 1824.
in the South, but some Southerners, such as Charles Pinckney, soon saw that the limited number of states which could be carved out of the territory allotted to the slave holders would eventually give to the North a proportionately larger representation in Congress. A lessening representation meant an increasing inability of the South to gain redress for grievances by vote of her delegates in Congress.  

The incident which poured cement into the foundation of the Southern position was the trial of Denmark Vesey in 1822. "Horror had crept over the state" when it was revealed that six thousand slaves had planned to burn Charleston, rob the banks, kill the men, ravish the women, and seize the ships in the harbor to sail away to San Domingo. Revulsion at the possible consequences of this plot caused the people of South Carolina to take greater precautions than ever against further dangers of this kind. The imprisonment of colored seamen was later one of the legislative results. The Act applied to the vessels of any nation "having on board any free negroes or persons of color, as cooks, stewards, or mariners." Those persons were taken off the ship and placed in jail until the ship sailed.  

2 After the passage of the Missouri Compromise Charles Pinckney, then in Congress, had declared that "in winning a temporary victory" as to the status of Missouri, South Carolina had acceded to the principle that Congress could exclude slavery from the territories. Miles' Weekly Register, XVIII (1820-1821), 349-350.  

at which time the captain had to redeem them, paying their jail expenses. If he failed to do so, he was subject to a thousand dollar fine; if he failed to pay this, the imprisoned men would "be taken and deemed as absolute slaves." ¹

Repercussions from this law began when Henry Elkison, a mulatto, was seized in Charleston Harbor from the British ship "Homer" out of Liverpool, and placed in jail until the ship's departure. The case was brought to court in August, 1823. Mitchell King defended Elkison. Judge William Johnson handed down the decision, and with it an opinion which threw the whole problem back upon the legislature. The opinion challenged the law when Johnson stated: "Upon the whole, I am decidedly of the opinion that the third section of the state act now under consideration is null and void, and that every arrest made under it subjects the parties making it to an action of trespass." ⁵

Colonel Benjamin Faneuil Hunt who, with Isaac E. Holmes, had prosecuted the case, was far from satisfied with the decision and, as a consequence, published a series of articles on the subject in various newspapers. Later he selected the substance from them for a pamphlet, entitled "Caroliniensis con the arrest of a British seaman," as an

¹ Journals of the House, 1822, 214.
⁵ Elkison v. DeLieseline, 2 Wheeler's Reports (South Carolina), 56 (1823).
answer to the opinion of Judge Johnson. Hunt berated the
decision, declaring that there was no need for the judge
to express an opinion as to the constitutionality of the
law, nor was it any part of his duty to reflect upon the
state legislature.

In December, 1825, at the request of Governor
Richard I. Manning, the matter was brought up from Legare's
committee on unfinished business. Hunt, who was also on
this committee, spoke vigorously in favor of the statute.
Legare gave his opinion as to the constitutional position
of South Carolina in relationship to the statute, which he
later followed with a significant legislative speech aimed
primarily at Hunt. As chairman of the committee, however,
Legare had more important matters to consider than merely
attacking the opinions of a fellow committee member. 7

Peter Petrie of Liverpool, owner of the British ship
"Marmion," had complained to H. W. Addington, President
of His Majesty's Board of Trade, as early as January, 1823,
about the seizure in Charleston Harbor of four of the
"Marmion's" seamen. Addington had then written a strong
letter to the Secretary of State, John Quincy Adams. Stratford

6 Caroliniensis con the arrest of a British seaman,
in answer to Judge Johnson's opinion, n.d. Carolina
Library.

7 Journals of the House, 1825, 6.
Canning, of the British diplomatic service in Washington, also wrote to Adams with a not too heavily veiled threat:

If I abstain for the present from laying before you the particulars of the transaction, it is only in the persuasion that ample redress has by this time been obtained on the spot, at the requisition of His Majesty's consul at Charleston . . . .

Before acting, Adams asked the opinion of the Attorney General, William Wirt, as to the constitutionality of the South Carolina action. Wirt replied:

No state can interdict a vessel which is about to enter her ports in conformity with the laws of the United States, nor impose any restraint or embarrassment on such vessels, in consequence of her having entered in conformity with those laws. For the regulation of Congress on this subject being both supreme and exclusive, no state can add to them, vary them, obstruct them, or touch the subject in any shape whatever, without the concurrence and sanction of Congress.9

Adams sent the letters from Petrie and Canning, along with the opinion of the Attorney General, to the Governor of South Carolina, who at that time was John Lide Wilson. At the same time he wrote Wilson: "I have it in charge to express the hope of the President that the inconvenience complained of will be remedied by the Legislature of the

---


9 William Wirt to id., Washington, May 8, 1824. Ibid.
State of South Carolina."\(^{10}\)

When Governor Wilson sent these papers on to the legislature he added a defiant and contradictory opinion of his own:

South Carolina had the right to interdict the entrance of such persons into her ports, whose organization of mind, habits, and associations render them peculiarly calculated to disturb the peace and tranquility of the State, in the same manner as she can prohibit those afflicted with infectious diseases to touch her shores. The law of self preservation derives its authority from a higher source than any Municipal or International law—and it should be the first policy of government to prevent, if possible, such encroachments, as eventually would lead to the injury and destruction of all that the citizen holds most dear. . . . It therefore rests with those whose rights are to be affected, to judge how long such laws shall exist, as were enacted for the peace and security of the community.\(^{11}\)

All this intervention from Great Britain, from Washington, and from Hunt and his friends, placed upon Legare the necessity of a double objective as he made his speech on "The Elkison Case" in December of 1825. First, he knew that the law must be so amended that Adams and Canning would be satisfied. Second, he realized that he must speak in such fashion as to prevent the already aroused opposition to Federal intervention in the state from swaying

\(^{10}\)John Quincy Adams to John Lide Wilson, Washington, July 6, 1824. Miscellaneous Papers, Unfinished Business, 1824. Ibid.

\(^{11}\)John Lide Wilson to the president and members of the Senate, Executive Department, Columbia, November 25, 1824. Ibid.
the legislative body to take a stubborn stand, which would force the Federal Government to act directly. In other words, Legare had to remove any likelihood that the state would accept Hunt's position. He must also agree with Wirt's opinion as to the constitutionality issue without seeming to be influenced by the declaration of an Attorney General who had ruled against a state law.

The dual responsibility on Legare's mind was evident in his opening words: "The turn which this discussion of the Elkison case has taken makes it a subject of grave and general interest to all Americans. It involves one of the debatable points, which, from the nature of our institutions, must be perpetually arising." He pointed out that an ill-advised decision at that time would "seriously threaten the welfare and the very existence of the Union." He perceived the Southern slave problem to be one of growing magnitude: "It requires no gift of prescience to foresee that the greatest difficulties with which we shall have to contend, will grow out of the difference between the situation of the North and the South with respect to domestic servitude." The gravity of the problem he stated in more graphic language: "This, if not the only, is certainly the capital source from which conflicts and disorders of the most serious kind may be expected to flow in upon us . . . ." Foresight as to the culmination of those "conflicts" was shown in his next words: "It is impossible
to consider the heats and prejudices that prevail on all sides without being apprehensive that it is destined to become, and that too, at no distant day, fruitful of these evils in their very worst form."

Hunt had emotionally referred to the "horrors" of potential Negro uprisings as "the dangers that stalk by night: violence, and murder, and rape." Legare saw the issue as a constitutional one: "I shall confine myself exclusively to the question of Constitutionality. With the other matters which have been so largely expatiated upon in the course of a very angry controversy, I desire to have nothing to do." He pleaded, therefore, for a logical approach to the problem of the relationship existing between the state and the national government:

The minds of men ought to be fully prepared for such an enquiry . . . . They ought to feel deeply, seriously, that it is no less their interest than their duty to pursue it with their most honest wish to arrive at the truth; and if the fear of some pressing danger . . . . inclines them to embrace, without examination, a particular conclusion, they should take care that, in their hurry to escape the evils which are apparent, that they do not throw themselves into still greater danger.\(^{12}\)

Then Legare took up the basic problem, thus narrowing the discussion to the specific point: "Has the State . . . a right under the Constitution . . . to pass a law by which a mariner on board a foreign ship . . . may be thrown

\(^{12}\)"Elkison's Case," an unpublished manuscript in Chisolm Papers.
into prison, and under certain circumstances, sold as a slave?" That was the issue to be determined, he said, that and nothing more.

Legare then examined Hunt's argument, commenting, derisively: "I do not remember to have seen so strange a medley of commonplace and paradox—such an alarming air of boldness and originality given to propositions that turn out, upon a little inspection, to be harmless and simple."

Hunt had been emotional, vehemently so, in his insistence that the state should take a stand against the Federal Government. Equally emotional responses would have been a weak weapon, and Legare avoided them, using instead the stronger one of ridiculing Hunt's false analogy:

Vattel is gravely cited to prove that a "nation consists in the duration of the political association of which it is formed, and that if a period be put to the Association, the nation or state no longer exists" though (which is really astonishing) "the individuals who compose it still exist," that is, when the Association ceases, it ceases. On the next page he asks with an air of triumph "What nation ever disputed the right of the Chinese to protect themselves from the contagion of European manners by a sort of universal non-intercourse act?" Why, who ever did? Who disputes the power of the United States to do so! although unfortunately for Mr. Hunt's illustration the same answer would scarcely be given to the question whether the Legislature of South Carolina could do as much.13

He pointed out that the fallacy was tied up with Hunt's basic

13Ibid.
premise and its immediate corollary. "It is surprising," he said, "how an ingenious lawyer could have fallen into it." Moreover, continued Legare, "Hunt seems to be so full of that notable discovery that South Carolina was a sovereign state before the adoption of the Constitution, that he does not perceive what is however unquestionable, that she ceased to be so by signing that Instrument as to all those powers which she confers directly and constructively upon the National Government." He went on to show that South Carolina, in all questions "relative to peace and war, commerce, etc., retains no more sovereignty than if she had never existed at all as an independent commonwealth."

Having established the falsity of the premises basic to Hunt's case, Legare moved easily into the position he wished to take against the State Act of 1822: "Whenever an interest, confessedly national, confessedly within the Constitution of the United States is concerned, not only our supreme, but our only government is the President and Congress." He turned, then, for one last fling at Hunt: "Every word that Vattel says of the sovereign power means, in our complex system, the Government of the United States. I have no objection to Mr. Hunt's citing, if he pleases, commonplace writers. I only ask him to apply them to the
At no time did Legare mention the ruling of the Attorney General of the United States. Instead, he neatly summarized Wirt's letter by means of a syllogism:

The General Government... has a right to make a commercial Treaty on such conditions and in such form as it may see fit. The commercial Treaties are the supreme law of the land, and everything in the laws of a state that is inconsistent with such Treaties is Null and Void. The Law of 1822 is inconsistent with the commercial Treaty between the United States and Great Britain—therefore it is inconsistent with the Constitution of the United States, and so is void.15

The logic of the syllogism won the case. But Legare still had to clinch the nail he had driven into Hunt's arguments. During the remainder of the speech he talked directly to the House, referring to his opponents only by the ambiguous term of "gentlemen." He declared that if anyone would look into the syllogism he would "immediately perceive that there can be no dispute about the general proposition touching the Treaty power," and that "the whole question turns absolutely upon the minor proposition: the fact that the law of 1822 is inconsistent with the Treaty," because

14 Before that particular audience irony and sarcasm were good weapons to use against Hunt. O'Neall was Speaker at the time, and later wrote of Hunt: "Colonel Hunt was an able advocate. I never regarded him as a safe legal adviser. He seemed to me to be rash and overconfident in his legal conclusions." O'Neall, Biographical Sketches of the Bench and Bar of South Carolina, II, 440.

15 "Elkison's Case." Chisolm Papers.
that law "makes an exception" of such British subjects "who happen to be colored."

The opponents had argued that there was no inconsistency between the statute and the treaty. But what would they have said, Legare asked, if the treaty had "denied to persons of color the rights of entering the ports of the United States?" Would the law of the statute have been constitutional then? Could a sheriff of Charleston have gone aboard a British ship and carried away a colored person in violation of such a treaty clause? "Certainly not," was his answer. With his last sentence Legare gave a final tap of the hammer: "If then, it be shown that [Negroes] were in effect excepted by operation of law, the consequences must be the same." 16

On this occasion Legare had chosen to make what was, essentially, a forensic rather than a deliberative address before the legislators. He was continuing a case which Hunt had argued earlier before a district court. His words made justices of his auditors, most of them lawyers themselves, and as such more ready to be appealed to by legal reasoning which had already been upheld by a judge.

Yet Legare had an objective which went far beyond a psychological effect upon a given audience. Reactions throughout the state against governmental policies were

16"Excepted" here has the legal meaning of "barred."
beginning to erupt in emotional words. If these feelings
of resentment and anger were not checked soon, there would
be a direct clash between state and Federal authorities.
Legare believed that such a clash could never be reduced
into a state remedy. Furthermore, unless the state
yielded on a point in which it was in error constitution-
ally, the legislature could not logically use constitution-
al grounds in its own protest against usurpations of power
by the Federal Government.

The law was amended so that it no longer inter-
fered with the Federal treaty. Legare had gained a double
objective\(^{17}\) and, furthermore, had persuaded the legislature
to place the state in a favorable position in relationship
to the more complex issue of state rights. Had not the
state admitted its error in this instance, all of Legare's
arguments on the correctness of the state's position on
larger questions would have been made ineffectual. His
future legislative strength had thus depended upon this
contest with Hunt.

With a reputation for legal erudition already
established throughout the state and enhanced by his serv-

\(^{17}\) The amendment of that section of the statute
under question changed the procedure from the one of jail-
ing colored persons on ships entering the harbors to that
of compelling ships with such persons on board to anchor
"not less than 150 yards from the wharf, and to load and
unload the same with lighters." Charleston *Courier*,
December 20, 1825.
ices on the Judiciary Committee of the legislature, it was
natural, when in 1826 Governor John Taylor called upon the
general assembly "to examine the possibility of the codi-
fication of the laws of the State," that Legare was named
chairman of the special House committee for this purpose.
He strongly disapproved of such a project, and when, on
December 16, he made his report before the House of Repre-
sentatives, he used the recommendations of the committee as
the occasion for an extended speech against any legislative
attempt to simplify either the common or the statute law of
the state. The first recommendation was that it was inex-
pedient to codify; the second, that it was inexpedient to
reduce the statute law, together with the improvements which
had arisen out of the common law; the third and fourth,
that two persons, with salary, be appointed to frame a code
of the statute law alone. 18

In this speech Legare was answering a statewide
cry of the people for judicial reform, rather than meeting
any concerted opposition within the legislature. The
Governor had merely resolved the many petitions sent to him.
Since 1812 discontent had developed with "life tenure"
judges. Some had been "autocratic," others had been guilty
of "gross habitual drunkenness," while one had unlawfully

---

18 Report of the Special Committee of the House of
Representatives "as relates to a Codification of the Laws,"
December 16, 1826. Manuscript, Reports of Committee, 1826.
South Carolina Historical Commission.
sold property "for the benefit of a creditor." Impeachment proceedings had been instigated by the House on several occasions, and Legare himself was chairman of the committee which later carried on an investigation against Judge Waddy Thompson in 1827 and 1828, which resulted finally in Thompson's resignation. Legare also introduced impeachment proceedings against former Governor John Lide Wilson for his inability to account for funds under his trust.

The move toward codification of the laws was part of a reform program. The great inequalities were mostly in the criminal law. Imprisonment for debt was not applied impartially. Criminals sentenced to jail until fines were paid could often "swear out," claiming insolvency; whereas honest debtors "were denied the privilege." Some criminals were hanged, while others were branded for similar crimes.

The problem placed upon Legare was that of saying "no" to a phase of a reform movement which had been gaining volume through the years and which was finally erupting.

Again he spoke to the members of the House, which contained many able lawyers, even though his injunctions were for the benefit of an opposition who advocated codification. He, therefore, chose to make an instructive speech, one that

19 Journals of the House, 1827-1828, passim.
21 Ibid., 463-465.
explained why the law had become what it was. As a consequence, he intentionally spoke as from an authority over and above that of the reformers.

"Those who recommend the turning of the whole body of our jurisprudence into written law," he began, "talk of it as a mere heap of feudal abuses. They tell us that it is a tissue of lies, and quote the pledges of Roe and Doe to prove it. The theory of its pleadings they denounce as a system of paltry quibblings and chicanery, and its practices as a vast scheme of extortion and fraud." The men who make these accusations, he continued, "hope to restore things to the simplicity which is the perfection of art," and to do this they would "substitute for the precision, directness, and brevity of the declaration and the plea, the loose, vague, and cumbersome generalities of the bill or the libel."

Legare accused those who argued for codification of using as the basis for their proposition all "the abuses of the English system." They speak, he said, "as if they were holding forth at a radical meeting in London." He showed that the law they spoke of had changed, because "the whole law of contracts," the "most important part of jurisprudence, comes through Lord Mansfield" and before him, "through Bracton and the old writers" and great judges, "from the Justinian collection," which was "a codification in the first place."
Proponents of codification had declared that the South Carolina law was feudal. The epithet had evidently rankled in Legare's mind, for he repeatedly returned to the point. "The truth is," he said, "that the only department of the law in which the least trace of feudal doctrine is visible is the learning of remainders, escheats, and a few other like subjects. Even with these, its connection is slight and indirect." Is it necessary, he asked, simply because "feodal principle is mixed up with our law of land property," to turn our entire jurisprudence into a series of statutes?

Legare's argumentation in this speech was again that of the forensic address. His exordium had been merely the questioning of an opponent's position, leaving him challenged, with the full burden of proof thrown upon him.

Not that all the statutes and judges' rulings written up in the South Carolina Reports were satisfactory to Legare--far from it. Though he fought against codification, he recognized the need for changes in the law:

Some changes in addition to the mighty ones that have already been made in our law are still necessary. Let them be made. All our statutes should be revised, condensed, amended, explained, digested. They are in a sad state; let them receive such improvements, or be reduced into the form of a code, with the interpretations of the courts embodied in it.²²

²²Charleston Courier, December 2, 1826.
But this was a question distinct from that of reducing the common law to a written book. To Legare it was a matter of feasibility: "We could place the entire common law into a code," as the five codes of France were reduced, "if we could find as able jurists for our redacteurs!" But "is there," he asked, "any one who will undertake such a gigantic and difficult task?"

After suggesting that there were no men qualified to codify the law, Legare proceeded to the second of four contentions: the virtues of a code after it had been classified. "France," he said, "needed codification, because she had discordant laws," and at the time she "had in her courts a body of accomplished lawyers." He pointed out, however, that even with such men, who had compiled a code better "than the Justinian collection," it did not follow that the "principles gathered" were "perfect as rules of right" or that the collection as such was "a good one."

The same truth, he declared, applied to the Justinian collection: "There are learned men who have thought that Justinian did more harm than good to the civil law, by his slovenly and unphilosophical method of compilation, and by substituting, in many instances, the language of his own degenerate and barbarous age . . . ."

Legare then moved to his third point, which held the essence of his position and explained the stand he took. He praised the modern principles of the law and
defined that law as "reason and the perfection of reason."

With the exception of a very few instances, nothing that is not reasonable is good law. And hence we venture to say that no written law ever approaches to perfection, either in respect to theoretical beauty or practical fitness, until it has been reduced to the form of unwritten or common law—until the inflexible matter of the original statute has been melted down and moulded into a more convenient shape, by the plastic hands of the commentator or judge.23

The words were expressive both of Legare's love for, and his understanding of, the law.

His final point of attack upon the reformers was that "written law cannot exempt us from the uncertainty and discretion of the judge," and that even under the best of codes the judges would find themselves "without the means of executing the true purposes of the parties whose differences are submitted to them." In many instances, he added, "the judge will find himself without a law. It is necessary, therefore, to leave him power to supply the law by the natural lights of integrity and good sense."

That was his case. He had shown the meager value of codes. He had given four good reasons why the form of the law in South Carolina was better than codification. He then summed up his position: "Why not codify the law? The answer is simple—because it will cost a great deal to do so," and considering "the present state of our law it can

23 Ibid.
do very little good and may do much harm." The digests, he added, "which have already been executed by private hands and which are improving every day, wholly supersede the necessity of such a work for professional purposes."

His conclusion was the remark of a thoughtful speaker, discussing a serious subject learnedly, leaving his audience an idea to ponder: "Upon the whole, the committee would recommend a profound study of our jurisprudence, rather than the ambition of reforming it. A thorough knowledge of jurisprudence is a highly profitable and glorious distinction among men—especially in an intellectual and a free country." 24

Legare submitted his resolutions and moved their adoption. The House agreed overwhelmingly, 109 to 10. 25 The Charleston Courier remarked that "the House have fortunately arrested the wild scheme of codifying the common law." 26 There was a curious quality in the almost complete acceptance of Legare's views, as if, in a sense, he had laid down the law from a final authority. For no one quarreled with him on that issue again.

Of all the attacks made by the reformers against

24 Ibid.
25 Ibid., December 16, 1826. See, also, Camden Journal, December 23, 1826.
26 Charleston Courier, December 20, 1826.
the judicial system of the state, the most hotly fought was that upon the judges themselves. Resentment against some of the judges for irregularities committed while in office led to an attempt to replace all twelve of the state judges with men more under the control of the legislature. So heated did House discussion become that a committee of the whole meeting was immediately resolved. Legare, who himself had inaugurated impeachment proceedings against Judge Thompson and John Lide Miller, found himself in the paradoxical position of defending the system which contained those judges.

The reform bill had come out of the Judiciary Committee of which Legare was a member. James Gregg, chairman of that committee, had proposed a ten year limitation upon the years of a judge's service. To this motion Waddy Thompson had offered an amendment that the judges of the "Superior courts shall hold their offices during good behavior or until they respectively attain to the age of sixty-five years." He also added a further resolution: "That the judges could be impeached at any time with a two-thirds vote of both branches of the Legislature." Time after time the Committee of the Whole met, debating the question, until November 26, 1827, when Legare made his long speech on the subject. Newspapers took quick notice of the


28 Ibid.
progress of the arguments. During the first week a Columbia paper stated: "Legare debated in the House of Representatives with Andrew Pickens Butler. So far this subject has been handled with uncommon ability and eloquence." The Charleston Courier remarked that Legare "argued on a constitutional point with Butler. . . . The debate continued Wednesday, and on Thursday past three o'clock—when finding it impossible to bring it to a close, . . . a motion was made to adjourn by Mr. Legare."^29

On the following Monday, November 26, the debate went into its final stages. Legare, who by parliamentary right would have held the floor, yielded to Butler. That gentleman was opposed to two of the resolutions, but favored the one which would allow the legislature to impeach by a two-thirds vote. Against the rest of the measure he argued that its language was revolutionary. He maintained that if there were any fault to be found with the judges then in office, the guilt lay with the legislature itself, for they had appointed them.

Legare next took the floor and held it for two hours. He was opposed to all three of the resolutions. He

^29 South Carolina State Gazette and Columbia Advertiser, November 28, 1827. Andrew Butler of Edgefield, South Carolina, succeeded George McDuffie in the United States Senate. It was because of remarks made about Butler in debate that Preston S. Brooks, years later, made a personal assault upon Charles Sumner.

^30 Charleston Courier, November 27, 1827.
began by asserting that the "root and branch reformers" were attempting "to overturn a beautiful feature of the South Carolina Constitution," and that although the adherents of the bill "had referred to the Revolution with admiration, their present efforts offered a wretched commentary upon the lessons then inculcated." He commended the motives which governed the leaders of "these schemes of reform; they were honest in their intentions but most woefully mistaken in their views." Butler had referred to the reforms of Marat and Robespierre during the French Revolution. Upon this reference Legare digressed at length, summing up the results of the Revolution, and ended by asserting: "That Revolution spoke to us as a voice of warning in its final days which, I hope, will not be lost upon the committee."

With that he brought the argument back to South Carolina: "What is it that is now proposed? Is it a petition relative to some road, bridge, ferry, or someone asking to be placed upon the pension list? No, Mr. Chairman, it is a great and awful change in our happy system of government which is proposed to be scattered to the winds." Almost conversationally he again digressed in order to bring in an analogy applicable to the results of the reform: "During the last summer I heard a highly respectable citizen of Georgia bewailing in the bitterest terms of anguish, the abomination under which the citizens of that state are languishing
from an elective judiciary which is now frittering away their rights and property."

There were three major complaints of the opponents against the judicial system. Legare took them up one at a time, answering each as he went along. The first was a charge of incompetency on the part of the judges then in office. He admitted that "some of them never had been and never would be fit for the station." But this, he said, "was not the error of the system," for he doubted if twelve good judges could be found "at any one time to fill those stations, and if there were, would the best ones be selected?" He feared not.

Another "ground of complaint" was the delay within the courts. Legare claimed that the delays were "more frequently owing to the lawyers than to the judges." The lawyers, he said, caused postponements, they took more time than necessary for their pleadings, and the "forms of pleadings were not observed in the State, as they should be, and consequently much of the time of the court was lost." He admitted that "there were some cases of erroneous decisions in the lower courts, but they were corrected by the Court of Appeals." At that point he asked the opponents "if they expected by the contemplated change in tenure in office to avoid such errors?"

Before he finished with this point he developed a picture of what the scene would be like under the dangerous
alternative of an elective judiciary. He declared that "there would be proscription to prevent the re-election" of a judge, and that even "the little stray dogs, blanch and sweetheart would join in the chase, and be barking at his heels." He pointed out that men "with no complaint against them" would be removed, and others, "totally unfit," put in their places. Judges, he said, would be placed "in situations in which they will be told how they must decide or they will be turned out at the next election. They will be rendered incapable of doing dood."

The final complaint was that the judiciary was "an anomaly, the only aristocratic feature of our government." Legare answered that with his definition of liberty: "Liberty means that the people should possess the power, through their representatives, to make the law, that those laws should be good; and that the laws, when made, should be rigidly and impartially carried into effect."

In the first half of his speech Legare had dealt with the major contentions of his adversaries. As he worked toward the conclusion he picked up the fallacies in their arguments and enveloped them with logical proof. After making the charge that "the change contemplated would create a standing army of candidates ... who would be arrayed every ten years" before the legislature, he remarked that he "might have had less confidence in his own views upon the subject if those opposed to him had been
consistent with themselves." One inconsistency he pointed out was that those who argued for the "ten year term" had protested that "judges would be too virtuous to stoop to electioneering." But, in supporting the resolution calling for a sixty-five year age limit, these same opponents had contended that the "identical judges would be guilty of falsehood to retain their seats after they should arrive at that age." Which position "do they mean to take?" he asked.

This question brought him to his final contention. All the charges of the reformers, he said, were directed against "present evils in the judiciary; they declare that those judges that are unfit must be removed by the new statute, and that the adoption of the proposed change would vacate the seats of all the present judges." But Legare argued that "a change in the constitution could never do away with any contract entered into under it." To prove this point he cited instances in which the legislature, after it had repealed laws, had been obliged to make good on "contracts entered into while these laws were in effect." He emphasized this point: "The present judges . . . hold their seats under a solemn constitutional contract, which it is not in the power of the Legislature to abrogate, . . . and if this proposed reform law cannot reach to the men it is directed toward, what good is that law?" 31

31 Ibid., December 1, 1827.
The Committee of the Whole was dissolved, and the House voted against the proposed amendment by a large majority. The Courier hailed the fact that the state judiciary had been saved. 32

Of all the issues which Legare met in the legislative debates of the 1820's, only that of the tariff drew from him all the eloquence of which he was capable, demanding his pen as well as his voice. On this question he fought to save the race he loved from final extinction.

From 1824 to 1828 his efforts, in a large measure, succeeded in preventing the House from taking any steps which would bring the state into open conflict with the Federal Government.

The enemy of the state was threefold. South Carolina was sinking, first, "under the competition with new rich lands," and, second, "under the deadening weight of slavery." 33 But the third, and perhaps the greatest of the evils, was the influence of some of the state's leaders who wasted the energies and emotions of the people in fighting the tariff acts of Congress which they themselves had helped to create through the Calhoun-McDuffie sponsored measures of 1816 and the later tariffs of 1818, 1820, and 1824. N

The tariff contention was not on the mind of the

32 Ibid., December 5, 1827.

33 Wallace, History of South Carolina, II, 424.
South Carolina governor who first centered the minds of the legislators upon the issue. James Lide Wilson, in 1824, called the attention of the legislature to the drift of Congress toward a "consolidated government." He referred particularly to the internal improvements legislation of Congress. He failed to mention the tariff. His only fear was that "South Carolina shall one day be grievously assessed to pay for the cutting of a canal across Cape Cod." 34

Wilson's message, nevertheless, pointed the thoughts of the legislature toward the question as to how much of the state's sovereignty was being usurped by the central government at Washington. The House appointed a special committee made up of Samuel Prioleau, Robert A. Taylor, John Caldwell, James Gregg, and Legare, with instructions to determine the policy the state was to follow. 35

A Senate committee acted first. Judge William Smith drew up and presented a set of resolutions denouncing as being unconstitutional both the internal improvements and the protective tariff measures of the Federal Government. These resolutions passed the Senate, and were then sent on to the Prioleau Committee for its consideration. But the

34 Message of Governor James Lide Wilson to the President of the Senate and the Speaker of the House of Representatives, 1824. Manuscript, Governors' Messages. South Carolina Historical Commission.

35 Journals of the House, 1824, 41.
House committee refused to accept the Senate recommendation. Instead, it drew up its own resolutions which denied the right of the state legislature to differ in its pronouncements with an act of the Federal Government. 36

These resolutions are important, for they were repetitions of the views Legare had expressed in the Southern Patriot in 1821. 37 Thus Legare was prepared to battle against a legislature that would, within a few years, wish to go beyond a mere protest to Congress in its resentment of Federal Acts. In this instance, a majority of the Prioleau Committee was with him in opinion, and the House accepted the committee resolutions without demur. The William Smith resolutions from the Senate were allowed to lie tabled in

36 Ibid., 56.

37 The resolutions were: 1. That all power is inherent in the people; and governments are instituted for their welfare. 2. That legislative representatives are the limited agents ... of the people, and not their sovereigns. ... 3. That the people have conferred no power upon their State Legislature to impugn the Acts of the Federal Government or the decisions of the Supreme Court of the United States. 4. That any exercise of such power by this State would be an act of usurpation. 5. That the Representatives of the People in Congress are only responsible under God to the People themselves. 6. That the People of the State are quite competent to superintend and control the conduct of their Representatives in Congress as well as their Representatives in this Legislature. 7. That the State Legislature has no power to propose amendments to the Constitution of the United States, but only to apply to Congress to call a Convention of the people for that purpose. 8. That the liberty of the People of this Country will be seriously endangered, whenever they permit their servants in this Legislature or in Congress to use any power not delegated to them. Washington National Intelligencer, January 1, 1825.
the House for a year, while those of the Prioleau Committee were sent on to Washington. Needless to say, they had no effect upon either Congress or the tariff.

A year later, with the opening of the legislature in 1825, Prioleau was ruled out of the legislative picture because he had been elected a Judge of the City Court in Charleston. Legare and O'Neall had made speeches before a committee of the whole, arguing unsuccessfully that the House should allow him to retain his seat. The departure of Prioleau left Legare as chairman of the committee on the tariff question.

Because the Prioleau resolutions had produced no results in Congress, Judge Smith on December 3 called up in the Senate the report of "the special committee of last session on the subject of the decisions of the Federal Judiciary and the Acts of Congress, contravening the letter and spirit of the Constitution of the Union." The House, in turn, immediately appointed Legare as chairman of the "Committee of revival of Unfinished Business of the last Session," meaning, of course, the revival of the work which

---

38 Charleston Courier, November 22, 1825.

39 As the Prioleau Committee had been a special committee which had ostensibly finished its work, any reopening of its affairs came under unfinished business.

40 Charleston Courier, November 22, 1825.
had been begun by the Prioleau Committee. Thus, the problem of the day was set, squared, and balanced upon Legare's shoulders.

Since the mild protest sent the year before had proved ineffective, both Smith in the Senate and Legare in the House agreed that a stronger protest should be sent. The Smith resolutions were precisely that. Consequently, they were taken off the table and brought up for consideration in the two Houses, respectively, by the two men.

That a legislative protest appeared radical to some of the thinking men of the state is evident in the words of a letter written by one of Legare's best friends to Joel R. Poinsett on the day Legare spoke in favor of the resolutions:

The House of Representatives are at this moment engaged in discussing Prioleau's Resolutions which remained among the unfinished business of the last meeting. Judge Smith and Hugh Legare are anxious to render to the State that service which they think would accrue from the adoption of our disgraceful sentiments expressed in the last session. How they will succeed I do not know.42

In a speech before the House Legare used the legal analogy of a trustee and his relationship to his trust, contrasting it with the Federal Government's relationship

41 Journals of the House, 1825, 7.
to its constituents.

A government of limited powers has no greater right to divert the funds of the government beyond the enumerated objects—because it has an unlimited power to appropriate for the general welfare—than a trustee, who has an unlimited power by deed to raise money on the trust estate, has to divert those funds to any other purposes of the estate than are expressed in the different trusts. 43

Legare went on, speaking in a forensic style: "As any lawyer knows, a trustee," because of the power given him by the trust, "can sell part of the trust estate." Throughout the analogy Legare was referring specifically to Congress, whose trust was the welfare of all the states. When Congress had set up a tariff to protect the industries of the North, she had, said Legare, "sold her trust," even though she had intended it as a beneficial measure. And though the sale was legal "and the appropriations could not be disturbed," though the tariff was constitutional and could not be legally prevented, nevertheless, Legare argued, "the trustee would be adjudged" to have "abused the trust" and "would be compelled to refund" the money. In a statement which summarized the analogy, Legare asserted that the government was such a trustee:

So it is with the government of the United States. It is a government of sovereign but limited powers. These limited powers are conferred upon the government to enable it to perform certain trusts. These trusts are defined with the utmost precision, in an instrument called the Constitution, but which is

43 Journals of the House, 1825, 47.
neither more nor less than the great Trust Deed between the States and the United States. The General Government, then, is a trustee, and the power which it receives from the States is a power coupled with a trust.44

Only a portion of Legare's speech is seemingly available, and that is so because it happened to serve the purposes of Robert J. Turnbull as a clear exposition of the relationship between the state and the central government. It is not impossible that it served, too, another political theorist, Calhoun, when he wrote his own Exposition.45

The concentrated legal analogy around which the speech was built demanded a close attention on the part of Legare's audience. The close-packed reasoning depended entirely upon its logical appeal, and had the listeners lost a single sentence they would have missed the entire thought. But they evidently listened well. The resolutions passed

---

44 Ibid. This speech is printed in part in Robert J. Turnbull, The Crisis (Charleston, 1827), 72. Turnbull, an ardent, early advocate of nullification, wrote a series of strong articles against Federal usurpations of power, which were published in the Charleston Mercury and later reprinted in book form.

45 Calhoun's Exposition stated: "Not the least portion of this high sovereignty resides in Congress or any of the departments of the general government. They are but the creatures of the constitution, appointed but to execute its provisions, and therefore, any attempt in all or any of the departments to exercise any power definitely, which in its consequences may alter the nature of the instrument or change the condition of the parties to it, would be an act of the highest political usurpation." Exposition and Protest, Reported by the Special Committee of the House of Representatives on the Tariff . . . , December 19, 1828 (Columbia, 1829), 27.
the House; the Senate concurred the following day. The result was "the first official condemnation by any State Legislature of the internal improvement and tariff act of Congress." In this protest against the usurpation of power on the part of the Federal Government, Legare had taken a stronger stand, certainly, than he had in his earlier expressions, either in the Southern Patriot in 1821 or in the House in 1824. But this was as far as he was ever to go in opposition to the general government, in his words or in his thinking. He had, to a great extent, led the House opposition to governmental tariff policies. His role from then on was to restrain the legislature from going even further, or in other, radical directions.

From then on, the paths of majority thinking and Legare's thinking diverged. He continued to believe, and to fight for the belief, that a protest, "with a little time and much discussion," would succeed, sooner or later, in bringing about the reforms necessary to the economic life of the South. He also felt that the evils resultant from the tariff and internal improvement laws were not as oppressive

---

46 Journals of the House, 1825, 48.


upon the Southern States as the Nullifiers-to-be represented them to be. He, therefore, advocated the principle and practice of opposition by protest against the governmental misuse of power, but he resisted the attempts within his state to go beyond a protest. He feared any direct clash between state and central authority.

Legare was able to defend this position successfully through the legislative session of 1828, at which time he made his greatest and his last effort to hold back the angry resentment of South Carolina legislators, goaded as they were by editorials in the newspapers and the advice of leaders desiring a nullification convention. Throughout 1827 and 1828 protest meetings of the citizens were held in growing number. While the result of most of these meetings was the sending of memorials to Washington, they served to further whet the desire of the people for concrete action against the tariff. Even in 1827 Legare was gloomy about the prospect for the state. He wrote to his mother at the opening of the session:

We have begun our business here, but I don't know what turn it is to take. I am far from being satisfied with the state of affairs, or the prospect before me & I do not know what is to be done. You know I am not given to being sanguine, but at present I am literally overwhelmed with gloom.

---

49 Speech delivered before the Union and State Rights Party, July 4, 1831. Writings, I, 271-279.
50 Legare to his mother, Columbia, December 20, 1827. Chisolm Papers.
Nullification was not yet in the minds of the legislators—that remedy had not yet been proposed by Calhoun and his lieutenants. Thomas Cooper's remark, made at a public meeting in Columbia, that it was "time to calculate the value of the Union," was considered too radical, and it received legislative censure. While speaking in the House in December, Andrew Butler declared that Cooper's language "amounted to rebellion against the Constitution which we are all sworn to support." O'Neill, the Speaker, still argued that "Congress had the power to pass both tariff and internal improvement laws," but that it "had no right to exceed or abuse that power." As a consequence, during the session of 1827, Legare had little difficulty in persuading the House to endorse another protest to Congress, which merely repeated the sentiments of 1825 and 1826, and in essence was:

That all the acts of Congress, known by the name of Tariff Laws, the object of which is neither the raising of revenue or the regulation of foreign commerce, but the promotion of Domestic Manufacturers, are violations of the Constitution in its spirit and ought to be repealed.

This bill Legare introduced just before the ending of the session, and it was passed with "some little discussion." But by the following year the state picture changed.

51 Charleston Courier, December 21, 1827.
52 Journals of the House, 1827, 378-379.
53 Ibid.
Congress passed the "Tariff of Abominations" on May 24, 1828. "Anti-tariff meetings" were held throughout South Carolina and Georgia, at which resolutions were adopted that breathed but one spirit: "a firm conviction of the unconstitutionality of laws enacted for the protection of domestic manufactures at the expense of the other great interests of the country." The people of both states demanded definite action from their legislatures, and many legislators were now willing to take stronger measures against Congress. Redress for the economic conditions in South Carolina was called for by men who saw throughout the state "waste and desolate spots that had lately teemed with life and fertility." Empty plantation houses and unploughed fields gave evidence that the people had left the land which could no longer feed and clothe them.

With these things on their minds, the men who filled the seats at the opening of the 1828 legislative session sought for a solution to a condition which was no longer tenable to many of them. Governor Stephen D. Miller, in his inaugural address, set the stage for them by saying:

In swearing to support the Constitution of the United States, I do not regard myself as acknowledging allegiance to an unconstitutional act of Congress. Acquiescence to such legislation must be considered as a convenience and not a duty.

---

54 Camden Journal, October 18, 1828.
55 James Hamilton, Jr., quoted in Wallace, History of South Carolina, II, 423.
Resistance to it involves alone the question of policy and not of crime. His message to the legislature dealt almost exclusively "with the late tariff," which, from then on, was referred to as the Tariff of Abominations or the Black Tariff. On December 2 a committee was appointed to consider what was to be done. Those named were "Mr. Preston, Mr. Legare, Mr. Cook, Mr. R. Barnwell Smith, Mr. Nixon, and Mr. Waddy Thompson, Jr." Resolutions were immediately given to this committee.

While Preston, through his resolutions, urged taking a strong

---

56 Niles' Weekly Register, XXXV (1828-1829), 303.
57 Camden Journal, October 18, 1828.
58 Preston offered the following resolutions: 1. That all duties imposed by Congress on imposts, not for revenue, but to control the industry of the country are unconstitutional. 2. That the acts commonly called the tariff laws passed in 1824 and 1828 for the encouragement of manufactures, are deliberate and dangerous infractions of the constitution. 3. That those laws are partial and oppressive in their operations upon the Southern States, and more particularly upon this state; and in their consequences calculated to produce the ruin of one section of the country—to corrupt the public morals of another, and destroy the liberties of all. 4. That the states, when their rights are palpably, deliberately, and dangerously violated by the general government, have, under the constitution the right, acting in their high sovereign capacity, to interpose and arrest the usurpation. 5. That it is the deliberate opinion of this legislature that, to defend and protect the constitution of the United States in its true meaning, to preserve unimpaired the reserved rights of the State, and to protect its citizens from impending ruin, such interposition is now necessary. 6. That a committee of be raised to devise and report such measures as may be best calculated to carry into effect the foregoing conclusions.

Robert Barnwell Smith's resolutions were less decisive: 1. Agreement as to the unconstitutionality of the tariff. 2. A suggestion that resolutions of protest be sent
stand, and suggested the interposition of the powers of the state to arrest the evil, Legare countered with a set of resolutions of his own: 1. That all protective duties are unconstitutional. 2. That the tariff of 1828 was "unjust and oppressive." 3. That the people of the state were not pre-

once more to Congress. 3. That this legislature be again convened if Congress does not act for repeal of the tariff. 4. That a committee be appointed.

Waddy Thompson, Jr., agreed: 1. That the tariff is unconstitutional. 2. That the state should wait a little longer in the hope of justice. 3. That the legislature make an exposition of its wrongs.

A. P. Hayne suggested: 1. That a committee be appointed to draw up a memorial. 2. That two citizens carry that memorial to Congress. 3. That if the present Congress does not act, another memorial be sent as a last appeal.

N. A. DeSaussure declared: That our Senators in Congress be instructed to apply to Congress to call a convention for proposing amendments to the Constitution.

Dunkin proposed: 1. That each state has the right to judge for itself of any infraction of the Federal Compact. 2. That when the Federal Government transcends the powers delegated to it . . . the only mode of opposition is by respectful remonstrance of open unqualified resistance. 3. That when the encroachment on the reserved rights of the States is so dangerous as to require the interposition of the sovereign parties to the compact, for arresting the progress of the evil, a convention of the people should be called to nullify any and all of the obnoxious laws. 4. That the tariff of 1828 is an exercise of a power not delegated by the constitution. 5. That South Carolina is deeply attached to her sister states. 6. That the people of South Carolina will bear and forbear with their brethren when the sole alternative left is a dissolution of the union or submission to a government without limitation of powers, but that when a choice must be made there will be no hesitation. 7. That another solemn appeal should be made to the justice of those states who have aided in establishment of the tariff. 8. That our senators be instructed to record a solemn protest on the Journals.

Nixon: That if the tariff be not repealed, a convention should be called to devise means of redress. Journals of the House, 1828, 4-82; Miles’ Weekly Register, XXXV (1828-1829), 303-306.
pared to come into "open rebellion with their fellow citizens, before time was given for further argument upon the subject, and every effort to obtain redress through the instrumentality of Congress had failed." 4. That a solemn protest be sent to Congress, and also sent to the governors of the other states, asking them to join in the protest. 5. That no convention ought to be called. 6. That no acts to "Nullify" the laws should be passed in South Carolina. 7. That our Senators and Representatives in Congress should be thanked for their efforts. 59

The committee considered the various resolutions and then submitted them to the House for debate. Preston, however, introduced another factor. During the late summer he had visited Calhoun at Fort Hill and had asked him to prepare a "draft of the exposition of the state's wrongs and the possible means of redress." This Calhoun had done. Preston had brought back with him the famous Exposition, which he now submitted to the committee. 60 In this draft

59 Charleston Courier, December 5, 1828; Journals of the House, 1828, 60; Niles' Weekly Register, XXXV (1828-1829), 305.

60 Wallace, History of South Carolina, II, 430. See, also, Charles M. Wiltse, John C. Calhoun, Nationalist, 1782-1828 (Indianapolis, 1944), 382. It is Wiltse's opinion that one can better understand the situation "out of which the Exposition came" if he were aware of the conditions which brought about the Southern Review, which, he states, "was meant to be to the South what the North American Review was to the New England States, but the times it served dictated an emphasis more on the political than on the literary. It was edited by H. S. Legare."
Calhoun argued for state interposition as the logical means to remedy the evils brought about by the protective tariff. He did not at this time use the term "nullification." Both Legare and Dunkin, however, had used the term in their resolutions more than two years before Calhoun wrote the Fort Hill letter. At any rate, Legare immediately opposed the underlying principles of the Exposition. To him they meant the death of all that he loved in Carolina, for he well understood what would follow their acceptance.

The last thing Legare desired was a convention. He feared the hot-headed emotions which he knew would arise from any mass meeting where the more outspoken elements of the state would gather. When A. W. Thompson, who was "opposed to any measure which might place the State in direct opposition to the General Government," suggested further remonstration, Legare readily agreed. In defending Thompson's position, he restated his own: "Although he considered the tariff as unjust, and unconstitutional, he proposed no measure more decisive than a formal remonstrance. He viewed the law as a violation, but not a palpable violation, of the Constitution of the United States." 62

The meetings of the Committee of the Whole con-

62 South Carolina State Gazette and Columbia Advertiser, December 8, 1828.
tinued for another week, with long sessions and long speeches. Shortly before the end of the debating, Legare, in a speech of two hours and a half, carried the House by his arguments. He embraced all the positions taken by the various resolutions, but his chief attack was directed towards the Exposition of Calhoun.

He began by summing up the arguments in the Exposition: "It is argued that the government of the United States, being one of enumerated powers," must have its acts declared null and void "whenever it transcends those powers." It "is said further that as such acts are null and void, every citizen has a right to resist them . . ., and to plead in justification the unconstitutionality of the law." This is well and good, he said, but those who maintain that position go on to assert that "not only has every citizen such a right, but that the state governments are in duty bound to 'interpose in order to arrest the progress of the evil.'" Moreover, "they say that this interposition is a peaceable remedy 'provided by the Constitution itself,'" and that when a convention of the people "declares the law unconstitutional, it ceases to all intents and purposes to be the law of the state." Furthermore, he continued, "these men maintain that this judicial power of judging" a Federal Act "is not

---

63Exposition and Protest, Reported by the Special Committee of the House of Representatives, on The Tariff; read and ordered to be printed.
expressly given to the states," but was implied "in the very nature of things, because a state which had surrendered certain rights must have some means of defending those rights not surrendered—otherwise the states are at the mercy of the confederacy." Finally, "they say that the Federal Courts do not afford the states adequate protection."

Having summed up the essence of Calhoun's position, Legare then attacked the idea of a convention of the people to be called by order of the legislature. "What is the difference between a constitutional remedy and a revolutionary one?" he asked. "If juries acquit, or judges discharge, or the governor pardons, the law still takes its due course; and though the things done by them shall not be approved, every part of the social order is still in its natural state."

Contrasted to this, he argued, the result of a convention would be ruinous: "The moment a mob, that is, any unauthorized body of men, however exalted their objects and purposes, resist the constitutional authorities of the land with success, government and society are at an end."

He went on to explain why this was so: "Can a state set at naught the laws and authority of our government and yet not disturb the relationship in which it stands to the rest of the states?" No, he said, it could not. He then pictured the evils which would follow such defiance: "One state, and then another, would follow this procedure. Every constitutional power of the confederacy might be drawn into
question in the same way"; and he doubted "whether a govern-
ment whose laws were interpreted by twenty-four different
tribunals, who were bound by no rule or precedent or author-
ity, would be any government at all."

Some of the "gentlemen," Legare asserted, have said
that "if a state cannot set aside a Federal power," she has
"no sovereignty at all." He questioned this. "The states
themselves formed the Union," he argued; "they vested
certain powers in the Federal Government," but retained
all "the residuary attributes." When the "General Govern-
ment usurps some of these residuary attributes, a court
appointed by that very government decides in favor of
usurpation," There are, he concluded, just two alternatives
to be considered: "Either the state is bound by such a
decision or she is not. If she is not, those who preach
submission are cowards and slaves. If she is, she is bereft
of all that is hers." Legare maintained that "whenever a
case shall arise which shall justify revolution, revolution
is a duty." Furthermore, he "agreed that a state may secede
from the Union in a case of extreme necessity, and that she
alone is the judge of that necessity." Legare thus granted
the right of secession, but denied that a state had the con-
stitutional right "to call a convention in order to alter
the constitution."

With these points established, Legare discussed
the nature of the compact which tied the states together,
and bound them "to abstain from doing certain things."
He pointed out that if a misunderstanding should arise "as to the nature or extent of this obligation," and if there were no tribunals, "the law of the strongest" would decide all differences. "It is to prevent this frightful result," he said, "that the will of the majority shall govern," and while at times this would bring injustice, "it is still infinitely better than brute force and violence."

Legare then took up the next question: "Our dispute now is about what is to follow . . . if one or more states claim the right not to obey a law. Our opponents say peace, because the government is 'bound to acquiesce.'" Legare saw but one result: "I say war, because the treaty or constitution which bound them is immediately dissolved." He explained this: "Either the state is subject or sovereign. If sovereign, she decides for herself, and the other states do the same. Unless one party or the other to the contract succumb, war is the last resort."

Throughout his speech there is little mention of ancient politics, illustrative surveys of history, or literary analogies usually found in his arguments. Save for the use of pungent epithets, he drove through logical point after logical point. Even his sentences were shorter. He was fighting for his state, for his race, because at that moment a path toward destruction was opening wide, and angry men were pointing the way.
Again he attacked Calhoun's Exposition, which had been offered as a "remedy" for the state's ills: "The idea that for every political wrong there must be a legal, constitutional, peaceable remedy is quite puerile. A government so contrived that it cannot go wrong is an invention yet to be found out."

Legare also had his remedies, and these he stressed. "We have two remedies," he said, "for usurpation of a conceded power." The first "is a change of administration by election." The second "is revolution." He also named two remedies for the usurpation of "a power not granted," the one, "peaceable, by going to law--the other violent, by secession or resistance, that is by revolution." The Constitution, he asserted, could be amended "in two, and only two ways." First, two-thirds of both Houses of Congress "can propose amendments to the Constitution." Second, "on the application of the legislatures of two-thirds of the several states, Congress shall call a convention for proposing amendments, . . . which in either case shall be valid . . . when ratified by the legislatures of three-fourths of the states."

He emphatically stated, however, that no amendment could be proposed "without the consent of Congress," and that "every change . . . forced upon the people and the states in any other way is revolution--no matter how peaceable, orderly, and otherwise rational the mode of procedure may be."
In his peroration Legare moved from logical to pathetic proof. But at no time did he leave his main line of argument, which was: That any move inaugurated by a state legislature against a delegated right of Congress, no matter how that right were being usurped, was revolutionary and could not end in peace.

He questioned the reasoning of the "Southern politicians," and wondered how anyone "in his right mind" could "pretend that after people had been heated to madness by a controversy, . . . they could be fair, even competent judges" of questions of such import. He could not "conceive how Southern politicians can be so blind as to do anything towards quickening the spirit of change among us." He pleaded with his audience: "Let us not complete our ruin by this rash effort to relieve ourselves from a temporary, however vexatious, evil."

Legare stressed the fact that the Constitution was a compact and that all states were bound by it: "The people of South Carolina, met in Convention, agreed for themselves and their successors that whatever the Federal Government should do would be the Supreme Law of the Land." The people themselves, he said, gave that power to the government, as well as "the allegiance, the homage, the fealty of themselves and their children." In view of this agreement, asserted Legare, "it would be vain for the people to say they have a right to change their government as they please
and as often as they please." What, he asked, would be the result? He answered:

The Legislature and the judges would say, "we don't know you. Our people have agreed never to meet in a constitutional sovereign capacity unless invited by two-thirds of their representatives. That is the only token by which we recognize them. YOU are a mob--a rabble--you are not the masters of the fold, because you have broken in through the windows and the back doors." It is true, if they chose to make it a contest of violence and physical force, they might send all the legislature to the guillotine and hang up the judges on the nearest lampposts.

This, he added sarcastically, "I suppose, the nullifiers will admit, would be a peaceable and legal remedy."

His next statement was uttered by a man trying with all his power to preserve not only the union of the states but the society in which he lived:

Liberty depends upon public opinion. From the moment people cease to be worthy of good government, whatever their Constitution may be, they are sure to have a bad one. You may entrench yourself in parchment to the teeth. The only safeguard of Liberty is the spirit of resistance. The Glorious right of Revolution. 64

The last words of Legare's speech were seemingly not recorded except by Preston, who summarized them in his eulogy. Preston wrote:

Legare depicted the possible consequences of a collision of the State with the Federal Government, in a few glowing sentences--brother

---

64 From an unpublished manuscript in Chisolm Papers. See, also, Charleston Courier, December 21, 23, 1828; South Carolina State Gazette and Columbia Advertiser, December 8, 10, 17, 1828; Camden Journal, January 12, 1829; Pendleton Messenger, December 17, 1828.
struggling with brother, parent with child, and the face of the land wrapt in conflagration and streaming with blood—while the slave, amidst the awful confusion, clanking his manacles, leaps up to join that dreadful revelry . . . .

The following day Legare wrote to his mother, telling her of the success of his words: "You will have seen by the papers that I have succeeded in carrying my views on the measures to be pursued in relation to the tariff . . . . I spoke almost two hours & a half to a deeply silent and attentive audience & with almost complete effect."66

The voting took place on December 15. The call for a convention was voted down by an almost two-thirds majority. A substitute resolution, which had the approval of Legare, was offered:

That it is expedient again to remonstrate with the present Congress against the unconstitutionality and oppressive operation of the Tariff system. Also to have our solemn protest against the said system entered in the Senate of the United States—and to make a public exposition of our wrongs and of the remedies within our power to be communicated to our sister states.

This resolution carried by a vote of 82 to 36, despite the negative votes of Harper, Holmes, Preston, Smith, and

66 Legare to his mother, Columbia, December 15, 1828, Chisolm Papers.
67 Journals of the House, 1828, 127.
68 Ibid., 128.
The chairman of the Committee of the Whole then moved a reconsideration of the resolution, which was agreed to. The final resolution, as amended, read as follows:

That it is expedient to make our solemn protest against the unconstitutionality and oppressive operation of the system of protective duties—also to have such protest against the system entered on the Journals of the Senate of the United States—and to make a public exposition of our wrongs, and of the remedies within our power, to be communicated to our sister states, with a request that they will co-operate with this state in procuring a repeal of the tariffs for protection, and if they be not repealed, to co-operate with us in such measures as may be necessary for arresting the evil.

When the motion was proposed it was carried, 97 to 21. Preston voted for it, although Waddy Thompson and Robert Barnwell Smith were opposed. The House measure was sent to the Senate, which concurred the next day, with a vote of 36 to 6.

Legare had won his victory. The Charleston Courier and the Pendleton Messenger, in Calhoun's district, both announced that "the Resolutions of Mr. Legare go to instruct the Senators in Washington to enter a solemn protest on the Journals of that body." A "Committee of Seven" was appointed to write the protest to Congress with an exposition

69 Ibid.
70 Ibid., 129.
71 Charleston Courier, December 20, 1828; Pendleton Messenger, December 19, 1828.
of the state's position to be sent to all governors. That committee was composed of James Gregg, David L. Wardlaw, Arthur P. Hayne, R. Barnwell Smith, Preston, and Legare. 72

The committee wrote the exposition of the state's grievances, but evidence indicates that Legare wrote the Protest. The resolutions offered in that document were a presentation of the principles he had just fought for in the House. He was the natural one to write the Protest, although no historian has as yet pointed this out. "The Protest I wrote myself," he declared in a letter to his mother, written immediately after his long effort in bringing his measures to a successful vote. 73

The Protest and an exposition of the state's cause for complaint were sent to Washington, and, presumably, the same documents were sent to the governors of all the states. Neither of these documents was Calhoun's Exposition. Early in 1829, however, someone, possibly Preston, had Calhoun's Exposition bound with Legare's Protest. Even as printed, the authorities of the Protest and the Exposition are clear. At the top of the first page the Protest has the stated sanction of the entire legislature. The Exposition has

72 Journals of the House, 1828, 129.

73 Legare to his mother, Columbia, December 15, 1828. Chisolm Papers. The Protest is printed, with several minor discrepancies as to wording, in "The American System," Southern Review, VI (August, 1830). The Exposition of Calhoun is not included, nor is there any reference to it.
only the listing of a committee beneath a printed statement of the House resolution. The authority is implied only, but not expressly stated.

The printed pamphlet, containing the Exposition and Protest, was scattered broadside throughout South Carolina and adjoining areas, thus making the Exposition of Calhoun available to all Carolinians, although he had not as yet claimed authorship. Who authorized the printing has not been ascertained. The Exposition had been given to Preston by Calhoun, and it seems safe to assume that Preston was aware of what had been done with the manuscript given to him. His home was in Columbia, where the manuscript had been printed.

At any rate, from a now easily available text, the principles of Calhoun began to ferment more strongly in the minds of the people of South Carolina. By the time Calhoun claimed authorship in 1831, the citizens had digested his ideas and were ready for more of the same food. Thus, Legare, even in winning a hard-fought victory, was destined to lose to the propaganda of a subtle opponent.
CHAPTER VII

SPOKESMAN FOR THE SOUTH CAROLINA UNIONISTS

Who were the Unionists in South Carolina who dared to challenge the will of Calhoun and the call of the fire-eaters for a convention to nullify? Why did they fail to save their state and themselves when they dared so much? And what became of them when they failed and the course of the state was set against them?

Many were sons of Federalists who had helped build the Union, either by debating upon or signing its chief documents, or by serving in the war that separated the colonies from England. Daniel Huger possibly expressed the thoughts of most of them. Although his words were filled with sentiment, they showed a deep devotion:

I know that we, who are opposed to what we believe to be rash, unconstitutional measures, have been called submission men. I accept the appellation for myself. It has been the pride of my life to submit to the laws of my country. To her will, even without the obligation of a law, I've always submitted, and I hope to persevere in so doing . . . . I may be wrong in the course which I have recommended, but I cannot be wrong in the motives by which I have been influenced. Should a convention be called—should Carolina be torn from her sisters, I will abide her fate—she has been all to me, and for her I would sacrifice my all.¹

¹Quoted in Wallace, History of South Carolina, II, 437.

175
Unionists of Charleston were filled with a love for their state but shared that love, as Huger had said, with the union of states their fathers had formed. Daniel Huger's relative, Alfred, called in his later years "the last of the barons," and who was, perhaps, the last of Legare's race, retained this same devotion throughout the entire conflict and into its last stages, in 1865. He held honor above everything else, and when Jackson offered him the postmastership of Charleston in the place of Peter Bacot, a Nullifier, Huger refused, saying that "nothing would induce him to supplant so excellent a man and officer as Mr. Bacot, upon merely political grounds."²

All had that same unyielding sense of honor peculiar to them. Mitchell King, upon receiving a judgeship, used his salary to support the family of his predecessor.³ William Drayton had given up an $18,000 a year law practice to enlist in the War of 1812.⁴ Besides these, there were many other excellent men in the Unionist ranks, including Henry Middleton, Chancellor Henry W. DeSaussure, Thomas S. Grimke, William Aiken, Judge J. R. Richardson, and Governors Richard I. Manning, Thomas Bennett, John Taylor and David R.⁵

²Ravenel, Charleston, The Place and the People, 190.
³Johnson, "Biographical Notice," xiv; American Review, II (October, 1845), 419.
⁴Ravenel, Charleston, The Place and the People, 190.
But of all the Unionists the most colorful, and certainly the most intellectual, were Legare and his closest friend, James Louis Petigru. Petigru was as able a lawyer as ever practiced at the bar of Charleston. With mental abilities of the same nature as those of Legare, he had a greater raciness in his everyday speech, and a more ready down-to-earth pungency. He learned much of the art of forensic speaking in an old pine-board courtroom at Coosawhatchie. Like Legare, Petigru was "essentially conservative, but a thorough Democrat. The majority of the Roman Republic was always on his mind, but to Demos he never bent." In a letter to a friend, written in 1830, he not only showed conditions at that time, but he illustrated the courtesy and understanding which members of the Charleston race expressed for each other, even when separated by the violence of nullification:

You and I will never dispute much on politics and not at all on anything else. There is less difference between us than between some who are on the same side. Nevertheless we differ more than I ever supposed we would about anything. I am devilishly puzzled to know whether my friends are mad, or I beside myself ... since I can't see what is so plain to others ... . . . I am fain to confess many excellent men have thought that the making a hell on earth is a good way of

5Wallace, History of South Carolina, II, 438.
6Carson, Petigru, 56.
7Ibid., 57.
8Ibid., 78.
being sure of a place in heaven, but I might as well try for music or dancing as for State-rights and Jefferson, which seems admirably calculated to serve one in this world, whatever it may do in the next.

The division between the two parties arose from no fundamental difference of opinion as to the cause of the state's economic troubles. Both were agreed that the protective tariff of the general government was onerous. They fought about the remedy. The Nullifiers said, "Because the acts of Congress are oppressive to us let us call them null and void." The Unionists answered, "The acts of the Federal Government are oppressive, but as they were enacted by Congress, they must be repealed by Congress. Until then we must endure them."

Upon these alternatives friends, and even families, split. For a time, however, their social relationships remained the same. Colonel William Drayton, a strong Unionist, continued almost as a brother to Robert J. Turnbull, ardent Nullifier, who, as "Brutus," had written a series of scathing articles in the Charleston Mercury against the consolidation of the powers of the Federal Government. Friends continued to meet at the same social gatherings and at the same tables. One guest, a Nullifier, might charge another guest, a Unionist, with being "a base

---

9 Petigru to an undesignated friend, Charleston, n.d., 1830, quoted in William J. Grayson, James Louis Petigru (New York, 1866), 118-120.
submission." The Unionist, in turn, would scornfully ask the Nullifier if "even the Fire-eaters really supposed that Government would allow itself to be defied by a single State. 'We can die for our rights,' would respond the Nullifier. 'You will die and not get your rights,' would answer the Unionist." Such remarks, and many others even stronger, finally made jagged gaps between those who had been friends—or relatives. Yet Charleston kept up its social life, its courtesies, and its dual political position.

That same race-relationship was in Legare. In him was the quality of maintaining intimate associations with Charlestonians even though they were at variance with him politically. He did not question the integrity of their honor, nor they his. When in January of 1829 he went to Washington to plead two cases before the Supreme Court, it was, therefore, natural that he spend his time with the Robert Y. Hayne family and with George McDuffie. They were his political enemies, Nullifiers. But they were friends. With Mrs. Hayne he attended the Jackson Inauguration. 11

10 Ravenel, Charleston, The Place and the People, 451.

11 He described the event in a letter to his mother: "We had famous doings here at the inauguration. I went in with my friend (and a kind and a sweet friend she has been to me) Mrs. Hayne, with General Jackson's family, consisting of two nieces . . . and three nephews--& with Mrs. & Miss (Cora) Livingston of N. Orleans, & got a place in the por-
Throughout 1829 and part of 1830 Legare and the other Unionists mingled with the Nullifiers at social and even political gatherings in Charleston. Politically, that period was comparatively quiet in the state. All were hopeful that Jackson and a fresh Congress would ease the burden on South Carolina. Meanwhile the "leaven of the Exposition" was working in the minds of Carolinians. So little trouble was imminent that, at the opening of the autumn legislative session, Legare delayed his appearance for a week. As a consequence, he was not placed upon any of the special committees dealing with the Governor's message. Preston took over the committee concerned with carrying on the state protest against the tariff acts. This change in the chairmanship, however, caused no alarm at the time among the Unionists. Their voting strength was almost on a parity with the Nullifiers in the House, and Preston could go no further than Legare's Protest of the year before. The calling of a convention to nullify, according to the state con-

12 Frederic Bancroft, Calhoun and the South Carolina Nullification Movement (Baltimore, 1928), 55.

13 Journals of the House, 1829, 21.
stitution, needed a two-thirds majority of both Houses.

With this balance between the two parties a sort of temporary stalemate was maintained upon national issues. Upon the purely state matter of judicial reform, however, controversy brought the House again into a committee of the whole. When Waddy Thompson proposed that the Court of Equity be abolished, an executive session was held, and the public was barred. Legare spoke at length against the motion, successfully. The measure lost by a wide majority. 14 The Charleston Southern Patriot remarked:

Mr. Legare took the floor this morning in opposition to the scheme of uniting the two jurisdictions of Law and Equity. His effort was worthy of his high reputation. It was eloquent and impressive, and for about an hour and a half riveted the attention of the House. 15

So certain was Legare that no convention move would be made at this time that, even though he had entered late, he left the legislature before the session was finished. His equanimity, and with it, that of all the Unionists, was soon disturbed when Daniel Webster, in January of 1830, raised nationality "as a shield" against the doctrine of the Exposition which Hayne threw at him in the famous debate. 16 But when congressional debating became desultory and the tariff

14 Ibid., 103.
15 Charleston Southern Patriot, December 11, 1829.
16 Bancroft, Calhoun and the South Carolina Nullification Movement, 65.
problem was no nearer settlement after four months, the conviction spread in South Carolina "that the Congressional prospect was hopeless." 17 By early summer the campaign for the calling of a convention began.

In June a dinner was given for Joel R. Poinsett. Charlestonians of both parties gathered, as had been their custom when any distinguished citizen was feted—for Poinsett had just returned from a mission to Mexico, to which he had been appointed by President Adams. Unionists sat next to Nullifiers. Some interesting toasts were given, highly disparate in sentiment. Judge Johnson of the Supreme Court declared: "The Union! The States formed it—the States control it—and the States shall maintain it."

Langdon Cheves took a slightly different note: "The Union—May it be preserved—but if it be so, it will be by a reform which shall make it serve the great purpose for which it was instituted—the equal protection of the rights, the interests, the honor and the feelings of all parts of the confederacy." Petigru merely saluted the elderly William Drayton "whose only object is his country's good." John Gadsden responded to this by a toast to McDuffie, "the able and eloquent and determined advocate of Southern rights and feelings."

Legare was called upon for a toast. In his prelim-

inary remarks he "alluded to the spirit of the Party which had been exhibited in the sentiments already pronounced" by the various gentlemen at the table. He then remarked that "he would offer a toast, in which all would unite, and which appeared to be called for by the occasion." Before he did so, he said, "Perhaps, however, it might be thought by some too early to require such an expression" as he was about to utter, "but he believed that every Carolinian would accord with him in the sentiment--and sure he was that every man bearing the name of an American citizen, would respond to it." With that, speaking to Nullifiers and Unionists alike, he gave the toast: "It is, sir--May our free institutions not be blighted in their bud, and our glory become a byword among the nations." His words were a warning to the audience.

As 1830 was an election year for the state legislature, the campaigning during the summer expressed itself in vigorous opposition articles in the newspapers throughout the state. The line of demarcation became deeper between those of unionist and those of nullification leanings. The Charleston Courier, Unionist in its position, blasted editorials which were written in the Mercury, and the blasts were returned. The Camden Journal thundered at the Columbia Southern Times and the Pendleton Messenger, both advocates

18 Camden Journal, June 19, 1830.
of nullification, and in support of Calhoun, although that
gentleman had not yet used the term as part of his theory.
Up in Greenville, Perry's Mountaineer strongly advanced the
Union note.

During that summer there appeared in the Camden
Journal a series of articles signed "A Plain Man." They
excited a great deal of comment, and the Charleston Courier
copied them sedulously from the Journal. There were eight
of them, entitled "Nullification." The author was most
certainly Legare, although the fact was probably not gen-
erally known at the time. The first one appeared on July
24, with an explanatory note from the editor of the Journal:

We had determined on submitting to the readers
of the Journal a series of numbers on this subject,
but any such necessity is superseded by the labors
of our . . . very able correspondent . . . . "A
Plain Man" carries through all the numbers which
have reached us the evidence of a vigorous mind
and felicitous pen. He . . . will occupy for some
time a larger share of the paper than we have been
in the habit, heretofore, in retrenching from our
columns, but the present posture of South Carolina
politics demands it.20

The articles were a delineation of the position the
Unionists should take, and attacked all the elements of

19 Ibid., July 24, 31; August 7, 14, 21, 28; Septem-
ber 4, 18, 1830. The eight articles were signed by the
words, "A Plain Man," and they have not been mentioned in
any published works on Legare. The writer discovered the
manuscripts in the Chisolm Papers, all in Legare's handwrit-
ing. The thought and much of the phrasing appear also in
Legare's Unionist Speech in Charleston, July 4, 1831.

20 Ibid., July 24, 1830.
Nullification—its theory, its sense, and its results.

Legare began:

Sir—As the only difference which exists between the great body of South Carolinians, in reference to the Tariff... is as to the remedy proper to be adopted, in order to rid ourselves of the evils of the system, I claim the privilege of being heard through your columns, on that important subject.21

Legare was doing what needed to be done for the Union Party—clearly distinguishing its position from that of the Nullifiers. The Nullifiers often confounded the Unionist premises, for political purposes, and many Northern writers so ignored the differences between the two groups that the Unionists constantly felt their stand to be weakened. A later editorial in the Journal expressed these feelings:

When we combat the Nullifiers that party turns round and calls us Tariffites, and when we make war upon the Tariff the Northern presses chide our heterodoxy, and attempt to identify us with Nullification—abuse us for our friendship with General Jackson, and praise our Nullification Senators for opposing the Administration. We cannot write a paragraph expressive of our views with respect to the oppression of the Tariff, but it is laid hold of by the disorganizing party at home, to inflame our citizens into still greater madness of resistance.22

To relieve the Unionists of the predicament, Legare wrote the articles on nullification. "One party," he said, meaning the Nullification Party, "maintains that the govern-

21Ibid.
22Ibid., May 12, 1832.
ment of the United States being one of enumerated powers its acts are utterly null and void." Every citizen, "they go on to maintain, has a right to resist those acts, and plead as his justification the unconstitutionality of the law." Furthermore, they believe "that the state governments are in duty bound to 'interpose in order to arrest the progress of the evil.'" They declare this "to be a peaceable remedy, to be applied by the people in convention." These state conventions then will "constitute a regular judicial tribunal" concurrent and paramount to that of the Supreme Court of the United States, to defend "against encroachments of the Federal Government." 23

In answer to this Legare stated the position of the Unionists. "Another party," the Union Party, "agree with them as to everything but the judicial powers of a convention." The Unionists, he said, agree that unconstitutional laws are void, but, he asked, "Who is to judge of that?" The Unionists "say that a convention, which is itself unconstitutional, cannot judge of violations of the Constitution."

Legare argued that the only remedy to be found in a constitutional democracy was that which the majority of the people could give: "All that is wanted is that the community at large should be thoroughly convinced of the

23"Nullification No. 1," ibid., July 24, 1830.
unconstitutionality of the tariff," for when "this state of things shall arise," the courts of the land would call the protection laws unconstitutional. 24

Therein, said Legare, lay the difference between a constitutional remedy and a revolutionary one. He took that position because his reason told him there was no remedy for the unconstitutional acts of the general government, save by revolution. He agreed "that a state may secede from the Union," and that the effect would be "to absolve all her citizens from their allegiance to the United States. But, he said, "the Nullifiers claim they can abolish the tariff and yet remain in the Union." They "argue that the Law of Nations gives them this right." 25 Emphatically he stated that "a convention only can secede from the Union, and it can do nothing else, in the way of actual coercion, but secede from the Union." 26

In "Nullification No. VII," Legare further explained this statement, declaring: "The very calling of such a convention would be revolutionary—because it is not authorized in the Constitution. Therefore, an act of nullification passed by such a convention would be revolutionary." He added that there was a difference between constitutional

24"Nullification No.II," ibid., July 31, 1830.
25Ibid.
checks on government and those "which arise out of the turmoil from any resistance of the people." Legare explained that this was because no amendment could be added to the Constitution unless it originated with Congress. Consequently, he said, "no convention can be called, to meddle with the Constitution of the United States but with the previous consent of Congress," and that body "would be bound to consider our state convention as a body foreign to the laws and hostile to the authority of the Union." Furthermore, he continued, the calling of "such a convention would be a revolutionary movement, and therefore all that it should do would be revolutionary." Legare declared this chain of "reasoning unanswerable," and concluded that the Nullifiers could not "derive the right of calling such a convention from the Constitution of the United States." 27

In the "Nullification" articles Legare remained consistent with the ideas he held in 1821, as expressed in his criticism of One of the People. James Hamilton, Jr., who had collaborated with him upon the earlier publication, had changed completely upon the governmental usurpation issue. In August he wrote a "confession" in which he stated "that in 1821 he was laboring under 'an honest but blind' delusion in advocating the exercise by Congress of powers which he had since come to see were ruinous to South Carolina." 28

On September 22, 1830, the Charleston Unionists held a meeting and nominated a ticket, naming William Drayton for Congress, Petigru for the state Senate, and Legare, Daniel Huger, William Aiken, Joel R. Poinsett, C. G. Memminger, and others for the state House of Representatives. Legare, Aiken, and DeSaussure had given "unequivocal assurance in writing that they were opposed to Convention." When the count was in, Legare headed the Charleston delegation.

Although Petigru was defeated, eleven Union men were elected. A belt of up country districts also voted for the Unionist ticket, although Pendleton, Calhoun's home district, did not. The Unionists had worked "in concert against a Convention," and though they had not gained a majority in the legislature, they still held sufficient votes to prevent the calling of a convention.

On his way to Columbia, Legare reached Stateburg just in time to participate in a dinner given in honor of General James Blair, one of South Carolina's Congressmen. After Governor Miller had spoken, John P. Richardson, later to be Governor, made some disparaging remarks about the recent election in Charleston, which, he said, had elected

29Charleston Courier, September 23, 1830.
30Ibid., October 14, 1830.
31Lillian A. Kibler, Benjamin F. Perry, South Carolina Unionist (Durham, 1945), 101.
men "who thought more of other parts of the country than they did their own." Following Richardson, Legare made an unscheduled speech, replying "in his happiest manner" with words that formed "a most excellent retort to what had been said." 32

The legislature, which convened a few days later, showed further examples of that peculiar trust and understanding which existed between some of the South Carolina politicians even after strong party differences had emerged. Although elections had been hotly contested throughout the state, Legare, a Unionist, was made chairman of the Committee of Privileges and Elections; while Preston, leader of the Nullifiers, was removed as chairman from the Judiciary Committee to make way for the venerable and highly respected Daniel Huger, an avowed Unionist. 33

A few days later Legare was elected Attorney General of the State, many of the votes cast for him coming from the opposition party. 34 He defeated Memminger, an able lawyer, later to become Secretary of the Treasury of the Confederacy. At this time, however, Legare's reputation was high. He had won two cases before the Supreme Court at its last session, one, arguing with Robert Y. Hayne, the

32 Charleston Courier, October 30, 1830.
33 Journals of the House, 1830, 4, 7, 10.
34 Charleston Courier, November 27, December 1, 1830.
other with William Wirt. His legal practice in Charleston was also a large one. Even so, he was a Unionist, and the vote was illustrative of the fact that elections in South Carolina did not in all instances follow party lines.

Legare hesitated before accepting the post. His letter to the legislature clearly gave his views on public trust, stating that he would retire "immediately from the political contention which now agitates and divides" the state, because a public officer should "be as far as possible exempt from the suspicion of personal or party bias, and those prejudices which are the inevitable lot of every politician." In such an open letter he was bold in stating that he felt "less reluctance in withdrawing from the House at this time, because my vote on the great political question of the day will not be lost to my constituents—a majority of two thirds of the whole Legislature being necessary to the call of a Convention."³⁵

That Legare fulfilled this high sense of trust is evidenced by a note of refusal which he wrote to a political committee of the Unionists a few months later:

I have just had the honor of receiving your note, accounting to me that "at a meeting of the Committee of Arrangements appointed on the 30th ult. by the citizens composing the Union & State Rights party," I was elected to act as one of the Vice-Presidents, at a dinner to be given by

³⁵Legare to Speaker and Gentlemen of the House of Representatives, Columbia, November 29, 1830, quoted in Journals of the House, 1830, 59.
the party on the 4th July next ....

I beg to be permitted to decline the honor intended me by this committee. Standing in the relation in which I do, I am deterred by a strong sense of official duty or decorum at least, from taking any active part in the unhappy agitation which involves the State. My views of this subject may be erroneous, but I am sure they are conscientious. 36

Legare, of course, intended to be present at the Fourth of July dinner. All Charlestonians dined in public on that day, either at the Nullifiers' dinner or at the Unionists' dinner. His only objection was identifying himself as a party official so long as he held the office of Attorney General.

In the same letter Legare outlined his political position and showed he understood that of his opponents. To him "secession was not to be thought of under existing circumstances," and though "the Governmental course is erroneous and perverse," the Union he believed to be a "glorious fabric." Moreover, the evils the state was suffering were not, he said, "as bad as those we would fly to as a relief from them." Of his opponents, he remarked: "But differing as I do with many of my earnest and most respected friends of the other side, ... I have to a great degree sympathized with them in their feeling." 37


37 Ibid.
The political situation in Charleston grew more
tense as summer approached. On May 19, at a dinner given
in his honor, McDuffie, in an "incendiary" speech, went
much further than any of the Nullifiers had yet gone, for
Calhoun had "emphasized the conservative nature of their
remedy," insisting it was "constitutional and nonviolent." 38
McDuffie, however, impetuously declaimed:

It is not for me to say, in this place, what
course South Carolina may deem it her duty to
pursue, in this great emergency. It is enough
to say, that she perfectly understands the ground
which she occupies; and be assured, sir, that
whatever attitude she may assume, in her highest
sovereign capacity, she will firmly and fear-
lessly maintain it, be the consequences what they
may. The responsibility will not rest upon her,
but upon her oppressors. 39

The logic of his words was later paraphrased by Turnbull:

Now as there can be no greater solecism than to
suppose the States derive any of their sovereign
right from the Federal Constitution—the creature
of their own hands—it would be obviously erro-
neous to deny the alleged right of interposition
because it is not derived from that instrument. 40

McDuffie's statement forced Calhoun to act immed-
mediately. As Calhoun's position had been that his remedy was
constitutional, he now had to justify it. He wrote to
Samuel D. Ingham: "The occurrence in Charleston to me was

38 Wiltse, John C. Calhoun, Nullifier, 110, 116.
39 Green, George McDuffie, 94–95; Bancroft, Calhoun
and the South Carolina Nullification Movement, 98.
40 Robert J. Turnbull, "Indirect Taxation,"
Southern Review, XV (July, 1831), 259.
wholly unexpected. It was caused by the accidental visit of McDuffie to that place. I think it very imprudent, and so have written to Hamilton."41 At Hamilton's request Calhoun then wrote the famous Fort Hill Letter, printed in the Pendleton Messenger of July 26, 1831, in which he reiterated the words of the Exposition. His breach with Jackson was growing—he became a Nullifier, openly.42

The Fourth of July celebration of 1831 in Charleston, because of kindled emotions, became a double mass meeting of the two forces, with rising tempers applied flamewise to the political question: Which party would save the state—Union or Nullification?

The Unionists built a huge wooden building to house their diners and speakers. The edifice was forty-five feet wide and a hundred and fifty feet long, but still too small for the throng which came that day. In this structure Legare made the finest speech of his career within the state. By this time conditions in South Carolina had assumed a stronger aspect, and he considered it his duty to participate in political events.

The day was ushered in, as usual, by the firing of cannons and the ringing of bells, followed by a parade of


42 Wallace, History of South Carolina, II, 439.
the militia. The Union party began to assemble at the market place at ten o'clock. Soon the crowd so far exceeded expectations that "it became necessary to call additional marshalls" to assist in organizing the great parade.

Between eleven and twelve o'clock the procession was organized and "moved onward to the First Presbyterian Church, which was found too small to admit the assemblage." The procession was led by twenty-four stewards, followed by two Revolutionary soldiers, Colonel Jacob Sass and Solomon Legare (not the grandfather of Hugh), who carried the American flag. Then followed "sixty youths," and "seventy Ship Masters and Seamen, with banners on which were inscribed the names of distinguished nautical commanders and naval victories." Behind these came the Union and State Rights Party, "exceeding 1200 souls." Then came "the Committee of Arrangements, Foreign Consuls, Distinguished Guests, invited from various parts of the State." After them marched "the Conscript Fathers of the Revolution," the clergy, the twenty-four vice presidents, General Daniel Huger, and William Drayton, the Orator of the Day, and, finally, the Secretary of the Committee of Arrangements, carrying the "blue-silk banner of the Unionist party, surmounted by a very splendid eagle." Along the line of march, "placed at proper intervals, marched and played the
bands of music."  

The parade moved through the city streets for about two miles, ending at the church. There, after prayers and the reading of original odes, the Orator of the Day, William Drayton, delivered "an able, patriotic, and exceedingly beautiful oration."  

But politically the day had just begun. The Unionists reassembled at the market at four o'clock, and again "moved off" in reverse order to that of the morning procession "to the Union Bower . . . where dinner was waiting to receive them." Tables for the overflow crowd were set up outside the entire length of the building. Even then people had to take turns eating.

The whole building was elaborately decorated. "Festoons of evergreens encircled the pillars," and from each archway hung shields which pictured the heroes of the past. "Transparencies of Washington" and others, "encircled with boughs and luxuriant foliage, hung at the upper end of the vast hall."

When all had eaten, toasts were delivered, some twenty-four of them, expressing Unionist sentiments, tariff resentments, and anti-nullification views. The toastmaster then read a letter which had been written to President

---

43 Henry D. Capers, Life and Times of C. G. Memminger (Richmond, 1893), 37-105.

44 Ibid., 39-42.
Jackson inviting his attendance. As Jackson's reply was read to the throng of Unionists, all there felt the strength of the old warrior's warning to the Nullifiers that "independence cannot exist without Union." They warmed to the President's hope that all would "rely on the Justice of our National Councils" and to the approaching "extinctions of the public debt, . . . which would necessarily produce modifications in the revenue system."^45

Five speeches were delivered before that audience broke up at ten o'clock. Legare's was second, following what was merely an enlarged toast to the Union by Thomas R. Mitchell. Petigru, Daniel Huger, Benjamin Faneuil Hunt, and Richard Yeadon spoke after Legare, whose speech was by far the longest. Although he was not a party officer, the Unionists still considered Legare to be their orator. 46

The overflow audience, the barnlike structure, and the gathering political intensity of party struggle presented a speech situation to Legare which differed greatly from that of the usual Fourth of July celebrations in Charleston. A few blocks away the Nullifiers were holding a similar meeting and stating their beliefs.

This was no place for eulogies, panegyrics, or testimonials to departed heroes, but was rather a demand for

---

46 Identical versions of the speech are available in Writings, I, 270-279, and in Camden Journal, July 23, 1831.
principles upon which future actions would be based. No simple declaration that the past had been glorious or that the future held forth promise would do for these Unionists who sat and stood before him down the lengths of all the tables. Nor did they expect that sort of speech from Legare.

He began simply, as had lately become his custom, and declared that he would speak that day what he thought, that his speech would be an exposition of his beliefs which warred against nullification. As he spoke there was little, if any, ornamentation added to his words. The interest which he roused lay solely in his subject matter. "The only question before us today," he said, is "the expediency of immediately interposing the sovereign power of the State to prevent the execution of the Tariff law... Upon such a question, no man... dare be neutral."

As Legare accepted his obligations to state the case for the Unionists, he made it clear that he was no adherent of Henry Clay's "American System," which was the essence of the newly developing Whig Party, and that he thought that system "unconstitutional, unjust and inexpedient." This opinion, he said, "I did not take up hastily," for "I, in common with everybody else in the State,

47The American System included, among other tenets, a policy of high protective tariff to make the United States economically independent, and federally supported internal improvements to bind the sections together.
once thought it within the competency of Congress. But mature inquiry has resulted in a change of my opinion upon that subject," and "I am more and more strengthened in that conviction by every day's experience and reflection."

Early in his speech he introduced an idea which was heresy to the Nullifiers and irritating even to some of those who sat before him. There was no connection, he said, "between the operation of the tariff law and the decay of the low country or the unproductiveness of slave labor"; but he hastened to add, "yet I do not wonder at the indignation which the imposition of such a burden of taxation has excited in our people in the present unprosperous state of their affairs." Then, almost exultingly, he stated one of his continuing beliefs:

It is not only as a Southern man that I protest against the tariff law. The doctrine of Free Trade is a great fundamental doctrine of civilization. The world must come to it at last, if the visions of improvement in which we love to indulge are ever to be realized.

Legare believed that much discussion by serious thinkers from all parts of the country would finally lead to harmony between the sections--sooner at least than would the harsh measures of nullification. As a result of this conviction, his next words endorsed the convention of the

---

48 On Friday, September 30, 1831, a convention was scheduled in Philadelphia, "by virtue of appointments made by public meetings in various states of the Union, held in pursuance of the following notice, first published in Philadelphia," June 22, 1831.

"Resolved, That a Convention for the purpose of se-
anti-tariffites to be held in Philadelphia in September:

Not that I am sanguine as to the immediate results of such a meeting; but if it be filled, as it ought to be, with leading and enlightened men from all parts of the country who think as we do upon the subject, it will awaken the attention of the people, and will lead to general discussion, it will give scope . . . for the operation of those momentous truths on which we rely.

Only then, after he had given his audience a concrete hope that other sections of the country were with the Unionists in sentiment, did he turn to the problem at home. He approached the question of nullification as an evil "calculated to divide us among ourselves, to alienate us from . . . our natural allies . . . the agricultural states in the neighborhood." He also spoke of the part he had played in preventing the doctrine of nullification from having been adopted by the state legislature in 1828: "I acted upon deep and solemn conviction, and I thank God . . . for being permitted to indulge in the consoling persuasion that my humble labors on that memorable occasion did contribute to avert" a convention and the "calamities" it would

.. during the efficient cooperation of the friends of Free Trade, throughout the United States, in procuring the repeal of the Restrictive System, be held at the Mansion House Hotel, in the City of Philadelphia, at 10 o'clock, on the morning of Friday, the 30th day of September next; and that there be invited to attend the same, such citizens, from all the states of the Union, without distinction of party, who are favorable to the object of the meeting, as may find it convenient to attend." Joseph R. Evans was chairman of the Philadelphia delegation. The Journal of the Free Trade Convention, Held in Philadelphia, from September 30 to October 7, 1831 (Philadelphia, 1831); Boucher, The Nullification Controversy in South Carolina, 112-114, 155, 162, 164.
bring.

He attacked Calhoun's theory specifically by saying: "The doctrine of Nullification . . . , as taught in 'The Exposition,' . . . involves just as many paradoxes and contradictions as there are topics relied on to maintain it."

The difference between the Unionists and the Nullifiers, he reminded his listeners, was not the question of "how far a state is bound to acquiesce in an unconstitutional act of Congress." Both parties agree as to the right, but the Unionists, he said, call that right by the name of Revolution and refuse to exercise it; while the Nullifiers call it Nullification and wish to exercise it, believing that by declaring it "to be constitutional it must be constitutional. The advocates of Nullification insist that the interference of the States in such a case would be a peaceable act—we say it would be an act of war . . . ."

Driving hard from point to point, as if judges sat before him instead of a crowd of diners, making no use of exhortation or embellishment of phrase, Legare developed the argument he had set forth a year earlier in the Camden Journal and in 1828 in the House of Representatives. "For the sake of argument," he granted the stand taken by Calhoun, and by Turnbull in The Crisis: "that the government of the United States was no government at all," but merely "a compact between independent States, conveying no powers not usually granted in international treaties." Legare "put the
case as strongly as possible for the advocates of the doctrine. I will suppose," he said, "that this constitution ... is found out to be a league between foreign powers, and that every question that can arise under it ... is merely a political question. What then?" He followed this up by arguing against the inferences which the Nullifiers had drawn from their premises: "Did you ever hear of one party to a league having a right ... to bind the other party by his judgment?" The Nullifiers "entirely forget," he said, "that there are other parties to the compact" besides South Carolina and that "those parties" also have "rights to express" and "interests to maintain."

Legare then moved to his concluding inference that South Carolina must be bound by the same strictures she placed upon others:

'We have a right to judge for ourselves,' they say, 'how far we are bound by the Constitution.' Grant it. But what of the other twenty-three parties? Are they all bound by our decision? Shall they not think for themselves, because we say an act which they have all declared to be within the meaning of the treaty and binding upon us, is not so? If our opinion is just, we are not bound. Admit it. But if theirs is just, we are bound.

Having laid a long fuse to his charge, Legare lit the match and applied it where the audience could watch it splutter:

The whole fallacy of the Nullifiers consists in coolly taking for granted the very matter in dispute, in blotting out this "if," in denying to others the very right of judging, which we claim for ourselves, and in expecting them, exacting of them, to act upon our convictions instead of their own.
In emphasizing the possible result of Calhoun's challenge to the other states, Legare drew upon Josiah Quincy's exhortation to the people of Boston prior to an earlier conflict, using the words of warning which that patriot had spoken:

The exertions of this day will call forth events which will make a very different spirit necessary for our salvation. Look to the end. Whoever supposes that shouts and hosannas will terminate the trials of this day entertains a childish fancy. We must be grossly ignorant of the importance and the value of the prize we are contending for—we must be equally ignorant of the power of those who are contending against us—we must be blind to that malice, inveteracy, and insatiable revenge which actuates our enemies, to hope that we will end this controversy, without the sharpest conflicts—to flatter ourselves that popular resolves, popular harangues, popular acclamations, and popular vapor, will vanquish our foes. Let us weigh and consider before we advance to those measures which must bring on the most trying and terrible struggle this country ever saw.

That was the warning. The conclusion followed: "The only question now submitted to the people of South Carolina is—are you ready to absolve yourself from your allegiance to the Government of the United States, and to make and maintain your station as a separate commonwealth among the nations of the world?" A derogatory epithet which the Nullifiers had often used against the Unionists was presented as a compliment as Legare ended his speech: "I give you, Sir, the Submission men of South Carolina. They dare do all that may become a man; who dares do more, is none."^49

The response to the speech in the Unionist papers was approving; the Charleston Courier seconded the concluding lines of the speaker. The Camden Journal directed its approval toward the argument itself:

We do not hesitate to pronounce the speech of Mr. Legare on this occasion one of the best we have ever read. He has placed the doctrine of nullification in a position where all we ask of the people is to—look. Look, fellow citizens at the portraiture there drawn, and if you can worship the monster image—it were idle to say more to you.

In August the same paper remarked: "The speech of Mr. Legare at the anniversary is eliciting the most flattering commendations from every part of the country." The Camden Beacon, on the other hand, misinterpreted Legare's meaning by quoting only a part of an idea, declaring he said "the tariff was not oppressive." Because Petigru had said at the same meeting that the tariff was constitutional, it concluded that "the Submission party of the state was one with Daniel Webster, New England, Tariff and the Federal Party."

Throughout July and August meetings were held to appoint delegates to the Philadelphia Convention of anti-tariff men. As both parties were against the tariff and both attended these meetings, the discussions were lively.

---

50 Charleston Courier, July 9, 1831.
51 Camden Journal, July 23, 1831.
52 Ibid., August 6, 1831.
53 Camden Beacon, July 19, 1831.
and at times almost violent. The delegates finally chosen were about equally divided between the two parties. Among them were Daniel Huger, John Fraser, Henry Middleton, Thomas Pinckney, and Legare, Unionists, and Preston, A. P. Butler, Stephen D. Miller, William Harper, and Langdon Cheves, Nullifiers. 54

After visiting his friend, George Ticknor, at Harvard, and a newer friend, Edward Livingston, in Washington, Legare attended the Philadelphia convention. He saw clearly that this convention would result in further strengthening the position of the Nullifiers in South Carolina. The meeting ended by voting to send another "Memorial to Congress." Although it was signed by names from all over the country, Legare perceived that it would have no more effect than the earlier ones sent by the South Carolina legislature. The same feeling was expressed by many South Carolina papers. 55

This further failure of the method of discussion, as advocated by Legare and the Unionists, gave greater incentive than ever for the Nullifiers to take action. To counteract this, on November 7, State Rights Associations were formed all over the state. Over thirty such associa-

---

54 The Journal of the Free Trade Convention, 5-7.
55 Pendleton Messenger, October 5, 10, 25, 1831.
tions met in Columbia in December. Although the Union forces were active, Legare and such men as Petigru and Drayton knew that enough votes would soon be gathered by the Nullifiers to enable them to call a convention, even though the 1831 session of the legislature had done nothing more than pass resolutions denouncing Jackson's letter to the Unionists which had been read on July 4.

In January, 1832, Legare determined to leave the country. He had been offered the post of Charge d'Affaires at Belgium and had been strongly urged by Edward Livingston to accept. As Legare watched the waning strength of the Unionists he felt a growing certainty that a convention would be called. Congress was about to give ear to Clay's plan for making some trifling reductions in the tariff and "for spending a large part of the revenue for internal improvements to benefit the West." With the exception of James Blair, Thomas Mitchell, and Drayton, the delegation from South Carolina insisted upon placing all duties on a uniformly low level, whether they were imposed upon "protected" or "unprotected" items. They refused to make any compromise whatever. With the position of the Nulli-

56 Boucher, The Nullification Controversy in South Carolina, 125-127.
57 Ibid., 164.
58 Ibid., 166.
59 Charleston Southern Patriot, April 4, 1832.
fiers solidified, their strength would grow within the state, and Legare felt that by autumn they would control the legislature. Actuated by this thinking, Legare decided to accept Livingston's offer, for he felt that in Belgium he would be able to give some service to his country—at least until his fellow Carolinians returned to their senses. William Drayton, with similar reasoning, left South Carolina forever.

Intent upon preparations for leaving the country, giving up the Attorney Generalship and his own legal practice, as well as arranging his family's affairs, Legare was not able to make what he considered adequate preparation for his last important speech in Charleston. On February 14th, at a "Public Meeting of Citizens" he was appointed Orator for the Washington Birthday celebrations. As the day approached he was further deterred from preparing his address by the first symptoms of the stomach ailment which later caused his death. Consequently, he was obliged to attempt an almost impromptu speech.

Again he spoke to an overflow crowd. The Courier stated that St. Philip's Church could accommodate only one-fifth of the people assembled. Listeners crowded at the windows, peering into the building from every possible vantage point. The oration was preceded by divine services

Wiltse, John C. Calhoun, Nullifier, 200.
conducted by the Reverend Alston Gibbes. Odes written for the day were then "sung by a select choir."

Legare, "although laboring under severe indisposition, . . . delivered an oration which was altogether worthy of his high reputation as a profound scholar and accomplished orator." He suited his words to the subject and to the reverent attitude which his audience held for the first President.

He offered no eulogy to Washington, declaring that "one equal to the subject was impossible," and that he "would require no stronger evidence of a man's incapacity to the task than that he should think it" possible. Instead, he traced the events which followed the birth of Washington, drawing vivid pictures of each era. He reviewed the century which had just passed, calling it a "period of the greatest civilization and purest philosophy" which the world had ever known, for, he said, only "in such an age had there been known a people capable of self-government, which by its very connotation implied the highest attribute of the human understanding."

Legare developed the thought that Washington's career was a model for the perfect "Republican virtue— that it combined in the finest manner" all the high qualities, "many of them apparently contradictory, which must be found in harmonious union in the characters of the people themselves, or those people were unfit for popular institutions."
He pointed out that every age of society had its heroes and gave a number of instances. Washington, he said, was the "heroic personification" of that state of society which was the most "advanced and exhalted." It had "often occurred to him in reading the works of Milton that what the poet had thought of, Washington was." Milton was one of Legare's favorite studies and it was indeed a high compliment for him to compare any man to the sublimity that poet had reached. "The moral grandeur which was the chief element of Milton's genius was," he said, "the element of Washington's character which was noteworthy in the same degree. It was, he added, "the main element of all greatness—eloquence itself,... and the most fit illustration of Washington's character could be found in the writings of Milton and Demosthenes."

Washington, said Legare, "had more practical ability and wisdom" than any other man of his day, and "illustrated his sagacity by preventing the projected invasion of Canada when the French alliance was first formed."

Legare then made several comments on the authenticity of the "Farewell Address." Rumors had recently been circulated that Washington had not actually written it. "It is not impossible," declared Legare, "that in the mere literary execution of it another hand might have had some part; nevertheless, those who would deprive him of the honor of having written it would have to explain how the reply to the
'Newburgh Letter' and his farewell address, both of them well written and admirable in composition," could have come from the pen of this man. Moreover, "Washington's voluminous correspondence" contained "the deepest political wisdom.

Legare then returned to the character of Washington: "Washington was more than a great captain; he was a great man full of the heroic spirit of the era, which he transferred to his troops." Of all the generals available, Legare believed "he was the only soldier of the day who could have kept his army together under the dreadful sufferings and deprivations" they faced. On the other hand, "had he not so completely merged the ambitious soldier in the good citizen, he might too have done incalculable harm at the head of a discontented army." Legare denied that Washington "could have put a crown upon his own head, as some foreigners imagined, but he might have extinguished the hope and glories of his country by plunging her into a civil war when she was already ruined by the previous contest."

In the final sentence of his speech Legare was no longer speaking of Washington. He was talking of the conditions of a time so similar in his mind to the economic weakness of his own state, but he implied that the one period had a wise Washington, whereas the present one had unwise Nullifiers to lead the people. In his peroration Legare extolled the man who "had left his country prosperous and
The speech was an occasional address, given in the mood of the day, and Legare, because of circumstances, spoke only those thoughts which came to him from his surroundings. Moreover, he framed his thoughts in such a manner that they had immediate application to the audience before him. Accordingly, he pictured the first American citizen as sacrificing what might have been a more ambitious course for the common good and as one who refrained from actions which could result only in dissension. The speech was his last public appeal to those Charlestonians who would still listen.

Many of the Union party had deserted. Some had thrown off their pretended love for the Union, which they professed only so long as the Unionists had retained a fair measure of control. The deserters and the Nullifiers had ceased to call nullification a peaceable remedy, and "it was freely admitted that civil war or disunion might result from it." Legare had called nullification a revolutionary measure. He had finally been taken up on his terms. There was no more that he or Drayton or Huger or Petigru could do within the state. Legare did not wish to die with the

---

61 Charleston Courier, February 24, 1832.
state as Daniel Huger was willing to do. There was work for him elsewhere. He could watch from Europe as the Nullifiers ran through the course of their malady. Friends who remained would keep him informed. One day they would tell him that his help was needed once more.
CHAPTER VIII

LEGARE'S SOUTHERN REVIEW

From February 1828 to February 1832 Legare's belief that "much discussion" is eventually the most effectual remedy to most problems was given concrete expression. The finest planter-minds of Charleston and the low country, in common enterprise, established the Southern Review as an organ through which they might speak "to vindicate the rights and privileges of the Southern States, and to guard against all violations of the Constitution." In pursuit of that objective the editor was "to be guided by no party feelings." A second purpose of the magazine was to bring to the notice of the citizens those works which detailed "the improvements of the age," and "those which leave, by their intrinsic power, their own impress upon the human mind." Editorial attention was to be "unremittingly applied" to the fields of literature, science, and agriculture, "as well as to our national and local concerns."  


2 Ibid.
The Review, then, was a community effort launched by Charleston intellectuals to protect Southern interests and to educate Southern tastes. The final plans for inaugurating the magazine, according to Jacob Newton Cardozo, were discussed at the home of General Hayne in the fall of 1827.\(^3\) The exact make-up of the group is not known, but, besides the host, it is probable that the two editors, Legare and Stephen Elliott, Sr., were there. Cardozo, publisher of the Charleston Southern Patriot, admits being present, and some, or all, of those who became trustees must have been at the inception. Those trustees were: Drayton, Hamilton, Petigru, Dr. S. H. Dickson, Mitchell King, John Gadsden, and Hayne, besides the two editors.\(^4\) Daniel and Alfred Huger were surely there, and possibly Thomas S. Grimke, Dr. John Holbrook, Edward Pringle, Bishop England, and Dr. Samuel Gilman, all of them foremost in promoting cultural activity in Charleston. All believed in the advancement of Southern culture, and their ambitious demand was that the South have an organ for its expression on a parity with or superior to the North American Review or the Edinburgh Review.

In launching the Review the editors drew their

\(^3\) Jacob N. Cardozo, Reminiscences of Charleston (Charleston, 1866), 36; Rhea, Hugh Swinton Legare, A Charleston Intellectual, 95.

\(^4\) Columbia Southern Times & State Gazette, November 23, 1830.
articles from all phases of Southern thought. Although Unionists in their own beliefs, they gave full space to the writings of the Nullifiers. Dr. Cooper contributed several articles. Among them was one against the rechartering of the United States Bank on the grounds that the business of the government could be readily handled by "means of cash-paying State Banks and private Banks." In another article, "The Distribution of Wealth," Cooper asserted: "Of all taxes, an income-tax is the fairest." He thought this tax should be applied to all persons making more than $750 a year, with a scale that placed the burden upon the higher income brackets. The writer justified this by saying: "An income of 2000 dollars ought to contribute more than double the amount laid upon an income of 1000 dollars; for the possessor can bear it better." 

James Hamilton, Jr., in a not too erudite essay,

5 All articles in the Southern Review were published anonymously. They have been identified by various authorities. A set of the Review now in the possession of the writer once belonged to Daniel Huger. It contains his identification of the articles. Another set, in the Carolinians Library, is identified by Charles Fraser, a contributor and a friend of Legare. A third, in the same place, is identified by Alexander Salley, former State Historian of South Carolina. The Charleston Library Society possesses a manuscript which identifies the contributions to the Review. Maximilian LaBorde, South Carolina College, 169-170, 188, 214, 388, identifies most of the contributions of the professors at the college. Wherever these identifications are in agreement there cannot be much doubt as to the authorship.


7 "Distribution of Wealth," ibid., 190.
reviewed *The Anatomy of Drunkenness*, by Robert McNish, and suggested with a certain amount of prejudice that, perhaps, drunkenness prevailed "more extensively in the Northern than in the Southern States of this confederacy." After a discussion of symptoms and treatments of the evil, Hamilton concluded with a warning to temperance societies not to institute "inquisitions into the habits of their neighbors" or to proscribe "all men whose habits may not be as ascetic as their own."8

George McDuffie wrote on the tariff.9 Concerning this essay, and another of opposing views written by Drayton, the editors stated:

The two last articles in this Number have been furnished by two of our most able statesmen. If they differ somewhat in their views—if they differ sometimes, from the opinions we ourselves have advanced, we yet publish them with great pleasure, from a wish that at a moment like the present, subjects of paramount importance, may be fairly and under different aspects, placed before our readers.10

McDuffie discussed an address which had been delivered at the Harrisburgh Convention, 11 July 30, 1827, written by Hezekiah Niles and Matthew Carey, which advocated the tariff

---


11A convention called by Clay and the tariffites to present the cause of high tariff to the people. The result was the high tariff bill of 1828.
to encourage industries. McDuffie criticized the protectionists for overlooking the fact that domestic competition could not reduce the cost of an article below the cost of production, for even when a protective tariff was placed upon imported goods, production costs were "at least eighty per cent higher in the United States" than in England. Consequently, the benefit of a tariff would be more than nullified. The cost of importation, he explained, might be "estimated at twenty per cent. Deduct this from eighty per cent and we have sixty per cent as the permanent tax imposed by prohibitory duties." He was certain that if this country ceased to purchase "all British productions, Great Britain cannot, and will not, purchase our agricultural staples," and that "if the tariff of 1828 is not repealed, . . . the existing market for two-thirds of the staples" produced in the South would be lost. "Free trade," he concluded, "would relieve the Southern States from at least fifteen millions of taxation, now annually paid as a tribute to the tariff States."12

Judge William Harper, another leader of the Nullifiers, wrote on the implausibility of efforts by the American Colonization Society to transport free Negroes to Liberia. From the standpoint of humaneness, of finance, and the inability of the society to transport the Negroes

fast enough to keep up with natural increase, Harper declared the attempt to be futile. "We say to the North, we cannot admit your right of interference. We fear no danger from you. This is the evil which now presses upon our thoughts." By these remarks Harper identified in his own mind the colonization movement as a part of the attitude common to the North in regard to slavery.

One of the earliest of the fire-eaters, Robert J. Turnbull, author of the incendiary "Brutus" essays in the Charleston Mercury, reviewed three of McDuffie's speeches, two in the House of Representatives of the United States. The third was the 1831 speech at a Charleston dinner which had forced Calhoun's hand and brought about the writing of the Fort Hill letter. The entire essay was in agreement with McDuffie's words and concluded: "No people can have any just pretensions to liberty where the government exercises the power of taking the property from one portion of the community and giving it to another." Those were the fire-eaters writing. Legare made no editorial effort either to prevent the appearance of their essays or to interfere in any manner, by comment or deletion, with their publication. His political enemies had free ac-

13"Colonization Society," ibid., I (February, 1828), 219-232, passim.
14"Indirect Taxation," ibid., VIII (November, 1831), 257.
cess to his pages.

Another group, in favor of nullification but not fire-eaters, wrote less controversial articles. Such were the writings of Hayne. One of his essays, the "Execution of Colonel Isaac Hayne," was biographical and dealt with an incident of the Revolutionary War. A second was "American Naval History." Samuel Prioleau discussed the "Liberty of the Press," and "Murat's Letters on the United States." David McCord, Legare's former classmate at South Carolina College, contributed an article upon the "Federal Constitution" in which he emphasized the inability of the state to interfere with the transactions of the Federal Government, and asked the question, "Are they to hold their peace?"

Professors at South Carolina College sent in their share of learned studies, President Cooper writing the most. That industrious scholar wrote on numerous subjects, such as "Principles of Agriculture," "Gall on the Function of the Brain," "Geology and Mineralogy of North Carolina," "Therapeutics," and even joined the late romantic

---


movement sufficiently to look into the early writings of the English race in a critical essay on "Higgin's Celtic Druids." Professor Robert Henry reviewed the "Romances of the Baron de La Motte Fouque," and made an analytic study of Goethe's psychological novel, *Wilhelm Meister*. Henry Junius Nott produced a condensed translation of the Latin of Gulielma Leonardo Mahne's *Vita Wyttenbachii*. This he followed in the next issue by a review of Charles Butler's *Life of Erasmus*, commenting upon the service Erasmus had rendered literature by providing an enlarged Latin vocabulary. This contribution, said Nott, brought about a more expressive style and allowed a greater fluency in the use of Latin. From the same writer also came the "Memoirs of Dr. Parr," "Travels in China," and an essay on the *Oeuvres Completes de Paul Louis Courier*.  

---


20 "Life of Wyttenbach," *ibid.*, I (May, 1828), 410-442.

21 "Life of Erasmus," *ibid.*, III (February, 1829), 77-124.  

Two other members of the college faculty sent in contributions. The essays of one of them, M. Michaelowitz, the librarian, brought on an interchange of letters with Noah Webster, which, besides being interesting in themselves, suggested that the *Southern Review* was being circulated in the North. Michaelowitz had reviewed Webster's *American Dictionary*. In doing so he attacked the introductory statement, charging Webster with a number of errors, both as to the origin of words and the origins of languages themselves. To this Webster replied with some caustic remarks about Michaelowitz's interpretations and knowledge. Webster's letter and Michaelowitz's response were printed in an appendix to the August, 1830, issue of the *Review*. There was no further published reply to the librarian's charge that Webster "had studied these languages only by dictionaries, so that we find it necessary to repeat 'that the mere aid of dictionaries, without grammatical knowledge, leads the inquirers to conclusions which often are equally absurd and delusive.'" Besides his article on "Etymology," Michaelowitz contributed an analysis of Moses Stuart's

---

23 Noah Webster, *An American Dictionary of the English Language*. To which are prefixed an *Introductory Dissertation on the Origin, History and Connection of the Languages of Western Asia and of Europe*, and a *Concise Grammar of the English Language* (New-York, 1828).

24 *Southern Review*, VI (August, 1830, appendix.)
Grammar of the Hebrew Language. 25

Professor James Wallace confined himself, in one essay, to mathematics. 26 In another, however, "Remarks on Canal Navigation and on the Resistance of Fluids," he made a practical application of the laws of physics to show that even in competition with the rapidly developing railroads, better uses could be made of the canals and rivers if special and radical principles were applied to the construction of boats in order to give them greater speed. 27 This is the same Wallace who proved mathematically that the use of multiple connecting rods would give a more efficient thrust to a motor—a principle which is today demonstrated in the automotive industry. 28

Stephen Elliott, Jr., later Bishop of Georgia, rounded out the efforts of the South Carolina College faculty by reviewing Reginald Heber's Life of Jeremy Taylor. 29

The staff of the Medical College of Charleston was also...


26 "Geometry and the Calculus," ibid., I (February, 1828), 107-134.


represented by Thomas G. Prioleau, who wrote an article on "Dyspepsia." This subject had a strong reader interest in 1829. Dietetics were practically unknown. Wordsworth, Coleridge, and Legare himself suffered from stomach disorders brought on mostly by an overbalanced meat diet. Countless others had the same malady, and doctors often prescribed laudanum for the resultant dyspepsia.

The church also expressed itself in the Southern Review. The first Roman Catholic bishop of Charleston, Bishop England, head of the Philosophical and Classical Seminary, gleaned the letters of missionaries of the seventeenth and eighteenth centuries for their remarks upon Indian beliefs, and then wrote the "Religion of the Aboriginal Americans." The Presbyterians were represented by an essay from the Boston-born Dr. Samuel Gilman, who reviewed Thomas Brown's Lectures on the Philosophy of the Human Mind, somewhat unfavorably, in relationship to the thinking of Thomas Reid and Dugald Stewart.

Editors of the Charleston Mercury and the Southern Patriot sent in reviews, one literary, one economic. John A. Stuart, editor of the Mercury, severely criticized James

30"Dyspepsia," *ibid.*, IV (August, 1829), 208-241.
31"Religion of the Aboriginal Americans," *ibid.*, II (November, 1828), 303-348.
32"Brown's Philosophy of the Human Mind," *ibid.*, III (February, 1829), 125-156.
Fenimore Cooper's *The Wept of Wish-Ton-Wish* in contrast with the earlier *Leatherstocking Tales*. Cardozo, of the *Patriot*, already nationally known for his revolt against the theories of Ricardo, attacked that school in an article on rent, arguing that no distinction could be made between artificial and natural fertility in land, and that the value of land was "regulated solely on commercial principles." It was his opinion that soil had no intrinsic worth except that obtained from it by labor and capital, and that worth varies as does the quality of the soil, the quality of the labor, and the quantity of the capital.

Charleston had at that time one of the finest corps of legal talent in any American city, and it was natural that it was well represented in the *Southern Review* by such lawyers as Drayton, Petigru, Samuel Prioleau, and Legere--and by those already mentioned, McDuffie, Hamilton, McCord, Harper, and Hayne. Drayton considered the question:

---


34 "Cardozo was the only man in pre-civil war America whose mind operated on that high level of abstraction that characterized the work of Ricardo and his school." Dorfman, *The Economic Mind in American Civilization*, 551.


36 Ibid., 192-218.
"Does the Federal Government or the State of Georgia possess the power to extinguish the titles to lands in the occupancy of Indian tribes, within the limits of that state?" Drayton took the position that what concerns the lives, liberties, and property of dwellers within a state is included within the province of the legislature of the state. He declared himself to be neither the advocate of state rights nor of Federal powers in opposition to each other, and expressed the hope that both might be maintained unimpaired.

Petigru, Legare's lifelong friend and a great lawyer, combined a delineation of the "Court of Chancery" with some pertinent advice to those who wrote reports of court cases. He gave reasons against the union of law and equity recently proposed in the State Legislature (which Legare had fought against). The leading characteristic of common law, wrote Petigru, is precision; but that part of law "which is called equity has many exceptions" and distinctions. "It is flexible. Therefore, the joining of the two jurisdictions would tend to relax the rules of law, and increase the discretion of the judge." Toward the end

---

37"Georgia Controversy," ibid., II (November, 1828), 541.
38Ibid., 541-582.
39"Court of Chancery," ibid., III (February, 1829), 73.
of the article Petigru suggested that the move toward efficiency might be helped without legislative changes by such simple means as reporting cases with greater brevity. If "Mr. Peters, who prints from all the counsel's brief every thing with long letters and all sorts of evidence without any bearing on the case," could learn not to do so, lawyers, he said, might stop taking on the "reporter's prolixity." 40

Samuel Prioleau, in a rambling review of an English antiquary on law and lawyers, besides repeating many of the anecdotes of the earlier work, defended the American judiciary from disparagement. He declared that the complexities of the English system "make a lawyer at the expense of the man," whereas "our system improves the man at the expense of the more technical practitioner." 41 The branches of the law in the United States, he added, have been simplified; the doctrines of the rights of man, the principles of international law, and constitutional law have been perfected, and the law adapted to the conditions of a republican people. 42

The field of the fine arts was represented by four essays. One was by Charles Fraser, written in reply to an article in the North American Review entitled "Academies of

40 Ibid., 63-77.
41 "Law and Lawyers," ibid. (May, 1829), 432.
42 Ibid., 431-450.
Arts." In that article Samuel F. B. Morse, who had studied painting in England but is better known today for his experiments in telegraphy, had declared that the fine arts were associated with the old age of a country. Against this view Fraser maintained that the natural scenery of America and its heroic history would give "ample employment to the painter, the statuary, and the engraver," and that American artists, by starting afresh from nature herself, would avoid many of the errors of the English and the continental schools.

Three other articles on the fine arts which were printed in the Southern Review, together with the peculiar revelation of their authorship, typify Legare's editorial integrity. The last of the three, "History of the Fine Arts," was as erudite and well-written as the two earlier ones on the history of Greek literature. They were all submitted by a German who had lived in Charleston for over three years. Though Legare printed the articles he was struck by similarities of phrasings to German works which he remembered. His curiosity was sufficiently aroused for him to check at length for possible sources. He found them, and discovered that the Greek surveys had originally been written by Wachler and the one on fine arts by Fiorillo.

44Ibid., 71-86.
The plagiarist, meanwhile, had sailed for Germany. Legare, nevertheless, printed his findings, stating that the contributor could "claim no higher rank in literature than a plagiarism."\footnote{Ibid., VII (August, 1831), appendix. The articles in question appeared in ibid., VI (August, 1830), 32-61; ibid. (November, 1830), 358-379; ibid., VII (May, 1831), 121-259. The works plagiarized were Wachler's Handbuek, der Geschichte der Literatur and Fiorillo's Geschichte der Mahlery.}

Pedagogical theories were expounded in Stephen Elliott, Jr.'s "Education in Germany," Cooper's "Agrarian and Education Systems," and Thomas S. Grimke's "Public Education."\footnote{"Education in Germany," ibid., IV (August, 1829), 86-123; "Agrarian and Education Systems," ibid., VI (August, 1830), 1-31; "Public Education," ibid., I (May, 1828), 478-503.} From the fields of science there were such contributions as "Classification of Plants," and "Views of Nature," by Stephen Elliott, Sr., the co-editor of the Review for two years.\footnote{"Classification of Plants," ibid., IV (November, 1829), 466-498; "Views of Nature," ibid., II (November, 1828), 408-431.} He also wrote two fine critical essays, which were essentially biographies, one on "Jefferson's Memoirs," and the other on the Memoires de M. Bourrienne, Ministre d'Etat sur Napoleon.\footnote{"Jefferson's Memoirs," ibid., V (February, 1830), 100-138; "Bourrienne's Memoirs," ibid. (May, 1830), 257-295.}
that appeared in the sixteen issues of the Southern Review, Legare wrote thirty-five or more. The question of his authorship of these essays is somewhat less difficult than that of some of the other contributors. Sixteen of Legare's reviews are included in volume II of his Writings. In his letters to J. Burton Harrison he claimed authorship of three others: "The Roman Orators," "Pollak's Course of Time," and "Political Economy." In his "Cicero de Republica" he implies the authorship of "Niebuhr's Roman History." Internal evidence gives strong indication that he wrote the criticism of "Ben Jonson's Works." The "Omnipresence of the Deity," "The American System," "Hoffman's Legal Outlines," and "Law of Tenures" were ascribed to Legare by the anonymous author who wrote "Life and Labors of Hugh S. Legare" for the American Review in 1845, and who spoke from "personal recollection." Such evidence accounts for twenty-five of Legare's articles. Corroboration is found in the authorship listings of Alexander Salley, South Carolina historian; of Charles Fraser, a friend and contributor; of Daniel Huger, a friend;
of Paul Hamilton Hayne, a biographer of Legare; and from the manuscript list of the authors in the Charleston Library Society. By agreement in these listings, Legare's authorship of eleven or more articles, besides those enumerated, is strongly suggested.

A further identification, even more accurate than the listings, is the signature of Legare's style. It is characteristic and peculiarly his own. His syntax is difficult only at first glance, for his sentences engulf a thought, amplify it, digress upon it, taxing the reader's concentration. But there is perspicuity and ease in the sentences, and a rhythmic element that avoids monotony. Never is there any straining for effect, nor any attempt to set forth aphorisms. Anglo-Saxon normally maintains a balance with Latin-derived words. When Legare illustrated or emphasized, however, he used a racy, idiomatic English, almost free from Latinization.

Legare's sentences are usually long, sometimes extremely so, broken often, whenever a thought has been sufficiently elaborated, by terse, emphatic expressions. The syntax does not follow a constant pattern. Periodic sentences are varied by balanced ones; the complex sentence is followed by the simple. Within compound sentences are parenthetic elements sufficient to break regularity. Through an entire work, and, indeed throughout all his writing, the reader feels a peculiar rhythm in Legare, though never aware
of its obtrusiveness. Even in the most formal of his essays there is a casualness, as if Legare used a language completely native to him and to the race for which he wrote. He was never impeded by language in the utterance of any thought; it was a complex instrument which he used fluently, easily. The language was his, a part of him.

"The mother-tongue," he said, "is acquired ... in the nursery--at the fireside--at the parental board--in society--everywhere."53

That there is an urbanity, a polish, in Legare's style no one who reads a page or two of any of his essays will deny. There is also an animation that runs through his works. It is in the phrase which fits into the mold of the syntax; it is in the aptness of the word. Most of all, it is in the piling up of matter as each clause, and even the parenthetical elements, leads to the enlargement of the thought. Legare desired to instruct. He used his sentences, his phrases, his words, to that end. At no point did he depart from that purpose merely to display ornateness. No purple patches scream oratorically at the reader. No beauty is added to the line for its own sake or to display poetic facility. Legare drove a load of thought to market. The sentences were horses that pulled harmoniously, answering readily to his reins, never getting out

53 Writings, II, 50.
of their traces.

This harmonious movement used for didactic purposes accounts for the rhythm within his writing. Each part teamed with every other part toward the single end, and this fact explains why very few passages of Legare's can be taken out of their context as quotable material. Separated, the vigor of the phrase is lessened; but left in their intended place, the amplifications and digressive elements combine to give a clear and enlivened progression from preceding thoughts, and form necessary bridges to the driving thought that follows.

Legare's style stands out from that of the other writers in the Review. There is none of the choppiness that is found in Cooper; none of the cautiously dull phrasings of Elliott, Sr. Even the excellent diction of Nott is inferior in rhythm, variety, and animation.

The essays of Legare, considering only those which are undoubtedly his, cover over twelve hundred pages, or about two and one-half of the eight volumes of the Southern Review. The intelligence and energy which produced this solid accomplishment ranged easily through the fields of political economy, literature—ancient and modern—and jurisprudence.

Five articles, one of them classical, make up Legare's study of political economy, a study which formed the preparation of his later speeches in Congress on the
currency problems. "The Public Economy of Athens" was written with contemporary restrictions on trade in mind. The inference was "that free trade, as such, was the policy" of the Athenian economy, "but that the power of government to interfere with all the concerns of the citizens, in the most absolute and arbitrary manner, was implicitly admitted, and that this power was, in fact, often exercised to the great detriment of commerce." The Athenian government was corrupt and, consequently, credit "was at a low ebb," because people had no confidence "in the administration of the laws." All money transactions were in the hands of bankers who "carried on an immense business" in speculation. The inflationary tendencies developed by this practice were heightened by the government-backed institution of the Theorica, which was the distribution of money to the people for festivals, money which should have gone to the defense of the country. "Their pleasures were to be preferred to their preservation."

The economy of Athens, wrote Legare, was so "oppressive and vexatious" that "no American citizen could bear to live under" it, and lasted as long as it did because of a "spirit of republican equality, bold, energetic, aspir-

55 Ibid., 280.  
56 Ibid., 284-297.
In those words was the core of Legare's thought which he was to develop five years later in a speech on the Sub-Treasury scheme of the Van Buren Administration.

Legare produced three studies on contemporary theorists of political science. In the first he argued against the principles advanced by J. C. L. Simonde de Sismondi that demand should precede and determine production; he upheld, instead, the position of David Ricardo and Jean Baptiste Say that a nation can never produce too much. The second work analyzed the theories of Daniel Raymond, an American, whose writings had circulated widely during the 1820's. Raymond's assertion that "property is wealth" Legare attacked as being meaningless, because Raymond was merely saying that "wealth is wealth." Raymond's statement that "a nation is in the greatest state of prosperity when the annual consumption just equals the annual production" Legare derided. He considered a better way to dispose of the net revenue of the nation would be to add

57 Ibid., 325.
it "to the capital engaged in production," and thus, in accordance with the theory of Adam Smith, have it "consumed reproductively." The third critical article on modern economy treated the work of Jean Baptiste Say. The treatise of that French professor, a friend of Jefferson, presented the entrepreneur as the great organizer of industry and considered property as a category of production. Legare accepted the precepts of Say sufficiently to remark: "Wherever has come in contact with his fellow laborers, as in his controversies with Malthus and Ricardo, he unquestionably has been triumphant. . . ." It is true, said Legare, that "the creation of values does not depend solely upon labor," as Adam Smith had said. The entrepreneur needs two ingredients: "the labour of man whether mental or bodily, and capital, whether it be houses, money, machinery, provisions, learning, or land." Capital

---

63 Jean Baptiste Say, A Treatise on Political Economy, or the production, distribution and consumption of Wealth (Philadelphia, 1830).
64 Dorfman, The Economic Mind in American Civilization, II, 513.
65 "Producers and Consumers," Southern Review, VIII (February, 1832), 496.
is the "accumulation of antecedent products of industry," and for a country to progress, annual income must be added to capital in such a way as to increase productive industry. Legare pointed out that the annual savings in the South were not sufficient to "swell the products of its land and labour" and that South Carolina was subject to a perpetual drain by absenteeism and emigration. The manufacturing states of the North, Legare declared, "have an immense advantage over us in respect to labour alone, when one considers the comparative unproductiveness of slave labour . . . in trades requiring skill." 67

Legare's fifth essay on political economy, "The American System," was confined to a discussion of the protective tariff in relation to the states of the South. In addition to reviewing his own tariff position from 1824 to 1828 in the South Carolina legislature, he went a step further and admitted that reciprocal trade agreements which foster commerce with other countries were an excellent thing. "Restraints upon commerce are certainly within the provisions of government, when the purpose of them is to coerce foreign states to reciprocity and fairness in their intercourse with us." The object of a "bona fide" commercial tariff would be constitutionally "to increase commerce—

66 Ibid., 496-497.
67 Ibid., 515.
procure a wider market for the products of the country, after those products are created." As to a tariff for protection, Legare stated: "We have never discovered in any contemporaneous paper of any kind, having the semblance of authority, an expression of a belief or a hope, that the powers of Congress would be exercised with a view to protection," except for constitutionally specified purposes of government.

Legare brought to the *Southern Review* a range of learning attained to by few men. With judgment and understanding he reconstructed the societies of Athens and Rome, the ages of Pericles and Augustus. The Demus of Athens held a strong fascination for him. Again and again he pictured that strange intellectual mob as it lived, corrupt, but at the same time, brilliant. In Legare's mind it had a similarity to the shouting partisans of nullification in his own Carolina.

His research into antiquity was given expression in six classical essays. The first, entitled appropriately enough, "Classical Learning," was Legare's plea that everyone should study the classics from an early age so that he would be better prepared to understand the literature and

---

The article was written in protest to the theme of Thomas S. Grimke, who claimed that the study of modern sciences would have greater utility for the modern scholar than would a classical training. Legare questioned that opinion: "Is not the space of human life, between the sixth and the twentieth year, quite large enough for acquiring every branch of liberal knowledge, as well as they need, or, indeed, can be acquired in youth?"

On the other hand, anyone could, "under competent teachers, acquire all that Newton or La Place knew, in two years."

The same truth "applies to any other branch of science."

If a child were taught the ancient languages from his eighth to his sixteenth years, Legare was convinced he would then have "his curiosity fired for further acquisitions," and, above all, would "be let into the great communion of scholars throughout all ages and all nations."

Legare's careful scholarship is well illustrated in two reviews: B. G. Niebuhr's Roemische Geschichte and John Dunlop's History of Roman Literature. Both articles consider the development of the Latin language from its sources.

70 "Classical Learning," ibid., I (February, 1828), 1-49.
71 Ibid., 46-47.
72 "Niebuhr's Roman History," ibid. (May, 1828), 320-341.
73 "Roman Literature," ibid., 358-410.
In the second article there is a discussion of Roman comedy and tragedy from the time of Livius Andronicus the slave, to Terence. The criticism of the latter is apt. Legare declared that in Terence there was a "faultlessness" that was "altogether insipid and spiritless" and that he seemed to "aim at nothing more than doing a perfectly genteel thing." 74 The appraisal of the dramatic writings of Ennius, whose works Legare called more representatively national than those of Seneca or Plautus, expressed regret that the writings of this dramatist had not been preserved, although in all probability they had been only translations of earlier Greek comedies and tragedies. 75

"The Roman Orators," which concluded Legare's discussion of the literature of Rome, was a review of the second volume of Dunlop's History of Roman Literature. 76 That work, however, was used merely as an introduction to a study of Cicero as an orator. It was Legare's opinion that Cicero "combined the most profound theory with the most successful practice of his art, and is the best teacher of it, precept and example taken together, that has ever ap-

74 Ibid., 390.
75 Ibid.
76 John Dunlop, History of Roman Literature, from its earliest period to the Augustan Age, 2 vols. (Philadelphia, 1827).
peared . . . "77 After a discussion of the Gracchi, followed by sketches of Antony, Crassus, Sulpicius, and Cotta—the four most distinguished orators before the time of Cicero—Legare enlarged upon two themes: first, the scenes of Roman eloquence, and, second, the ancient criterion of a good speech.

The Roman orators spoke before the "Praetor and the Selecti Judices," which were "analogous to our jury trials" with the Praetor functioning as a judge, and before the Senate, which, in Cicero's time, was supposed to have five hundred members—although "half that number was reckoned a full house." Orators also spoke before the people "in the Comitia, or public assemblies."78 In the Senate, once a speaker got the floor, "he was not, by the rules of the body, subject to any interruption"; whereas the "assembly, . . . in cases of extreme necessity, took the law into their own hands and put down a tedious or obtrusive speaker, as they would have killed a highwayman, in sheer self-defense." The eloquence used before the Comitia was "either forensic or deliberative, as they met both to pass laws and to judge questions of right."79

The last thirty pages of this essay were an exposi-

78 Ibid., 504.
79 Ibid., 505.
tion of what the Romans, and Cicero, thought to be a good speech. The orators themselves "made no secret of their laborious preparation," although the "Latin orators were probably somewhat less careful in preparation than were the Greeks." 80 Cicero "pronounced the pen to be the best and most effectual teacher of eloquence." Although his own speeches were elaborately prepared, Cicero "tells us expressly that speeches were generally written not to be spoken, but after having been spoken: habitae jam non ut habeantur." 81 Their art was to write and deliver speeches so well as to seem "perfectly ex tempore, that is, best suited to the time and occasion." Their speeches were always business speeches, however, and the orator was expected "to accomplish his end, and not to lose sight of it for a moment." But the audience demanded that he accomplish that end "with ease and simplicity." 82

Cicero, wrote Legare, studied oratory "as a means of political aggrandisement," but "he also studied it as a branch of a finished education, and as essential to an accomplished character." The subjects on which he spoke "called for display rather of a splendid and ornamental, than a severe and simple eloquence." The impeachment "of

80 Cicero, De Oratore, lib. i, c. 59.
81 Ibid., 33-34; Cicero, Brutus, c. 24 cf.
Verres, for instance, dealt with evils of which most of the Praetors were guilty, and had to be exaggerated to have any effect at all.  

It is impossible, concluded Legare, to study the rhetorical writings of Cicero "without being astonished at the orator's thorough knowledge—a knowledge equally systematic, comprehensive and minute—of his own art." Legare discussed the two principles of "taste or judgment" emphasized by Cicero. The first was "utility, which is the being able to give a reason for every thing that is done in a work of art, by pointing out the end it is designed to accomplish." The second was "that by a law of nature, whatever objects affect our senses most keenly at first, and afford us the highest pleasure, are most apt to produce satiety and disgust. . . . Thus in all things the greatest pleasure is ever on the border of disgust" so that in neither "poetry nor prose is an ornate, ambitious and affected style, without variety or relief . . . destined to please long." By this test, declared Legare, "the works of Cicero have been tried" and have become "the admiration of all cultivated nations."

83 Ibid., 535.
84 Cicero, De Oratore, lib. iii, c. 45-47.
85 Ibid., c. 25.
Legare's "Cicero de Republica" was, in part, a sharp criticism of a translation of that work by G. W. Featherstonhaugh. The first eight pages of Legare's essay pointed out the author's errors in translation. The final blow was Legare's suggestion that Featherstonhaugh look into the proper references so as to avoid mistaken the name of a writer for the title of his work:

If Mr. Featherstonhaugh (we wish his name were shorter) will only open the 18th epistle of the first book of Horace's epistles, at the 41st verse, and read three or four lines, together with the notes of the Dauphin editor, he will learn something more of "this author of Pacuvius."

With that, Legare apparently forgot the work he had been reviewing and went on to discuss at some length the discovery of manuscripts which had thrown new light upon the work of antiquity, particularly the fragment of Cicero found in the Monastery of Gobio in Liguria, and published in 1822. The remainder of the essay deals with Legare's own consideration of Cicero's Republic, which he called the "fruit of practical and experimental wisdom brought forth at full maturity."
The greatest number of Legare's reviews were literary studies. This was true partly because, as an editor, Legare wished to cater as much as possible to the tastes of a reading public. The output, however, stemmed from his own extensive and continuous study of the writings of his own time and the earlier works from which our culture was derived.

He made two studies in the Elizabethan period, of Sidney and of Jonson. Of all the works of Sir Philip Sidney, Legare called his "Defence of Poesy" the best. He felt that "Sir Philip's prose was more poetical than his verse," and found in the "Defence" a stimulation sufficient to draw from him his own definition of poetry:

Every thing about us, and above us, is full of poetry—for every thing is full of sublimity and beauty—every thing is calculated to inspire admiration or awaken love in rational creatures and in them alone—yet to enjoy the very pleasures—to cultivate the very perceptions and faculties that most distinguish them from the brutes that perish, is folly or worse, in the opinions of those who talk, in the loftiest strains, of the privileges and pre-eminence of human reason.

And again, a page or so later, Legare wrote: "True poetry—like true eloquence—is the voice of nature appealing to the

---

92 Ibid., 318.
93 Ibid., 302.
heart with its utmost sublimity and power. . . . Instead of teaching merely, it persuades, elevates, inspires."  

When he turned to another Elizabethan, Ben Jonson, Legare found "less poetry." The tragedies of Jonson, he wrote, "preserved in them the 'costume' of Rome." In regard to Jonson's writings he agreed with Schlegel that "the subject continues history, without becoming poetry." But as to the intellectual equipment of that stout Elizabethan, he perceived "the wonderful learning of the man" who had "a knowledge of the Greek and Roman classics, perfectly unmatched even in his own age; a knowledge at once various, minute, profound, comprehensive and philosophical."

With all the learning of this man, Legare asked, "why . . . have these plays ceased to keep possession of the stage? Why have they fallen into neglect?" The answer, he said, was that they were too metaphysical. They were of the school of Donne and of Cowley, filled with too many "far-fetched and learned conceits," and the versification was too "rugged and harsh." Another reason he found in the subject matter. Jonson painted "not so much man, as his fantastic, external form," and when this form changed, "the

---

94 Ibid., 303.

95 "Ben Jonson's Works," Ibid., VI (August, 1830), 113.
merit of the delineation was lost. ... Had Jonson developed the passions instead of the humours," he would have "spoken a language that would have been understood throughout all time. ..." As a comedian he could not, like Molière, develop "the characters of his dramatic persons ... by a few slight and occasional strokes, while the action rolled along." His comedies were "too stained with seriousness."96 Certain it is that Legare saw Jonson with clarity.

Each issue of the Southern Review contained one or more reviews of contemporary novels. Such were the critiques of Scott's The Fair Maid of Perth, Bulwer-Lytton's The Disowned, and George Croly's Tales of the St. Bernard. In these reviews enough of the stories were related to give a casual reader an idea of the entire work. The general plot was told, and an analysis was made of the major characters. In addition, there was an estimate of the work. Scott's novel was adjudged "not to be one of his best."97 Bulwer-Lytton's was unconditionally condemned. Of his attempt to portray fashionable English life Legare remarked: "We verily believe [that] at no other time in the history of polished society, could such stupid extravagances—such vain and coxcombical imbecility ... be palmed upon the

96 Ibid., 114-116.
world." Only a society "whose disease is vanity" would accept it. With evidence such as this, why is it that Legare was called an inordinate lover of English society?

The *Bravo*, by James Fenimore Cooper, was treated in like manner, but without harsh criticism. The work had "many readable passages," although Legare would allow himself to go no further than this accurate description. As to Washington Irving's *Life and Voyages of Columbus*, Legare was fully aware of how much Irving, with the loss of his inventive powers, had taken from the manuscript of Navarette's history, and he wrote with truth: "His later productions have, we think, lost in ease and vigour, all that they have gained in the more polished structure of their sentences . . . ."

In only a few reviews did Legare print long excerpts from the works considered, and only when a novel or a poem was being reviewed. But even in this sort of appraisal Legare, at times, allowed himself to go all-out with an essay of his own, especially if the work being reviewed deserved his disapprobation. Two American writers

98 "The Disowned," *ibid.*., III (May, 1829), 467.
100 "Cooper's Bravo," *Southern Review*, VIII (February, 1832), 382.
101 "Irving's Life of Columbus," *ibid.*., II (August, 1828), 1.
justly received his full condemnation. One was James Gates Percival, whom earlier reviewers had admired for his Byronic romanticism. Of Percival, Legare wrote, candidly enough: "If Mr. Percival is ambitious of outliving the present generation, he must have done dreaming dreams and seeing visions." It was too much for Legare to read "page after page, and volume after volume... of mere musings—of such incoherent, undefined and shapeless fantasies, as may be supposed to float about at random in the brain of a poetical opium-eater." As to the three volumes of *Clio* which Percival had just written, Legare called them hastily done and filled "with a dangerous volubility." To him Percival's style was ambiguous; Legare himself belonged to that old-fashioned school which refused "to admire in literature what it is not able to understand, and lays down as the first cannon of criticism that a reader has a right to see clearly what his author would be after."

The writings of his fellow-townsman, William Crafts, fared as poorly under Legare's pen. In the early 1820's Crafts had been regarded as one of the promising literary men of the country. Legare, however, considered his poetry vapid and mediocre: "We do not consider these

---

102 "Percival's *Clio*," *ibid.*, I (May, 1828), 442.
104 A Selection in Prose and Poetry, from the Miscellaneous Writings of the Late William Crafts (Charleston, 1828).
verses at all better than can be had" in the "poetical corner" of a fashionable newspaper, or monthly magazine. . . . Their merit is not high enough to challenge honour from gods, or men, or pillars." If some of the lines were turned into prose, "every body would acknowledge them to be the dullest trash that was ever printed." 105

When Legare discovered William Cullen Bryant his pleasure was expressed in sincere praise, but with characteristic accuracy: "A writer who is capable of what he has done, is capable of a great deal more." 106 Bryant, he said, "was formed rather for the beautiful than the sublime--rather for pensive tenderness than deep and harrowing pathos--rather for the effusions of fancy and feeling than for the creation of a bold and fertile imagination." What pleased Legare the most about this young American poet was his simple and natural diction; there was no "straining after effect; there was clarity and precision" in the expression of the thought; and the thought was "not at all inconsistent with common sense." 107

Among Legare's finest literary essays are the two

105 "Crafts' Fugitive Writings," Southern Review, I (May, 1828), 514-520.
106 "Bryant's Poems," ibid., VIII (February, 1832), 443.
107 Ibid.
on Lord Byron.\textsuperscript{108} Of the poet himself Legare wrote:

We apply to him, without changing a syllable, his own lines in relation to Manfred:
"This should have been a noble creature; he Hath all the energy which would have made A goodly frame of glorious elements, Had they been wisely mingled . . . ."\textsuperscript{109}

Even so, Legare placed the author of \textit{Childe Harold} high on his scale of English poets. First came Milton and Shakespeare far above everyone else; then Pope and Dryden, "writers of quite another stamp"; and then Byron, with the qualification, "we doubt between him and Spenser."

\textsuperscript{110} The contrast between Byron and Scott had made a lasting impression on Legare's mind. Scott was "a falcon trained to the uses of a domestic bird" and Byron a "savage, untamed eagle" who had "flung himself forth" to make the Alps "ring to his boding and wild scream."

\textsuperscript{111} To Legare Byron's works were a "self-painting," and he believed it was "this circumstance, that for some time, excited so powerful an interest in his works," and at the same time eventually hurt his writing. "He gradually learned to refer every thing to himself, like other spoiled

\textsuperscript{108} "Lord Byron's Character and Writings," \textit{ibid.}, V (May, 1830), 463-522; "Byron's Letters and Journals," \textit{ibid.}, VII (May, 1831), 1-42.

\textsuperscript{109} "Byron's Letters and Journals," \textit{ibid.}, VII (May, 1831), 42.

\textsuperscript{110} "Lord Byron's Character and Writings," \textit{ibid.}, V (May, 1830), 522.

\textsuperscript{111} \textit{Ibid.}, 466.
children," and expected "the laws of nature" to "yield to his wanton caprice." Then after severe criticism of his early poems by the Edinburgh Review, "pride became his ruling passion," pride "strongly dashed with vanity." Lack of control and subordination became "the vice of his poetry." But without "the vast learning and consummate art of Milton," Byron wrote "because he felt and as he felt." Within his lines he "sighed and groaned and cursed," and found "an echo in the hearts of men." Yet, even in his finest compositions, in Manfred for instance, are many "feeble, prosaic, and even unmeaning lines." There was a carelessness of diction "in his Spenserian stanza when compared with that of Spenser or Thomson; in his satires, when compared with those of Dryden's vigour or Pope's elegance." When Byron did "achieve the lofty" nothing could be "more powerful," but "the want of pruning, of further labor, mars that with the rest." Finally, "his invention was not fertile"; he composed with ease, but there was "no variety either in his subjects or his style." Because of pride and vanity "his greatest rival was himself." With that remark Legare concluded his review, dissatisfied: "Every page reveals powers which might have done so much more for art . . . .

With Byron's letters, however, Legare was delighted. In Thomas Moore's publication of the more candid side of

112 Ibid., 466-522.
the stormy poet, as revealed in his letters, Legare found a style "distinguished by an ease, simplicity, and abandon rarely equalled." He called those writings "as good a specimen as we have ever seen of strong, healthy English sense—that common sense which is of all things the most uncommon—in pure, idiomatic, expressive and vigorous English." 113

Legare's critical interpretation of literature had as its purpose the stimulation of the reader toward further study. But in the essays on jurisprudence, Legare's knowledge of, and enthusiasm for, the great story of the law caused him to go far beyond the layman's power to follow. Yet even in these works so great is the clarity, so forcible the reasonings, that the most unlegal-minded of journeymen readers must feel that they are being drawn up an intellectual stream toward the geysers at the source.

Taking the critique of David Hoffman's Legal Outlines as a starting point, one might see that Legare demanded that law be reasonable and applicable to the time in which it is pronounced. 114 As to Hoffman's Outlines, Legare doubted if Atticus himself could have "digested the enormous mass of irrelevant matter" which had been "huddled
together in the volume." Hoffman would force the young student "to set out with Kant and Richerand, with Cuvier and Hauy, with Jonathan Edwards and Thomas Aquinas" instead of with Mansfield and D'Aguesseau, for, observed Legare, very little of the work was on law. It had, moreover, given all manner of confusion, because Hoffman had used the term "natural law." That term had taken on any number of meanings in the minds of philosophers in the last century or two; but as far as the law was concerned it meant "a sort of ideal standard of perfect theoretical justice, to which every code of laws ought to approximate as nearly as the circumstance of society will permit." 116

Law to Legare was a continuous organic growth; codification tended toward the static and was almost abhorrent to him. An imaginary code of laws might be formed, "and every possible variety of cases to which its principles would apply be anticipated and decided, and a whole corpus juris with the response prudentum, and the equity of the praetor to explain and to temper its positive rules, be arranged." But the moment that code should be applied to any specific territory by some "liberal despot" the "chance is that very great changes would have to be made in it, in order to accommodate its principles to existing circum-

115 Ibid., 47.
116 Ibid., 50.
Legare used Crabbe's *A History of English Law* "to say a few words upon . . . Codification." He answered the arguments of the advocates of codification, who declared that the common law was full of feudal abuses, that the theory of its pleadings was "quibbling and chicanery," and that codification would bring simplicity and brevity to jurisprudence. Legare declared that feudal law had already been largely removed from common law, with the "exception of the learning of remainders, escheats, and a few other like subjects." Moreover, the common law was, "of all others, the best settled and most systematic— in which there is the least excuse for being wrong."

As to the Justinian Code, which the reformers referred to as "a most triumphant example of codification," Legare believed that "Justinian did more harm than good to the civil law by his slovenly and unphilosophical method of compilation, and by substituting, in so many instances, the language of his own degenerate and barbarous age for the


118 George Crabbe, *A History of English Law, or an attempt to trace the rise, progress and successive changes of the Common Law; from the earliest period to the present time* (n. p., 1831).

elegance of a more fortunate era." Legare admitted that
the civil law had done more to enlighten and civilize the
world than any other branch of jurisprudence, and that it
was "worthy of admiration," but that it did not necessarily
"follow" that "the collection as such" was a good one. He
explained why the Justinian Code was not a good model:

A few years before Justinian set about his labours
as a compiler of laws, that is, in the seventh year
of the sixth century, Alaric, King of the Visigoths,
. . . undertook for the benefit of his Roman sub-
jects (for they were still indulged in an option
between their hereditary institutions and those of
their rude masters) to compile a code of his own.
This Corpus Alaricianum, as it is called, of which
all the fragments have been laboriously gathered up
by Schultingius, in his Jurisprudentianæ Anti-
Justinianæ, comprised abridgments of the Hermogenian
and Gregorian codes, as well as of that of the
younger Theodosius. Some novels are included, an
epitome of the Institutes of Caius, excerpts from
the sententiae of Paullus and the writings of
Papinian—though with voluminous commentaries upon
the whole; these last, it is needless to say, stained
with the barbarism of the age, and containing any
thing but a just interpretation of the text. The
author of this collection is supposed to have been
one, Anianus, a high officer of the Gothic court. We
are indebted to the modesty with which he undertook
to improve what he had not the understanding to appre-
ciate, for a corrupt and mangled edition of the In-
stitutes of Caius—a work which had been long used
as a text book in the law schools, and was confess-
edly the pattern of the Institutes of Justinian.121

Legare followed this with several pages of analysis of the
Justinian Code, and ended by remarking: "We confess, there-
fore, that we are not very much impressed with this example
of codification, . . . especially as we have no evidence

121 Ibid., 398.
whatever to shew us how it worked in practice."

Legare pointed out that the chief reasons for codification in antiquity were the scarcity of libraries and the impossibility of ready reference to cases; but, he added, conditions had changed, and digests "which have already been executed by private hands, and which are improving every day, wholly supersede the necessity" of codification for professional purposes.

The "Law of Tenures" was an essay on feudal law, tracing "the origin and consequences" of that law, especially in its most "important effects upon the law of real estate in England." It was a treatise directed more to the learned jurist than to the layman, although there is much for the layman in Legare's discussion of that element of the feudal system "which is the basis of well-regulated freedom." For, from feudal law we have learned that "obligation and right are reciprocal and that the greatest ought not to be above the law which they impose upon the humble or weak."

With these remarks Legare then "bid adieu to the gentle reader" and "plung[ed] into that gloomy and intricate forest, the English law of real estate," which "the gentle reader"

122Ibid., 401.
123Ibid., 410-411.
would indeed have difficulty following.\footnote{125}{Ibid., 20-21.}

In the final issue of the \textit{Southern Review} Legare seized upon what he called "a scandalous piece of bookmaking," a \textit{Memoir of the Life of Henry Francis D'Aguesseau},\footnote{126}{Charles Butler, \textit{Memoir of the Life of Henry Francis D'Aguesseau, Chancellor of France; and his Ordinances for consolidating and amending certain portions of the French law: And an historical and literary account of the Roman and Canon Law} (London, 1830).} to write a biography on his own account of the great French jurist.\footnote{127}{"D'Aguesseau," \textit{Southern Review}, VIII (February, 1831), 399-443.} It was more than a biography; it was a recognition by Legare of the industry and mental powers of another human being who had reached to that excellence which he himself sought. Of D'Aguesseau he wrote:

\begin{quote}
With the science of the lawyer he combined the enlarged views, "the prophetic eye" of the legislator, and with all the qualities that adorn the eminence, he possessed the spirit of self-sacrifice, which exalts them into heroic virtue. He inculcated the necessity, and, so far as it was practicable at that time, set the example of reform in the law, with the double purpose of making it more perfect in itself and uniform throughout France.\footnote{128}{Ibid., 424.}
\end{quote}

After having eulogized this scholarly Frenchman as to his erudition of mind and the perfection of his written style, Legare showed a sensitive comprehension of character when he remarked that "D'Aguesseau's influence over the minds of
men in his lifetime" was not the equal of another Chancellor of France, de l'Hospital. D'Aguesseau was often too scrupulous as to forms and professional habits. Even his own father had said of him: "Le defaut de votre discours est d'être trop beau." His "style" had "no fault except its faultlessness," and, to Legare, his chancellorship and his practical use of knowledge was also too perfect for the "uses of mankind."129

"Kent's Commentaries," as reviewed by Legare, again showed his approval of intellectual excellence. But along with the approval he combined an angry denunciation of that society which, "like an usurious pawnbroker," in order to save "a few thousand dollars," retired Chancellor Kent and thus deprived "itself of the accumulated learning, the diversified experience, and the ripe wisdom of such a man at the age of sixty!"130

Good commentaries such as Kent's, Legare stated, were needed to express the theoretical, elementary parts of the law, and even its deeper philosophy. Blackstone, in his "gentleman's law book, clear but not deep," admitted this,131 and "Cicero repeatedly touches upon the subject."132

129 Ibid., 443.
130 "Kent's Commentaries," ibid., II (August, 1828), 72-113.
131 Ibid., 81.
132 Ibid., 83; De Legibus, lib. i, c. 5; De Oratore, lib. i, c. 42.
Kent, therefore, in giving a summary of the general rules of law as practiced in this country, "has rendered an essential service to the profession." Such men, said Legare, were needed on the bench, because "the rarest thing in nature—certainly the rarest thing in America—is a learned and able judge ...."133

To distinguish between the cultural contribution of Legare and that of his magazine would lead only to confusion in terminology. For each was the other, one the creator, one the thing created.134 When Legare left for Europe in 1832 the Southern Review immediately ceased to exist—for without him it could have no being. It had the imprint of Legare and was identified with the diversity of his learning, with the breadth and character of his thinking, and with his desire to stimulate intellectually the society he wrote for. He was, perhaps, as Parrington called him, "the most widely read man in America, and the Review gave to the public a digest of that learning."135

The very nature of Legare and his associates, saturated as they were with the world's literature, demanded

---


134 Legare called the Southern Review "the creation of my own little knowledge & abilities." Legare to Mary Legare, New York, September 10, 1838. Chisolm Papers.

135 Parrington, Main Currents in American Thought, II, 15.
that they impart this knowledge to their countrymen. The Review became the focal point of that desire. The work itself was the culmination of a culture, the final achievement of a proud but disintegrating race—the planters of the low country of South Carolina.

The state boasted of its magazine. The Camden Journal eagerly seized the remark of John Randolph of Virginia that the Review "was the best in existence," and the comment of John Marshall that the "last number of the Southern Review was the best review he had ever seen." 136

A Columbia paper wrote:

Within the short space of three years, the "Southern Review" has acquired a reputation that has thrown into the shade every periodical on this side of the Atlantic, and placed it in credible comparison with those of Europe. It is read in England; has been translated into French and German, and quoted in the German Universities. 137

Legare's editorship was "an immense labor" which entailed "many nights (summer nights too) of watching and toil ... ." 138 Those five or six hours a day which had been his lifetime habit of study he gave to writing reviews and reading contributions sent in. The tremendous number

---

136 Camden Journal, December 5, 1829.
137 Columbia Southern Times & State Gazette, November 23, 1830.
138 Legare to Huger, Brussels, November 21, 1835, Chisolm Papers; Writings, I, 224.
of pages which he himself wrote testifies to the thousands of hours he gave to the magazine. A letter to a contributor illustrates his sympathetic understanding as an editor and, at the same time, suggests the high standards he set:

I hinted to you that there was a little mannerism of a school in your style. There is & it is its only fault, for in general it is very elegant and pure. It is that dainty, mincing, priggish way Everett has. Avoid that & look up to your bright Virginia skies for inspiration & a native strain. I shall at all times be exceedingly flattered by hearing from you.139

Legare's reviews were severely critical of the works they considered; the excellence he maintained demanded it. Moreover, he felt that the great vice of the American people (including himself) was their "enormous self-conceit" and "presumptuous confidence," as well as the literary habit of defending themselves by excusing their vices and extolling their virtues. Above all, he believed in "pointing out the dangers that beset" the country, politically and economically, instead of "lulling ever anxious people to sleep with the false and insidious cry of all's well." In the same manner he fought for higher standards in creative writing, believing it wrong to praise an American work simply because it was written by an American.140

139 Id. to Harrison, Charleston, November 3, 1828. Harrison Collection, Library of Congress. The reference is to A. H. Everett, editor of the North American Review.

140 Id. to unidentified friend, Brussels, n.d., in Chisolm Papers.
Legare's own writings were the culmination of all the studying and thinking he had done up to this period of his life. During the four years of the Southern Review he wrote a platform for his later public life. Out of his economic essays came his 1837 Congressional speech on the Sub-Treasury scheme of Van Buren. In his review of Hall's Travels were the words which he inculcated into his speech against Adams, when he warned the Abolitionists not to bring to a crisis a question that could be concluded only by war. His legal writings later became the essence of his pleadings before the Supreme Court of the United States. The wide range of legal subject matter, the accuracy of fact, and the excellence of composition demanded by Legare as an editor forced upon him an exacting discipline. The intellectual judgment which he put into the Southern Review not only produced a magazine which stood the tests of the most learned minds, but it gave to Legare the habit of a correct and clear statement of his thoughts. When, as Attorney General, he later offered one hundred and fifty opinions that met the challenge of all legal minds, the accomplishment was simply the culmination of the habits of composition begun during the term of his editorial training.

The Southern Review was an expression in print of that principle which Legare laid out for himself in all his activities and which was the chief reason for his pursuance of a lifelong education. It was the thesis of his very
existence that "nothing, absolutely nothing, is worth a thought from a reasonable being, except making his own character & conduct approach as near as possible to the highest perfection of his nature." Just as he applied this principle to himself, so he also applied it to the writings which he felt were representative of himself and of his race.

As it was Legare's learning and intellectual drive that carried the magazine through sixteen issues, so it is that Legare's name that has come to be identified with that Review. The Civil War ended the nullification arguments of McDuffie, Cooper, Harper, and the others. Advances in science have gone beyond the ideas of Elliott and Wallace. But the legal and literary opinions of Legare continue to be accepted. In 1882 at a meeting of the American Bar Association the president of that organization said:

The pages of the Southern Review could challenge comparison with any similar magazine in this country, but it was vitalized and made a living representative of the most advanced culture of the age by the genius, learning, and industry of Legare.142

A comment by Edd Winfield Parks gives an underlying reason for Legare's lasting worth: "No artificiality can be discerned in the work of Hugh Swinton Legare, or in the solid

141 Ibid. to his mother, Brussels, March 14, 1833.
articles in the *Southern Review* ..." In that statement is summarized the man Legare and his writings. What he said and what he wrote came from a greater learning, a greater understanding, and a greater earnestness than is given to most people. The truths he felt and expressed were based on too solid a footing to be erased by a few shifting fashions in a century or so.
CHAPTER IX

OPPONENT OF THE SUB-TREASURY

Legare watched the pot of nullification simmer for three years and then come to a boil. The poison in the fumes was too much for him, as it also was later for his fellow-Unionist, William Drayton. Both were driven from the state. Drayton never returned; Legare stayed away from 1832 to 1836 until the cauldron had burned itself out. Of his going he wrote:

I wished to husband my resources for better days, for it is a great mistake in a public man to suffer himself to be used up by unavailing and public efforts made mal a propos . . . . No man ever yet opposed such a movement with success in any country under the sun . . . . To spit against such a wind is, as Franklin, or some other sage says, just to spit in one's own face.

On April 14, 1832, Legare accepted the post of Charge d'Affairs at the new court of Belgium, which had been urged upon him by Edward Livingston, Secretary of State under Jackson. He resigned his Attorney Generalship.

---


2Legare to Huger, Brussels, December 15, 1834. Alfred Huger Papers, South Caroliniana Library.

3Legare's arguments before the Supreme Court in 1829, in Weston v. City Council of Charleston, 2 Peters, 265.
in South Carolina, turned over his large law practice to a friend, and left for Washington. Then, after visiting the Ticknors in Boston, he sailed for Europe.

Legare's chief service in the country which had just revolted from the Dutch government, besides completing a commercial treaty when Belgium reached stability, was to develop a cordial relationship with the diplomatic representatives, not only of Belgium, but of those other countries which had recognized the new state. He was to gather information to pass on to Livingston as to commercial and political conditions in general.

Besides the round of diplomatic and social calls, the Belgium mission was, for the most part, one of waiting for political events to shape themselves. Consequently, each day throughout the four years, Legare had seven or eight hours to devote to his studies. His diary gives a typical study schedule: "Greek before breakfast. After: law of nations, civil and common law, politics, etc. Vattel,"

449, and in Shanks v. Dupont, 3 Peters, 242 had so impressed Justice Joseph Story that he had praised Legare to Livingston, who had encouraged Legare to continue his studies in the civil law with the idea of a later contribution to the jurisprudence of the country.

4 Legare turned over his legal practice to George W. Eggleston, who had been his law partner since 1829.


6 Edward Livingston to Legare, Washington, June 28, 1832. Ibid.

Edward Livingston to Legare, Washington, June 28, 1832. Ibid.
Letters on English Chancery. Translate diplomatic pieces out of French into English, in order to retranslate into French."  

Throughout his stay in Brussels he enlarged his reading in all fields, making almost daily purchases of books, philosophical, literary, legal, and political.

His absence from South Carolina was not a complete exile. Unionist friends, such as Petigru, Alfred Huger, Henry Middleton, and Charles Fraser, wrote to him often. Even Isaac E. Holmes, a Nullifier, wrote. In December Petigru confirmed Legare's earlier predictions as to what the course of events in South Carolina would be. The Unionists had not even set up a ticket against the Nullifiers save in those few districts where there was still a majority. As a result, the legislature met and "was a pliant tool of McDuffie and Hamilton." Petigru told Legare the Assembly had voted for a convention, which met in an emotional gathering and passed an ordinance which . . . nullifies everything, and offers to the General Government no alternative except between submission & secession. . . . On the following Monday came the President's Proclamation—which you may well suppose created a monstrous sensation . . . Fanaticism of all kinds spreads. Cooper is extolled—Barnwell Smith and Robert Barnwell are full of the Holy Ghost—

7"Diary of Brussels," Writings, I, 3.

8Letters from each of these men are quoted in Writings, I, 203-230; these and many others are in Chisolm Papers.
and it is rumoured that Henry L. Pinckney will oppose Dr. Benjamin Morgan Palmer in the church if he does not oppose Col. Drayton for Congress.9

Legare informed Livingston of European reactions to the South Carolina convention, and warned him that unless "the wise and moderate counsels" of the government could prevent the "discontents from breaking out into flame," the European countries were ready, with arms if necessary, to "encourage and strengthen the fatal spirit of resistance" for their own ends.10 He also informed Livingston that if his friends there thought he could be of any use "in the scene of action itself," he would ask leave to return to South Carolina.11

The flash fire of convention engulfed South Carolina. Even Preston shouted "wild beast" and "toothless tiger" at Jackson in public harangue. 12 The Nullifiers were in a

---

9Petigru to Legare, Charleston, December 21, 1832, Chisolm Papers; also quoted in Carson, Petigru, 111.

10Legare to Livingston, Brussels, January 6, 1833, Writings, I, 162.

11Id. to id., Brussels, January 17, 1833, ibid., 163.

12Charles Fraser to Legare, Charleston, January 30, 1833, Charles Fraser Papers, South Caroliniana Library. Preston at this time was possibly undergoing somewhat of a mental strain preceding his revolt from Calhoun's influence. Within two years he was ardently opposing the ideas he had formerly proclaimed. Mrs. Holbrook, wife of a Charleston doctor, also remarked about this change: "There is no longer any trace of gentlemanliness about him--none except grammatical accuracy in speaking--his voice is a cracker twang, his attitudes boorish ...." Mrs. John Holbrook to Legare, Charleston, June 1, 1833, Chisolm Papers.
"roasting ferment." General Scott with the United States forces and two gun boats were on hand at Sullivan's Island. Arms and supplies had been procured by the state government, and it was decided to place troops in the citadel. Both sides were ready for trouble to begin, and "a spark at any moment would cause an explosion." Petigru wrote Legare in February: "The two-penny revolution is still smoking, but the blaze has not yet broken out." Disorderly mobs roamed the streets, he said, and "crowded on us with every species of insult. . . . Many blows were aimed at me." He was in "a complete state of uncertainty" as to what the Nullifiers would do, what Congress would do, or what the states would do.13 After hearing numerous reports such as this Legare wrote his mother: "Had I known the danger was so near I should not have left home."14

Upon receiving word that the convention which met on February 1, 1833, had ordered the state to cease paying duties on imports, Jackson sent his proclamation, which stated that "if the duties were not paid, the State should be reduced by force." A tense truce existed for a time as each side waited for the other to make the first move. Hayne, Huger, and Petigru managed to restrain the Charles-

13 Petigru to Legare, Charleston, October 29, 1832. Carson, Petigru, 102.

14 Legare to his mother, Brussels, February 4, 1833. Chisolm Papers.
tonians from making the break. Then, on February 12 Henry Clay stepped into the picture by introducing in the Senate a bill to modify the tariff. Calhoun accepted the compromise and the bill was ratified within a week. Back in South Carolina the convention met again, annulled the Ordinance of Nullification, which declared the tariffs of 1828 and 1832 null and void, and everyone was relieved. Both sides happily claimed the victory. 15

A shift in alliance began shortly after that, but it was gradual. There was no swift movement of the Nullifiers to break away from the beliefs they had expressed in the convention. Several of the leaders were not too well satisfied with what they had accomplished. Mitchell King wrote to Legare:

Hamilton ... is sick, very sick of the game. ...
Hayne is very much at a loss what to do. ...
He is neither satisfied with himself nor with the position in which he is placed. ...
I was not a little surprised and gratified to observe the political sagacity with which you have anticipated the course of events. 16

King felt that Calhoun's forces were breaking up and that the Unionists would soon regain power. Legare, however, saw no victory for himself or for the Unionists in Hamilton's disaffection. He knew that Calhoun would not lose his hold

15 Ravenel, Charleston, The Place and the People, 453-455.
over South Carolina simply because he had lost a lieutenant or two. Nor was he for a moment fooled as to what effect the compromise on the tariff would produce in the economic conditions of the state. He stated his beliefs in a letter to his mother:

Calhoun and a few of the ringleaders have been all along contriving to bring about their recent coalition with Clay, & these profligate demagogues have not scrupled to play at their political gambling-table for the honor of the country, staking its very existence on a throw of the dice. When I think of the impudence with which they forced their absurdities down the throats of so many intelligent, good sort of people in South Carolina, I am disposed to despair of man-kind. Just see what they had the front to do. After convincing the people of So. Carolina that they & their Southern friends paid all the tax, they have agreed to keep up that tax for nearly ten years & then to be satisfied that it be reduced in half. And this the knaves make the fools believe is a complete triumph & will restore all our former prosperity. . . . Carolina has not by any means seen its worst days.17

A second indication that the Nullifiers were loosening the rigidity of their attitude occurred in December, 1834, with Hamilton's conciliatory speech in the legislature regarding the application of the Test Oath. Although the Nullifiers had rescinded the Nullification Ordinance, they had allowed the Test Oath to remain. In December, 1832, the dominant party in the legislature had passed a law which required "the oath of obedience to the

17 Legare to his mother, Brussels, May 10, 1833.
ordinance of nullification and all acts in its support." In March, 1833, the State Rights Convention had "ordained that the allegiance of the citizens of this State is due to the Federal Government." The legislature was also authorized to require oaths "abjuring all other allegiance" than that to the state. Whereupon it enacted a "constitutional amendment prescribing the Test Oath" for the state militia.

The Unionists were bitterly hostile to the Test Oath, and their resistance grew stronger when the Nullifiers went even further to exclude Unionists from holding office: they passed a bill to amend the state constitution so as to add a similar oath to be required of all officers of the state. Thus, they extended the Test Oath from the military to the civil list.

18 Wiltse, John G. Calhoun, Nullifier, 201.

19 The Test Oath read: "I do solemnly swear . . . that I will well and truly obey, execute, and enforce the ordinance to nullify certain acts of the Congress of the United States purporting to be laws laying duties and imposts upon the importation of foreign commodities passed in convention of the State at Columbia the 24th day of November . . . 1832." Carson, Petigru, 130-131.

20 Proposed oath: "I do solemnly swear, or affirm, that I will be faithful and true allegiance bear to the state of South Carolina so long as I may continue a citizen thereof; . . . and that I will, to the best of my abilities, discharge the duties thereof and preserve, protect, and defend the constitution of this state and of the United States; so help me God." Boucher, The Nullification Controversy in South Carolina, 317-319; Charleston Mercury, April 30, 1834.
In December, 1833, thirteen Unionist senators, believing the Test Oath gave only secondary allegiance to the Federal Government, drew up and published a protest. But in spite of protests, bitter words, and numerous meetings the Test Oath was invulnerable. When the elections for militia officers were held, several Union men were elected. These men refused to take the oath, and their commissions were withheld. Several cases went to the courts, one case being carried to the court of appeals. By a vote of two to one the judges annulled the test oath. The Nullifiers, however, were quick to state that "this was not the end; that they intended to make the oath the issue in the next election, carry it through the legislature again by two-thirds, and thus have it a part of the constitution, beyond the reach of Union Judges." The returns from the state election in October gave the Nullifiers a two-thirds majority in both Houses. The amendment to the Constitution seemed assured.

Just when the Unionists were deciding on what plan of action to adopt, Petigru thrust himself into the picture. In December, 1834, the leading members of the Union Party met at the home of Chancellor DeSaussure. The result of that meeting was a determination to openly resist the oath.

---

Petigru was asked to go to Columbia and quiet some of the Unionists "who were running wild." He went, as he later wrote Legare, "and was called on to make them a long speech." This speech was the turning point in restoring peace to the state:

Professing, as I cordially did, that the Oath should be an unlawful thing to me as long as it offended the conscience of my friends; that for our people to take it would be breaking down the moral sense and feeling, not only of the party, but of the country; that resistance to the oath was to be considered a settled thing, ... I excited myself to the utmost to render these views agreeable and give them strength. 22

After this speech Petigru was sent to confer with Governor Hamilton. The two met, and after a number of long discussions Hamilton agreed "to work as hard for peace as ever he did for nullification, at the risk of dividing the party forever." And he kept his word to Petigru by calling a caucus of the Nullifiers which met and agreed to accept Hamilton's "report on Federal relations, intended as a peacemaker." The report was soon brought before the legislature and both Houses concurred in its acceptance. "The House resounded with applause," Petigru wrote Legare, and added:

"All hail to the dawn of a brighter day; the spell of party is broken and Nullification in Carolina is no more than a recollection. We have compromised and buried the tomahawk." 23

---

22 Petigru to Legare, Savannah, December 15, 1834, in Carson, Petigru, 167-168.
23 Ibid., 167, 170.
Such events in South Carolina increased the probability of Legare's return from Europe. Georgia also played a part. The reaction in that state to what nullification and the Test Oath had done to South Carolina gave the Georgia Unionists enough campaign fodder to win the election. Petigru wrote Legare: "The Union party in Georgia has gained a most decisive victory ... This clips the wings of Calhoun's ambition [to a high national office] and is a bitter pill to our gentry." 24

In 1836 Legare's friends told him that the time was ripe for his return. Stephen Elliott, Jr. offered him a position as lecturer at South Carolina College, believing he would "help to restore a wholesome and proper tone to the public feeling of the country." 25 Petigru's words were more enthusiastic, urging Legare to once more get into the political picture: "Great things are on foot here. Pinckney bolted [Calhoun] a week ago, and introduced resolutions counter to the proceedings of Hammond, in the House, and Calhoun, in the Senate." Come and get Pinckney's place, cried Petigru, and he followed this letter with other, more urgent demands. 26

24 Id. to id., Charleston, October 26, 1834, ibid.

25 Stephen Elliott, Jr. to id., Columbia, April 12, 1836, in Chisolm Papers.

26 Petigru to id., Charleston, February 17, 1836, ibid.
Legare came home, but he was in no hurry to reach South Carolina. He did, however, give Petigru permission to enter his name as a Union candidate against Pinckney for Congress.

On February 3, 1836, Pinckney had offered a resolution in Congress which declared that "Congress ought not to interfere in any way with slavery in the District of Columbia." Although intended to prevent the Abolitionists from presenting memorials on this question, the resolution endangered Calhoun’s position. It emphasized the conflict between the South and the Abolitionists by implying that Congress had power to abolish slavery in the District. This emphasis came at a time when Calhoun had been hoping for some Northern votes, which would be denied him if the conflict became broadened. The Calhounites of South Carolina poured in mail upon Pinckney, protesting the resolution which had passed the House.

Calhoun felt that Pinckney "had to be defeated" before he could strengthen his own position. Hence, Calhoun was in a frame of mind to accept almost anyone who could defeat Pinckney and whose position on the slavery issue was acceptable. He, therefore, "approached the old Unionist

27 Register of Debates, 24 Cong., 1 Sess., 2482-2483.
leaders and offered to take as his candidate any man they chose to put up," for Calhoun would need Unionist votes to defeat Pinckney. They selected Legare, "whose chief virtue was that he had been out of the country during the nullification fight," and had few enemies.\textsuperscript{29}

The resulting situation in South Carolina favored Legare's candidacy for Congress. Pinckney, of course, ran for re-election. He "crept about our Union men," Petigru told Legare, "and gained them over to his purposes in some occasions."\textsuperscript{30} Many of the Unionists would vote for Pinckney, believing they were opposing Calhoun, while the others, who knew Legare's abilities and his integrity, would vote for him. On the other hand, many of the Nullifiers, knowing little of Legare, would, nevertheless, vote for him as the tacitly supported candidate of Calhoun.

The Courier's editor, with that sense of honor so peculiar to his race, almost cost Legare the election, for he refused to support him, either in print or by personal vote. He declared his nomination "high-handed," saying that "even though Mr. Legare has not an enemy or an opponent in the Union party, and ... Mr. Pinckney has no friend there," he felt it his duty to vote for Pinckney, because he had

\textsuperscript{29}Ibid., 293

\textsuperscript{30}Petigru to Legare, Charleston, August 23, 1836, in Carson, Petigru, 163.
Legare himself was unperturbed by the furor in Charleston as reported to him by Petigru, and, as he had no intention of campaigning for himself, he went to Boston to visit Ticknor and A. H. Everett. While there he attended the two hundredth anniversary of the founding of Harvard, and at a banquet was called upon for a speech. A toast was given, directed especially to South Carolina and Massachusetts who "so conspicuously stood by each other in the War of Independence," and expressing the hope that "they might not be separated in their common attachment to and defense of the Constitution." To this, Legare, as the only South Carolinian present, responded. According to the New York American it was both "an unpremeditated and a brilliant reply." 32

He began by "joining in the praise of the Constitution" with the toaster, and declared the Constitution to be "an instrument which nothing but the greatest folly could ever seek to overthrow." Following this reference to the toast, Legare moved into his main theme, which was a tribute to the progress made by the people of New England. He ex-

31 Charleston Courier, September 1, 1836. Another Unionist wrote: "The Union party will not, for the sake of even a petted son of theirs, join in foreswearing their principles." Ibid., September 13, 1836.

32 New York American, September 13, 1836. No complete account of this speech seems available. The notices in the Boston papers are even shorter.
pressed the admiration which he, as a returning traveler, felt as he "beheld the mighty progressive movements, ... the boundless prosperity, the unceasing industry" all around him. This spectacle, he told his audience, had forced upon him the question: "How and whence is it, that this people, these New England people, accomplish so much?"

The answer, he said, was to be gathered from the scene before him. It was because "the provident founders of this people had sought wisdom first and before all things, and with wisdom came all their blessings." Then Legare diplomatically gave "as an example of this wisdom and the use of it" a gentleman who sat with him at the table: "Mr. Webster and his service in defense of the Constitution." Webster made his answer, and "in the burning words which he poured out" expressed his "delight at the sentiment" uttered by Legare "regarding the Constitution" and complimented him "and those who with him stood forth at the season of imminent peril to that Constitution and manifested their free resolve upon the inseparable connection between education and freedom." As Legare journeyed southward in a leisurely way,

33Ibid.
34Legare to his mother, Boston, September 13, 1836, in Chisolm Papers.
35New York American, September 13, 1836.
36Ibid.
his friends nominated him and carried on his campaign. He stopped awhile in New York, where he wrote his mother of his lack of excitement in the Congressional race:

As for the election to Congress, I trust you will not give yourself a moment's uneasiness about it. I did not wish to be set up. I do not wish to go—and what is more, between us, I do not see the least likelihood that I shall. Pinckney has all the great electioneers with him & is known to the mass of the people & they prefer him on all accounts to me.

Nor did he respond too readily to Petigru's entreaty: "I hope you don't mean to stay long in Boston nor in New York either, but come home as soon as you can . . . . You are right in saying that it is going to be a tough race between you and Pinckney."

Although Legare was officially nominated on September 23, he did not reach Charleston until early in October. Even then he refused an official public dinner in his honor. It was not until October 8 that he made his single campaign speech—indeed the only campaign address he ever made for himself.

---

37 Charleston Courier, September 22, 23, October 6, 1836.
38 Legare to his mother, New York, September 22, 1836, in Chisolm Papers.
39 Petigru to Legare, Charleston, September 6, 1836, ibid.
40 Charleston Courier, September 22, 23, 24, October 6, 1836.
41 Ibid., October 6, 1836.
The audience was large and a welcoming one, composed of both Unionists and Nullifiers. Throughout the whole campaign, before and after Legare arrived in Charleston, there was complete cordiality towards him personally. Many in the audience who would vote against him were, nevertheless, his friends and admirers and had come simply to hear him speak. No abuse of any sort was manifested, even by the followers of Pinckney.\footnote{Charleston Courier, October 10, 1836.}

Judge Henry A. DeSaussure "in an eloquent speech" supported the resolution "that this meeting will zealously and cordially support the nomination of H. S. Legare for Congress on the United ticket of the State Rights and Union parties for the House of Representatives." Benjamin Faneuil Dunkin seconded the resolution, which was "unanimously passed."\footnote{Ibid., October, 1836, passim; Charleston Mercury, October, 1836, passim.}

The audience "cheered loudly, repeatedly called for Legare, and enthusiastically applauded" when he appeared. His first words were like those of a "son, returned to his family." He expressed his appreciation for the reception accorded him on his return to Charleston. It was pleasing, he said, to be welcomed home from "his honorable exile, not as a stranger, but as one worthy of the confidence of his fellow citizens, honored by them far beyond his highest ex-
pectations." To be accepted once more in such a spirit had given him "an overflowing heart," and had made him willing, as nothing else could have, "to assume the responsibilities of the high station for which he was invited to become a candidate."

Throughout the speech Legare defended his political views and assured the audience that his general principles were no different than when he had last spoken before them in 1832 on the occasion of the Washington Birthday celebration. Moreover, he declared, he could never change "what his mind assured him was truth, regardless of party or expediency."44

The Charleston Courier broke down in its resolve not to advance Legare's chances for election, with a review almost effusive:

No one could have heard Mr. Legare without a thorough conviction that his mind is of the first order and that he is fully competent to try conclusions even with the intellectual giants of our national legislature. Well may South Carolina be proud of such a man. . . . Where is the man better fitted than H. S. Legare—in ripe scholarship, in rich and gorgeous and persuasive rhetoric, in pride and power of reasoning?45

Newspapers in other parts of the country commented upon Legare's nomination. Said the Mobile Commercial Register:

\[44\text{Ibid. No complete text of this speech is available besides the excerpts in ibid.}\]

\[45\text{Ibid.}\]
For ourselves we cannot but hope now that the embittered feelings of party have in some degree subsided that S. C. will take up the amiable and accomplished Legare and cherish him as he deserves. It is true that we dislike to see Mr. Pinckney sacrificed for a refusal to bend the knee to Baal, yet heretofore he has been as intolerant to others as his own party are now disposed to be to him. Legare has always been a devoted Union man, with talents of the most refined and highest order. ... To these he unites a private character in all respects unexceptional, and the two combined have always secured for him the admiration and respect of foes as well as friends ... .

It was the opinion of the New York Evening Post that "whatever might be the political views of Mr. Legare, his talents should make him an ornament to the halls of our national legislature."  

On October 10 elections were held in Charleston for sixteen national, state, and local governmental offices. Pinckney's personally picked candidates won fourteen of the state posts, Petigru and another Unionist being the other two elected on that ticket. But the election to the top post, that of Congressman, for which Pinckney himself was running, went to Legare by a scant fifty-six votes.

During the months which preceded the meeting of the twenty-fifth Congress Legare "re-familiarized himself with the state of things throughout the country," spending much

46 Mobile Commercial Register, September 7, 1836.
47 New York Evening Post, October 6, 1836.
48 Charleston Courier, October 15, 1836; Charleston Mercury, October 15, 1836.
time with his friends Petigru, Huger, and King, whose views on all important questions of the day were essentially his own. 49 He had, moreover, shortly after his return to Charleston, again taken up his law practice. His services were in immediate demand, and by the January term he was once more arguing successfully before the state supreme court. 50

He studied all phases of the great political issue of the day which would demand his attention at Washington. This was the bank problem, brought about by the attempt of the previous administration to do away with the Bank of the United States. The revenue of the Federal Government had been stored in this bank, which was a private institution controlled by Nicholas Biddle and a board of directors. The Jackson Administration, fearful of the growing power of the bank, had withdrawn governmental revenues and given them into the keeping of the United States Treasury. Furthermore, in order to stop land speculation, Jackson had put a stop to the acceptance of bank notes for the sale of public lands and, on July 11, 1836, had issued a Specie Circular which forbade the federal land offices to receive anything but specie. This had, of course, lowered the value of state

49 Johnson, "Biographical Notice," lxiv.
bank notes. Runs upon the banks of the larger cities continued until the institutions refused to redeem the notes in gold and silver.\footnote{51}{Wiltse, John C. Calhoun, Nullifier, 351; Arthur M. Schlesinger, Jr., The Age of Jackson (Boston, 1946), 234-241; Washington National Intelligencer, May 12, 1837.}

Upon taking office in March, 1837, Van Buren had inherited both a dynasty and a depression. In order to maintain the dynasty and end the depression he had attempted to put the country on a sound financial basis by keeping the governmental money transactions upon a specie, or hard money, policy. Moreover, this specie was to be stored either in the United States Treasury or in sub-treasuries scattered throughout the country.\footnote{52}{Wiltse, John C. Calhoun, Nullifier, 350-351.} Panic conditions, nevertheless, continued, and Van Buren was forced to call a special session of Congress to convene on the first Monday in September.\footnote{53}{Washington National Intelligencer, September 7, 1837.}

Legare took his seat in the House, especially well prepared on the monetary issues to be considered.

One of the first questions, however, which faced the House was the seating of two members from Mississippi. As the special session was called for September and as the regular Mississippi elections were not scheduled to take place until November, the governor of that state had issued a proclamation for the election of two representatives to
Congress. John F. H. Claiborne and Samuel Gholson were elected and went to Washington. "The fact that Claiborne and Gholson were avowed anti-bank advocates operated to cause opponents of the Sub-Treasury to take advantage of the irregularity of the Mississippi election to challenge at once their right to be seated." The issue to be decided was the constitutional one of "whether Mississippi, in electing representatives for the special session of Congress, was electing for the special session only, or whether she was actually choosing her representatives for the entire Twenty-fifth Congress."\(^{54}\)

Legare's first speech in the House was in behalf of the seating of these two new members. As others had done before him, Legare contested the constitutionality of the election as to the issuance of the writ and the proclamation of the governor. He argued that "if Gholson and Claiborne were elected at all, they were elected members for the ensuing two year." He asked if the election could "be set aside as a mere nothing, the voice of the state stifled, and their representatives sent back?"\(^ {55}\) Unlike many of his colleagues, Legare failed to consider the political aspects of the controversy; he did not at the time

\(^{54}\)Dallas C. Dickey, Seargent S. Prentiss, Whig Orator of the Old South (Baton Rouge, 1946), 96-103. See ibid., 96-131 for a complete account of "The Disputed Mississippi Election."

\(^{55}\)Cong. Globe and Appendix, 25 Cong., 1 Sess., 96.
realize that Claiborne and Gholson would oppose his ideas in the coming House debates. Later, however, when all the facts were better known to him, he found himself in a difficult position because of his earlier words. In contrast to a later speech on the same question, his first speech was considered "animated and eloquent." 56

Actually the battle had just begun and was, primarily, a party conflict. Mississippi held its regular election in November and sent Seargent S. Prentiss and Thomas J. Word to Washington to replace Gholson and Claiborne, who refused to give up their seats. "Congress, divided evenly between Democrats and Whigs, . . . would have to make a decision." On December 27 the case was brought before the House and was for over five weeks the subject of many lengthy arguments, harsh words, and hard feelings. 57

Legare again spoke out for Gholson and Claiborne. But this time his point lacked conviction, his words had lost their animation, and he failed to appear to good advantage. His emotions were now involved; the situation was no longer an impersonal one with him, for these two men had voted in opposition to him on the Sub-Treasury bill and were thus allied with his political enemy, Calhoun. In

56 Miles: National Register, LIII (1837-1838), 95.
57 Dickey, Seargent S. Prentiss, 104-125.
spite of this, Legare stuck to his guns. The reasoning which had held good in September was, in his mind, still valid now. He spoke logically, but without force, merely stating that he opposed the seating of the new claimants and considered "it contrary to all parliamentary usage to allow individuals to take their seats for the purpose of discussing the merits of a contested election, after the matter had been adjudicated by the House." A month later he again spoke on the same subject in an effort to prove that Gholson and Claiborne "were duly elected by the people of Mississippi," again basing his arguments "on the Constitution of the United States." But he failed to influence the vote, for on January 31 the House voted 119 to 112 "in favor of rescinding its action in regard to the Democratic claimants," and "Claiborne and Gholson were thus swept from the scene."  

Prentiss and Word, however, were not yet seated. The Democrats naturally wanted to send the two Whigs back to Mississippi for a third election. Consequently, the matter dragged on for five more days, at which time a vote was taken that resulted in a tie of 117 to 117. The decision then depended upon the Speaker, Polk, who voted to send Prentiss and Word back for another election, thus leaving

---

59 Dickey, Seargent S. Prentiss, 125.
Mississippi without representation. 60

Legare obviously voted along with the Democrats to send Prentiss and Word back to Mississippi, for even his friend Petigru chided him about the position he had gotten himself into:

I must say that I can't see how you could avoid the conclusion that either one set or the other were entitled to the seats. When the House decided against Gholson—consistency seemed to require that Prentiss should be allowed to kiss the book. But I have not seen your speech—only your vote. 61

It is also evident that Legare himself regretted the part he had played in the disputed election, for in April the *Niles' Register* published a remark attributed to him to the effect that "in the Mississippi election case he would have given anything for a better opportunity to study and investigate all the points in that case." 62

The chief objective of the Van Buren Administration, however, throughout the entire term of the twenty-fifth Congress was the passage of its Sub-Treasury bill. The part of the scheme under consideration during the special session was "the Bill Imposing Additional Duties, as Depositaries, in certain cases, on Public Officers," which would make treasury officers both collectors and

61 Petigru to Legare, Charleston, February 14, 1838, in Chisolm Papers.
62 *Niles' National Register*, LIV (1838), 96.
holders of public monies. Moreover, it was the intention of the bill that all money paid in to these officers would be "hard money," that is, gold and silver. 63

Legare made his important speech upon this issue in October, shortly before the end of the session. He was thoroughly acquainted with all the economic principles involved. He himself had written three articles on political economy, 64 and was familiar with the works of such political economists as Adam Smith and David Ricardo of England, Jean Baptiste Say and J. C. L. Simonde de Sismondi of France, Daniel Raymond, John McVicker, and Condy Raquet of the United States. During his four years in Europe Legare had become acquainted with Nasau Senior, Professor of Political Economy at Oxford, whose theories had helped in stabilizing the Bank of England in 1832. It is Dorfman's opinion that Senior stood "foremost in the pure science of political economy." 65 Legare had had many discussions with Senior in Brussels, also in London when Legare had visited England, as well as through correspondence after Legare had left Europe in 1836. Not only had Legare made a

---

63 Cong. Globe and Appendix, 25 Cong., 1 Sess., 236.
64 "Sismondi's Political Economy," Southern Review, IV (November, 1829); "Raymond's Political Economy," ibid., V (February, 1830); "Political Economy," ibid., VIII (February, 1832).
comparative study of all the theories of the chief economists of the age, but he had practical experience as well, for, between the years 1830 and 1832, he had represented the Bank of the State of South Carolina in twenty-three cases. 66

Before Legare spoke, Joel R. Poinsett, Secretary of War, had unsuccessfully tried to influence him to support the Administration's position on the currency question—or at least not to oppose it; but Legare had written him in reply: "I am afraid it is impossible for me to change my course on the measure in question, but I will temper my opposition so as to make it as little disagreeable as I can. I consider the whole subject of banking and currency as too difficult and unsettled to be made a party question." 67

During the morning of October 13 Legare spoke for two hours on the Sub-Treasury issue. Many speakers throughout the preceding days had debated at great length on the question; in fact, the bill had occupied the time of both the Senate and the House since the middle of September. Calhoun had secured the bill's passage in the Senate against the opposition of both Webster and Clay. Calhoun's

66 Account Book of the Clerk of Court, Charleston District, 1821-1838, in Records of the Secretary of State of South Carolina, Historical Commission of South Carolina.

men, Pickens and Rhett—together with the Administration group of the New York delegation, led by Churchill C. Cambreling, "a Van Buren lieutenant,"—had argued the measure in the House.

That Legare was aware of all the facets of the situation is evident from his words written "To a Constituent," published in the Charleston Courier shortly after he made the speech:

As to my part of the argument, you will perceive why, speaking at the close of a very protracted discussion in both houses, I was compelled to take much for granted as already established by previous speakers. The view I took of the whole subject seemed to be all that was left an orator who aimed at once at throwing new light upon the great question before the country, and interesting the house, exhausted as it was by a very long debate, and eager to close the business of the special session.

Even though Legare spoke at a time when the members of the House had become "fatigued, harassed, exhausted by incessant attendance, by night and by day," he held the attention of the audience throughout the speech.

He began by stating that his immediate purpose was to refute the arguments already presented by his opponents, rather than to repeat what had already been said by his colleagues. He did not, however, immediately proceed to

68 Charleston Courier, December 3, 1837; Niles' National Register, LIII (1837-1838), passim; Cong. Globe and Appendix, 25 Cong., 1 Sess., 236-245.

69 Niles' National Register, LIII (December 9, 1837), 270-272.
his objective, choosing instead to inject a hopeful note in his prefatory remarks. Referring to the panic conditions in the country, he stated that there was a "lesson to be learned from such calamities as have just befallen the country. . . . A national visitation ought to be considered as a great providential lesson. It teaches the most momentous truths . . . in a most impressive manner."

America, he said, had paid a great price for the experience, and he knew she would profit by it if she would "look the difficulties with which the subject is surrounded fairly in the face."

The transition to the central theme of his speech was made by citing opinions brought out in the House of Commons in 1832 on the question of renewing the charter of the Bank of England. He brought out the point that whereas there were four factions, each differing as to the proper method of banking, they all agreed as to the advisability of "adhering to the paper system. Nobody there thinks of anything so extravagant as the overthrow of that system."

Legare then went into his main attack upon the Sub-Treasury scheme, saying that it would reduce the American people to poverty by doing away with all credit—the credit which had bought the luxuries to which the country had become accustomed. And in this respect the previous speaker, Hoffman of New York, had sounded to him like "some Benedict returned to the holy solitudes of Monte
Casino to preach to a world lost in vanity and pleasures the blessings of poverty and the mortifications of the flesh." The people of South Carolina, said Legare, would never submit to such a Spartan discipline, and "I am afraid," he added—using the terms by which his speech became identified—"they have no taste for black broth and iron money," which would be "irksome, and even revolting to them." To use specie only, would be to go back to the days of "iron money... We love money as much as men ever did," but along with money comes "the demand for the conveniences" and luxuries of life, and this demand "is the basis of all civilization that is intended to be high, solid and lasting." He spoke of the standards of comfort which were dependent on commerce, and emphasized the fact that the backbone of commerce was credit. Credit, he said, had brought the steam engine, which had in turn brought cheap fabrics and other products within the reach "of the humblest of the laboring classes." But, if the Sub-Treasury scheme were put into effect, credit, he declared, would be destroyed, great industries could not function, and all classes would suffer by reverting to common barter.

The Sub-Treasury advocates had argued that the credit system had been responsible for the accumulation of great wealth "in a few hands." To this Legare replied that such an accumulation of wealth had enabled businessmen to change the "very face of the earth" by "industry and enter-
prise," and that through credit America had become "the most active and enterprising of all races." Industrial progress such as this, he said, "is not to be thwarted by the policy" of the Administration.

Why, he asked, must we destroy this excellent credit system? "What pressing exigency requires" the collection of revenue only in gold and silver? A government spokesman had argued that in case of war "the Government would find its whole treasure suddenly turned into bank credits." But, Legare asked, "does it follow that such a system should be unnecessarily adopted in time of peace?" Moreover, he doubted if even the pressure of war would compel the government, "abounding in such resources of public credit as no other government ever enjoyed, to resort to a measure so novel, so harsh, and so inconsistent with the established order of things." To do so would make specie only "an article of merchandise," that is, the holders of gold would sell only to the highest bidder. Foreign investors would overbid our government and thus cause gold and silver to become ever scarcer in this country.

Legare then gave his attention to the second issue of the debate: "How shall the revenues when collected, be kept and disbursed: shall Sub-Treasuries be established by the Government, or shall banks be employed for that purpose as heretofore?" His first words seemed to dismiss the subject casually: "As to whether the revenue shall be kept by
officers of our own or by the banks... so much has been said that I am very little disposed to trouble the committee with any additional remarks in regard to it." Nevertheless, he went ahead and devoted the greater part of the remainder of the speech to this very point. He first attacked Hoffman, who had said that the officers of the government could collect its revenues as the Quaestors of Rome had done. Legare used irony tinged with humor in his answer: "These were ideas, that in my simple way of considering such matters, shocked and alarmed me--ideas of Roman conquest... I thought of that most fearful of all things, a vast empire, which always tends to centralization, with its revenues collected only in gold and silver, to be hoarded." Rome was cursed with a "decreasing currency." He added vehemently:

One of the greatest calamities of the declining empire was a circulation diminishing so frightfully that the pay of a general in the third century was nominally not higher than that of a private had been in the reign of Augustus! So much for the ROMAN SUB-TREASURY SYSTEM, and the example of the Quaestor!

The unfortunate fluctuations in the currency, which had been argued by the Administration forces as the reason why the Sub-Treasury scheme was necessary, became Legare's next consideration. He contended that no matter how the currency were organized, the very nature of the American people, their enterprise and boldness, would bring periodic

70The House was sitting in Committee of the Whole.
convulsions. But, he declared, those depressions were not as great an evil as the remedy, which would "extinguish the spirit" of the American businessman. Moreover, he added, during such periods "commercial credit" alone would do more to make the country prosperous than banks or bank notes or "redundant currency" or governmental restrictions.

Credit, Legare argued, is necessary in order that business might prosper. Scotland, he said, "is a country whose whole currency is of paper," but it "has made greater progress than any other in Europe, with a flourishing commerce, with manufactures of the greatest extent." He used England as another example of a nation that had successfully employed credit, with her "Thames crowded with shipping; with arsenals, docks, canals, railways, factories, mines, warehouses, roads, and bridges," and with the Bank of England notes "at a premium everywhere." Credit, he declared, "implies confidence, in your neighbors, in your government," and it would not be found in a nation which put its revenue in vaults and then attempted to collect those revenues in specie. If the Federal Government should "put down the banks, it would," he said, "have no effect but to set up something worse in the shape of private paper," for the people would insist upon credit, whatever the government might do.

Administration spokesmen in the House had argued that at the worst the Sub-Treasury scheme was but an ex-
periment, and as such, the House should not be alarmed by it, because Americans "were accustomed to experiments."
The Constitution itself they had called "a mere experiment."
Legare's answer to this was comparatively terse: "Sir, I deny it utterly." It was "because our fathers made no ex-
periments . . . that their work has stood. . . . All that
is republican within our institutions remained after the
Revolution, and remains now—with some very subordinate
modifications—what it was from the beginning." The Con-
stitution was not "a piece of paper," for in it "was written what was already in the minds" of men and "handed
down from Magna Charta." Americans, he insisted, were not
a people who made experiments and should not make the ex-
periment which the Administration was proposing.

With a "word more to the South" and to Calhoun in
particular, he concluded. As he spoke he had in mind
Calhoun's alliance with northern labor. That statesman,
having decided that the wealth and capital of the North
would inevitably sponsor the American System of Clay and
would lean toward a further centralization of a government
controlled by moneyed interests, had aligned himself with
the only group which he felt would have sufficient votes
to stop such a movement—namely, the working masses. It
was a queer combination: the cultured and wealthy planters
and the Northern "poor man." Calhoun claimed that both
groups agreed upon the Sub-Treasury plan because it would
take away dangerous power from the Northern capitalists by decentralizing the control of the government's money. Against Calhoun's position Legare argued that banking institutions had never been injurious to the working people. Furthermore, the attempt to align worker against capitalist was, he said, harmful to a democracy because, by ingenuity and the use of credit, any man might become a capitalist. He himself represented "equally, rent, capital, and wages," and he protested "against attempts to array, without cause, . . . the different classes of society against one another, as if in such a country as this there could be any natural hostility," Why, he asked, should any one attempt to "pervert the natural good sense of this kindly and moral people," and "breathe into them the spirit of Cain, muttering deep curses . . . against his brother because the smoke of his sacrifice had ascended to heaven before his own!" This was Legare's chief speech in his first session of Congress. It gained him a reputation and was one of the effective speeches against Van Buren's financial scheme. Calhoun himself had been worried enough to enter the House


72 Cong. Globe, 25 Cong., 1 Sess., 236-244; ibid., 25 Cong., 2 Sess., 601-606; Writings, I, 280-321; edited version of this speech is in Charleston Courier, December 3, 1837, under the title "Letter to a Constituent," quoted in Niles' National Register, LIII (December 9, 1837).
while Legare was speaking. Legare described that incident to his friend, Huger:

While I was speaking, in the midst of the most profound silence throughout that vast hall, he came in, took his seat just behind me & entered into conversation ... with Dixon H. Lewis, talking loudly enough to disturb me, if anything could do that & distract the attention of the House, if it had not been too deeply fixed. He failed in doing so & soon boomed off.73

John Quincy Adams listened in his judicious way and then wrote in his diary: "Legare of Charleston, South Carolina, delivered one of the most eloquent speeches, of two hours, ever pronounced in that hall."74

The Boston Courier was more enthusiastic than Adams; a correspondent who had heard the speech wrote:

The Hon. Hugh Legare, of South Carolina, has today made one of the most eloquent speeches that ever fell from the lips of man. ... All sides of the House awarded him the most profound attention. ... As a man of pure and elegant eloquence he has not an equal in either House of Congress, and [has]7 distanced all the rivals that have been engaged in the race for parliamentary fame.75

Evidently the influence of the speech reached throughout the country. One letter from Ohio requested copies of it sent to the governor of that state.76 Another letter from

73Legare to Huger, New York, October 25, 1837, in Chisolm Papers.
75Boston Courier, October 17, 1837.
76I. E. Scott to Legare, Columbus, Ohio, January 14, 1838, in Chisolm Papers.
North Carolina stated: "I was so much pleased with the enlarged and new view which you presented on paper currency, I have been induced to ask you for two of your speeches."\(^{77}\)

Legare sent copies of the speech to Alfred Huger for distribution among his acquaintances in Charleston, advising him not to let Calhoun see him handing out the speech: "Calhoun will never forgive you. He has another hobby & I have thwarted him. He looked like a demoniac the day the vote was taken, when he found the whole delegation, except Pickens, going with me."\(^{78}\)

At the end of the short session, the National Intelligencer summed up the new twenty-fifth Congress in a complimentary tone and recognized Legare:

> We are happy to have it in our power to congratulate the country not only that an independent spirit has been shown this session . . . by the body which immediately represents the people, but that an improvement has taken place in the composition, character, and manners of the same assembly. There has been a considerable accession of talent, both youthful and mature, in the House. It has been a source of honest joy to . . . see such men as the Hoffmans, the Legares and the Menefees . . . occupying seats in that Hall along with older members of tried ability and experience. The debates in that body which has just closed will well compare both for solidity

\(^{77}\)R. N. Williamson to id., Rockingham City, N. C., December 4, 1837, ibid.

\(^{78}\)Legare to Huger, New York, October 25, 1837, ibid.
The defeat of the Sub-Treasury scheme of the Van Buren-Calhoun alliance, on October 14, showed that there was a "new schism in the ranks of the Democratic party." While most Democrats supported the Sub-Treasury, certain ones, such as William Cabell Rives, Representative from Virginia, Nathaniel P. Tallmadge, Senator from New York, and Legare, were in opposition. They called themselves "Conservatives," and were in favor of "a government system of deposits with state banks under certain restrictions and regulations."  

That group had an organ to express its views. They set up the Madisonian in Washington, a paper "devoted to Democratic principles 'as delineated by Mr. Madison.'" From its first edition it attacked the theories of Gouge and the exponent of those theories, Van Buren, and enlarged upon the virtues of the state bank system.  

---

79 Washington National Intelligencer, October 17, 1837. The same paper said of Legare's Sub-Treasury speech: "It is with the greatest reluctance that we have not within our power to lay before our readers the main part of the luminous and statesmanlike speech of Mr. Legare . . . ." Ibid.  

80 Lyon Gardiner Tyler, The Letters and Times of the Tylers, 2 vols. (Richmond, 1885), I, 584.  

81 Schlesinger, The Age of Jackson, 235. William Gouge was "former editor of a Jackson newspaper and Treasury official, who was primarily interested in preventing new banks. His general philosophy was that convertible bank notes were almost as bad as inconvertible notes; that bank
These conservatives astutely maintained and added to their strength in opposition to the Van Buren Administration to such an extent that they were a deciding factor in the Whig victory of 1840. In spite of the fact that Legare was one of their leaders, he was, in South Carolina, only a part of a very small minority. Calhoun had become virtual dictator of that state, and he saw to it that very little, if any, praise of Legare, Preston, or Waddy Thompson reached print in the key papers of the state, for these men constituted his congressional opposition. Even the Courier failed to print Legare's Sub-Treasury speech, although, in December, it did publish his "Letter to a Constituent," which was a defense of the speech. 82

All who opposed Calhoun politically during these years were removed by him from the picture. Within two years Legare was forced out of state politics, and by 1844 Preston and Thompson were removed. McDuffie, who revolted at the same time, sickened mentally and died. James Hamilton notes drive out specie and that if bank notes were eliminated enough specie would flow in for the needs of trade."


82 Wiltse, John C. Calhoun, Nullifier, 391. See, also, Wallace, The History of South Carolina, II, 490. In a letter to Huger Legare stated: "I can give you no idea of the recoil I felt in looking over a file of Charleston papers this morning up to the 20th inclusive, to see not even the slightest allusion to a speech, which I am sick of seeing printed in the other newspapers of this country." Legare to Huger, New York, October 25, 1837, in Chisolm Papers.
transferred his interests to Texas. Petigru and Huger became leaders of only a dwindling minority in Charleston. 83

Numerically, a strong opposition to Calhoun's policies remained, but it had no voice in the national councils. The Unionists hoped that a change of political direction would take place—although in South Carolina that hope was never realized. Preston voiced this frustration when writing to Legare: "I doubt not your [Sub-Treasury] speech will contribute to inform and reform public opinion in Charleston. . . . The state of the press in Charleston puts us to great disadvantage. We can't be heard. Is there no way of remedying this?" 84

There was no way. Former governor, Thomas Bennet, described Preston's leaving Columbia "deeply mortified in having pursued a course so diametrically opposite to the obvious will of his immediate constituents." He also spoke of Petigru as one "whose name will be found among the honorable minorities," but whose "eloquence failed in making a single convert." The Unionists of the old race of Charleston were dying, killed by the politics of ambition—the ambition of Calhoun who wanted power, for his state and for himself. 85

84 Preston to Legare, Columbia, November 11, 1837, in Chisolm Papers.
85 Thomas Bennet to Poinsett, Columbia, December 13, 1837, ibid.
In December the second session of Congress started sluggishly. The battle of the Sub-Treasury was under the surface for a time while the adherents of the scheme made further plans. Legare felt the dullness of the marking-time period when he wrote:

Interminable speaking on every subject, coarse language & conduct, quarrelling & billingsgate—such are the pleasures of this vast cavern, into which I enter every day. . . . I heard yesterday that old Quincy Adams has 360 petitions against slavery now waiting for an opportunity to present them. . . . I see a storm brewing, & when I look at the pilots who are expected to guide us thro' its perils—my heart sinks within me.86

The abolition storm broke on December 20 and Legare was drawn into it. William Slade, Representative from Vermont, "moved to refer two memorials praying for the abolition of slavery and the slave trade in the District of Columbia to a select committee." In a vehement speech Slade lashed out in a tirade against the whole institution of slavery. This brought Legare to his feet immediately, for he feared any move by the Abolitionists which would stir up the emotions of the North. Understanding the character of the Southerner as he did, he knew that slavery was the one question from which the South could not retreat. While he had sold all of his own slaves and had advised Petigru to do the same, he was firmly convinced that on the question

of slavery, and on none other, the final combat between the North and the South would take place.

Legare, therefore, entreated Slade "to consider the probable consequences of such a course, which involved the interests of a nation and a continent." Solemnity, not defiance, was in his tone as he warned the Vermonter that "if there were a spirit aroused in the North in relation to this subject," it would encounter in the South a "spirit fully as stubborn," and that if "the question were forced upon the people of the South, they would be ready to take up the gauntlet." He concluded by again asking Slade "to ponder well on his course before he ventured to proceed." Slade, however, pushed on, heedless of Legare's warning.

Immediately after Slade's speech Robert B. Campbell of South Carolina announced that all delegates representing slave-holding interests would meet in the committee room. The Southerners assembled, the thoughtful ones anxious, the impulsive ones fiery. Rhett prepared an amendment "that the Constitution should be amended or the Union dissolved." Henry A. Wise of Virginia shouted to the Virginia delegation to follow him to a committee room.

---

90 Niles' National Register, LIII (1837-1838), 261. See, also, ibid., 356-358, for Rhett's discussion of the proposed amendment.
The storm was indeed gathering clouds when the House adjourned. In this instance there was quick approval in Charleston of Legare's words against Slade. This was an indication of stronger conflicts in the future.

It was not until June 3 that Legare made his major speech in Congress during his second session. The issue arose as a carry-over of Jackson's attempt to move the Cherokees and the Seminoles farther west and to open the vacated lands to settlers. Although Jackson, in 1818, had burned the towns of the Seminoles, had defeated them many times in battle, and had captured the east coast of Florida and Pensacola on the Gulf, the Indians had retreated into central Florida, still considering themselves unconquered. Many slaves had fled from their masters to join the Seminoles, and the Government had sent troops to recover the slaves. General Wiley Thompson, in command, had imprisoned Osceola, thinking this a sufficient disciplinary measure to end the struggle. But Osceola, a great fighter, had outmaneuvered Thompson and escaped. He then gathered his warriors, killed Thompson and others at Fort King on December 28, 1835, and cut to pieces a body of troops under Major Dade. After an

91 "I am ready upon that subject to take up arms, if necessary, to separate from those who desire separation on the ground of objection to slavery as a Southern institution. I am rejoiced at the stand you have made against Mr. Slade." John J. Cogdell to Legare, Charleston, December 29, 1837. Chisolm Papers,
arduous campaign the Indians were only partially conquered by 1837, at which time they agreed by a written treaty to emigrate farther west. Osceola, however, gathered greater forces and renewed the war, fighting sporadically until 1842. 92

People were tired of the fruitless struggle. Settlers wanted security; the states were bitter about sending further volunteers to the swamps of Florida where disease took as many lives as did arrows and guns. Finally, a bill was introduced in Congress "making appropriations for preventing and suppressing Indian hostilities." Previous speakers had criticized the Administration for the war against the Seminoles in Florida and had directed much of that criticism toward the Secretary of War, Poinsett.

Legare spoke in defense of the policies and actions of Poinsett, and at the same time justified the administrative position on the removal of the Indians to the West. He defended the policies of the Administration not as a party man, but because he believed that the war against the Indians should be continued until it was brought to a successful conclusion, and because he thought the course of the Secretary of War the correct one.

After a brief eulogy of Poinsett, Legare undertook to answer the objections of the previous speaker, Richard

92J. Franklin Jameson, Dictionary of United States History (Boston, 1897), 587.
Biddle of Pennsylvania, which he considered unwarranted and trivial. What had his objections been? Legare asked. He answered his own question: merely that the language of a general had been coarse and that some Indian ponies had been "offered as rewards to stimulate the enterprise of the bold and adventurous" soldiers fighting in the Florida swamps. These "trifling objections" had been made the foundation of Biddle's charges of inefficiency against Poinsett.

After belittling the attack upon Poinsett, Legare charged his opponents with striving to end the war merely to save a little money. He himself "had never confounded economy with parsimony," he said; at least he had never hoarded "cheese-parings and candle-ends." His idea of true economy was "to lay out money to the greatest advantage; and he was ready to lavish it . . . for the defense of the country in war." It was his belief that the country would eventually profit by pursuing Poinsett's course to its logical end by quelling the disturbances in Florida so that white settlers could live there in peace.

With his next words Legare accomplished two things. He moved the discussion away from the consideration of Poinsett's conduct of the war, and he focused House attention upon further expenditures to continue the conflict. He did this by charging that "Congress itself was responsible for the disasters of the war." The remark so startled his audience that Henry R. Wise of Virginia broke in to ask:
"How can that be?" Legare replied that "upon the head of this Congress rests the heavy responsibility of having exposed the nation to the wasteful expenditure of its treasures, to the loss of life, the destruction of property, and the desolation of the country of Florida, by its absurd reduction of the army in 1821." That reduction, he declared, "was far below what was indispensable in such a country even for an adequate peace establishment." He went on to show that eleven million dollars had been spent "on the contest which the early presence of an adequate regular force would have effectually prevented or instantly suppressed."

After having brought the discussion through the two phases of defense and attack, Legare was able for the first time to work toward his main objective: the advocacy of Poinsett's policy of continuing the attempt to remove the Indians from their lands. Throughout the remainder of his speech he developed the legal considerations of that removal, reminding his listeners that the principles involved were "expounded by Chief Justice Marshall." Legare explained that so long as the tribes had "a sort of undefined personal relation, independent of the States in whose territory they resided," they were treated as if they "had a right to reside upon the soil which they occupied." They were creatures "whose dumb despair, or whose revenge, could be expressed only by sallies of irregular hostility." But "times are now changed," he said, and "the Indians
are become civilized and Christianized. They have learned the use of letters... They belong to the same religious communion; they refer to the same standards of morality."

At this point, when he seemed to be building a sympathy for the Indians, Legare used that sympathy to influence the opinion of the members. "Mercy," he declared, "requires that this measure should be accomplished; to remove them is a kindness to them. They cannot exist in the midst of the white race." They "should be established in the pleasant land which has been assigned them, aloof from those contaminating and destructive influences with which they will soon be environed here..."

Legare admitted that the history of the country's Indian relations was not "the brightest page of our annals; but, after all, no one," he said, "could seriously argue that this magnificent continent, with all its boundless capacities for improvement, was to be left a waste to furnish hunting-grounds for a few savage tribes." And "it is too late now," he added, "to look into the equity of the principles" of the first settlers in their dealings with the Indians, for "the law which governed the course of events in this regard was established before this generation took up the matter."

His concluding words were comparatively brief, but they had the quality of a longer peroration: "Whatever my private feelings may be, the laws of my ancestors bind me
absolutely; I must endure them, but I will do so in mercy. I will do whatever I can constitutionally to reconcile these people to their fate and to justify our policy to the civilized world." His final sentence was simple, yet effective: "The treaty must be executed."93

Legare's speech had entirely shifted the attention of the House to governmental policy, and away from the Secretary of War. The result pleased Poinsett, who wrote: "The Cherokee measure which alarmed my friends greatly at first was terminated triumphantly in Congress, and cannot fail to be advantageous to the administration. . . . Legare defended [The measure] ably in the House."94

A short time later Congress adjourned. Although Legare's last words in the House had been in support of the administration—and indeed had helped save the political neck of the Secretary of War—his firm stand against the Sub-Treasury scheme had put an end to his own congressional career. Calhoun hurried back to South Carolina as soon as the session was over, fretting about the defeat of the financial measure. As a Calhoun biographer has written, "he blamed that defeat, not on Nicholas Biddle who took personal credit for it, but on the activities and votes of two dissi-


dent South Carolina Congressman, Legare and Thompson, and
was determined that neither should be re-elected." 95

Legare did not return to Charleston to campaign
for himself. Instead he visited friends in the North,
spending three weeks at White Sulphur Springs with the
Rives family. While there he received a letter from Thomas
Bennet, apprising him of the Calhoun-Poinsett plot to re-
move him from Congress. 96 The news, however, left him
unmoved. He wrote to Huger stating that he would not make
"any concessions inconsistent with the principles which
[he] had proclaimed," and adding, flatly: "I do not desire
to sit in Congress on any other terms than those which I
have hitherto insisted on." 97 After leaving the Springs
Legare went first to Newport to visit Petigru who was
vacationing there, and then on to Boston to see the
Ticknors, preferring the intellectual stimulation of such
friends to any campaigning activity in his own city. 98

Calhoun made use of Legare's absence to oust him.

95 Wiltse, John C. Calhoun, Nullifier, 391.
96 Bennet's letter to Legare is not available, but
Legare replied: "Many thanks for your letter which con-
tained just the sort of information I wanted. I see now
how things stand . . . ." Legare to Bennet, White Sulphur
Springs, August 11, 1838. Chisolm Papers.
97 Id. to Huger, New Port, September 23, 1838. Paul
Hamilton Hayne Papers, Duke University Library.
98 Id. to his mother, New York, October 25, 1838.
Chisolm Papers.
Thompson conducted a vigorous campaign, denying that he was for a national bank, declaring himself opposed to pet banks, and asserting that he was a good administration man, thereby winning his election. Legare, not being present to speak for himself, was more vulnerable. Calhoun accepted I. E. Holmes as a candidate, and, though Huger and Petigru fought for Legare, the Calhoun faction won at the polls by some five hundred votes.

Even in political defeat, however, the integrity of Legare was enhanced by the revealed maneuverings of his opponents. Calhoun and Poinsett had plotted together and had made the mistake of allowing their connivings to be revealed in the press. In a letter to the Charleston Mercury Poinsett had attempted to explain his desertion of Legare, who had spoken so well for him in the speech on the Seminole War:

> It is probable that the expression of my feelings of personal regard towards Mr. Legare and my deep sense of gratitude for his manly and able defense of me when I was exposed to attack without the power to defend myself may have been misconstrued into a desire to promote his election.

But, in the same issue which carried this explanation, the Mercury made the greater political blunder of commenting:

---

99 Wiltse, John C. Calhoun, Nullifier, 392.
100 Charleston Mercury, October 12, 1838.
101 Ibid., October 6, 1838.
Before any compromise between gentlemen here
was made, a letter of Mr. Poinsett was shown to
a number of gentlemen, and which we hope will be
produced if called for, (we saw it yesterday) in
which Mr. Poinsett declares that he could not as
a friend of the Administration sustain Mr. Legare
in his election—that he had, at the instance of
Mr. Calhoun, suggested either Judge Huger,
Mr. Memminger or Mr. Bennett ... to be substi-
tuted for Mr. Legare. ... 102

This printed proof, in the Nullifiers' own paper, of
Calhoun's political contrivance in the defeat of Legare
brought on an immediate reaction, in and out of the state.
The Macon Georgia Messenger spoke.

Mr. Legare has been defeated ... by the direct
interference of a Senator and of a Cabinet
officer. ... It is enough to fill with disgust
and indignation, every Carolinian who sets any
value on the demeanor of persons in high office.
... Mr. Calhoun is caught in close intrigue
with the Secretary of War, counselling him to
interfere to control the elections in Charleston--
advising in secret another proscription, which
he dared not openly promote. ... 103

The Richmond Whig shouted: "If there be a State Rights man
in the South, who doubts that Mr. Calhoun has apostatized,
let him doubt no more." 104

On October 12, when he learned that he had lost the
election, Legare wrote to his sister from New York. He ex-
pressed no bitterness, only a regret that his friends who

102 Ibid.
103 Macon Georgia Messenger, October 25, 1838.
104 Richmond Whig and Public Advertiser, October 11,
1838; Columbia Telescope, October 20, 1838; Charleston
Courier, October 7, 1838.
had worked for him had been put to some embarrassment.

"I am proscribed," he said, "for what I regard as one of
the most elevated passages of my life . . . ." Later,
in a letter to his mother, he said: "It is as well, perhaps,
that my pride should be checked. I have too much of it."

Legare's defeat left him free to return to the
field of jurisprudence, to the cases with which he was to
become famous. But before this time came, there still
remained another session in Congress for him, in which, as
a lame duck member, he could speak independent of party,
regardless of Calhoun's wrath.

---

105 Legare to Mary Legare, New York, October 12, 1838. Chisolm Papers.

106 Id. to his mother, New York, October 25, 1838. Ibid.
CHAPTER X

CONGRESSIONAL INDEPENDENT

Legare began the final session of the twenty-fifth Congress feeling, as he said, "like an eagle turned out of a cage." No duty to party, no political commitments of any sort restrained him from uttering any thought which he entertained. As far as Calhoun was concerned Legare made himself immediately clear:

I have not as yet exchanged civilities with any of that gang, & do not expect to do so. Calhoun went over to Preston the other day in the Senate in an unusually amiable manner, & told him he would like to converse with me about some memorial he had received from Charleston, but that he "did not know what our social relations were." Preston looked at him, he says & made no answer. A day or two after, I met him descending the steps of the Capitol, & passed him without looking at him. I suppose he no longer has any doubt. As for Poinsett, he is in my eyes too contemptible for hatred--but he shall feel me, if he comes my way.2

The opportunity for Legare to make himself felt occurred shortly after the House convened in December. The administration forces held a caucus at which an attempt was made to iron out the differences between the abolitionists

---

1Legare to his mother, Washington, December 24, 1838. Chisolm Papers.

2Ibid.
of the North and the nullifiers of the South. Could this be accomplished, Van Buren would be able to gather enough votes to pass the Sub-Treasury bill. Resolutions were adopted "by which they aimed to gull the South into a support of them and all their measures." With his first speech on the floor of the House during the session Legare flung these carefully devised plans of the Administration, and of Calhoun, to the winds of sectional dissension.

Leverett Saltonstall of Massachusetts gave him the opportunity by presenting a petition for the recognition of Hayti by the United States. This was in itself but another thinly disguised abolition memorial, the latest in a long series sponsored by Adams. But since the gag rule had been put into effect, during the time of Pinckney, most of the memorials had merely been tabled or allowed to be lost in committee. As a consequence, the petitioners resorted to ruses of various sorts. Saltonstall insisted that what he had to say had nothing to do with slavery. Hayti, however, was a black country, and it was obvious that if the United States recognized a nation ruled by Negroes it would be admitting the equality of the races. Certainly such a move would knock out the Southerners' con-

---

3 Ibid.
tion that the Negro was an inferior being.

Had Legare remained silent it is quite probable that nothing would have happened—in regard to Hayti. The petition, however, even though a disguised one, would finally have been considered by the House. In a sense, the abolitionists would have been appeased and the compromise desired by the administration caucus would have been achieved. Enough abolitionists would then have combined with the Van Buren forces to control a majority of the House. But Legare spoke. The words he used and the psychological moment he chose in which to utter them completely destroyed any harmony, fictitious as it would have been, between the fanatics of the North and the firebrands of the South. Once more he broke up the scheming of Calhoun even as he embarrassed Van Buren.

Legare's thoughts on slavery had been clearly expressed ten years before in the Southern Review. The entire civilized world, he believed, shared equally in the guilt for those actions which had brought about the institution. The slave trade which had introduced the Negroes to the South he had called "that infernal traffic, by which the great trading nations of Europe were endeavoring to swell the mass of colonial produce for their own benefit." He strongly defended the people of the South who had been

attacked by the abolitionists:

The sternest justice can demand no more than that we should be thought as bad as those who brought this evil upon us. But, in a more considerate view of the case, the pander even of a confessedly vicious appetite, is worse than the libertine whose lusts he is base enough to subserve; and it is an absurdity without a parallel in the whole history of human extravagance and folly, to hear the people of Old England or New England, or of any other portion of Christendom, coolly lecturing us upon the sin of keeping our fellow-men in bondage! They accuse us of violating the law of nature, who, by the law which they themselves prescribed, drew us into this supposed offense! They talk about the imprescindible rights of mankind, and question the very titles which they were bound to warrant, by selling us the property! A father whose vices had entailed disease upon his offspring, and who should cast him off for this hereditary uncleanness, presents something like a parallel—the only one we have been able to imagine—to this instance of prodigious effrontery.

Whatever may be his feelings or opinions in relation to slavery in the abstract, no sensible or conscientious man would undertake to act upon them in so vital a concern, without fully looking into the consequences. Innovators or Revolutionists who go only for an imaginary abstract rectitude and symmetry in government, are always dangerous, and sometimes the greatest curse with which heaven in its wrath can visit an offending people. Language affords no suitable epithet for the cowardly and atrocious wickedness of wretches, who, under the pretext of a sympathy with one order or portion of a community with which they have nothing to do, presume to recommend or to dictate changes, of which they can neither judge of the propriety, nor feel the consequences.6

When Legare gained the floor to speak against Saltonstall it was with the intention of expressing these thoughts which he had written a decade earlier and warning

6 Ibid., 353-357.
him to go no further in recrimination of the South. The fact that this would embarrass the administration served only to add zest to his words and a sense of satisfaction to a duty.

As soon as he was able to be heard Legare objected to the memorial being received because it was "not a true petition requesting aid for some distress." It was presented, he declared, merely to promote "the ends of abolition," and should be rejected. It was, moreover, "virtually an act of war against one portion of the Union." At this point Legare turned to the Speaker, admitted he was "out of order," and assured him that "he would not press the matter further." Immediately there were cries of "Go on! Go on!" And he did, shifting the debate from Saltonstall to John Quincy Adams, who was the power behind the presentation of the various abolition petitions:

The gentleman from Massachusetts, in a spirit ... less offensive than he usually displays on this subject, has contended that the amendment of the constitution touching the right of petition has set at nought all the precedents of the British House of Commons.

Legare showed this to be in error, declaring that "as far back as the times of the Long Parliament, you will find a case in which a petition was ordered to be burnt by the common hangman."

He then answered the point made by the former president, declaring that the House, in refusing to consider
petitions, was exercising "not a legislative but a judicial function" under a constitutional right which permitted the House to regulate its own procedure. 7 "The right of petition is as much protected by this amendment of the constitution as the freedom of speech is, and no more," Legare asserted. "And will any man tell me," he asked, "that the freedom of speech is absolute and inherent, and cannot be restrained by this House?" The meaning of the amendment is "clear," he said, and "means that what is liberty of speech in this House shall be judged by the House, and by the House alone." The right of petition is similar to the right of speech, he added, and, therefore, it "is alone the right of this House to judge whether or not the petition being presented is one seeking aid."

As he continued in defense of the gag rule, Legare aimed a side thrust at his fellow South Carolinian, Pickens, who had declared in the caucus that a thousand books on parliamentary law would condemn the tabling of slavery petitions. "Although I have not been happy enough to meet

7Legare was debating the constitutionality of the gag rule passed by the twenty-fourth Congress, which read: "That all petitions, memorials, resolutions, propositions, or papers, relating in any way, or to any extent whatever, to the subject of slavery, or the abolition of slavery, shall, without either being printed or referred, be laid upon the table, and that no further action whatever shall be had thereon." Register of Debates, 24 Cong., 1 Sess., 4031, 4050-4055; Wiltse, John C. Calhoun, Nullifier, 285-286.
with nine-hundred and ninety-nine out of the thousand commentators on parliamentary law, spoken of the other day by one of my colleagues; yet," said Legare, "the thousandth is all sufficient for me." The thousandth was the work of "good old honest Hatsell, a most useful and faithful compilation." In this volume, Legare explained, one could find that the House of Commons, in 1669, ruled on the matter of privilege, stating that it was the right of "every commoner to present his petition to the House of Commons," but that it was also "the undoubted right and privilege of that House to adjudge and determine how far such petitions are proper to be received." The very authority which Adams had referred to, British Parliamentary law, showed that petitions need not be received by the House.

Throughout his speech Legare thus directed his words to the whole subject of petitions rather than to the particular petition advanced by Saltonstall. His real opponent was Adams, not merely the preceding speaker. He, therefore, refused to discuss any recognition of Hayti, because such a discussion would be in reality a House consideration of a petition—just what the abolitionists wanted.

The only question open for further debate was, he said, "whether these petitions fall within that category" which the House "is both authorized and bound to refuse to receive." Were these petitions ones that asked Congress to relieve distress or give "commercial benefit" to the country?
If so, Legare said, they would be received. But, he continued, "the abolitionists have not talked of these things"; their "arguments have been of an entirely different nature," and as such, the "question ought at once to be disposed of, in a fair, open, candid, and manly spirit."

With the objective of separating the Southerners and the abolitionists firmly in mind, Legare continued to avoid the question of Hayti. Instead, he reviewed the slavery problem as it had progressed in Congress. The abolitionists, he said, "first told the House it must abolish slavery in the District of Columbia." Next they informed the House that "it must refuse to admit Florida to the Union" because this would open more area to slavery. Then they asked "it to prevent the removal of the black race to more southern climates," such as Texas.

Legare was then stopped by the Speaker. Again there were cries of "Go on! Go on!" The Speaker cautioned the House that it was not in order to cry "Go on!" when a member was violating the rules of order by speaking upon an entirely different subject after having interrupted another member who had the floor. "The question," he declared, "was on the reception of a memorial."

Legare protested against the interruptions of the Speaker. Had he been stopped at that point the shaky coalition between the nullifiers and the abolitionists might
have been left intact. Briefly he explained his objections to the memorial: it aimed at abolition, it was "part of a system," and it was "not for the benefit of commerce or for relief, but for the ruin of the South." For the last time the Speaker attempted to silence Legare by stating that "if the memorial had anything on its face about abolition it would at once be laid on the table."

The Speaker, James K. Polk, an administration man, was aware of the result of the caucus and the attempted coalition. But he made no further effort to stop Legare, who had obtained the interest of the House and pressed his advantage: "Well, sir, I want to show that it is a firebrand cast into the House for the worst purposes; that it originates in a design . . . to convulse the Union, and ought, therefore, to be rejected."

Legare expressed the same hope and the same fear which he had spoken sixteen years earlier in his first public speech:

Without being, perhaps, a legitimate democrat—whether I am or not, God knows; I leave it to the Doctors of the school—I have been nursed from my youth in an idolatrous love of . . . Republican government, and I have dreamed for my country the highest things within the reach of humanity—a career of greatness such as the world has never

8"The fortunes of the species, are thus, in some degree, identified with those of THE REPUBLIC—and if our experiment fail, there is no hope for man on this side of the grave." "Oration before the '76 Association, July 4, 1823." Writings, I, 269.
yet witnessed.

There is one subject, and, so far as I am able to perceive, but one, that, for the present at least, threatens to cloud this glorious prospect, and to disappoint those high hopes. . . . It is a question of liberty; not a wild, visionary, impracticable scheme for giving liberty to a race utterly incapable of it, did our constitution even permit us to do so; but a question involving the sober, stable, rational, enduring, hereditary liberty of the Anglo-American, which has hitherto been identified with our whole being, but of which the knell is struck whenever the schemes of these petitioners shall have been consummated. Dissolve this Union, and your Republican institutions are gone forever. In the scenes of blood and anarchy which will infallibly succeed, no human prescience can anticipate precisely what results will ensue; but one thing I hold at least to be perfectly certain; and that is, that popular government will cease to exist in States engaged in perpetual hostility with one another.

Having sincerely uttered the thoughts which were the very premise of his being, he then spoke directly to all the Southerners who had sat in upon the caucus:

And can gentlemen bring themselves lightly to tamper, in spite of the most solemn constitutional obligations, with interests like these? Do they imagine that the people who sent them here are prepared to peril the peace, the union, the liberty, the hopes of this continent, in an idle pursuit of a mere visionary, unattainable good? . . . Sir, I tell you they are not.

Legare thus set the minds of his auditors upon their constituents. He then pleaded with the Representatives to preserve the Union by fairly presenting the question of slavery to all the people: "Let them be brought to pass upon the true issue involved in these schemes before they are driven to madness by a most unhallowed agitation."
Legare then gave a brief resume of what he had said, declaring that he had established the parliamentary right of the House to pass upon all petitions presented to it. His concluding words were emphatic: "The petitions now in question are in fact such as are not proper to be received; and I have, accordingly, without hesitation, voted against receiving them." 9

The speech effectively broke the attempted coalition. The petition was not received, and the breach between the nullifiers and the abolitionists was widened sufficiently to prevent any concerted political action. Legare felt he had been successful and wrote his mother that he had been "cheered on by the House. They all wanted to hear me speak & I verily believe I am the only person there who would have been permitted to say what I did. My delivery was unusually happy." 10

A few days later another opportunity to embarrass the Administration arose. Henry Wise of Virginia had placed a motion before the House to print 20,000 copies of a pamphlet which would show a list of governmental defaulters as well as the correspondence of the Secretary of the Treasury in relationship to the subject. The motion was


grasped by Waddy Thompson, Prentiss, Legare, and others as a chance to publicly expose administrative corruption. In desperate opposition the administrative forces, including the Speaker, fought to prevent this. As one writer has pointed out: "If ever an opposition party found a gratifying fragment it was in this instance when an administrative appointee proved to be a thief of public money." Among all the charges heaped upon him "the Swartwout case was probably Van Buren's greatest single embarrassment." The agent in question, Samuel Swartwout, a Jackson appointee retained by Van Buren, had been a collector at the port of New York. Over a period of years he had defaulted with $1,374,119, of which amount only $30,000 had been recovered. Before he could be brought to trial Swartwout had "conveniently departed for European sanctuary."

Legare spoke on December 28. He first expressed "astonishment" as to a statement made by Francis Thomas of Maryland, the gentleman who had preceded him, declaring "it was inconceivable to him that any gentleman should have serious objections to the printing of an important public document." Thomas interrupted to explain that "he had no objection to printing, but only to printing 20,000 copies." To this Legare replied that the statement "somewhat dimin-

---

11 Memoirs of John Quincy Adams, X, 80.
12 Dickey, Seargent S. Prentiss, 150-151.
ished his astonishment, though it did not wholly remove
it," for, regardless of which party would be condemned by
the figures revealed in the pamphlet, "the public mind
should be brought to bear on the great subjects before the
country."

The Swartwout defalcation in itself was a minor
issue. But if it could be clearly shown that many of the
administrative officials were corrupt, the case for the
Sub-Treasury scheme would be hard hit. With his next words
Legare sought to do this. Is it possible, he asked, "that
the country could have so fallen . . . that men could not
be found to fill public offices in whom the public could
trust?" Was the government itself so weak that it must
"bow to a corrupt official and make no attempt to expose
him?" He was referring to the many corruptions which
Seargent S. Prentiss had exposed on the two preceding days.
"The gentleman from Mississippi," Legare continued, "had
amused them all by the manner in which he had exposed some
of these transactions; it was impossible to listen to some
of the things he had said, and resist the force of his
humor; but still it was a most grave and serious matter."
At the conclusion of Prentiss' speech Legare had left the
House, he said, "deeply and painfully musing at the dis-
closure of official malfeasance which had been brought to
light." In view of the charges of corruption, how, Legare
asked, could the Administration "resort to the principle of
economy as a reason against printing those matters and sending them abroad to all parts of the country?"

Having implicitly tied in the corruption charges as an attack upon the proposed Sub-Treasury scheme, Legare then boldly stated his conclusion: "Never was there an expenditure which would better pay for itself in the good it will effect, . . . especially at this moment, when a new system was proposed by the Executive for the custody of the public treasure." The implication of Legare's words was clear—certainly to all the members present in the House. If the administration could not prevent corruption in its officials, it would be indeed dangerous for the country to allow those same agents to have an arbitrary control over all governmental monies under a Sub-Treasury system. The attack upon the Secretary of the Treasury and his agents had been an attack upon Van Buren himself in his policies of handling the currency.

The Swartwout defalcation was too juicy a morsel for the opposition to let pass readily; it was only natural that it should be continued into January and that Legare should again speak upon the subject. A committee to investigate Swartwout was voted. This in itself the administration did not mind, for the Speaker with his usual power of

appointment could pack that committee with administration figures who would render harmless any discoveries of corruption. The Whig opposition sought to prevent this, and Legare, of course, joined in.

He used irony and logic which tended to make the administration look ridiculous. He began by sympathizing with Polk, the Speaker, as to the position in which he must find himself, declaring that "his friends" had placed him in "this false position." The administration, he said, was trying to appoint a committee of its own members, and it seemed to think the Speaker was "bound upon party principles to appoint such a committee." Legare argued that a committee so composed would be merely the "advocates of the administration" rather than conductors of an impartial investigation, and that by House rules "the Speaker is charged with the appointment of committees, unless the House shall see fit to order otherwise, in which case they shall be chosen by ballot. The law is on your table—it stares you in the face—it is clear, direct, unequivocal."

For the next few minutes Legare compared the differences between the procedure in the House of Representatives and in the English House of Commons. In the latter, he said, the majority "are always friends of the proposed measure" and the committees invariably represent majority opinion. In the House of Representatives, "the Executive, where it has a majority in this House at the opening of a
Congress, exercises through the Chair an influence which is unknown in the constitutional monarchies of Europe, and is enabled, through the chairmen of our own committees, to give a direction to the business of the House and the opinions of the country the very opposite of that which would be impressed upon them by the fairly expressed sense of a majority here."

The difference between the American and the English system was especially significant in the particular "case before the House." Legare pointed out that an administration, charged with corruption, would actually be investigating itself and assuming "the responsibility of another department of the Government." The administration, he asserted, "through its official organ in this House, comes here and demands . . . how it happened that one of the principal agents of the Executive has been guilty of Malversation in office. What right has the Executive, Legare asked, "to make any such call upon this House?" The entire procedure, he said, was the result of "the extraordinary development of the executive power which has taken place in the silent process of things, and to which we are become so accustomed that we are losing sight of the simplest and most elementary principles of our Government."

The whole theory of American government, Legare argued, lay in the separation of the executive and the legislative branches of that government. The legislative
branch, he declared, "is placed here not as the associate, but the antagonist" of the executive, and the legislature "should serve as a check and a counterpoise." In short, the House "represents the popular jealousy of power," and "when, therefore, the Executive asks us to appoint a committee of this kind, our answer," Legare asserted, "must be:

We shall appoint one, but not for your behoof—we hold you to your whole responsibility under the Constitution; if we look into this business at all, it will of course be with a view to discover and to correct your errors, and, if need be, to visit them with appropriate penalties.

Legare thus took the position that the whole financial policy of the administration should be assailed, that Van Buren's agents were corrupt, and that the Secretary of the Treasury, Levi Woodbury, might be impeached for allowing such a condition to continue. He reviewed the history of the Swartwout embezzlements, speaking ironically of the criminal as if he were some captain of industry. Swartwout he described as a man who became a defaulter, at first "in a moderate way," but who carefully developed his peculiar talent, "still observing a degree of moderation," until, finally, he "achieved a speculation so magnificent as to place him by the side of the great historic plunderers of antiquity." Having finished this pseudo-eulogy, Legare then threw the blame for the corruption squarely upon the shoulders of the Secretary of the Treasury: "I do not charge
Mr. Woodbury with corruption. I do not speak, as yet, of impeachment. ... But I contend that he stands before us self-accused." And with that Legare returned to his original point: "If any case called for the election of a committee by the House itself, that case is the one before you."

And again, as he had done in December, Legare made the inevitable tie-in with the Sub-Treasury bill. This case of official corruption he called "extraordinary," because it happened "during a crisis in the financial affairs of this country, ... and the public mind is much awakened." The defaulting of a public agent, he stated, "has an immediate bearing upon this engrossing subject."

If administration men alone composed the committee, he added, "I should not be satisfied with any report made by gentlemen who differ with me in their views, whatever might be their integrities or abilities. This is a matter which I will not consent to look at through another's prejudices."

If the purpose of the committee were merely to recover the money, Legare continued, law officers should be used, "who could do it better than a committee of legislators." But "every circumstance," he said, "had pointed out to the Administration the guilt of Swartwout; the facts show conclusively that they cannot plead surprise or ignorance." Therefore, he concluded, the recovery of the money
was secondary; the first duty of the House was to examine the administration, or at least its policy of hiring agents. The House, he said, "is justified in its visible determination to give to this whole subject a most severe and searching examination, through a committee of its own choosing."  

The speech was a part of "the great debate on the Swartwout defalcations." As such it achieved its purpose, if one can judge by the vote. The House elected a committee which was sent to New York to study Swartwout's former activities. The chief value of the speech, however, was its contribution to the parade of charges of corruption against the Van Buren administration. In less than two years those charges were to be the powder and bullets of the Whig campaign that killed the election hopes of the adopted son of Andrew Jackson.

Again in January Legare was given an unexpected opportunity to speak. He entered the House late and found that "a very able member from Maine [George Evans] had been dealing some vigorous blows upon Charleston & the

---


Under consideration was a bill providing for a dry-dock at the Brooklyn Navy Yard and a similar provision, as a proposed amendment, for Philadelphia. Evans was, at the time, answering Waddy Thompson of South Carolina, and was attacking the need for naval depots at Pensacola and at Charleston. He had almost finished when Legare entered. Thompson then told Legare what had been said.

Though he spoke on a moment's notice, Legare's speech was more extemporaneous than impromptu. A year previously he had introduced and debated on a resolution "that the Secretary of the Navy be requested to report to the House . . . his opinion as to the expediency of establishing a navy yard for sloops of war . . . at Charleston." The resolution had passed the House, and Legare had prepared a statement for Samuel D. Ingham, Chairman of the Committee on Naval Affairs. In this paper he had covered both the internal and external characteristics of Charleston harbor, the importance of that port for commerce, and its strategic position in respect to the entire South. In answering Evans he made use of this previous statement,

---

adapting it to the specific occasion.

At the outset of the speech Legare capitalized on the implication that his constituents had been "attacked." Violent words, he said, had been used about "the peaceful city which he had the honor still to represent." Immediately Evans rose and "disavowed any intention of saying anything that might be offensive." In reply Legare used ethical proof in such a manner as to disquiet Evans:

It is not my habit to sacrifice the dignity and the decencies of this House to wrangling personalities; nor, standing here as the advocate of so good a cause, would I cast suspicion upon it by resorting to the language of passion. As to the imputations thrown out by the gentleman against Southern sectional spirit, I fearlessly appeal to the House whether the uniform tenor of my conduct here does not entirely exempt me from such a charge.

Legare then pointed out the national advantages of bringing new industry, such as a naval base would entail, to a Southern port. It would, he said "employ a strong body of white mechanics and laborers where that description of people are more wanted and needed." Although arguing specifically for depots in the two Southern ports of Charleston and Pensacola, Legare also declared himself to be in favor of the bill before the House: "It appears to me obviously proper that there should be a dry-dock at New York--the great seat of our commerce . . . ." Evans had argued that the resources of the country were not sufficient to build depots in Charleston and Pensacola. Legare pleaded
for a broader perspective:

Looking at the immense resources, actual and eventual, of the country, I will not consent to neglect or to weaken any of its military defenses, simply because, from transient causes, our Treasury happens to be rather low.

This was a chance to attack the administration again, and Legare was not one to hold back when an opportunity was indicated.

Unless our affairs be miserably mismanaged, a few years will restore to us a redundant revenue, and we should, by refusing this money [for the building of naval stations] only sacrifice the strength and protection of the country, which ought never for a moment to be neglected, to an ill-timed and most timid and unreasonable parsimony.

Legare firmly believed that a great future lay ahead for the United States if it were not interfered with by short-sighted leaders. Again and again in his speaking he stated this premise, and he did so now:

within a few years—for what is a century in the life of a nation—everything on this side of the mountains will be dwarfed in the comparison. The valley of the Mississippi... is capable of supporting as great a population as that of all Europe put together....

Sir, I have only to mention a name, which no American can hear pronounced... without some excitement—Cuba. Do you doubt that in event of another war with England, for instance, she would take possession of that island, and hold it if she could? Sir, it is with a view to contingencies so probable, to exigences so pressing as these, that I regard Pensacola... as entitled to your most earnest attention.... That city will, not improbably, be the Havre of New Orleans. You should render it, as far as possible, impregnable; you should arm it with every means and instrument of war, offensive and defensive. It should be your Gibraltar.
Having shown the necessity for additional military defenses in the South, Legare then questioned the logic of Evans' statement that "wages of labor would be a little higher there." According to that argument, said Legare, it would be necessary to "crowd all dry-docks and navy yards into New England where contracts could be entered into on more reasonable terms."

At this point Evans interrupted Legare to state that what he had said was not intended to convey his own opinions so much as to refute those of Waddy Thompson and others, "who contended for the superior advantages of Pensacola, in respect of its forests of live oak, etc." Legare's reply was that forests of live oak certainly were no disadvantage to the port under discussion.

After the interruption Legare continued, asking the House "to look at the subject in the point of view of a statesman." He reiterated that Pensacola should be "a great port of military equipment." and attempted to show that a port is the strength of a country, illustrating the point by using figures dramatically to arouse imagination.

An ingenious writer has remarked that the three men whose memories are dearest to France—-I do not mean in the vulgar sense of the word "popularity"—-but who have the strongest hold upon the French mind, as identified with the history and the destinies of their country—Richelieu, Louis XIV, and Bonaparte—will be remembered after all transitory grounds of reputation and influence shall be passed away, as founders of the three great military ports of Brest, Dunkirk, and Antwerp. The importance of the last of these to
the empire of Napoleon was well expressed in his saying that it was a pistol loaded and presented at the very heart of England.

The navigation of the Bosphorus and the Hellespont is become almost the pivot of European politics.

The analogy was clear. Pensacola, he declared, "commands our Bosphorus and Hellespont, or will enable us to prevent others from commanding it." He then concluded his appeal with a warning:

If we do not, by a foresight worthy of the lawgivers of a great nation, anticipate events by preparing it at once to serve the purposes for which Providence seems to have marked it out, we shall, I have no doubt at all of it, be made to feel its importance by disastrous experience in some future war.

Having finished with his argument for Pensacola, which corroborated what his colleague, Thompson, had said, Legare turned to the claims of Charleston for a navy yard. First, he met Evans' objection that naval yards in the South would cost more than similar establishments in the North. Evans "had quite forgotten," said Legare, "that the South had borne, without any compensation, its share in the tax for the support of Northern navigation."

Evans again interrupted to remark that money spent on Northern ports was for the benefit of the whole country. Legare took the objection in stride, and replied that all seamen were residents of the North and that New England kept this monopoly only by virtue of the tariff which was paid for in great part by the South. Under those circum-
stances, continued Legare, "the objection to Charleston as a naval depot comes with a very ill grace from the lips of a gentleman from the Eastern States."

During the next few minutes he brought out the fact that the entire coast line from the capes of Virginia to Pensacola "had not a single port of military equipment." When he had finished this survey he pointed out two distinct advantages held by Charleston: (1) It was "the nearest port to the windward station on the West India Islands." (2) "It was the natural point for a base of operations for the whole surrounding low country" of South Carolina and Georgia and a part of North Carolina. Any foreign invader, he said, would "lose no time in arming the city of Charleston with all the instruments of defense which its situation required."

Legare concluded his arguments with a final thrust at Evans:

We were told yesterday, by the gentleman from Virginia [Mr. Wise] that to get anything, even justice, here, we must be sturdy and indefatigable beggars, and that Southern people cannot, or will not, become so.

We are today twitted by the gentleman from Maine [Mr. Evans] with the excessive eagerness of our importunities. I trust I have done something to render these, for the future, less necessary, and that the House will hereafter look at the subject in the true national point of view.

He added, gravely, making full use of ethical proof:
I shall not myself, it is probable, have an 
opportunity of pleading the cause when it shall 
come up in its turn, but I am sure it cannot be 
presented in vain to men who shall survey the 
whole subject in the comprehensive spirit of 
statesmen.

Because this was one of his last few opportunities 
to speak in the House, and because he felt he had his 
audience with him, Legare went on to declare his views on 
the South in its relationship to the nation. Some people, 
he said, seem to think that the South "should make greater 
pecuniary sacrifices than any other section of the country, 
in consideration of certain imaginary advantages of polit-
ical power and influence." His own opinion was 

that the ratio of population and direct taxes 
was a most mistaken concession on the part of 
the South; but, without touching here a ques-
tion which is precluded by the constitution, 
I venture to say that it is impossible for any 
powers of arithmetic to compute the amount of 
the price paid by it for the blessings of the 
Union. Sir, I do not affect to question these 
blessings—far from it. . . . Our people have 
paid their contribution to the general weal . . . 
with willing hearts and with self-devoted gen-
erosity.

But let not gentlemen from other parts of 
the country deceive themselves into an idea 
that we have not bought these blessings at an 
immense price; or that we are not fully aware 
of it. . . . The South, if it labors, as it 
certainly does labor, under several disadvan-
tages with regard to commerce and industry, had, 
in its fertile soil and privileged staple com-
modities, the means of indemnifying itself to a 
considerable degree, had all that was drawn from 
the soil by taxation been returned to it in ex-
penditure, and had her commerce and industry been 
protected to the exclusion of those of the other 
States, we should have had importing merchants in 
our great cities.
Stating that the topic was "a fearful one," Legare went no further in his emotional appeal but concluded simply:

I have said enough to expose the radical futility and injustice of the arguments which would deprive us of institutions and establishments of which no great country ought to be destitute, on no better ground than they will cost a little more in our cities than in those of the North. . . . I claim nothing for my constituents to which I shall not be able to show they are entitled on the broadest grounds of justice and policy, and I shall expect that every such claim will be unhesitatingly granted by the House.21

In a letter to his sister Legare mentioned the speech and seemed happy about the result:

I have just made an extemporaneous speech about Navy Yards, drydocks, etc., which has been favorably received. . . . My reply [To Evans] has been universally complimented here. . . . I rose as soon as he sat down. I was naturally alarmed, for though my dear constituents have most grossly ill-treated me, I would not for the world be considered as neglecting their interests, or my duties.22

The same letter indicated that he was beginning to enjoy his lame-duck position in Congress. He felt more at liberty to fulfill his duty as he saw fit, regardless of party or further repercussion from any position he might take. When he wrote that the session was becoming "politically very interesting," he was, perhaps, anticipating the excitement of continued attacks upon a vulnerable admin-

---


istration, as well as probable outbursts from the abolitionists. Then, too, there was the personal delight in tilting with Adams.

Legare's last encounter with Adams occurred in March. A controversy had arisen over a strip of territory between Maine and the Canadian Province of New Brunswick. The dispute had come about when a British official had written to the Governor of Maine, claiming for the Crown a comparatively small piece of land. The letter implied, however, that Great Britain would use force if necessary. Maine immediately threatened to take care of the matter herself, without permission from the Federal Government. Lest this should happen and Maine start something the rest of the states would have to finish, a bill was proposed giving the President "additional powers for the defense of the United States." This was the initial stage of the long controversy with England, which was not settled until 1842 by the Ashburton Treaty. Seven-twelfths of the territory was then awarded to the United States. 23

The House met in evening session on March 1, 1839. Legare advocated the bill and spoke for it. He claimed that it was not intended as a war measure to stir up trouble between the two nations, but was, on the other hand, a measure "calculated to avert war." He assured his listeners

23Arthur Meier Schlesinger, Political and Social History of the United States (New York, 1925), 67-69.
that "he had ever been a uniform advocate of peace," but that on this question he believed the House had no other "choice than to do its duty in support of what was just, and leave the results to Heaven." It was his opinion that the rightful possession of the land under dispute was the only thing to be considered. As to the boundary he was explicit:

The answer as to the boundary was spoken by Nature herself. Men might dispute about what constituted a highland, what was a hill and what was a mountain; but if there was any height of ground from which the streams run in opposite directions, into the St. Lawrence on the one hand, and into the Atlantic on the other, it was enough. . . . The claim set up by Great Britain was a mere fetch—a pretext to get hold of a piece of ground which it was very desirable for her to possess.

At this point Adams broke in and stated that although "this nation would unanimously support Maine in all steps that she may feel it necessary to take, consistent with the Constitution," he felt that in his message the President had indicated a possible intention of deserting Maine when he said "he regretted the stand Maine had taken."

Legare immediately took over, and suggested to the dogmatic former president a greater care in the words he used:

Now I say on behalf of my constituents, & I believe I speak the language of the whole South, that you must be very careful to make precisely the distinction which I had the honor of pointing out last night, and upon which the President bottoms his course of policy; that is to say, the distinction between defending Maine against an
arrogant ... pretension of a foreign government, and permission given to Maine—a carte blanche—to enforce her claim against that government, and thus to put herself as much in the wrong in relationship to that government as I believe that government is now in the wrong towards her and us.

Adams rose and objected to this dichotomy of the problem, declaring that he had not meant that Maine be given a carte blanche, but had simply regretted "that the President of the United States had used the language he did."

Legare's reply suspiciously suggested a scorn covered by Southern courtesy. There was complete formality in his words as he said:

The momentous nature of this occasion must plead my apology for urging that the gentleman from Massachusetts, to whose venerable authority in such matters this House has always manifested so much deference, will make a more full explanation than he has just made.

Legare then closed his final speech in Congress. "South Carolina," he said, "would uphold the State of Maine so long and as far as her cause is righteous, and so far only." He emphatically stated that Maine must not go beyond the possession of territory which was rightfully hers merely to display military prowess against the British. Nor should she act alone. "It would be presumptuous," he declared, "in one member of a confederacy to act without reference to what the other members may think." His final words were addressed to Van Buren: "I trust that the President of the
United States will know that we have voted with this understanding alone."

Legare did not make the "great speech" he had hoped to utter during his last session in Congress; no opportunity arose for him to do so. He had, nevertheless, made himself listened to and felt, both by the Democrats and by the Whigs. A description of the interest he created whenever he arose to speak is suggested in a sketch of him which appeared in the Baltimore Sun:

We will attempt to sketch you the gentleman who has just risen to address the Chair. We hear the loungers ask who he is. We see that the members near us pause in their commonplaces to

---

24 Cong. Globe and Appendix, 25 Cong., 3 Sess., 283-285. Among the Chisolm Papers is a short, undated manuscript of a sketch of Adams by Legare, which reads as follows: "That Mr. Adams is, even yet, enfeebled as he is by years & violent passions, an extraordinary man, none will deny. His fierce denunciations, it is true, are uttered in the cracked tones of dotage... It is still a singular spectacle... to see a man verging upon eighty, wrestling with the youth of a second generation beneath him... & struggling for promotion in this world as if it contained no grave. But, in his best day, Mr. Adams had only abilities of a peculiar &... a subordinate kind. Nature formed him for controversy & for controversy only... With her usual economy, however, she denied him the highest gifts of cool temper, sober judgments, large views... He never could be a safe leader. He has none of the gifts and powers of one... His taste has always been wretchedly bad, as any body who will turn to the bombast or commonplace which he published under the title of Lectures on Rhetoric will at once see. His daily exhibitions, oral and written, give us a melancholy evidence of the above defect. A sophist in reasoning, a cynic in manners, scolding like a fish-woman, raging at times like a fury from hell... What a picture is this of the old age of a man who for... years has been charged with the most important interests of mankind & has been exercising the most exalted functions of government."
listen to the speaker. We see afar off away over the Hall a number of heads spring up—great eyes fixed and brilliant stare over the assembly.

The reporters all seize their pens and the Speaker turns in his morocco chair to catch a full view of the ample and intelligent face. In the gallery there is quite a sensation. Necks are stretched over—fingers pointed—ladies are whispering to their beaux. . . . There is a general sensation throughout the lobbies. . . . Even we, accustomed as we are to all manner of eloquence, feel quite a tumult within us, and we are glad that admiration opens forth to a man so gifted as Legare of South Carolina. 25

A few days after Legare's Maine boundary speech the twenty-fifth Congress adjourned. The Sub-Treasury bill had not passed. Not only had this major objective of Van Buren and his associates been blocked, but charges of corruption against them had been brought into the open, and later used in lieu of a platform by the Whigs in their campaign for William Henry Harrison.

Legare would participate in that campaign, vigorously and effectively. First, however, he returned to South Carolina to enter into the last and finest phase of his professional activities. There he began the series of famous legal cases which led him from the Supreme Court of his own state to the Supreme Court of the United States.

25Baltimore Sun, June 26, 1843.
CHAPTER XI

THE HARRISON CAMPAIGN

Legare campaigned for William Henry Harrison in 1840 more as a result of an aversion to Van Buren's policies than through any great admiration for the Whig candidate. The measures brought forward by Whig leaders, however, incorporated a fundamental interpretation of governmental powers derived from principles laid down by Alexander Hamilton and his associates. With these Legare had long been in agreement.

Even so, Legare was never a Whig as such. His long-time opponents, the nullifiers, had used the term too often for him to accept it readily. As early as 1832 the nullifiers of South Carolina had designated themselves as "whigs" to distinguish their position from that of the Jacksonians who were usurping unconstitutional powers.¹ The Charleston Mercury proposed at that time that "all printers throughout the State shall designate the friends of that State by the proud name of WHIGS, and the friends of Andrew Jackson and of consolidation by the name of

The name of "whig," as a consequence of its association with nullification, thus came to have unpleasant connotations in Legare's mind.

In 1837 when Legare entered into national politics, Calhoun, by an alliance with the Van Buren Democrats, separated himself and his followers in South Carolina from any association with whiggery. As Calhoun exerted almost dictatorial powers in that state, this meant that the Whigs would have no place in the politics of South Carolina. Nor was the minority opposition to Calhoun interested in taking up the "whig" name which he had casually discarded. Legare, Petigru, and Huger certainly were not. Their party name had been and would remain Unionist, even though in principle they were closer to the Whigs than to the Democrats.

In his own mind Legare was a Republican, in the sense that the term was used by Madison. Legare believed that the Union was a republic destined to great things if the institutions which had come about naturally and necessarily were not destroyed by careless innovations. He was, thus, a conservative in all things pertaining to government.

In 1832 Legare had met William Cabell Rives, then ambassador to France, and had found in him not only a lasting friend but also a political leader with similar ideas who had started a Conservative party in Virginia in

---

2 Charleston Mercury, December 17, 1832.
opposition to governmental usurpations of power. Legare had readily joined that group. His political future lay in the North, for South Carolina would remain at the bidding of Calhoun for some time to come.\footnote{Ulrich Bonnell Phillips, "The Southern Whigs, 1834-1854," \textit{Essays in American History} (New York, 1910), 213.} During his two years in Congress Legare had roomed with Rives, and each had found great satisfaction in the association. Together the two had laid plans to overthrow an administration which seemed to be growing in corruption and power. A statement embodying their thoughts appeared in the conservative party organ, the \textit{Madisonian}, which, in its first issue on August 16, 1837, had declared its opposition to the currency policies of Van Buren:

\begin{quote}
We certainly, to use the critical phrase, go with General Jackson, in his doctrines of 1828; but we do not go with the Globe in its ultraism of 1837; we certainly go with the late and the present administration in their opposition to a National Bank; but we do not go with the Globe in the war of extermination it has been recklessly waging against the state banks and the whole credit system. We go with Gen. Jackson and Mr. Van Buren in the reform of the banking system, . . . but we do not go with the Globe in denouncing all paper circulation as \textit{rag} money, all interested in banks as \textit{rag} barons, and advocating, by implication at least, an exclusive metallic currency. We go with the administration in sustaining a well-regulated mixed currency.\footnote{Washington \textit{Madisonian}, August 16, 1837.}
\end{quote}

The editor, Thomas Allen, close friend of Rives and of Legare, defended the American credit system in an editorial
which might well have been written by Legare, for many of the ideas were similar to those used by him in his Sub-Treasury speech in the opening session of the twenty-fifth Congress. Also emphasized in the Madisonian was the conservative contention that government must not experiment with the country's financial institutions by attempting to revert to a metallic currency:

The system of credit is coeval with our government; it has been incorporated with our institutions, has fashioned our mode of business, is interwoven with all the transactions of society, and is suited to the genius of our people. It awakens enterprise, it encourages emulation, it rewards industry, and it filled up the vast vacuum inseparable from our condition when we stepped into existence feeble and needy, and has been our current and negotiable endorser ever since. It connects the past, the present, and the future by so many ties, that it cannot be exterminated without a ruinous revulsion in all the important interests of the country and fearful embarrassments to the government.\footnote{Ibid.}

As the Madisonian advocated the American credit system chiefly by a support of state banks and a mixed currency of paper and metal, so Rives and Legare and the conservatives made this the principle thesis of their campaigning in 1839 and 1840 against the Van Buren administration. As they had done during Legare's term in Congress, so they now again threw their strength with the Whigs in the presidential race.

On June 18, 1839, Rives wrote to Legare stating
that in the next Congress thirteen Conservatives would again hold the balance of power between the Whigs and the Democrats. As to the coming presidential campaign Rives remarked: "A decided majority of the people of Virginia, I am persuaded, are now opposed to Van Buren; but the question is, can they be rallied upon Clay, or any Whig candidate? There is the rub."^6

Although Legare had never actively campaigned for himself, the time had come when he would do so for others. In August he went to Virginia and with Rives mapped out the part he was to play in the defeat of Van Buren. It was an obvious truth that the party which carried the heavy electoral vote of New York would have an immediate advantage. That state was, furthermore, the home state of Van Buren. But the groundwork for victory had to be laid in 1839, a year before the crucial contest. Nathaniel P. Tallmadge, conservative senator, friend of both Legare and Rives, urged them to bring their eloquence to New York in the conservative cause.

Legare went on to Boston to visit the Ticknors, but Tallmadge followed him there and urged him to speak at the Conservative Convention at Syracuse in October. "Tallmadge laid hold" of him, he wrote in a letter to his sister, and "would take no refusal, but go I must to the

convention & make a speech." There was, however, no thought of refusal in his mind:

I consented, but with infinite reluctance, went off with him on Monday; on Tuesday got to Albany, on Wednesday to Syracuse . . . & on Thursday was introduced into the aforesaid meeting, & by their request, mounted the rostrum, & delivered a harangue of about an hour, in my most animated & popular style.\(^7\)

The speech was an attack upon Van Buren and his administrative policies. Sarcasm, loaded epithet, and pictorial invective were all welded into his line of argument. His sarcasm was directed against demagogues who set themselves up "as exclusive friends of the poor man." By a fluent use of rhetorical questions he showed the precarious conditions to which the country had come. Caustically he pointed out "the unspeakable blessings with which he was surrounded in this country--emphatically the country of the poor man," and asked what the so-called friends of the poor man had done "to promote his welfare." He spoke of industry as being "stimulated by poverty, and relying . . . only on a strong heart and a good right arm," in a land which "was one vast monument of what Poverty and Labor, with good morale, could achieve in a few generations." He lauded the Astors and the Girards, "who beginning in a condition as humble" as any laborer, "had risen to be more

\(^7\) Legare to Mary Legare, New York, October 10, 1839.
than the princes of the earth."

Legare next enumerated the ways in which the administration "demagogues" spoke to the poorer classes. Did they, he asked, speak to them as they spoke to the Astors and the Girards? "No! No!" was his answer. The language used to the laborer, he declared, was the language of "the tempter, . . . the destroyer of mankind, . . . the language of pride, envy, despite, and despair." The laboring classes envied the Astors, he explained, because they had not been taught "that these colossal fortunes were the natural fruits and the appropriate reward of long years of patient, indefatigable industry, . . . of perseverance and discouragement, of courage and constancy." The Van Buren administration, Legare asserted, had not told the worker "to go and do likewise," but had "taught him instead to sit down and fold his arms in repining, querulousness, listlessness and indolence—to hate all business but politics, . . . to look upon the Commonwealth as his spoil—to revolt against his destiny without making one effort to better his condition."

Legare ended by accusing the Democrats of committing "the crime of rendering liberty itself odious—they blasphemed and prostituted the very name—the sacred name of popular government." His final words were severe as he described the loco-focos:
They taught him . . . to blaspheme the God who had cast his lot in this most blessed of all lands—to curse his brother whose crime was that he had in him an example of successful industry—to find fault and virtually to rebel against the institutions of his country which had protected him in every right and offered him inducements to the exercising of every talent and capacity—they armed him with the torch of the incendiary—and if not with the dagger of the assassin, yet with the far more unsparing sword of revolutionary vengeance—and when they had thus corrupted and debauched him—perverted his understanding with the sophistry of hell, filled his heart with the gall of bitterness—when they had driven him to phrenzy and desperation and made him fit only for the cell of the maniac or the felon they called the desperado a DEMOCRAT.  

The New York Express reported that Legare spoke in "one of the most thrilling and electrifying bursts of eloquence we have ever heard." The Albany Evening Journal was impressed by "the spell which he cast upon the audience" during the hour of his address. A Boston paper, which had been delighted the previous year by his political defeat in South Carolina, went so far as to consider his Syracuse speech far better than any the reporters of that paper had heard of Webster's or Clay's. In a letter to his sister Legare told of the great enjoyment he had had

---

8 Albany Argus, October 25, 1839; Albany Evening Journal, October 6, 1839; Washington Madisonian, October 11, 1839.
9 New York Express, October 11, 1839.
10 Albany Evening Journal, October 6, 1839.
11 Boston Daily Advertiser and Patriot, October 10, 1839.
in making the speech:

My success was prodigious. They interrupted me continually with bursts of applause & cries of "Go on" when I said I would stop, & when I at last sat down, I never heard anything so stormy as their approbation, which burst out, among other things, into loud hurrahs, three times three. I drew among other things the character of a "democrat" according to the notions of the new school, which seemed to transport them.  

The speech, and especially the description of a "democrat," stung the opposition to outraged replies. One of these, signed "A Democrat, but no Desperado," appeared in the Albany Argus:

Sir, this man [Legare] is no Judah Hammond or Herman Romeyn whose silly ravings have been heretofore noticed. He pretends to be above them as far as the heaven is above the earth; he pretends to be one of the finest scholars of the present day; one of the most comprehensive and liberal; and above all, he pretends to be a true American. Now sir, I would fain believe that Mr. Legare never uttered these words. I had supposed him to be a gentleman . . . and, in fact, I might say we all expected better things from him . . .

I can scarcely imagine how New-Yorkers could sit still and hear him so grossly vilify our citizens—a true, unchanged Democrat would have hissed him down with scorn, when he said "a Democrat" (meaning a supporter of Mr. Van Buren) was a "desperado" and "fit only for the cell of the maniac or the felon . . . ." But what shall we now think . . . ? Do we hear any mark of disapprobation now? Has it not in fact been published in the Evening Journal and the New York American as "the eloquent remarks" of Mr. Legare? Was he not also the right arm of Tallmadge (the Whig candidate for the United

12 Legare to Mary Legare, New York, October 10, 1839. Chisolm Papers.
States Senate) at this same conservative convention of Freemen of New York? What say you to this?  

The same Democratic paper also called Legare "the itinerant 'conservative' declaimer" and declared that Tallmadge "had made a bargain with the federalists." The two speakers, however, were entirely successful at the convention. Tallmadge was elected to the United States Senate, and Legare caused growing concern in the minds of the loco-focos.  

A curious phenomenon was occurring in the history of American politics. Able speakers who felt that they could do political good in sections other than their own traveled great distances to speak. Newspapers took note of this. The Madisonian copied an editorial from a Mobile paper which saw great significance in the interchange of travel:  

It seems to us that nearly all the prejudice which has existed between the North and the South has been dissipated during the present Presidential contest... The interchange of visits going on between the distinguished men of South Carolina, Louisiana, Virginia, Massachusetts, Connecticut, and New York, are dissipating these prejudices as rapidly as the morning sun absorbs the dew from flowers. Watkins Leigh, one of the old scions from Virginia, stood on Bunker Hill among his brethren of Massachusetts, and Daniel Webster mingled with  

13Albany Argus, October 25, 1839.  
14Ibid., October 24, 1839.  
15Ibid., October 2, 1839.
his brethren of Virginia in front of the capitol at Richmond. Tallmadge, Legare, Rives, and Cushing representing New York, South Carolina, Virginia, and Mississippi are associating in the glorious work of binding firm our bonds of union. We are "ONE PEOPLE," and why should we be estranged through jealousy or prejudice?16

As this article was written a year after Legare made his first incursion into New York politics, it is evident that he was one of the first to start a vogue in political speaking that carried on through the Harrison campaign, from which time it continued as a natural expedient.

In his travels with Tallmadge, as well as on his previous visits to the North, Legare had established many ties throughout the region, each of which tempted him to remain in that part of the country permanently. George Ticknor had continually tried to influence him to leave the South and live in the North, especially near Boston, and Legare was several times nearly persuaded.17 J. G. Cogswell, editor of the New York Review, who had published three long articles of Legare's, begged him to remain in New York and continue his literary career.18 And now the Tallmadges urged him to remain in New York, either in the field of law

16 Mobile Advertiser, quoted in Washington Madisonian, November 3, 1840.

17 Legare to Mary Legare, New York, October 10, 1839. Chisolm Papers.

18 "We will give you five dollars a page for your articles & that is three times as much as pay other contributors." J. G. Cogswell to Legare, New York, April 24, 1839. Ibid.
or literature. He wrote to his sister: "I am exceedingly tempted to pitch my tent here. My friends think my success would be sure." 19

Even on his journey home, while stopping with friends in Baltimore, the story was the same. Again he wrote his sister:

Every body says I did much good in New York, & our friends are confident they will carry the state. We shall soon see. . . . If I were rich, I would go to that state & think I should have a fair chance of playing a leading part in its politics. But I don't like the idea of having to work at the bar there. Their lawyers are mere drudges. But I will think of it.

Baltimore, with a view to the profession, holds out more agreeable prospects. I am very much liked here, & I like them very much. 20

When Legare returned to Charleston late in November, one of the first things he did was to declare open war on Van Burenism. In a letter to Gouverneur Kemble he asserted that he had no hostility whatever toward Van Buren personally, but that as President "he has demoralized & debauched us . . . & done all he could to exclude intelligence of a high order from the public service." Until this time Legare "had never, directly or indirectly, had any connexion or understanding with the Whigs," nor had he been willing to join them as a party. In the letter to Kemble, Legare

19 Legare to Mary Legare, New York, October 11, 1839. Ibid.
20 Id. to id., Baltimore, October 31, 1839. Ibid.
stated his reasons for opposing Van Buren:

It is his executive conduct; his unjustifiable use or rather systematic abuse of the patronage of the government—his passing upon the rights, degrading the character & destroying the independence of the Legislature—it is that he has chosen rather to play the demagogue than the president . . . & has, as I verily believe, done more to corrupt & demoralize the country, to spread abroad in it a spirit of revolt against law & impatience of restraint, & insensibility to all obligation & duty, than all he can do of good in any other way will atone for. . . . I am by complexion, as well as by reflection, a conservative in politics, but as a mere bystander I care as little what turns up as the best democrat in Tammany Hall. Only I am a republican & hate monarchy (for myself, I mean)—therefore, the elective throne now attempting to be set up at Washington is not to my taste, & I shall not cry my eyes out if the present incumbent be tumbled off it. I should like things to stand as they are a few years more; I mean, to have some semblance of a government of laws; but if Mr. V. B. be re-elected & go on as he has begun, the downfall of the Government is most certainly at hand. It is obviously losing ground in the attachment of the people, who will not know its value, as it was when administered by the Washingtons & Madisons, until they have overthrown its powers, in following the lead of the demagogues of this day.21

In the same letter Legare expressed an intention to include Poinsett and Calhoun among those he would battle during the coming year.22 He was not alone in his contempt for Calhoun. Petigru, in a letter to Legare, referred to the South Carolina Senator as the "Johnny C. whose vain and paltry heart suffers more at the thought of another being

21 Id. to Gouverneur Kemble (Washington), Charleston, December 21, 1839. Ibid.
22 Ibid.
President than in the continuance of him that is already."\(^{23}\)

From Washington Legare received word that Van Buren and Calhoun were having hard going. William Dawson, Representative from Georgia, wrote: "The Administration are 'all to pieces,' in 'shreds.' Too many asking for the Spoils--they look in a bad humor, and rather sad, disappointed, and mortified--and there are none to pity them." Dawson also said that because of the situation Benton and Calhoun had split and had "caused swearing and wry faces." The Georgian closed with a compliment which must have been pleasing to Legare:

I wish you could have heard the speech of your successor a few days ago. "Who is that?" someone asked. The reply was "Legare's successor /Isaac Holmes/! My God," was the exclamation, "what a change in the high tone of Southern character & influence."\(^{24}\)

An earnest conviction that Van Buren should be removed from office by the vote of the American people kept Legare working toward that end throughout the election year of 1840. Although he was at that time engaged in some of his more famous legal cases before the state Supreme Court, he nevertheless found the time necessary for the early phases of the political campaign. In April he wrote to

---

\(^{23}\) Petigru to Legare, Charleston, October 5, 1839.  
\(^{24}\) William Dawson to id., Washington, December 17, 1839.  
\(^{23}\) Ibid.  
\(^{24}\) Ibid.
Waddy Thompson concerning a political meeting in Charleston:

Petigru has got up, with some others, a Harrison & Tyler meeting for tomorrow. I have just returned from the country, & so know nothing of the state of feeling here, but I fear it will be rather a failure. Nothing costs so much, in politics especially, as a first step. . . . But since the step is taken, there is no help for it, & we must go through.25

Legare was thinking of the hopeless Whig minority in South Carolina. Calhoun would hold the state secure for Van Buren, and nothing the Whigs could do would alter that situation. But the Unionists would give a small but vigorous opposition to the nullifiers and would send the eloquence of Preston and Legare into the national battle.

The purpose of that particular meeting was to appoint special delegates to the National Convention of Whig Young men to be held in Baltimore on May 5, 1840. Legare and Petigru both addressed the thousand or so Whigs that gathered at Charleston in a "large, respectable, and orderly" assemblage in which "much enthusiasm appeared to exist among the friends" of Harrison.26

The lack of interest apparent in the write-up is accounted for by the fact that the Courier was at that time openly for Van Buren, and the Mercury very much under the thumb of Calhoun. Consequently, neither paper recorded the speeches at the South

25 Legare to Waddy Thompson, Charleston, April 22, 1840. Ibid.
26 Charleston Courier, April 27, 1840.
Carolina rally. Legare discussed the wrongs of the Sub-Treasury plan and brought out the debilitating character of the Van Buren stranglehold upon Congress. He insisted that the election of Harrison was a necessity to a people who still believed in popular government. 27

In addition to being named as one of the delegates to the convention, Legare received a special invitation from the national committee to speak at the Baltimore meeting. The letter advised him

that the convention would be by far the most numerous national assemblage of the Delegates of the people, that has ever taken place in the United States. We earnestly wish that it may not only be worthy of being remembered for its multitudes, but for its deeds and the counsels it will offer to the nation. To this end, we desire that its deliberations may be aided, as well as witnessed, by the sages of the Republic. 28

Legare and the South Carolina delegation arrived in Baltimore on Monday, May 4 and joined the delegates from each of the twenty-six states who marched down the streets to the tune of "Old Tippecanoe." On that day and the next Henry Clay and Daniel Webster spoke, as did John Seargent of Pennsylvania, Henry A. Wise of Virginia, and Preston of South Carolina. Legare spoke to a massed audience on the morning of May 5 at Monument Square. His speech was an

---

27 Niles' National Register, LVIII (1840), 159; Edgefield Advertiser, April 30, 1840.
28 Neilson Poe and others to Legare, Baltimore, April 15, 1840. Chisolm Papers.
analysis of what government might be, as it was intended by
the founding fathers, in contrast to what it had become
under Van Buren. The Richmond Yeoman called Legare one "of
the most eloquent men of the country," who "delighted the
thousands" who heard him. 29 The Niles' Register declared
that "few men in the country have more power to interest,
and no one has a more brilliant imagination with which to
illustrate the good or bad principles of government."30

The Baltimore convention marked the real beginning
of the "hurrah campaign" of 1840, also referred to as the
"log cabin and hard cider campaign." The various factions,
which had hitherto formed merely an alliance, were finally
cemented into a union in which "all questions as between
paternalism and state rights should be waived for the sake
of a joint campaign against presidential autocracy and
irresponsible democracy."31 It was as if the Democratic
party had finally driven all groups, even those usually

29 Richmond Yeoman, May 14, 1840.
30 Niles' National Register, LVIII (1840), 153.
31 Phillips, "The Southern Whigs," Essays in
American History, 209. "The taunt in a Virginia Newspaper
[the Richmond Enquirer], edited by Thomas Ritchie7 that
General Harrison would be contented with a log-cabin, with
plenty of hard cider, was a god-send to the Whigs of 1840.
They made it their watch-word. They put the question to
the voters whether a man was to be ostracized because he
lived in an unpretentious house. In every city cabins were
built of rough logs, to serve as Whig head-quarters, and
hard cider was to be had for the asking." Thurlow Weed
Barnes, Memoir of Thurlow Weed, 2 vols. (Boston, 1884), II,
81.
uncongenial to each other, into a desperate alliance for the common purpose of unseating one man, Van Buren. Few movements have ever had so many leaders who put aside personal differences in order to bring a common cause to a successful outcome as was true of the Harrison campaign.

Legare returned to South Carolina and a growing Whig onslaught against the Democratic forces. Even though Calhoun would have the final voice in the election, for the electoral vote would be cast at his bidding, Whig meetings were held throughout the state. Expressions of approval of Legare and his northern speaking were numerous. Toasts to his name were uttered at each celebration. At Columbia it was said: "H. S. Legare—like Cicero, exiled [from] the councils of his country by factious tribunes—he bows at the statue of Minerva, not to the golden image of Calhoun."\(^{32}\)

At Monticello he was called "a Huguenot by descent; a gentleman by birth; a scholar by discipline; and a statesman by wisdom; exiled by unfeeling proscription, from the councils of his country; we hope the state may be honored by his restoration."\(^{33}\)

Invitations to speak began to pour in from his own

---

\(^{32}\)Columbia Southern Chronicle, July 9, 1840.

\(^{33}\)Ibid., July 6, 1840.
and from nearby states.34 The greatest number of requests, however, came from Virginia and states farther north. He was asked to be one of the principal speakers at a great Whig meeting to be held at Auburn, New York, early in October. Many of the towns on his route to that meeting asked that he speak especially to them. Typical of the sentiments expressed in these invitations was one from Hudson, New York:

It is very desirable that we hold a general convention of the people of this country and its vicinity previous to the election. . . . We have decided upon this measure, under the persuasion that we shall succeed in having the presence among us of some of our distinguished statesmen to address the assemblage. We are requested therefore to invite you to be with us on that occasion. Your talents and character are well known among us and we can assure you that a visit from you will be hailed with great pleasure as well as be of advantage to the common cause of the country.35

Legare went north in September to take his part in the campaign. He journeyed first towards Boston, having accepted an invitation to speak at the Bunker Hill celebration for the unveiling of the finally completed monument.36

34Legare to Gentlemen of Spotsylvania, Charleston, July 7, 1840, Chisolm Papers; id. to the Harrison Democrats at Portsmouth and Norfolk, Virginia, Charleston, August 1, 1840, ibid.; id. to Committee of Friends of Harrison at Salisbury, North Carolina, quoted in Columbia Southern Chronicle, August 20, 1840.

35Elisha Jenkins and others, committee, to Legare, Hudson, New York, September 12, 1840. Chisolm Papers.

36Richmond Whig and Public Advertiser, September 11, 1840; Boston Daily Atlas, September 29, 1840.
Just north of Richmond, however, his train was barred in its passage by a burning bridge over the North Anna River. Legare and the rest of the passengers were forced to return to Richmond to spend the night. Although the accident prevented his reaching Boston in time for the Bunker Hill celebration, the people of Richmond took immediate advantage of his detention. A Whig committee asked him if he would speak that night at the "Log Cabin," and he consented. As was the custom in Richmond when "a speaker was to be heard," the committee "hoisted their flag." This was a well-understood signal among a citizenry that took great delight in oratory of all sorts. By eight o'clock in the evening "there was as large an assembly gathered as the room could possibly contain." 37

Legare's speaking at Richmond was illustrative of a peculiar factor which brought about a Whig victory at the polls in November. It has often been said that the whole campaign was merely a "wild and universal shout of 'Tippecanoe and Tyler too,' and 'Down with Van Burenism.'" 38 True, the whole effort was festooned with torchlight parades and noisy conventions in almost every hamlet. However, when the final small majority of popular votes

37Legare to his mother, New York, September 14, 1840. Chisolm Papers.

cascaded into an overwhelming cannonade from the electoral college, two very strong factors were forgotten by memories that thought only of log cabin and hard cider slogans. Those two factors were present every moment of the political struggle. First was the fact that sectional pleas—whether for a National Bank, State Rights, Abolition, or for the strengthening of state banks—were subordinated to a unified program directed upon one focal point: the Van Buren administration. Faction was for once forgotten in a common objective that was maintained for two months. Held by a pervasive enthusiasm, dissenting politicians hewed to the line as they have seldom done since. The second and even more important factor of the Whig campaign was that the principal speakers in the key areas were among the most eloquent and best educated men this country has ever produced. Clay spoke throughout the southern and central states with all the magic of which he was capable. Webster went into the South and the West. Rives and Tallmadge spoke again and again throughout the central coastal states. Henry A. Wise in Virginia and John M. Berrien in Georgia sounded the same anti-Van Buren note. In effect, the Whig campaign was one of song, rollicking humor, and fierce invective; but in actuality it was the work of many intelligent and eloquent men using the power of speech as it had seldom been used since the days of the founding of the country to overthrow a political party.
Legare was a part of that eloquence, certainly one of the most intellectual of all the participants, and probably the most cultured. Although the speech opportunity at the Richmond "Log Cabin" was fortuitous, and though the audience had been hastily assembled, he gave his listeners a train of ideas which constituted a disquisition on comparative government—for the speech was a lesson in history and illustrated by analogy the similarities of British misgovernment in Canada and the course followed by Van Buren and his Secretary of War. Poinsett had recommended a federal organization of the militia, and Van Buren had been agreeable to the suggestion, probably because of potential dangers connected with the Maine boundary dispute with Great Britain. Virginia particularly resented such a federal control over a military organization so closely associated with state government, which had already served the country well enough in the recent Seminole wars.

Legare seized upon the opportunity both to kindle the resentment of his audience against Van Buren and to strike vigorously at his old enemy, Poinsett. Van Buren's weakness during much of his presidency had been in giving too much responsibility to his Secretaries. 39 Legare made a

---

39"For three years, he [Van Buren] left his secretaries to act pretty much on their own responsibility. Not until the fourth year did he display some executive energy." Schlesinger, The Age of Jackson, 263.
strong point of this, comparing it to the British mismanage-
ment of Canadian affairs. As an illustration he used Earl
Durham, who had been appointed Governor General of Canada:

On his arrival in Canada, he found a large number of the emigrants in prison, taken
mostly in arms against their sovereign, some of whom had been condemned by military tribunals,
while others were awaiting trial. After exam-
ing into the circumstances of the case, and
being desirous of terminating the troubles of
the Provinces in the easiest and most effectual
manner, he determined to pardon all—those under
arrest, as well as those who had been convicted—and ordered the whole to New South Wales. When
the news of Earl Durham's course reached England,
the whole Kingdom was thrown into a flame.

The Lords and Commons united in a denunciation of
the acts of Durham, contending that they were not
authorized by the common law principles of the
British monarchy. Earl Durham was immedi-
ately recalled, cashiered, and disgraced, and has
recently died, of a broken heart. But, where is
Mr. Poinsett? 40

Having placed Poinsett in the same position as the
unfortunate Durham, Legare turned to another inflammatory
subject—abolition. Van Buren, attempting to make an
extreme concession to the slave states, had admitted the
justification of the "gag rule," and had declared that he
would protect the slave holders of the South by the use of

40"Lord Durham had been sent to Canada to redress
the wrongs of the five colonies, after their abortive
attempt at rebellion. He used a wise mercy towards the
rebels and made rapid progress in the reforms. But a
malevolent attack upon him by Lord Brougham was successful,
and Durham was disgraced. But his reforms were continued
and Canada has since remained loyal." Edward M. Shepard,
Martin Van Buren (Boston, 1888), 355-356.
his veto power.\textsuperscript{41} But Legare would let neither concession stand in the President's favor. "It was humiliating and degrading," he said, that the South, where the "perception of the principles and blessings of freedom were more acute and intense" than anywhere else, "should now be told by the political hucksters of the day that they must look to the Executive veto for the protection of their rights . . . rather than to their own right arms and ample means."

Before an aroused audience Legare returned in his peroration to the same idea:

The South hold their rights by another tenure than the President's veto, and will defend them by other and far surer means. She rests upon herself—the invincibility of her sons—for that which a Federal President can neither give nor take away. Away then with this vaunted but hollow and serf-like humbug of the veto! Rely on your own arms for safety, and mistrust all who would delude you into the belief that protection, if it ever be wanted, can be derived from any other source.\textsuperscript{42}

Legare spoke for about an hour and a half. According to the Richmond Compiler, "the audience were delighted with his speech."

It was peculiar for its originality in matter and style. We have never listened to a speech superior to it for classic elegance of language and appropriateness of illustration. As an accomplished scholar and statesman, Mr. Legare deserves a position in the front rank of the great men of America. When listening to his

\textsuperscript{41}\textit{Ibid.}, 380.
\textsuperscript{42}\textit{Washington Madisonian}, September 18, 1840.
polished, manly, and able speech, we often recurred to a sentiment we expressed when he was ejected from Congress, viz. how lamentable it is that a statesman so accomplished and talented, so high minded and honorable, should be banished from the councils of the nation, by party spirit.43

The Richmond Whig was even more laudatory:

We do not propose to attempt even an outline of Mr. Legare's transcendent display. . . . We had heard much of his great abilities, his learning, his wit, his fluency, his unbounded treasure of knowledge, gathered from all tongues and every department of human attainment; but all preconception was distanced by the actual exhibition. He moved in a more elevated region of thought and argument than any other whom it has been our happiness to hear. Many, probably we have heard, of as powerful native genius; but we doubt if the wide limits of the Union can produce another who can bring into the field of discussion such ample stores of diversified knowledge and matured wisdom, collected from the records of the past, and familiar to him as household words. Not that there was ostentation or display; far from it. All was subordinate to that modesty and good taste which the superior intellect cherishes as cardinal.44

The Boston Daily Atlas stated that he "denounced the oppressors and betrayers of the country."

His noble voice at once arrested the attention of the auditory, and his powerful logic, weighty matter, and superb elocution, did not permit it to flag one moment during the whole of his magnificent address. He analyzed the condition of the country into its remote and general causes--presented to us the elements of things; and showed

43 Richmond Compiler, September 10, 1840.
44 Richmond Whig and Public Advertiser, September 11, 1840; Washington National Intelligencer, September 12, 1840.
by bold and masterly sketches how in the nature of things they resolved themselves into the concrete evils of the country. 45

The same Boston paper regretted "the untoward accident of the burning of the bridge on the Richmond Railroad," which prevented Legare from reaching Boston. "Let him still come on," it added, for "the Whig reformers of Massachusetts, New Hampshire, and Maine are desirous that he should visit them, and give them a spice of his quality." 46

From Richmond Legare went directly to New York. 47 He intended to make the trip up the Hudson River with Rives to address the meeting of the "Conservation" at Auburn on October 1, and then to return to Richmond to speak at the convention there on October 5. 48 He remained several days in New York, taking care of his personal affairs and discussing politics with Senator Tallmadge and others. He

45 Boston Daily Atlas, September 29, 1840.
46 Ibid.
47 "From Baltimore I came on without stopping to New York, nearly 190 miles, which is done in 13½ hours, every delay included." Legare to his mother, New York, September 14, 1840. Chisolm Papers.
48 "Deeply impressed as we are with the importance of the proposed measure in its bearing on the great struggle in November, and anxious to enlist the best influence and talents of the country in its behalf, we trust that nothing will occur to deprive us of the pleasure of your presence on that occasion." Committee of Invitation to Legare, Richmond, September 1, 1840. Ibid.
also sat for his portrait. 49

On September 14 Legare left New York to spend some time with friends in Newport. On his return trip by boat he made an unscheduled speech at the insistence of all the passengers, who had called a meeting in the cabin and appointed a committee to make known to him their request. He refused the initial invitation, but another committee, larger than the first, "pressed" him "so hard" that he was "fain to go down & say something." He told his mother that he was "beset on all sides for speeches." 50

Arriving in New York the next day he found himself "advertised for a speech that very evening" at National Hall. As he was "hoarse from a cold" and had not been notified that he was to speak, he "had a good excuse" for not doing so. He wrote his mother that "the expectation of hearing" him "drew an immense multitude--some say 6000 people." He "passed by in the dark," he said, "and heard them singing Tippecanoe songs." The crowd was "extremely disappointed," but hopeful that he would speak on his return

49 The portrait was painted by a young artist by the name of Marchant, who had also painted General Jackson, Harrison, and Clay, and who wanted "a gallery of distinguished names." Legare to his mother, New York, September 14, 1840, ibid. Several weeks later he wrote his mother: "I really wish I could order a copy for you. But I can't afford it, tho' only $100." Ibid., September 27, 1840, ibid.

50 Ibid., September 27, 1840, ibid.
from Auburn.\(^{51}\)

On September 26 Legare was again "forced" to speak on board the great English steamboat, the "British Queen," which he and some friends were visiting. He later wrote his mother that his "speech" was fortunately "one of the very best (of the kind)" he had ever delivered, explaining that he had used the word "fortunate" because he had been "very unwilling to speak."\(^{52}\)

Whig meetings throughout the state, torchlight parades, newspaper articles attacking Van Buren—all combined to whip up political excitement, and indicated that the Auburn convention, as the final "show," would cap everything. Over six thousand persons streamed to that little town from all parts of the state.\(^{53}\)

A special delegation, headed by Rives and Legare as the invited speakers, N. P. Tallmadge, General Tallmadge, General Pierre Van Courtland, General Starkweather, and "other distinguished gentlemen" boarded the "De Witt Clinton" on Tuesday evening, September 29. When the boat left the wharf the passengers "gave three cheers" as they passed the "North Carolina." While passing the "Russel Glover" the steerage passengers "groaned out 'hard cider.'" A "fine

\(^{51}\)Ibid.

\(^{52}\)Ibid.

\(^{53}\)New York Herald, October 3, 1840; Niles' National Register, LIX (1840-1841), 156.
band of music" played; flags flew, banners waved, and a cannon on the forecastle was fired at intervals. Sky-rockets and colored flares brightened the night as the boat moved up the Hudson. An abundance of champagne was "furnished by the captain." At all points along the route where the boat stopped to take on delegates there were enthusiastic demonstrations by the "multitudes on shore." Thousands congregated on the wharves "with bands of music," and "rent the air with shouts" in honor of the delegates. 54

The "De Witt Clinton" reached Albany in the early morning and was greeted by the firing of "signal guns" and by a large welcoming committee of Whigs, who escorted the party to Congress Hall. From there, Legare, Rives, and other important guests proceeded to Governor Seward's house for breakfast. At this meal several toasts were given. One was to Legare: "Mr. Legare of South Carolina; that man must be ignorant of the political history of his country who is not conversant with the merits of Mr. Legare." Legare's reply was: "A speedy restoration of the good old republican times; liberty and law within the states; the Constitution of the Union between them." 55

54 Ibid.
55 Ibid. For other accounts, see Albany Advertiser, October 1, 1840; the Log Cabin (a weekly of New York and Albany), October 1, 1840; New York Commercial Advertiser, October 2, 1840; Columbia Southern Chronicle, October 15, 1840.
At nine o'clock those who had breakfasted with the Governor were escorted to the railway station where they boarded the train for Auburn. The entourage pulled out to the accompaniment of shouts and cheers from those who "had ranged themselves on either side of the railway tracks." In spite of torrential rains "great enthusiasm prevailed" all along the route to Auburn; "the ladies waved white handkerchiefs, the men shouted, and all classes ran down to the cars to speak to, and to shake hands with, Mr. Rives and Mr. Legare." As the train passed through Syracuse, the Whig delegation observed with satisfaction that the loco-foco convention being held there had been "dispersed and dispirited by the rain." It was midnight before the delegates finally reached Auburn. Most of them were unable to obtain rooms for the night, the crowd assembled being estimated as the largest ever gathered together in that state. This did not dishearten them, however, for they spent the night "singing Tippecanoe songs, ... shouting

56 Albany Advertiser, October 1, 1840; New York Commercial Advertiser, October 2, 1840.

57 New York Herald, October 5, 1840; Niles’ National Register, LIX (1840-1841), 98, 156.

58 The Albany Advertiser, October 1, 1840, remarked that any one "who contrasted the meagre turnout of the loco-focos ... with the joyous and spirited assemblage" of the Whigs in Albany would "need no other indication of the popular sentiment in the Empire State."
and hurraing."

The next day, after General Van Courtland had been elected president of the convention and the delegates had eaten dinner at the American Hotel, the whole assembly met on the grounds of the theological seminary at the edge of town. The New York Herald described the scene:

At the extremity of the green, and facing the College, a large platform was erected for the revolutionary soldiers (many of whom were there) and the speakers. About 40 long benches were constructed out of rough planks for the ladies. All the trees around the green were filled, and in every window of the college there were dozens of young ladies, all anxious to see and to hear Mr. Rives and Mr. Legare. There must have been, at half past one o'clock, not less than 5,000 persons present.

N. P. Tallmadge, Senator from New York, introduced Rives, who spoke for over three and a half hours. Even after he had finished, the crowd was still eager to hear Legare, for they cried out "Legare! Legare!" By that time it had grown dark and Legare asked to be excused. But the crowd shouted "no excuse." Legare answered, "I shall not do myself justice." But the voices continued to call, "Go on." When Legare told them he should "have to speak in the dark," they answered again, "We'll stay and hear you."

Stay they did. "Lights were brought and placed in

---

59 New York Herald, October 5, 1840; Niles' National Register, LIX (1840-1841), 156.
60 New York Herald, October 5, 1840.
61 Ibid.
the trees," and Legare spoke from six o'clock until eight-thirty. What he said was not fully recorded, for darkness prevented complete coverage by the reporters. A Cooperstown paper stated that he "combined the most varied and critical learning with the highest oratorical powers, and a rapid flow of thought with an impassioned and impressive manner." He used analogy in the same manner as he had in the Richmond speech, but enlarged the scope of his thought. Tracing the growth of dictatorships in ancient Greece, in Rome, in England, and in France, he indicated, in each instance, similarities to the Van Buren administration. He showed the weakness of the dictator and his government as being inimical to the free thought of a people, and harmful to mental growth even as it instilled a false security by seeming to protect the masses against encroachments of creative and independent men. The end of such a dictatorship, concluded Legare, was always "decadence, debilitation of enterprise, and finally a weakness in the very government itself" which rendered it incapable of withstanding economic or political crises, "surrounded as it was by sychophantic retainers."

---

62 Ibid.
63 Cooperstown Otsego Republican, October 12, 1840.
64 Poughkeepsie Journal, October 7, 1840.
The Albany Journal, thinking of his proscription by Calhoun, called Legare a man who "had been hunted down by the bloodhounds of the Federal Government for following the dictates of an elevated sense of right," but who, since that time, had been sustained and his course "vindicated by the voice of the people." The Journal thought his "speech was one of intense and thrilling interest. He . . . met the high expectations which his fame had excited. That he is one of the ablest men in our country none who have read his profound and finished efforts in Congress will deny." The New York American merely remarked that Legare "displayed his accustomed eloquence." The Times and Evening Star found it "impossible to portray a speech of Mr. Legare" because of his display of high learning and rapid flow of thought, but observed that he "surprised and again delighted his auditory." The Poughkeepsie Journal called him "the distinguished champion of civil liberty" from whom people could learn "the best mode of preserving our rights, both individual and national, for the future.

The emotional momentum of the Whigs increased. The rank and file sang the pervasive "Tippecanoe and Tyler too" song, set to the music of the "Little Pig's Tail."

---

65 Albany Journal, October 3, 1840.
66 New York American, October 5, 1840.
68 Poughkeepsie Journal, October 7, 1840.
song contained the line "Van is a used up man," which was chanted even in front of the White House in Washington. The variations were infinite. After speaking, Legare would often hear such a version as this:

And now nine cheers for Legare  
And the speech he made, made, made, made!  
And his state too!  
He'll help us soon the times to mend—  
For Tippecanoe and Tyler, too!  
For Tippecanoe and Tyler, too!  
And with him we'll beat little Van-Van-Van—  
Van is a used up man!  
And with him we'll beat little Van. 69

After the Auburn convention Legare spent some time in New York with the Tallmadges. Between speaking engagements in and about the city he wrote an article on Calhoun for the New York Review. It was a caustic appraisal, its purpose being to establish the fact that the distinction made by Calhoun between bankrupt and insolvent laws was based on speciousness and fallacy. Before going into a long discussion as to Calhoun's reasoning, Legare directly attacked him as being a dangerous man to hold public office:

This Senator is a subtle disputant, quick of perception, ready in reply, bold in paradox, specious in apology, intrepid to affirm, and skilled in all the little artifices of verbal distinction. His head is French, for his love of preconceived system, and German, for its tendency to transcendental metaphysics; but he has neither the practical sense of the former, nor the large, roundabout, catholic, comprehensive views . . . and diversified knowledge of the latter. He is very limited . . . He would have been a most

69 New York Herald, October 5, 1840.
formidable champion of the "irrefragable doctors" and might have figured with Aquinas and Scotus. . . . But he lives in an age too late by some five or six hundred years. The plain rules of inductive logic, the discredit into which theories a priori and verbal cavillings have been brought by such small wits as Bacon and Galileo and Newton, are a great impediment to such a genius. He disdains all reference to facts . . . as if they do not happen to square with his system. He has always gone for some broad principle and pursues the "high priori" road. These principles he, of course, assumes without any hesitation, and he runs them down to their remotest consequences with a most invincible contempt of experience and observation.70

Campaign speaking was still Legare's chief occupation throughout October. He wrote his mother that he had accepted an invitation from a "Committee of Ladies" to speak in Hudson. He told her also of an elderly gentleman who had that morning come twenty-eight miles to hear him, and who remarked after the speech: "You are just the sort of speaker we Yankees like. Those high-flown orators are not understood by the people--but you speak plainly."

Legare told the old man that his compliment was "the highest praise" ever paid him, and added "that people had tried to persuade me I did not know how to treat great masses of men, & I had indeed but little practice--but now I was satisfied that the best speaking for one assembly was the best for all."71

70 New York Review, VII (October, 1840), 447-448.
71 Legare to his mother, New York, November 7, 1840. Chisolm Papers.
On November 6 Legare delivered the postponed address at National Hall in New York to an overflow audience. The opinion of the New York Times was that it was "the most vigorous and beautiful appeal to the intellect and the heart" it had ever heard, "even from his lips." His "illustrations were poetry, his reasoning demonstration." He traced clearly the "financial policy of the Administration." Point by point he picked out its blunders and denounced it with bitter sarcasm. He lashed out at its arrogance and demogogy and its abuse of patronage. The nation, he declared, had been the "victim, not only of political knavery, but of drivelling imbecility" by the "small-beer statesmen" in the administration.

One of the "victims" of Van Buren's "false principles and contracted, unphilosophical, petty views," Legare told his audience, was "the mercantile class." The merchants, he said, should be able "to claim the parental care and protection of the government," for it was these men who carried on the business of the country. He considered these merchants as "promoters of civilization, the peacemakers of civilization." But instead of being protected, they had been "assailed" by the government itself. And "by whom," he asked, "was the war upon the merchants—upon the whole business of the country directed?" He gave

them the answer: "By a son of New York." Legare assured his listeners, however, that New York "would repair the error she had committed in assisting him [Van Buren] to the Presidential chair." He contrasted New York with the mother of Nero, who, when told that if he were made Emperor she would be put to death, answered: "Let him reign though I perish!" New York, he was convinced, had no intention either to uphold Van Buren or to perish. On the other hand, New York, unlike Agrippina, would sacrifice her son rather than allow him to destroy the liberties of the people.

Legare next attacked the corruption in the Van Buren administration, a subject which affected him deeply. With great fervor he spoke of the "demoralization which would necessarily flow" from an administration whose maxim was: "To the victors belong the spoils." This he illustrated by an analogy from Tacitus which described "the bloodiest epoch in the history of imperial Rome," when "spies and informers" were employed by the government and the "tools and instruments" of dissolute politicians held the highest offices in the land. This was "the climax of the infamy and degradation of the once proud mistress of the world," and this, he said, was also the "policy of Van Buren," his "agents and officials."

Legare spent the greater part of an hour in answering the administration's claim that the Sub-Treasury plan would benefit the country by checking excessive imports.
He argued that when importations were the greatest, then, also, the supply of the precious metals was abundant, and that, consequently, the country would then be well supplied with commodities such as hardware and dry goods. Confidence too would abound, and this, he added, would induce the flow of specie to America through increased credit abroad. He pointed out that the Sub-Treasury, on the other hand, "without object or motive, locked up a great amount of specie," thus withdrawing it "from the dependable resources of the country." This action, he explained, "hastened the suspension of specie payments," and increased the hardship of the American business man at those times when his condition was the most strained and when the state of the money market was the most precarious. Legare then went on to show that the Sub-Treasury plan was impracticable, even if it were managed by intelligent administrators:

The specie circular, in relation to the public lands—and which was an emanation from the same school of Political Economy—operated as the Sub-Treasury is destined to do, if it last long enough to produce its appropriate fruit. . . . This notable effort to keep specie in the country terminated, as we all are aware, in the universal suspension of specie payments, and such, in a similar state of the money-market, will ever be the result of the nostrums of political charlatans, who undertake to meddle with matters of which they are consummately ignorant.

His conclusion was solemnly directed to the voters in the audience: "The casting out of the men now in power would be a work of purification. That work would be done."
The day had come—judgment had been passed," and it was time for an "execution." 73

A reporter for the New York American was lavish in praise of the speech:

The whole speech of Mr. Legare was an intellectual treat of a nature seldom enjoyed by those who attend political meetings in this city. It was, throughout, a well reasoned discourse, which would have done honor to any parliamentary orator in any legislative assembly of the universe; while those portions, which referred to the currency, would have been worthy of a place in the most erudite essay of political economy, with the additional advantage over ordinary treatises of an immediate practical application. 74

Following the address, Legare wrote his mother that he had been "overwhelmed with flattery," and that if his "head were not proof against such things," it would have been turned. 75

Legare remained in New York another week, for, as he said, "the crisis is a very interesting one for me." 76

The crucial point was soon reached and Harrison was victorious. Although the popular vote was close, the electoral vote was a landslide. The National Intelligencer remarked

73 Ibid. Quoted also in Washington National Intelligencer, November 9, 1840; New York American, November 6, 1840; and the Columbia Southern Chronicle, November 19, 1840, which assured its readers that "the glowing eulogium . . . was not exaggerated."

74 New York American, November 6, 1840.

75 Legare to his mother, New York, November 7, 1840. Chisolm Papers.

76 Ibid.
tersely: "The contest of 1840 is over. The victory is won. The people are again free. Our republican institutions are redeemed from the grasp of the tyrants." 77

Although Legare and the other conservatives had fought shoulder to shoulder with the Whigs, they had not been assimilated by the victorious party. The Poughkeepsie Journal, even as it recognized the victory, made a distinction between the two forces:

The Whigs fought under their organization of long standing, never flinching and alike resolute, whether good or evil seemed to betide them. And for this they deserve all praise.

The Conservatives, in their own way, with the Whigs, fought the campaign, assuming a different and perhaps more trying and arduous responsibility than was incident to the Whigs—viz. that of laboring to put down the same men whom they had before labored to put up, in the confidence of the public. And inasmuch as they preserved a consistency of principle, regardless of men and the sacrifice of long established personal and political friendships, they manifested to the world an additional evidence of their devotion to principle and the country which is not in the way of the Whigs because of their different position to manifest and require a degree of credit that attaches to them exclusively. In a word, the Conservatives, holding the balance of power, shifted it from one party, whom they believed to be wrong, to the other party, whom they believed disposed to be right; and in this way did what it was not within the province of the Whigs to do. In this they too deserve all praise. 78

Therein was an often overlooked element in the cam-

77 Washington National Intelligencer, November 19, 1840.

78 Poughkeepsie Journal, December 30, 1840.
paign of 1840. The conservatives added their balance of power, even as they had done in Congress to upset the Sub-Treasury scheme. Legare came out of South Carolina, and Rives came from Virginia, to act politically in states other than their own. Though the Democrats carried both South Carolina and Virginia, Legare and Rives helped carry the country for Harrison.
CHAPTER XII

LEGARE'S JURISTIC SPEAKING

When Legare, in 1839, turned once more to the courts it was as a legal scholar steeped for twenty-five years in the philosophy of jurisprudence. The great founders of international law, such as Hugo Grotius and Samuel Pufendorf, had become his intimates. With Grotius Legare came to believe that the state was formed as a covenant for the protection of the rights of the individual, for the benefit of society. With Pufendorf he agreed that natural rights existed for all.1 Far from thinking that the law which governed human beings could ever become static within a rigid code, he yet felt that the wisdom of the past must always give counsel to the present, that laws should be re-examined each generation, and that every court decision should discover some principle that would bring greater harmony to an enlarging world society.

Legal reform, to Legare, was a continuing necessity and meant "a perpetual sacrifice of law to equity, of science

1Rudolf Rocker, Nationalism and Culture (Los Angeles, 1937), 142-143. Legare even went so far as to call codification an "exploded folly." "Origin, History, and Influence of Roman Legislation," Writings, I, 519.
to polity or feeling, of *jus civile* to *jus gentium*, of the
privileges of the citizen to the rights of man, of the pride
and the prejudices of Rome to the genius of humanity conse-
crated by the religion of Christ.*" To Legare the court-
room was a council chamber in which the philosophies of
equity must be discussed many times for each step towards a
universal objective, even as the relationships of society
were increasingly harmonized.

Of Legare's re-entrance into the field of jurispru-
dence his friend Preston remarked:

He returned to the bar with an earnestness of
purpose, enhanced by his short congressional
career, and he came to it with surprising bril-
liancy and power. Animated by a competition
which taxed all his resources, he displayed so
much learning, ability and eloquence, that the
courts in which he appeared expanded into a forum,
and became objects of public attraction, to which
multitudes flocked as to a theatre, and from which
opinions, principles and emotions were propagated
through the community.*

His preparation for the court struggles ahead of
him was complete. From 1814 to 1823 he had studied law in
his own library; this was followed by work on the civil law
during his two years in Europe. His early term in the state
legislature had given him practical experience in the making
of laws. In 1822, with Charles W. D'Oyley, he had opened an

---


office on Meeting Street in Charleston, and had begun a practical apprenticeship. After a year and a half of this arrangement the partnership had been dissolved and Legare had practiced alone until 1830, at which time the enlargement of his practice and the duties of his office as Attorney General of South Carolina necessitated his taking on another partner, George W. Eggleston. The last stages of his long preparation, however, were the years of his Belgium mission and his single term in Congress. In Europe Legare had probed deeper and deeper into the philosophy of jurisprudence, reading in the original German texts and manuscripts the masters of international law. He had traced the origin of the principles of these juristic philosophers in the evolutionary period of the Roman civil law which culminated in the code of Justinian. After returning to America and entering the House of Representatives Legare had focused his legal erudition, during the sessions in Congress, on the constitutional questions of the country in all their legal implications.

Soon after Legare opened an office in Charleston "cases poured in upon him." But his lasting fame as a

---

4The Directory and Strangers' Guide for the City of Charleston (Charleston, 1822), 37.
5Ibid., (1831), 89.
6"Life and Labors of Hugh S. Legare," The American Review, II (October, 1845), 428.
courtroom lawyer rests chiefly upon those cases which brought
him before the Supreme Court of South Carolina and the Su-
preme Court of the United States during the short four years
of life which remained to him. 7 These pleadings were all in
the field of equity, in constitutional or international law.

7Cruger v. Daniel, McMullan's Equity, 157; Pell and
wife v. Ball, Cheves' Equity, 99; Pell v. Executors of Ball,
Speers' Equity, 48; Davidson & Simpson v. Admiral Graves and
Baron Vandermissen et al., Riley's Equity, 219; The State v.
The Bank of the State of South Carolina, 1 Speers, 144; Bank
of the State of South Carolina v. Green, 2 Bailey, 230; Bank
of the State of South Carolina v. Huggins, 2 Bailey, 230;
Morrison v. Barksdale, Harper, 101; Davidson and Simpson and
others v. Graves and others, Riley's Equity, 232; Davidson
and Simpson v. Admiral Graves, Riley's Equity, 246; Bedon v.
Bedon, 2 Bailey, 231; The State ex rel. Robert Burney v. The
Tax Collector of the Parishes of St. Philip's and St.
Michael's et al., 2 Bailey, 654; The State ex rel. Moses v.
Mitchell, et al., 2 Bailey, 225; Roche v. Chaplin, 1 Bailey,
419; Williamson v. Broughton, 4 McComb, 212; Corbett v. Lucas
and Dotterer, 4 McComb, 323; Spencer v. Bank of Charleston,
Bailey's Equity, 468; White et al. v. Poussin, Bailey's
Equity, 458; Manigault v. Holmes, Bailey's Equity, 298; Welse
v. Parish, 1 Hill, 155.

Cases before the United States Supreme Court: Weston
et al. v. City Council of Charleston, 2 Peters, 149 (1829); 
Shanks et al. v. Dupont et al., 3 Peters, 212 (1830); Watkins
v. Lessee of Holman et al., 16 Peters, 25 (1842); United
States v. Breward, 15 Peters, 113 (1842); United States v.
Miranda et al., 16 Peters, 153 (1842); United States v. Low
et al., 16 Peters, 162 (1842); United States v. Hanson et al.,
16 Peters, 196 (1842); United States v. Murphy and Morgan,
16 Peters, 203 (1842); United States v. Heirs of Clarke and
Atkinson, 16 Peters, 228 (1842); Kelsey and McIntyre v. Hobby
and Bond, 16 Peters, 269 (1842); United States v. Eliason,
16 Peters, 291 (1842); Wood v. United States, 16 Peters, 312
(1842); United States v. Acosta, 1 Howard, 24 (1843); United
States v. Linn et al., 1 Howard, 104 (1843); Bowman et al.
v. Watkins et al., 1 Howard, 189 (1843); Lessee of Jewell
et al v. Jewell et al., 1 Howard, 219 (1843); United States
v. Eckford's Executors, 1 Howard, 251 (1843); Williams v.
United States, 1 Howard, 290 (1843).
Although Legare's rhetorical approach in each instance was consciously adapted to the specific case, his normal manner—when, for instance, he was arguing a constitutional question before judges—was strikingly different from that of the usual lawyer of his day. He was, of course, marked immediately by his physical uniqueness. He was probably the shortest person in any courtroom he entered, short enough to attract all eyes. Stockily built, he was barely five feet tall. Even so, he was often the best dressed man among men who dressed well. He usually wore a flowing black coat, string tie and ruff, and the polished boots so common to the low country planter. There was a casual grace in his gestures and a rhythm in his walk. His handicaps of a stiffened elbow and shortened legs had been overcome.

That quality which most distinguished Legare from the ordinary lawyer, however, lay in his actual speaking. His style itself, according to a New York newspaper, was "unique—perhaps eccentric," in contrast to the oratorical displays of other pleaders of his time, for his tone was usually "familiar, easy and colloquial." Often he seemed to be arguing his case "at his easy leisure with an intimate friend." In him was none "of the ordinary restrictions or stiffnesses conventionally imposed upon the bar in the presence of the
In courtrooms where other lawyers often spoke with bombast, Legare's very ease of manner wrapped the full attention of the audience about him like a cloak which fitted him well.

The result was an intense conversational style peculiarly adapted to the ears of attentive, intelligent judges. Upon his easily spoken words came the full weight of Legare's charged learning. Parrington declared that "probably not three men in America comprehended the significance of half the references that he offered for the consideration of his fellow lawyers, or were competent to question his deductions." Yet no listener was ever lost in following the argument, for his chain of reasoning was always lucid. The difference was that he went further into analogy and illustration for his proof than judges were capable of following. His thread of argument was apparent, however, even when his citations exhausted historic example.

In his forensic style a common practice gave to Legare's pleadings a dramatic tensity. Though he was never known to make eulogy the single purpose of any speech, he nevertheless used it as a subtle device within a speech. Time and again, in the midst of his pleadings he would eulogize some great jurist or proponent of juristic principle. Often

---

8New York Commercial Advertiser, March 11, 1829.
9Parrington, Main Currents in American Thought, II, 117.
he would effectively eulogize an abstract truth which he was relying upon in his argument, especially when tracing its emergence from the French or English bench. He would treat the logical reasoning of a Hamilton or a Kent in the same manner. These eulogies were never long. They were set within the framework of a forensic, or even a deliberative, speech, and they served Legare as emotional stimuli to hasten the listener along the chain of reasoning. Their effectiveness was noted even by Justice Marshall as he rendered a decision on one of Legare's first cases before the United States Supreme Court.10

The praise of abstract truth was natural to Legare. He believed that principles were more enduring than human abilities. He often asked such a question as "What is human praise, or what is human greatness?"11 His answers to these questions were prompted by a "sense of the nothingness of man's efforts which constantly haunted him."12 That was why, whenever he spoke before a court of law, there was a relentless drive toward some principle which held a greater truth and justice. It was, perhaps, why there was often a tone of sadness in his voice; and this, in itself, held a

12 Ibid.
peculiar attractiveness that compelled attention.

The first among the significant cases Legare argued was one which is still talked about by South Carolina lawyers, Pell and wife v. The Executors of Ball. Legare and Petigru represented the complainants, sisters of the deceased Mrs. Ball. The opposition lawyers were C. G. Memminger, Alexander Mazyck, and DeSaussure. The great legal interest revolved around a question of survivorship, in what was then a novel approach by the complainants. The biographer of Memminger explains that "there were no abstruse principles of the law involved," but that such a "thorough knowledge of the rules of evidence" was demanded that no previous question in the history of the Charleston bar had caused "so much comment and general interest."^14

The circumstances of the case were dramatic. A Miss Channing, the daughter of a wealthy Boston merchant, had married a Mr. Ball of South Carolina. She had brought to her husband a large fortune but had failed to make any contractual settlement. In his last will and testament the husband had bequeathed to his wife all of his goods and properties. On the evening of June 13, 1838, the couple sailed from Savannah on the steamer "Pulaski" bound for New York. At mid-

^13 Cheves' Equity (South Carolina), 99 (1840).

^14 Capers, The Life and Times of C. G. Memminger, 179.
night, after most of the passengers had retired, a boiler exploded, a breach was made in the starboard side of the vessel, and the main deck was blown off. Because of this last fact all communication between the forward and the after parts of the steamer was discontinued. The forward part of the upper deck was utterly destroyed; the wheelhouse was carried away, killing the captain and many of the passengers. Many more perished when the gentlemen's forward cabin was shattered. 15

The vessel careened to the port side and water poured in. The hold was soon filled and the ship broke in two. Most of the passengers in the forward part perished, but the greater number of the passengers in the after part were still alive. Some of these climbed above to what was left of the promenade deck, but Mrs. Ball remained on the main deck looking frantically for some sign of her husband. She was seen here and there, searching, and was recognized by at least one witness who knew her. During the trial this witness testified that Mrs. Ball called for her husband just before the fragment of the ship on which she stood went down. The only indication that her husband was not killed immediately by the explosion was the discovery of a dress coat in

15Cheves' Equity (South Carolina), 115-120 (1840).
a floating lifeboat. In a pocket of the coat was a collar bearing his name. 16

Each side went to great pains to bring out the appalling details of the catastrophe. An exact model of the ship had been constructed so that the attorneys could indicate where a witness or a principal might have been at a given time and so that the wreck after the explosion could be shown.

The question under consideration was "whether Mrs. Ball survived her husband, even for a moment, or whether she perished before he did, or whether both perished at the same instant of time." Memminger and his associates took for granted an old principle of the civil law; that the husband, as the stronger of the two, was the survivor. Earlier court decisions had been awarded on those grounds and it was assumed that the court would so rule in this instance. There had been very little positive decision in the common law courts upon the survivorship question at issue. Memminger made the most of all that had been established in the textbooks as to circumstantial evidence. 17

When Memminger had finished Legare went far beyond the textbooks to show that the wife had survived her husband. At first, discursively, he demonstrated that in the civil

16 Ibid., 179-180.
17 Capers, The Life and Times of C. G. Memminger, 181.
law there was no settled tenet on survivorship. Another principle which had an overriding force and was recognized both by the civil and the common law was, he said, that positive testimony must always overcome presumptions. Legare had but one single piece of evidence: that Mrs. Ball was seen "flying wildly about the broken deck, her voice heard above all others, calling for her husband." Before using this evidence Legare spent two hours preparing the way. He implanted in the mind of the chancellor who was to render the decision the conceptions of two thousand years of law as to the greater weight of testimony over presumption. He moved from citation to citation, easily weaving a logical plausibility for his contention. Only when he felt that the chancellor was receptive did he use the one bit of evidence which he had.

Legare framed that evidence in drama. Moving to the model of the exploded ship, he set the stage for emotional appeal. The eloquence of his argument was completely adjusted to the tragic mood, as were his tones, his gestures, and his whole being. He then offered as an unassailable truth the single sentence of his only witness, thereby transforming the one circumstance that had been salvaged from the terror of the exploded vessel into irresistible proof that

---

18 Cheves' Equity (South Carolina), 110 (1840).
the husband must have died first. His closing words brought tears to the eyes of Chancellor Johnston:

Upon the narrow theatre of that shattered deck there was enacted a scene, to paint the horror of which all that imagination or poetry could invent of the most pathetic must fail. She called upon the husband on whom she had never before called in vain—upon whose arm she had ever leaned in danger—her stay, her rescue! She called—but he never answered—no, sir, he was dead! he was dead!

No listener sat unmoved in the courtroom at that moment. Preston called the closing argument "the sublimest flight of the picturesque and the passionate." Even the decision of the chancellor suggests Legare's effectiveness: "The admirable preparation and argument of this cause have enabled the court to form a judgment, satisfactory to itself, at an early day." That Legare's dramatic effort was convincing is further indidated in Chancellor Johnston's decision: "We are sure that she was there. I think it was not probable that he was. . . . I have, from all these considerations, formed the opinion that Mrs. Ball survived her husband." That Legare's victory was complete is evidenced by the fact that the property settlement was a general one,


21 Cheves' Equity (South Carolina), 100, 111 (1840).
without court restrictions.\textsuperscript{22}

During the two years he remained in South Carolina many clients asked Legare to plead for them; but the greatest of his cases was argued for the principal he had represented so often before, the Bank of the State of South Carolina. The hard times the state banks were having under the Jackson-Van Buren policies were indicated by Legare in a letter to his sister, written shortly after he had won the Ball case:

\begin{quote}
The times here are frightful, worse far, than any one remembers. Nothing sells but at a sacrifice. Bank stock has gone down & \ldots people won't touch it. Nobody pays & every body is in debt. God only knows what is to come of it all. Meanwhile the legislature makes war on the banks & it is thought these will resist, in which case, it is said, Petigru and myself will be called on by the banks & I hope get good fees, of which I stand in need.\textsuperscript{23}
\end{quote}

The legislative "war on the banks" was led by Legare's opponent in the Ball case, C. G. Memminger. As chairman of the Ways and Means Committee in the South Carolina House of Representatives, Memminger, in 1840, had introduced a bill entitled "An act to provide against the suspension of specie payments by the banks of South Carolina."\textsuperscript{24} Acting under the provisions of this bill the state had started proceedings against the Bank of South

\textsuperscript{22}Ibid., 111.

\textsuperscript{23}Legare to Mary Legare, Charleston, n.d. Chisolm Papers.

\textsuperscript{24}Capers, The Life and Times of C. G. Memminger, 131.
Carolina "to vacate the charter of the bank on the ground of its having suspended specie payment, and the payment of deposits on demand." The bank was charged with continually refusing to pay in specie all promissory notes and bills of credit "from the 18th of May, 1837, until the last day of September, 1838." The bank was further charged with a second alleged suspension of specie payment on the 14th of October, 1839 and from that day to the 21st of July, 1840, during which time the bank continued to do business, receive deposits, discount notes and issue bills, paying out only its own notes and notes of other suspended banks.25

To these charges the defendants pleaded:

First, not guilty; second, that the bank . . . did not, on demand made, refuse to redeem or pay in gold or silver, . . . and the said Bank of South Carolina, having all along kept in view the duty of paying their debts and liabilities in gold and silver coin, . . . made their arrangements to accelerate . . . the day when the resumption of specie payments might be made, without great and material injury to all persons indebted to them, did resume the ordinary payment of specie . . . and from thence have continued to do so.26

The battery of legal talent was impressive.

Memminger, Armistead Burt, Benjamin Faneuil Hunt, and Henry

25Ibid., 132-133.

26Henry Bailey (ed.), The Bank Case, A Report of the Proceedings in the cases of The Bank of South Carolina, and The Bank of Charleston upon Scire Facias to Vacate their Charters, for Suspending Payments, with the Final Argument and Determination thereof, in The Court for the Correction of Errors of South Carolina in the Years 1842 and 1843. Printed by Order of the Legislature of South Carolina (Charleston, 1844), 4.
Bailey, the Attorney General, argued for the state. Opposed to them and representing the bank were James M. Walker, solicitor for the bank, Legare, Petigru, and Mitchell King. The case was argued during the May term of 1841 before Justice Butler.

The great burden of the defense argument fell upon Legare. With the exception of the rebuttal by the Attorney General, the advocates of the state's position completed their arguments before the defense counsel spoke. It had been agreed that Petigru would argue but one point of the case and that King would confine himself to the moral issue of the state's obligations to her citizens. But upon Legare fell the entire task of arguing all the legal principles involved. Memminger, Burt, and Hunt spoke first and propounded the state's position. Then Walker presented the history of the bank's actions in as fair a light as possible. Legare spoke fifth, after Walker.

He opened conversationally, almost casually, speaking almost solely to the judge, so that the packed audience which had gathered to hear him became silent and had to lean forward to hear his words. "He had not supposed,"

27 "Life and Labors of Hugh S. Legare," loc. cit.,

427.

28 Preston declared that Legare's choice of manner, style, and tone in speaking was always thought out. "If he erred ... it was not accidental, but the result of a wrong judgment." Preston, "Eulogy on Hugh Swinton Legare," 29.
he said, "that the Attorney General would have persevered in urging upon the Court any proposition so strong as the dissolution of the . . . bank . . . on the ground of a suspension of specie payments." He had given the attorneys for the state "credit for too much acumen" to believe that they would attempt to maintain a position "so utterly untenable" as the one which they were ascribing to. He had, however, been "mistaken but not disappointed," as it lessened "any anxiety he might have felt as to the result of this case."

Because his "articulation was clear even in its minutest inflections" and because his projection was under perfect control, Legare had the ability, when he chose, to talk to those even in the distant corners of the courtroom without seeming to depart from his casual manner. He could, as his next words indicated, effectively attack an opponent without apparent effort:

The prosecution . . . is now permitted to appear in its naked deformity, in an attempt to destroy a perfectly solvent bank, ruin its stockholders, and, to that extent, impoverish the state . . . . And all for what? Why, for the enormous offense of having refused payment, on demand, of some of its notes of hand.

Having struck, Legare followed with a second body blow, directed as much to the audience as to the judge before him:

I cannot suppose that my friends have reflected upon the consequences of success in the miserable proceedings in which they are engaged. . . . If the precedents and authorities upon which they rely be worth a straw, the judgment must be that the franchise be seized into the hands of the State . . . , which would amount to a confiscation to the extent of millions. . . . Are they prepared to deprive the stockholders of their property—to plunder the widow and the orphan, . . . to carry out their new fangled theory of corporate responsibility? . . . Some stringent precedents, at least, must be produced; and where is such an one to be found? . . . The cases of municipal corporations in the reigns of the Stuarts, fall far short of the judgment demanded in this case.

Before he proceeded to his main contention, Legare digressed into whimsicality. With cheerful malice he concocted a picture of the "Attorney General and his compeers sallying forth with Chitty in one hand and Stephan in the other," merely to make a declaration which was in error on many counts. For, he said, that declaration would not show by whom the demands for specie were made, "or that any were made," and that where gold and silver coin were alleged, "the word 'coin' was insufficient—as 'bullion' would have avoided it." True, the illustration was whimsical, but it was pertinent and contained the pith of Legare's objections to his opponents' case, which he thus artfully introduced.

Still speaking conversationally, Legare moved on to another illustration, one which, however, embodied his main contention. He did this simply by introducing an imaginary "very distinguished and highly intelligent merchant,
connected with the bank of England," from whom he had, he said, learned much. Using this "personal acquaintance" to express his own views, Legare added:

Nothing, I am sure, could have struck this accomplished merchant, as more exceedingly ludicrous, than the idea of following up the commercial disasters of the country, by an attempt to forfeit the charter of a solvent, honest, and honorable company of bankers, for doing the only thing which prudence, courage, and patriotism could have devised.

Legare then reached into the immediate past economic history of the United States to show that the action of the bank was the only possible culmination to the preceding series of events, and certainly the only course open to intelligent men.

Having justified the bank's actions as being sound, he went even further and praised its policies:

South Carolina participated less in and suffered less from, that wild spirit of speculation which constituted the madness of the times, than any other state in the Union ... and her banks ... had been conducted with an ability, prudence, and moderation which constitute them an exception to similar institutions almost everywhere. ... They might have acceded to the demands made upon them for specie. But they suspended payments in order to keep a circulating medium adequate to the wants of the State ... They decreased their issue of notes, and enlarged their specie basis ... with a practical wisdom. They granted extension of loans to their debtors to prevent their ruin and sustain the commerce of the State. By these means the panic was arrested, and the business of the country was restored to regularity and a healthy activity. ... And it is for doing this, that the stockholders of the Bank of South Carolina are now summoned before this Court, as criminals ...
After thus placing the state and the bank in the relative position he desired for his arguments, Legare next contested any "shadow of legal ground" for the forfeiture of the bank's charter. He took up the document, paragraph by paragraph, showing that it had been constructed according to Alexander Hamilton's model of the United States Bank and that, as a consequence, it had no forfeiture clause. And here his amazingly accurate memory was a part of his strength. He quoted the document, as invariably was his custom, entirely from memory. Never did notes of any sort interfere with Legare's delivery. He needed none.

If there were no grounds for forfeiture in the charter of the bank, were there, Legare asked, any such grounds in common law itself? Therein lay the main burden of his argument:

The bank has forfeited no franchise, because there is no franchise to forfeit. I deny . . . that a corporation is a franchise. . . . It is a mere capacity; and you might as well insist that the capacity conferred by naturalization is a franchise, and therefore subject to forfeiture.

As Legare went deeper into the common law he brought in his philosophy of jurisprudence—that law must give way to the betterment of mankind:

30"He habitually read with a pen in his hand, and . . . abstracted the argument, with his reflections upon it, by which he accumulated an immense mass of common-place books, which were indexed in his retentive memory." Preston, "Eulogy on Hugh Swinton Legare," 25.
The whole doctrine of franchises, and of forfeitures, had its origin in times long gone by, and under conditions of society altogether different from our own—and it is everywhere yielding... to the progress of commerce and civilization. It sprang up in those dark ages when a greedy despotism was permitted, by ignorance and weakness, to appropriate for itself such privileges as wreck, treasure-trove, waifs, royal-fish, and gold and silver mines... and to draw from them a yet more iniquitous source of profit, by means of fraudulent presumptions... I think the public mind is now ripe for the discussion; and it behooves our Courts, especially,... to examine the principles of the doctrine in question... and restore the rule of liberty and law.

Legare discussed instances of the misuse of franchises, both in England and in the United States: how the "Judges of Assize... prostituted their authority"; how Jefferies, the advocate of Charles II, in 1684, "made all the charters, like the walls of Jericho, fall down before him, and returned laden with surrenders, the spoils of towns"; and how these proceedings "drove the Stuarts from the throne."31

Still examining the common law to show that there were no instances of forfeiture of charters, Legare seized upon the authority which his opponents had used as a basis for their case. It was a judgment against the city of London during the reign of William and Mary. Memminger had used it as his chief precedent; but Legare turned the authority against him by showing that the judgment obtained by the

31 Roger North, Exam. (London, 1740), 626.
Stuart advocate against the City of London, instead of being a precedent which an American court could follow, was actually an act against which the American colonists had revolted and that such judgments were forever ruled from the laws of the United States by the Revolutionary War itself:

It is not a little remarkable, that this judgment against the City of London, which my learned friends now pray this court to recognize as the law of the land, was the foundation of the first invasion ever attempted upon the liberties of America. The proceedings against the City of London, were, as has been said, but part of a general system; and this system was not confined within the narrow limits of the kingdom. . . . Accordingly, after the seizure of the charters of the corporations in England, measures were immediately taken to seize the charters of the American colonies, and thus bring them also under the arbitrary control of the crown.

It was upon this point, the very authority used by the state, that Legare won the case, by showing that the whole premise of the opposition, as based upon the City of London case, was contrary to the spirit of American common law:

What is the principle of the case of the City of London? What is the law ascertained by the judgment rendered? The counsel for the State are compelled to rely upon it to prove that a corporation may be forfeited. . . . The only principle to be deduced is . . . that whatever the government shall think fit to regard as an offense, is cause for forfeiture of a charter of a corporation.

This, he added, might be the law in some places, "but it is sufficient to say, that it cannot be the law here, until the Constitution of the United States has been repealed." The
question was once and for all decided "by the Supreme Court, in the cases of Terrett v. Taylor, and Dartmouth College v. Woodward, which," declared Legare, "settled definitely, that the government could neither revoke, nor impair a charter once granted, and in the constitutionality, wisdom, and propriety of these decisions, the whole country has acquiesced, with perfect unanimity, ever since."  

This was Legare's final pleading in South Carolina before he left to become Attorney General of the United States, a pending appointment of which he was already aware.

Before leaving Charleston Legare made what amounted to a farewell speech to the citizens of South Carolina. Toward the end of May, with Petigru and other friends, he attended a dinner given to Preston, after the latter had been removed from Congress by the political machine of Calhoun. After Preston had thanked the diners for the reception, Legare "was called for, and, upon coming forward was received with an enthusiasm and spirit which showed how justly proud Charleston was of her eloquent and gifted son."  

Legare must have been thinking of the similarity of Preston's situation at the time and his own in 1838. He must have contrasted the enthusiastic reception accorded him on this night with the political silence of two years.

---

33 Charleston Courier, May 24, 1841.
earlier when he had been guilty of doing what Preston had recently done—spoken out against the policies of Calhoun. These thoughts were suggested in his speech, for he talked of "the strange and sudden changes" which South Carolina had seen in "her political leaders—and of the character which political opposition had assumed." This, he said, was not always so: "Once, in South Carolina political rivalry was the noble contest of gentlemen and cavaliers—a hostility that hindered not an opponent from admitting and doing honor to the character of a rival." He illustrated these "changes" in politicians by referring to the Harrison campaign:

To judge from specimens lately displayed, these controversies are to be carried on in the spirit of savages and in the language of fishwomen. . . . While living, General Harrison was the object of their most unmerited obloquy. How great a change was wrought by his death! Those who most vilified him living, do him honor now in his new made grave. The shafts which no armor could repel while in life, fall harmless and spent upon his shroud.

The sight of Preston sitting in front of him tugged at his emotions enough for him to demand of the people of the state, if now they were prepared to cut off Mr. Preston—whether they could strike off the hand that had battled so gallantly for them, because he had chosen to exercise his own judgment and not submit to tyrannical party domination. His crime was his eminence, his usefulness, his honorable and widespread fame. 34

Legare held his audience that night as he had perhaps never done before in his home city, in spite of the

34 Ibid.
physical pain of the ailment which proved fatal two short years later. The paper which lauded his speech made note of this fact:

His address was of a nature so rich and varied, so startling in its sudden changes, from bold, clear statement, to the loftiest flights of true eloquence, that his audience was completely taken by surprise, now chained in a rapt attention—now startled by a burst of indignant sarcasm. Mr. Legare was laboring under severe indisposition, but as he went on, the orator forgot the man, and the wealth of his mind was never more suddenly drawn upon nor more triumphantly displayed.35

Legare's successes in the courts had given him a prestige in Charleston such as nothing else could have done in that town of lawyers and planters. His heart was now in the law; the last statement of his beliefs, given publicly several days before he left Charleston, served as a criterion for the service which he gave to the United States as Attorney General:

I rejoice and am proud that I have lived to see this day, privileged to discharge the highest duty and Godlike function of that profession—the protection of the innocent and the oppressed—the defense of the country, the right, and the law.36

In June Legare was invited by Ticknor to spend the summer at Cape Cod, where Allston, Prescott, and Longfellow made up the intellectual association. Ticknor complained of Legare's neglect of him:

35 Ibid.
36 Ibid., May 31, 1841.
So the next time I shall hear from you, after all your Greek and Spanish, will be a seat in the House of Representatives, or a foreign mission. But first you must come here and swear like the knight that it is all naught, and I will believe nothing of what you say, nor even do you the grace to think you perjured. 37

The friendship between Legare and Ticknor had grown stronger throughout the years. The teacher had sought continually to divert the lawyer into the field of literature where he felt Legare would better fulfill himself. But the law had finally won out.

Early in the summer, almost as soon as the court term ended, Legare left for Boston. On his way to Cape Cod he called on President Tyler in Washington. On the following day he left for New York, where he found that his article on Demosthenes in the New York Review had met with great success. Contrary to all his plans, he also went "up to Saratoga, . . . & was there kept in a whirl of dissipation for upwards of a fortnight." Not until September did he arrive at Cape Cod, where he enjoyed a few days at Ticknor's summer place, "called Woods' Hole, on the seashore about eighty miles from Boston." 38

37 George Ticknor to Legare, Boston, June 16, 1841. Chisolm Papers. See, also, Anna Ticknor, Life, Letters, and Journals of George Ticknor, 2 vols. (Boston, 1877), II, 196. The associates were Washington Allston, painter, William Hickling Prescott, historian, and Henry Wadsworth Longfellow.

38 Legare to his mother, New York, August 11, 1841. Chisolm Papers.
Legare was notified on September 13, 1841, of his appointment to the Attorney Generalship. At that time he was visiting friends in Newport. The notification from Tyler was in the nature of a desperate begging of a favor for a country in distress:

Yesterday, at different hours between 11 and 3 o'clock, I received the resignations of the Secretaries of the Treasury, War, and Navy and of the Attorney-General; and inasmuch as Congress had adopted a resolution to adjourn on to-morrow, I was thereby driven to the necessity of either making nominations forthwith or of devolving the administration of the departments on the chief clerks, and of losing the aid of the Attorney-General altogether, until Congress again assembled. I, therefore, after consultation with a mutual friend, took the great liberty of sending in your name to the Senate, for the Attorney-Generalship of the United States. Your high reputation, and exalted private and political worth, upon the instant, designated you as the most fit person for that elevated station, and, not doubting the prompt concurrence of the Senate, I have to express my most earnest hope that no impediment will be found to exist, in the way of your acceptance, and that you will reach this city at as early a day as possible. If I require any thing else to excuse me for the liberty I have taken with you, be pleased to permit the manifestation of high trust and confidence, which is implied in the fact itself, to plead my full apology.39

In a letter to his mother Legare had indicated that

39 John Tyler to Legare, Washington, September 12, 1841, quoted in Charleston Mercury, September 16, 1841. Tyler had retained Harrison's cabinet, who were, however, Whigs, and when Tyler vetoed a new Clay-supported bank bill a storm of indignation arose among the Whigs. The cabinet, with the exception of Webster, resigned, giving various reasons for doing so. Frederick Jackson Turner, The United States, 1830-1850, The Nation and Its Sections (New York, 1935), 502-503.
he was not entirely unaware of his forthcoming appointment:

You ask about the state of the nation. I think it very bad. The Whig party is broken up & if it were not, it would be beaten by the Locofoocos, who are moving fast over the ground they have lost. It is too late to speak now of the blunders that have been committed by the Whig leaders. The last accounts represent things as in a somewhat better condition than heretofore. Yet I think they are bad past all recovery. I have received a letter from Rives ... from which I infer that a new cabinet was to be appointed, & that I was named as one of them. ...

... I do not know as yet whether I would accept if appointed. It depends upon the rest of the Cabinet, etc. But at all events it is a high honor to be called for, & I appreciate it accordingly.

That Legare fully realized the crisis for the country and put service above his personal inclinations was expressed in a letter to his mother just before hurrying to Washington:

I am called to a most important & responsible post, at a crisis of great danger for the country, both from within and from without ... & be the consequences what they may to me, I am ready to exert myself to the utmost of my ability to render some service in my day & generation, & not to have lived in vain with so many advantages as I have had.

Upon reaching Washington, Legare immediately took up the duties of the office left vacant by the resignation

---

40Legare to his mother, Boston, September 2, 1841. Chisolm Papers.

41Id. to id., New Port, September 13, 1841. Ibid.
of John J. Crittenden. His appointment met with general approval throughout the country. A New York paper spoke of him as a man "who became eminent by his writings" and one who, opposed to Van Buren's Sub-Treasury scheme, "took ground against it in a profound and masterly speech." The Newark Advertiser called him one of "the most accomplished men of our age—a well approved scholar, statesman and jurist." The editor of the Charleston Courier, perhaps with Legare's words on Preston still echoing in his ears, declared:

The appointment of Mr. Legare, considered simply in reference to his fitness for the office, must please the country without distinction of party. His selection, to all Carolinians, to be a confidential adviser to the President, justifies the opinion which many citizens of the state have entertained of him. . . . Politically regarded, the appointment . . . is the broadest possible intimation, that the President seeks nothing, and expects nothing, and will yield nothing to Mr. Calhoun. The victim has now become the victor, and Mr. Legare, the reviled, and the persecuted, is the responsible organ of his native state, in the councils of the administration.

Typical of many letters received about Legare's appointment was one written by "an ordinary citizen," a

42 We have the pleasure in stating that MR. LEGARE, having accepted the office of Attorney General, . . . has arrived in this city and entered upon the discharge of the duties of that office." Washington National Intelligencer, September 20, 1841.


44 Newark Advertiser, October 1, 1841.

45 Charleston Courier, September 16, 1841.
lawyer from Providence, Rhode Island:

The new cabinet has been formed of very talented men, amongst whom we particularize the new Attorney General, Mr. Hugh S. Legare of Charleston, South Carolina. He is one of the most classical men of the age, a very profound and brilliant writer. . . . He is a first-rate lawyer, and well fitted for the high and distinguished station which he now holds. He is in all probability the most ornamental member of the new cabinet. 46

Legare's first responsibility was in helping Tyler complete the cabinet. The fact that the President called upon him for this service and that Legare's suggestions were astute is shown by his choice of Thomas Corwin, Governor of Ohio, for a cabinet post:

I have taken the liberty to designate you to the President as the man to succeed to the place of Secretary of War which circumstances prevent Mr. McLean from accepting. Be assured--nay, I may say you know--there are very few persons in the country to whom I would be at the trouble of writing these lines . . . or anything like it. . . . You know that some of the vehement Whigs thought nobody thinking as you do ought to accept any of the impending portfolios--that the country should be left, perhaps, with an impending war with England. . . . I do not think so--neither can you, if I have not mistaken the temper and size of your mind. It is at such moments that men born to be something in their generation, vindicate their true place among men. . . . In short, my opinion is you ought to be here. . . . Depend upon it there never was a

46 E. A. Greene to his Aunt Frances, Providence, September 24, 1841. Miscellaneous Papers, South Caroliniana Library. The new cabinet was composed of Daniel Webster, Secretary of State; Walter Forward, Secretary of the Treasury; John C. Spencer, Secretary of War; Abel P. Upshur, Secretary of the Navy; Charles A. Wickliffe, Postmaster-General; and Legare, Attorney-General.
greater need of men like you in the public service, and there never will be such another opening for them.47

Even as Legare was helping Tyler complete his cabinet, other duties crowded in upon him. On the day he wrote to Corwin he gave his first opinion as Attorney General. It was a statement advising Tyler to continue the same policy towards the Cherokees that Van Buren had followed, "a course concurred in by so many able and experienced men."48 Three days later he advised the Secretary of the Treasury as to compensation of customs and naval officers.49 Within the next two days he thoroughly examined the question of reimbursement of an officer and gave his opinion to the Secretary of the Navy.50 Before he had been in office a month he had ruled on such widely diversified questions as the surrender of fugitives from Canada,51 the mileage of senators at an extra session,52

---

47 Legare to Thomas Corwin, Washington, September 26, 1841. Chisolm Papers. Thomas McLean was a Justice of the Supreme Court and wished to retain that post. John C. Spencer of New York was appointed October 2, 1841.

48 Benjamin F. Hall (ed.), Official Opinions of the Attorneys General of the United States, Advising the President and Heads of Departments in Relation to their Official Duties, III (Washington, 1852), 657.

49 Ibid., 658-659.

50 Ibid., 659-660.

51 Ibid., 661-662.

52 Ibid., 662-664.
the enlistment of aliens,\textsuperscript{53} the power of the President to fill vacancies,\textsuperscript{54} and claims under the treaty ceding Florida to the United States.\textsuperscript{55}

During the year and a half before he died Legare gave one hundred and fifty opinions to the President and his cabinet, each one so carefully constructed that Tyler said of them:

It is not believed that a single instance has occurred wherein his seriatim opinion has been overruled by \textit{the Supreme Court}. \ldots If Congress placed a mistaken interpretation on the force and effect of a statute, as it did in a notable instance, Legare, on being called upon for his opinion, had no hesitation in pronouncing Congress wrong, and so, accordingly, at an after day, it was decided to be, by the unanimous opinion of the Supreme Court.\textsuperscript{56}

The President leaned upon Legare in many ways. At cabinet meetings his counsel was ever in demand. Tyler said of him:

Familiar with all the questions of constitutional and municipal law, he had also a large knowledge of international law, which found in him, at the Cabinet Board, on many interesting occasions, an

\textsuperscript{53}Ibid., 671-673
\textsuperscript{54}Ibid., 673-676.
\textsuperscript{55}Ibid., 677-682.
\textsuperscript{56}Tyler, The Letters and Times of the Tylers, II, 169. The Whigs maintained that without new laws no duties could be levied. The vindication of Legare's opinion, "That the compromise act of 1833 is capable of being executed without further legislation," is shown in the case of Aldridge v. Williams, 15 Curtis, 268. See, also Hall, Official Opinions of the Attorneys General . . ., IV, 56-68.
able expounder. His mind was a deep well, which was in no danger of being exhausted by the copious drafts made upon it. 57

In January Legare appeared before the Supreme Court for the first time after his appointment as Attorney General. It was not in his federal capacity, however, but as a private counsellor that he argued the case. The situation itself was interesting, for his opponent was his predecessor in office, John Crittenden. The case was that of Watkins v. Holman's Heirs, which had been argued the previous term but was ordered to be heard a second time. 58 By the nature of things a contest was expected, and a large audience was present to see the Attorney General in action against his predecessor. 59 That Legare himself felt the tenseness of the situation was shown by a remark he made to an acquaintance while entering the Capitol: "It has been said that I am a mere literary man; but I will show them today whether I am a lawyer or not." 60

The case involved the title to waterfront property in Mobile which Oliver Holman had purchased and upon which he had built houses and a wharf. When Holman died, his

57 Tyler, The Letters and Times of the Tylers, II, 384.
58 Watkins v. The Lessee of Holman et al., 16 Peters, 25 (1842).
59 New York Commercial Advertiser, January 17, 1842.
60 "Life and Labors of Hugh S. Legare," loc. cit., 428.
widow took out letters of administration in Massachusetts and procured an act of the legislature of Alabama to sell the Mobile property for payment of debts. The property was later sold, streets were laid out upon it, and a number of houses built by the purchasers. The heirs of Holman then proceeded to set aside the acts of the administratrix and brought suit in the circuit court to eject the purchasers from the property. The heirs declared that the act of the Alabama legislature was unconstitutional and void and that the proceedings in the Massachusetts court, which authorized the administratrix to convey the title, were inoperative.

The lower court upheld the suit. 61 The chief point made by the circuit court had been that the act of the Alabama legislature was unconstitutional because it interfered with the judicial power—the two powers being distinct in that state. 62

Crittenden argued for the defendants in error and sought to uphold the decision of the lower court. He contended that the widow did not actually sell the property because she had no legal title to convey, and that Massachusetts had no jurisdiction to appoint her as executrix as she was "extraterritorial to the state." Furthermore, he

argued that it was the intention of the Alabama legislature to give the administratrix the right to sell the land in order that the money might be used to pay the debts of the estate. Crittenden declared that the widow was not the lawful administratrix in Alabama, that no proof existed to show that she was, and that because of this situation the lower court was right in denouncing the deed of sale. He further argued that the act of the Alabama legislature was "contrary and repugnant to the constitution of the State of Alabama as decided by the Circuit Court." His line of argument followed the principle that in Alabama the powers of government were divided into legislative, executive, and judicial and that "each is forbidden to exercise any power properly belonging to either of the others."

Crittenden was a persuasive speaker and must have made a strong impression upon his auditors. He was also a passionate lover of the Union, and it was he who later counseled Kentucky to remain within the Union. For the neutrality which that state adopted at the outset of the Civil War he was largely responsible. His words now must have carried conviction even as they did then.

It is needless to say that Legare's powers were taxed. He was forced to call upon his knowledge of property law from Justinian to Kent. Although it was his first case

---

63 Dictionary of National Biography, IV, 548.
as Attorney General and the room was filled with a critical audience, he made no mistake in the method by which he delivered his pleading. Apparently at ease, he addressed the justices conversationally, using no notes. A reporter who was present remarked:

With a command of language which was never at fault, with a grace and an eloquence that were in themselves illustrative of his position, and with a self-possession and ease of manner, which gave a strong force to every word he uttered, he displayed a familiarity with the case into which he had but recently come. . . .

Almost with his opening words Legare broke down the arguments of Crittenden. Representing the purchasers of the property as well as the administratrix, he contended that the purchasers bought the property under the "solemn sanction of the Legislature of one of the most enlightened States of the Union." The rights claimed by the opposition may have been valid, he said, when other principles in regard to realty prevailed, or

when it was the policy to secure the realty to the heir, in preference to satisfying the demands of creditors. But now no such policy, and no such injustice prevails. Real estate, like personal property, is subject to debts; and the rights of heirs-at-law are inferior to those of just creditors.

Before establishing the position of his own clients, Legare cast doubt on the very titles by which his opponent's clients had first brought suit. His effectiveness in doing

---

64 New York Commercial Advertiser, January 17, 1842.
this was increased by his citing from memory passages from
the identical authorities used by the opposition. In devel-
oping his points he went further than many within the court
were able to follow. The opposition had based its claim on
the fact that the heirs-at-law had their title from posses-
sion of public domain, by the law of alluvion. Legare used
this very contention of the opponents to defeat them. He
argued that the title in this case was limited to "the
fence which ran to high water mark" and that this fence was
the limit of possession. He also pointed out that the land
under dispute lay entirely beyond "high water mark," beyond
the fence, and beyond the land which the heirs-at-law
claimed, and therefore beyond the possession of the heirs-
at-law. The principle of the law of alluvion was that
possession extended only to "high water mark." Legare
showed that this principle was recognized as far back as
Justinian's Institutes and quoted the book, title, and para-
graph. He also pointed out that discussions of this prin-
ciple appeared in Henniccius, in Grotius, in English common
law, and in the more recent commentaries by Kent. Legare
quoted all his authority, word for word, from a memory amaz-
ing in its accuracy. No attorney ever questioned the ac-
curacy of his proofs and authorities, nor did Crittenden in
this instance.

Legare next defended the action of the Massachusetts
Supreme Court in appointing his client as administratrix. He argued that "the court proceeded on the ground that there was a trust" and that it directed the administratrix to sell the property after notice "had been given to the . . . heirs-at-law." Because the contract which had been made by Holman was a personal contract, it was, said Legare, "proper that the administratrix should convey" while acting under a trust which could be ordered by one state as well as by another.

As to the act of the Alabama legislature, Legare maintained that "the statutes of Alabama allow a foreign administrator to represent the estate of a deceased person." The law passed by the assembly, Legare argued, "does no more than authorize that to be done at once which, by a long course of proceedings in the courts, could have been effected."

Legare then took up the constitutionality of the division of powers among the branches of government of Alabama. His main contention was:

It is impossible to lay down the limits between legislative and judicial powers. It is not in the power of the courts to interfere, and say this was not legislative power, and thus to assume a control over the Legislature which will destroy it. . . . The only objection to this law is, that it was passed in a particular case; but this does not annul the law.

He declared that the proceedings of the Alabama legislature, subsequent to this particular act, did not show that the
legislature had no power to pass the act. "The result of this reasoning," he continued, "is that the Legislature has the power."

After having proved that the act of the legislature was the law of the State of Alabama, Legare asked simply, "Has the law of Alabama been executed?" His affirmative answer closed the case: "The administratrix did what she was allowed to do, by converting the land into assets to pay the debts; the security required by law having been given."

The nine justices ordered that the judgment of the circuit court be reversed and the cause remanded for further proceedings. Legare had won his case. A New York paper gave its impressions:

A large concourse of people have attended the court both days, and all seem agreed that the new Attorney General has shown, by his first effort, the wisdom of that selection which the President has made to fill the vacancy occasioned by the resignation of Mr. Crittenden. . . . He has an obvious acquaintance with the peculiar, arduous, and responsible duties of his new position, that could hardly have been anticipated.

Legare wrote to his mother frankly and happily, as had always been his custom after each triumph:

---

65 Watkins v. The Lessee of Holman et al., 16 Peters, 25-64 (1842).
66 New York Commercial Advertiser, January 17, 1842.
I made a great impression I am told. Mr. Webster says Judge Story, who is the greatest lawyer in this country, or perhaps of the age, says he has heard no such argument from any one . . . . So you see here is another trial and a severe one passed.67

Well it was for Legare that he quickly developed a private law practice in Washington and that he was successful in it, for his salary, which was only four thousand dollars a year, was not paid regularly. By the middle of February he had not yet received his December salary. He was forced to borrow fifteen hundred dollars to set up an establishment in Washington large enough for his family. He had finally determined to leave South Carolina and planned to have his mother and sister make their home with him in Washington.69

Later in January Legare argued before the Supreme Court another private case, Kelsey v. Hobby, which was an appeal from the Circuit Court of South Carolina.70 It had been won in the lower court by Petigru who was unable to come to Washington and had asked Legare to argue against the appeal. The appellants brought in "a most distinguished

---

68 Columbia Weekly Southern Journal, February 16, 1842.
70 Kelsey v. Hobby, 16 Peters, 269 (1842).
lawyer from New York," Bradford R. Wood. As a consequence, Legare again found himself arguing before a crowded courtroom. The Supreme Court upheld the lower court's decree, and Legare's arguments were once more praised by the justices; one of them, James M. Wayne, even wrote him a congratulatory letter after the decision had been given.  

On learning that his case had been won, Petigru wrote Legare:

"Many thanks for the early intimation of the decree. . . . It is the only hope I had of effecting an arrangement with creditors for my $60,000 security debt. But don't put it on your luck. There was never any serious doubt in my mind as to the results."  

Legare's own need for money also drove him on:

"All this financial trouble only stimulates me the more to exertion in my profession. I have been speaking a great deal. The other day I dined with the President in company with the Judges. After dinner the President told me he had been listening to the highest compliments upon me from the Judges. . . . I hope I shall profit by my success."  

During the 1842 term of the Supreme Court Legare

---

71Legare to his mother, Washington, February 19, 1842. Chisolm Papers. Wood was later representative to Congress from New York.  

72Petigru to Legare, Charleston, February 22, 1842. Ibid. "The embarrassment of Petigru's affairs caused by the adoption of specie payments precipitated his difficulties and the final disaster came in 1842." Carson, Petigru, 212.  

73Legare to his mother, Washington, January 29, 1842. Chisolm Papers."
argued eight cases as Attorney General of the United States. Five of them were Spanish land grant cases, one an indictment for larceny on the high seas, one a libel suit, and another on the power of the Executive to establish rules and regulations for the army. Legare's fluency in the Spanish idiom was put to a practical use in the land grant cases. His arguments arose from a careful and easy personal reading of all the Spanish documents pertaining to the proceedings. In one case, in which a comparatively ignorant river pilot had possessed himself of a forged grant to 368,640 acres on Tampa Bay and had satisfied the lower courts, Legare detected the forgery and won the case. The lower court's decision was reversed, and what is today a fabulously expensive piece of property was placed in the hands of the lawful owners.\footnote{United States v. Miranda et al., 16 Peters, 153-161 (1842).}

The second famous government case of the term, one which established precedent as to United States customhouse procedures, was that of Wood v. United States. The actual amount of money involved was small, for it was a test case. In 1839 the United States had filed "an information claiming a forfeiture of twenty-two pieces of cloth, of the value of twenty-five hundred dollars." The cloth had been imported into New York without being invoiced and "with a
desire to evade" duties. The circuit court and later the district court of Maryland had both upheld the positions of United States' attorneys, but time after time the case had been appealed, and it was now finally up to Legare to uphold the position of the lower courts. Importing interests were spending large sums of money to obtain a reversal so that lax procedures at the customhouses could be continued.

Crittenden had been engaged to represent the plaintiff, who contended that the goods had entered the New York customhouse, were unladen and delivered under permits granted by the collector, and that there was no right of seizure after goods had once gone through the customhouse. The agent who had passed the goods was responsible as a bona fide representative of the United States Government; but the plaintiff maintained that after the goods had left the agent's hands they were no longer the responsibility of the United States customs.

Legare began with a whimsical sarcasm, comparing the plaintiff's position with that of the Greeks, who believed that any one could steal so long as he was not caught:

The leading idea of all the arguments of the other side was that the United States had adopted a sort of Spartan system of permitting fraud, so it be cleverly enough executed to escape detection at the customhouse, no matter how clearly it may be exposed afterwards.
The analogy, although casual, was an apt one for the ears of Justice Story, who was to deliver the opinion of the court. Legare completed his introductory remarks in the same strain, declaring that there was no plausibility in his opponent's argument, and that simply because inspectors were "perpetually on the watch to detect any violation of the revenue laws" was no reason for disregarding all other detection.

From then on Legare's words were direct, serious, and immediately pertinent. He made use of the Act of 1799 which stated that "individual pieces of goods, falsely invoiced" were subject to forfeiture. He cited the Act of 1832 which ruled that an entire invoice must be forfeited if it were "made up with intent to defraud the revenue." He showed that in neither of these acts was enforcement contingent upon "the manner" in which the goods were seized.

Taking a broader view of the question, Legare argued that "the power of the United States to enforce a forfeiture . . . is not dependent upon the acts or omissions of the appraisers and other officers of the customs." He contended that enforcement was necessary when invoices were made up specifically to deceive the regular officials of the customhouse. He then pointed out that the circumstantial evidence in the case showed intent rather than chance: First, the invoices were a "connected part of a series,"
and second, the "intent to make out fictitious invoices occurred on both sides of the water." This, he concluded, proved a "systematic combination for the purpose of fraud between the foreign importer and the buyer."

The Supreme Court affirmed the decisions of the lower courts and thus settled the principles which were from then on applicable to cases of revenue fraud. ⁷⁵

Legare's reputation was growing with each case. Chief Justice Taney remarked that no attorney general had ever given more perfect satisfaction. ⁷⁶ Even after the court term ended Legare's services were needed. Opinions of all sorts flowed from his pen, each one of vital use to some department of government and each one further enhancing his reputation.

An opinion which he wrote in July formed part of a complex political proceeding that brought about greater harmony between Great Britain and the United States. Legare took a vital part in the negotiations which led to the Ashburton Treaty, especially in that phase relating to a problem which had exasperated this country for several decades and had already brought on one war: the question as

to right of search of American vessels on the high seas.\textsuperscript{77}

The circumstances leading up to the treaty might easily have brought on another war with Great Britain. The seizure problem stemmed from the "Creole Affair." A ship by that name had sailed for New Orleans in 1811 with slaves on board. The slaves had revolted, killed the crew, and sailed to Nassau. The British court on the island had punished some of the slaves as murderers and set others free. Webster, as Secretary of State, had demanded an apology from England and compensation for the slaves.\textsuperscript{78}

Neither country could have picked better men to conduct a successful negotiation. Lord Ashburton, married to an American woman, a man of much good sense, had a greater understanding of American institutions and American ways than did most Englishmen.\textsuperscript{79} Webster, a forceful diplomat, had intelligence enough to seek advice from his colleagues before making demands and then to demand no more than Great Britain could offer. Legare, with his over-all knowledge of

\textsuperscript{77}Henry A. Wise, Seven Decades of the Union (Philadelphia, 1881), 202; *Niles' National Register*, LXIII (September 17, 1842), 37; Ramage, "Hugh Swinton Legare," loc. cit., 177.

\textsuperscript{78}An undeclared war, the "Aroostock," between the inhabitants of Maine and Nova Scotia had been going on for some time over a boundary dispute between the United States and Canada. William E. Dodd, Expansion and Conflict (Chicago, 1915), 124-125.

\textsuperscript{79}Tyler, The Letters and Times of the Tylers, II, 198.
international law, sat in on some of the discussions and gave his opinions, both oral and written. At Ashburton's request he reduced his remarks on the right of seizure to a written opinion. 80

As his correspondence shows, Legare was aware of international implications as well as international law. He realized, as did few Americans, the potentialities of an Africa that would open up to trade as soon as the traffic in slaves was stopped. He also knew that both Great Britain and France would vie for that trade and that the United States might lose the commercial opportunity entirely if she stubbornly continued to oppose England. A letter from the son of Alexander Hamilton reveals one of Legare's sources of knowledge:

Great Britain has, as you probably know, a fort ... near the mouth of the Gambia river erected on a small territory purchased from the natives, claiming to exercise control over the navigation of this river. ... The French have in a similar manner sought to control the ingress to the Senegal.

These two powers will have the command of two of the great arteries of Africa. As the suppression of the slave trade will open an important market in that quarter of the world for our cotton fabrics it may possibly be worthy consideration whether in the treaty on the topic some admission or recognition of principle adverse to these pretensions might not be inserted. 81

80 Hall, Official Opinions of the Attorneys General ... , IV, 98-105.

That the impending treaty would play its part in staving off a potential war was certainly on Hamilton's mind, and he felt that unless the treaty were completed before an election brought a possible change in the government, war cries might well grow louder:

Is it not the true interest of the Southern States to manifest a disposition to aid in the abolition of this abominable [slave] traffic and thus to silence our Northern agitators? Can it be doubted that for such a boon Great Britain would gladly enter into all reasonable stipulations to protect our coasting trade from a recurrence of such affairs as that of the Creole? ... Doomed as the country is to go again under the dominion of loco focoism, I feel anxious to see every cause of collision with foreign powers removed. Many look to war as a cure for the unsound state of the public mind. 82

Legare entered into that part of the Ashburton negotiations which, although perhaps not so important at the time as fixing the northern boundary, nevertheless had much to do with future commercial operations. The principles which he enunciated during the treaty discussions embodied these views: England and France must be prevented from using their military forces to bar American ships from African ports; American vessels must be allowed to compete in African trade and an admission of this right included in the treaty, expressly or tacitly; the possibility of a repetition of the Creole incident must be removed. These views were expressed in the opinion which Ashburton asked Legare 82 *Ibid.*
to write and they were included in the treaty as it was
finally framed. They were the principles which were to
govern maritime authorities in their relationships to
persons and property upon ships while in foreign harbors.
Legare's words are clear:

I have endeavored to show that a ship going into
a British port with slaves on board, would not,
according to the law of nations in analogous
cases, be responsible on that account to the
local authorities so long as those slaves re-
mained on board. . . . I am willing to concede,
for the sake of argument, that, in . . . /The
Creole/ case ships voluntarily entering into
British ports, with a knowledge of the state of
British law, may be taken to have voluntarily
submitted to the law, (right or wrong) as it is
interpreted there. Still, in the case of com-
pulsory entry, under an overruling necessity,
there can be no such presumption of acquiescence,
and I maintain that no authority, or principle,
or analogy of the law of nations will justify
the enforcing on board a foreign ship—thus in-
voluntarily within the jurisdiction of a foreign
nation—the municipal law of that nation, to the
utter subversion of authorities and rights un-
doubtedly established and guaranteed by the munici-
pal law of its own country.83

When the treaty was finally negotiated in August,
1842, it stipulated that England and the United States should
each furnish a squadron to be stationed off the coast of
Africa to suppress the slave trade. The United States thus
became a party to the control of African ports at the same
time that the right of seizure was removed.84 This,

83 Hall, Official Opinions of the Attorneys General
 . . . , VI, 103-104.
84 House Executive Documents 2, 27 Cong., 3 Sess.,
25-30.
together with the settling of the boundary line between Canada and the United States as far west as Oregon, brought a semblance of political harmony between Great Britain and this country and ended the threat of war. Lord Ashburton had apologized in writing for the necessity of the Creole affair. The international law, as expressed by Legare and set by the treaty, underscored the right of American merchants to commerce on the high seas and in the ports of the world.

Early in September recognition was given Legare for his part in the negotiations by an invitation to the Ashburton dinner in New York. His reply to the committee expressed the hope that the treaty was a step toward international harmony:

Were it only to have an opportunity of publicly expressing the sense I entertain of the admirable temper and judgment, the clear, candid and conciliatory spirit that have marked the whole conduct of your distinguished guest in the management of a discussion as delicate and complicated as it has ever fallen to the lot of any single diplomatist to conduct, it would have afforded me the highest pleasure to share with you in the congratulations. . . . It has been his good fortune, I trust, to succeed in making not merely a treaty of peace, but a peace independent of all treaty—a peace in the hearts of two great nations—and by inspiring feelings of mutual confidence and respect, in at once removing the causes of any

85 Turner, The United States, 1830-1850, 503.
immediate rupture and diminishing infinitely the chances of any future collision.\(^{86}\)

In the winter of 1842 Legare’s mother and sister Mary came to Washington to live with him. Though aging, his mother seemed well, and the three of them planned a sort of domestic idyl.\(^{87}\) Scarcely were they settled, however, when Legare suffered a severe attack of the intestinal derangement that was soon to prove fatal. Then in January his mother died and Legare was heartbroken. Seldom have mother and son remained as close to each other as he and the woman who had nursed him back to life during his first illness. He poured out his full sorrow in a letter to King,\(^{88}\) but his acquaintances in Washington saw only a little more sadness in a face characteristically melancholy.

Neither sorrow nor continuing ill health, however, kept Legare from the responsibilities of the ever-widening scope of his duties. In the spring term of 1843 he argued six cases before the Supreme Court, and because of the growing breach between Tyler and Webster, the President was taking more and more of his counsel upon international

\(^{86}\) Legare to Messrs. Jas. D. P. Ogden, Jas. G. King and others, Committee, Washington, August 29, 1842, quoted in Niles’ National Register, LXIII (September 17, 1842), 37.

\(^{87}\) Legare to Mary Legare, Boston, September 27, 1842. Chisolm Papers.

\(^{88}\) Johnson, “Biographical Notice,” lxxi.
affairs from Legare, especially in the development of a doctrine for the Pacific and the Far East.

The Texas problem precipitated a split between Tyler and Webster and eventually forced the Secretary's resignation. Webster believed that, although Texas could be legally annexed, it was not expedient to do so. Tyler felt that it was both legal and expedient. The growing opposition between the two men was noted by a member of the Senate who wrote: "It was thought by the President that Webster could not be trusted with the secrets concerning the Texas question, much less the negotiations for annexation. . . . Consequently he was dismissed." To Legare, on the other hand, Tyler offered public commendation, calling him "the best man in my cabinet, the only one that attends to his legitimate duties, and scorns participation in party drudgery. . . ." Those duties were as unending as they were varied.

The six court cases alone were arduous enough for a jurist in any one term. Although two of them were not argued, Legare prepared the complete briefs for the Court

89 Turner, The United States, 1830-1850, 510, 511.

90 Oscar Doane Lambert, Presidential Politics in the United States, 1841-1844 (Durham, 1936), 85.


92 Niles' National Register, LXII (1842), 267.
He won the four cases which he argued. One, United States v. Eckford's Executors, settled finally the question of Swartwout's defalcations, which had caused so much congressional debate while Legare was in Congress. Two precepts were established by Legare's argument and by the court's decision: (1) that each term of office of a governmental official is a separate responsibility, (2) that Swartwout, or any collector of governmental revenue, held money as a mere bailiff and had no right to do anything with that money but turn it over to the government. Williams v. United States, Legare's final case as Attorney General, established the responsibility of the President of the United States as to the various departments under him. The decision declared that the President's duty "requires his superintendence of the administration" but does not require him "to become the administrative officer of every department . . . , or to perform in person the numerous details incident to services . . . "

But the great argument of Legare's last year before

93 United States v. Acosta, 1 Howard, 24 (1843); United States v. Linn et al., 1 Howard, 104 (1843).
94 United States v. Eckford's Executors, 1 Howard, 251 (1843).
95 Williams v. United States, 1 Howard, 290 (1843).
the court was in the case of Jewell v. Jewell\textsuperscript{96} which involved the question: "What is the law of marriage in the United States?" Legare's arguments, however, were not included in Benjamin Howard's brief report; the only evidence available comes from the memory of those who heard him. In 1882 the President of the American Bar Association told the members at their annual meeting:

There was no extent to which Legare's industry and learning did not carry him when the necessities of his case seemed to require it. In the famous case of Jewell vs. Jewell . . . he took the trouble to send all the way to Vienna for Eichhorn's Kirchenrecht, of which he made great use in the argument. For Legare was not only learned as a civilian, but a thorough German scholar. In profundity of legal research, in elevation of sentiment and social views, many familiar with his professional course consider this argument his chef d'oeuvre.\textsuperscript{97}

An anonymous writer in The American Review remarked that "all who heard it admitted that it was one of his greatest efforts."\textsuperscript{98}

As the court term drew to a close and national affairs soon would demand his adding still another strenuous office to his responsibilities, his health grew worse. In April immediately after the court sessions were ended, Legare

\textsuperscript{96}Jewell et al. v. Jewell et al., 1 Howard, 219 (1843).
\textsuperscript{97}"Annual Address by Alexander R. Lawton," Report . . . of the American Bar Association, 206.
\textsuperscript{98}"Life and Labors of Hugh S. Legare," loc. cit., 430.
boarded ship and sailed for his last visit to South Carolina. This was his first opportunity since the death of his mother to settle the family estate. His stay in Charleston was brief, and he returned by the first week in May, believing that the sea voyage had improved his health.99

On the day of his return a cabinet meeting was called by Tyler, and Legare was appointed Secretary of State. He accepted the post but refused to consider it a permanent appointment. This is indicated in a letter to his sister:

"As to the Cabinet, it seems to be nearly, not quite, arranged that I am to be the Secy. for awhile. All the Cabinet called for this, and they wished me to be permanently so, but to this I demur."100 Two days later Legare was officially appointed as the first officer of the Cabinet.101 Newspapers expressed no surprise, and, although various reasonings were applied to Tyler's policy, none questioned his choice.

Although the short month during which Legare held the secretaryship did not give him time to take any decisive

100 Ibid.
101 Washington National Intelligencer, May 8, 1843; Niles' National Register, LXIV (1843), 163.
102 "if the officers occupying positions in this government refused to promote the wishes of the administration, others could be found who would." Washington National Intelligencer, May 2, 1843.
steps in the developing relations of Texas, California, or Oregon, he, nevertheless, expressed Tyler's doctrine as to America's foreign policy in the Pacific, especially in relationship to the future territory of Hawaii. This doctrine was that the European powers, especially France and England, must keep their hands off the little islands.

The development of what can be called Tyler's policy of American expansion in the Pacific began on December 14, 1842. At that time two emissaries from the islands sought full recognition of the independence of Hawaii. The agents convinced Tyler of the commercial importance of the islands to the United States. Webster, however, frowned upon any active commitment in the Pacific, fearing that the resultant collision with England or France would disturb the newly won harmony with Great Britain. He, therefore, sent a noncommittal reply to the emissaries. Tyler, on the other hand, in a message to Congress said:

Considering . . . that the United States possesses so large a share of the intercourse with those islands it is deemed not unfit to make the declaration that their Government seeks nevertheless no peculiar advantages, no exclusive control over the Hawaiian Government, but is content with its independent existence, and anxiously wishes for its security and prosperity.  

On March 23, 1843, Webster informed the Minister to England,

---

103 Webster to Haalilio and Richards, December 29, 1842, Senate Executive Documents, 77, 52 Cong., 2 Sess., 40-41.
104 Ibid., 35-37.
Edward Everett, that "the President would regret exceedingly that any suspicion of American designs would prevent France and Great Britain from adopting . . . a just and conservative course towards the government and people of this remote but interesting group of islands." 105

What Tyler did not know in March was that Lord Paulet, commanding the British sloop "Carysfort," had seized control of the islands on February 25, 1843. Paulet had taken possession in order to forestall a similar seizure by a French fleet which was in Pacific waters. 106

When news of the British action reached the American public, however, a clamor arose and reporters used such phrases as "bold and brutal attack" and "abomination of injustice." 107

The Hawaiian problem became Legare's. His own concept of the expansion of American mercantile interests and his expression of the advice he had given Tyler appeared in a note to Everett as the orders of the new Secretary of

105 Webster to Everett (No. 34), March 23, 1843, ibid., 57, 4. See, also, Sylvester K. Stevens, American Expansion in Hawaii, 1842-1898 (Harrisburg, 1945), 7; Ralph S. Kuykendall, The Hawaiian Kingdom, 1778-1894, Foundation and Transformation (Honolulu, 1947), 197.

106 The French fleet in the Pacific was made up of 8 ships carrying 242 guns; the British fleet had 4 ships with 104 guns, and was expecting several other cruisers; the United States' fleet of 5 ships and 116 guns had only one frigate, the famous "United States." House Executive Documents 166, 27 Cong., 2 Sess., 111-112.

107 Niles' National Register, LXIV (1843), 237-238.
There is something so entirely peculiar in the relations between this little commonwealth and ourselves that we might even feel justified, consistently with our own principles, in interfering by force to prevent its falling into the hands of one of the great powers of Europe.

He also emphasized the importance of the Hawaiian harbors to American trade with China, declaring that "even the undisputed possession of the Oregon territory and the use of the Columbia River—or indeed anything short of the acquisition of California—would be insufficient indemnity to us for the loss of these harbors." Everett was requested to do all he could "to prevent the consummation of any purpose of conquest that England may possibly have conceived."

The new Secretary of State showed a sensitive awareness of what England would or would not do, adding, "On the whole, however, the better opinion seems to be that what Lord Paulet has done will be disavowed."

Legare estimated the situation correctly. Although the British fleet in Pacific waters would soon be larger than the combined French and American fleets, and even though the seizure of the islands by Lord Paulet gave to Britain the strength of possession, the British Minister of Foreign Affairs, Lord Aberdeen, wrote to the English Ambas-

---

108 Legare to Everett (No. 46), June 13, 1843, Senate Executive Documents, 57, 52 Cong., 2 Sess., 7-8. See, also, Kuykendall, The Hawaiian Kingdom, 1778-1854, 199-200.

109 Ibid.
sador at Paris, Lord Crowley, saying just about what Legare had predicted:

Her Majesty's Government are of opinion that it would be highly desirable, with a view to the promotion of unanimity and a constant good understanding between the three powers [France, Great Britain, the United States] not only that they should all place themselves upon exactly the same line in this particular, by formally recognizing the independence of the [Hawaiian Islands], but also that they should mutually pledge themselves not to occupy them on any ground or pretext, either absolutely, or under the title of protectors, but, on the contrary, to leave those islands entirely under their own government, and equally open to all the world. 110

Legare's decisive words to Everett, at the moment when Great Britain had temporary possession of the islands, resulted in the declaration of a hands off policy on the part of European powers. France had to follow England's lead. Legare knew that if the independence of the islands could be maintained for a few years, American traders, settlers, and missionaries would bring the valuable prize into the possession of the United States, even as already had been accomplished with Texas.

At the time Legare was writing the letter to Everett and ending his part in the drama that was ultimately to bring Hawaii into the boundaries of the United States, the President and the cabinet, with the exception of Legare,

---

110 Aberdeen to Crowley, July 21, 1843, quoted in part in Kuykendall, The Hawaiian Kingdom, 1778-1854, 201.
had deserted Washington. Tyler and the cabinet were making a triumphal journey from Washington through the towns of the eastern seaboard to Boston where they planned to participate in a great celebration at Bunker Hill. Militia and bands escorted them through Baltimore, Philadelphia, New York, and Providence, each stop being marked with banquets and speeches. 111

Legare remained in Washington for a time and then joined the presidential party. He expected to speak at the Bunker Hill celebration, along with Webster and others. After that he intended to go to the seashore with Ticknor for a brief rest.

Scarcely had he arrived in Boston, however, when the old intestinal ailment seized upon him and this time never let him go. Ticknor had him brought to his home, and the President's own doctor as well as the best physicians of Boston attended him. Although the papers of the land published the details of his last hours, the story of Legare's death was, perhaps, best told by Ticknor who had known him so well:

An old friend has just died in my house, in my arms. . . . He came here . . . to the great national celebration . . . and was taken ill the same morning. I was with him that day and the next,--during which his sufferings were great.

111 *Miles' National Register*, LXIV (1843), 261, 263, 267.
The suddenness of the death . . . and the greatness of the loss—for he was certainly the most important man in the Administration after Webster left it—filled our city with sorrow and consternation. . . . He was a man of genius, full of refinement and poetry, and one of the best scholars in the country; but, more than all this, he was of a most warm and affectionate spirit.

He possessed his powers in perfect composure to the last moment; made his will, sent all his public papers to the President, . . . and did every thing without once altering the level tone of his voice . . . .

It was one of the most solemn and striking events that has ever come within my knowledge. The old physicians who attended him . . . were as astonished at his composure as I was.112

So tranquil was his death that Ticknor, even though he held him in his arms, was unaware of it until one of the physicians told him that Legare had died.113

112 Ticknor to John Kenyon, Boston, June 29, 1843, quoted in Ticknor, Life, Letters, and Journals of George Ticknor, II, 174.

113 Boston Daily Advertiser, June 21, 1843.
 CHAPTER XIII

LEGARE THE SPEAKER: AN ESTIMATE

John Quincy Adams, candid commentator that he was upon congressional figures of his day, declared that the Sub-Treasury speech of Legare's was "one of the most eloquent speeches of two hours ever pronounced" in the House of Representatives. Adams' description of Legare as a speaker, although not softened by any undue attempt to praise, is probably, for that very reason, relatively accurate:

Legare has not the ideal form of an orator—short, thick, with a head disproportionate in size to his body; a fattish, ugly, but intelligent face, dark complexion, and slightly limping left foot; but his voice is strong; his enunciation distinct though rapid; his actions not graceful, but energetic; his intonations alternately high and low; and his command of language copious and ornamental. He is, like Hoffman, rather of the English than the American school, and will surely rank among the distinguished orators of the nation.¹

The power of Legare's spoken word was proclaimed by all who knew him well enough to feel the impact of his mind. At his death five men, whom he himself would have

¹Allan Nevins (ed.), The Diary of John Quincy Adams, 1794-1845 (New York, 1951), 486.
placed high among human beings, uttered heartfelt eulogies of him. All believed that the reaches of high eloquence were his. Four of them saw him as cut down before he had attained to his full powers.

One depicted him as already upon a pinnacle. The elderly Justice Joseph Story spoke in sorrow before a group of Harvard law students. For an hour he amplified his conviction that the nation had lost a great statesman and its most learned jurist. Story concluded by saying fervently and simply: "To me—had my own career closed before his—a single word of praise from his lips, could I have looked back to know it, would have been as valuable a tribute as from any other human being." Those were the words of an able philosopher of jurisprudence who had known Legare when he argued before the Supreme Court, who had watched him win case after case with chains of reasoning that seemed unassailable to the justices.

George Ticknor of Harvard saw Legare as not yet having fulfilled his promise:

He was a man of genius, . . . and one of the best scholars in the country . . . . And yet this man was only forty-seven [sic] years old; just as the country, divided about every thing else, was beginning to look with great unanimity to him, from a perfect confidence alike in his talents,

---

2 Address quoted in Boston Daily Advertiser, June 30, 1843.

3 Legare lost no cases before the Supreme Court of South Carolina or before the Supreme Court of the United States after he re-entered the law in 1839.
his principles, and his honour,—it was, indeed, just when he felt sure he was at once "to burst out into sudden blaze," that "the Blind Fury came, and slit the thin-spun life."

A similar picture of Legare was drawn by Preston in the fall of 1843 before a Charleston audience. Preston also saw him as a man struck down too soon, thus shattering the "future brilliancy" of his career:

For the attainment of office, which, to ordinary men, is the object and end of ambition, was but a starting point for him. We who knew him, believed he was yet in his orient; and that he was destined to an ascension independent of, and beyond, official station.

Equally sincere were the words spoken a year later by another lifelong friend of Legare, Petigru, before a Fourth of July audience in Charleston:

No more shall we kindle in the glow which so often warmed the heart, when some great theme was touched by his genius, in the forum or the senate. And now on this solemn day when we recall the illustrious deeds of Moultrie, Pinckney, and Marion, let us not begrudge a tear to the memory of Legare, who illustrated in his life, that the republic is the nurse of genius; who loved his country with the ardor that republics can only inspire, and who by his eloquence, could so well portray the immense value of the gifts conferred upon us by the liberty and union of America.

---

4 Ticknor to John Kenyon, Boston, June 29, 1843, quoted in full in Ticknor, Life, Letters, and Journals of George Ticknor, II, 173-175. Legare died at the age of forty-six.

5 Preston, "Eulogy on Hugh Swinton Legare," 4.

6 Carson, Petigru, 236.
Petigru had shared with Legare a great love of the Union which both had fought for throughout the years.

The old warrior of the Charleston Unionists, Alfred Huger, declared that "no one could look at the beaming of [Legare's] countenance, without seeing the force of intellect and power; and no one could listen to him without being conscious of the presence of both." 7

These opinions were those of Legare's close friends and were, perhaps, biased. But they were opinions of men of high integrity and sound judgment. They were the result of long association, of close and penetrating observation.

The remarks of newspapers or of acquaintances less intimate, although perhaps more general, were, nevertheless, of the same nature. In 1840 a Charleston paper called one of Legare's speeches "another powerful evidence of his accomplished and gigantic mind." 8 A Virginia paper reported that it "had heard much of his great abilities, his learning, his wit, his fluency, ... but all preconception was distanced by the actual exhibition." 9 A Newark paper praised "his manly and eloquent" speech against the Sub-

7 Quoted in Hayne, Lives of Robert Young Hayne and Hugh Swinton Legare, 157.

8 Charleston Southern Patriot, December 11, 1840.

9 Richmond Whig and Public Advertiser, September 11, 1840.
Treasury bill. A New York paper called the same speech "masterly and profound."

To a Boston reporter Legare was a speaker who "arrested the attention" by the use of a "powerful logic, weighty matter, and superb elocution," all of which produced a "magnificent address."

The esteem which many of his contemporaries held for Legare, as an orator and as a man, was evidenced in the national consciousness of a great loss which was felt at his death. This fact was mentioned by William Cabell Rives in an article written for the Southern Literary Messenger:

All must have remarked, and many not without surprise, the loud and universal acclaim of mingled sorrow and praise, which followed to the tomb one whose habits and tastes through life cherished the privacy of studious retirement—who, far from courting, shunned the public gaze, except when an imperious sense of duty brought him before it, ... and who from his inmost heart despised, as in his lofty and burning eloquence he was ever wont to brand, the unworthy arts of the demagogue.

The nation officially wept at Legare's sudden death. The President ordered all officers of the government to wear black arm bands for a period of thirty days. For six months the army and navy officers wore similar bands, both on arm

10 Newark Advertiser, October 1, 1841.
and on sword hilt. From Boston to Charleston courts held special eulogistic sessions and then adjourned for periods of mourning. At the instigation of Daniel Webster and the American Bar Association, services for Legare were held before the Supreme Court on the first day of its January, 1844, term. Members of the Bar from all parts of the country, together with the justices and officers of the Supreme Court, filled the hall and listened to the reading of resolutions such as the following:

The American Bar was not insensible to the loss sustained by the proud profession, of which the deceased was so distinguished an ornament. Its members everywhere truly participated in the general grief, and those of them now assembled, with whom during the latter period of his professional career, he was brought into more intimate association, have deemed it to be peculiarly appropriate at this time and here before this august tribunal, at whose pure shrine he so successfully ministered while living, to speak his praise; here, where by the extent of his diversified attainments, the richness of his rare eloquence and the cogency of his vigorous reasoning, he laid the foundation of his most enviable fame; and where, had it pleased an all-wise Providence longer to have spared him, he was destined to have won a more wide-spread, enduring and imperishable renown.

The ceremonies and acknowledgments offered as tributes to Legare, both written and oral, recognized the worth

---

14 Charleston Southern Patriot, June 30, 1843.
15 Baltimore Sun, June 23, 1843; Washington National Intelligencer, June 23, 1843; Charleston Courier, June 27, 28, 1843.
16 Niles' National Register, LXV (1843-1844), 322.
of the man and his service to the nation. That service, both legislative and legal, had rested primarily upon Legare's abilities in deliberative and in forensic speaking. His character, his learning, his talents of eloquence had all been expressed before audiences which had judged him, whether sitting in assembly or on the bench, and who now mourned his loss.

If success in speaking is determined by an orator's ability to persuade, then Legare was preeminently a forensic speaker. The Court's expressed opinions and his own victories in the courtroom attest to his effectiveness. It cannot be said that any of his speeches in Congress, with the single exception of a short effort in the Mississippi election contest, in any manner detracted from the reputation which he was building. Certainly the Harrison campaign speeches added to his stature. Before the courts, however, he was the complete master.

Legare spent forty years making himself the forensic speaker which he became. His objectives during all that time had been:

Get wisdom—get understanding—or as Milton quaintly but forcibly expressed it: "Whose mind soever is fully possessed with a fervent desire to know good things, and with the deepest charity to infuse the knowledge of them into others; when such a man would speak, his words . . . , like so
many nimble and airy servitors, trip about him at command, and in well-ordered files, as he would wish, fall aptly into their places."17 Legare was the embodiment of his learning. During his years of study he had sought "the good" of all lands, in many languages, and had made the knowledge of all branches of thought his own. His mind had been used in the service of his country, and Tyler and his cabinet had made "copious drafts upon it."18 The learning he acquired became his literally, for whatever he read was at once indelibly a part of his mind. It was always his habit to read slowly, carefully, writing down his reactions. Even after he assumed the burdens of a cabinet position, Legare continued this sort of study:

... for however small the interval of time which fell upon his hands, unoccupied by the necessary demands of business, or the cherished society of a chosen circle of friends, it was never wasted. A book, a pen, or a train of thought to be resumed, was always at hand to absorb and employ it usefully; for so perfect was the discipline of mind he had established, through long habits of industry and study, that he turned his attention at will, to whatever subject seemed, at the moment, fittest to engage it.19

Legare's habits of speech preparation changed radically during his lifetime. Until 1828 his practice had been

17The quotation is from John Milton's Apology to Smectymnuus. Writings, I, 458.

18Tyler, The Letters and Times of the Tylers, II, 386.

to write out his speeches, commit them to memory, and then deliver them much as they had been written. Perhaps his success in persuading the South Carolina House of Representatives to accept protest instead of nullification principles convinced him that written speeches were no longer necessary. However that may be, no manuscripts of Legare's speeches after 1828 have come to light.

After 1828 it gradually became his habit to pore over books complementary to the subject he would speak upon, particularly any new acquisitions. As he read he would make marginal notations laboriously, to such an extent that the notes themselves became commentaries upon the works. Before any important speech or pleading at law his custom was invariably to work late into the night. When he had finished his reading, his speech or his pleading was complete, not on paper but in his mind. The sentences he had read were so stamped upon his memory that he could cite them as they had been written.

Legare prepared no speech nor pleading as a tour de force. Each address, each case, was a part of a larger moral purpose, perhaps to bring a greater stability to the Union or to further refine the common law of the land. Yet the particular case was never neglected, nor even subordinated to the larger objective. As Henry Bailey, Attorney General of South Carolina, remarked to the court:
Profound as was his scholarship, thorough, minute, and delicate as was his knowledge and his appreciation of all literature and general sciences, it was fully equalled by his vast erudition, his thorough comprehension, and his entire familiarity with all the particulars of the common law—its creature [sic] and deduction—chancery jurisprudence. Whoever has had the good fortune to be associated with, or the ill-fortune to be placed against him, at the bar, will acknowledge this.  

Because he saw so large a background of world thought Legare's utterances were often filled with didacticism. He usually sought to teach as well as to persuade. His audiences, however, accepted his learning. When he spoke, the legislative hall filled; the courtroom became a forum. That this ethical appeal was a tangible quality there is ample evidence.

It was the high moral tone so visibly impressed on all his actions, his disdain of every thing low and mean and narrow, the commanding elevation of his principles and views, the lofty spirit of personal honor, the magnanimous courage and self-reliance of conscious virtue, which made him truly great.  

In addition to his acknowledged learning and evi-

20 Charleston Courier, June 27, 1843.


22 "As a scholar, he stood without a rival among the public men of America of his day, and if, even in that class of learned men who make the cultivation and pursuit of letters the sole business of their lives, he had any superior in scholarship, it would be difficult to say who that superior was." Rives, "Hugh S. Legare," loc. cit., 574.
dent high ideals, another quality was implicit in the ethos of Legare: an earnestness in pursuit of objectives which he felt to be for the general good. Sincerity came to be associated with his name, and his usefulness was publicly recognized. "The loss of so distinguished and so useful a man," remarked a Boston reporter, "is indeed a national calamity."23 A Charleston paper respected him for recognizing "no rule of statesmanship but his country's good."24 "Men of all parties," said the Baltimore Sun, "acknowledged the purity of his motive and felt that any and every trust was safe that could be placed in his hands."25

The force of Legare's ethical appeal always expanded, rather than contracted, during the course of one of his speeches or pleadings. When he enlarged an opponent's point to show that its interpretation was actually the opposite of what had been implied, when he drew upon historical facts which the opponent had not considered or had not known, Legare constantly enlarged his stature. In the Sub-Treasury speech, after Ogden Hoffman of New York had praised the efficiency of Roman fiscal policies, Legare showed factually that the Roman system had been that of a Verres, of a despoiler of the people, and so had been no fiscal policy

23Boston Daily Mail, June 23, 1843.
24Charleston Courier, June 26, 1843.
25Baltimore Sun, June 23, 1843.
at all. Because of his amazing memory Legare often turned to his own advantage an opponent’s citation of an authority by quoting that authority more fully, thereby showing that the passage actually called for an entirely different deduction than the one advanced. Yet when Legare used his learning to confute an opponent there was never any mere display of knowledge for its own sake. He was too much in earnest for ostentation; he believed too firmly that true eloquence, like true liberty, was "founded in the most elevated moral sentiments," and was "incompatible with any other."27

A few days before his death Legare took time out from his duties as Secretary of State and Attorney General to write his concept of a "good man." This was incorporated in a letter to a widow who had asked his advice on bringing up her son:

No man governs multitudes without a strong will, and, generally speaking, moral qualities are greatly more predominant in the world than intellectual ones--perseverance, application, fidelity, encouragement, the love of truth for its own sake, and in all things the sense of duty, the charm, the eloquence, the almighty power of sincerity of heart--these are the true elements of greatness, properly so-called.28

28 Legare to Mrs. A--a Mother, Washington, June 6, 1843. Chisolm Papers.
As ethos was Legare's armor, logic was his sword. He grasped its hilt firmly and wielded its edge with complete mastery. In his pleadings he never passed from the line of argument, nor lost sight of the cause. When he spoke before the Supreme Court he removed all excess verbiage, depended little upon emotional appeal, and let his logic stand clear. Chief Justice Taney remarked: "He came to the argument of every case fully prepared, presenting it in the fewest possible words and with the candor and frankness which became his official situation."

Although Legare used examples, analogies, and authority to enhance the logic of his arguments, that logic always seemed to emanate from natural law, from common sense. Though he used citations from the Roman civil law on marriage, the British common law, or feudal law on property; though he brought in the words of Grotius or Pufendorf on international law; though he traced concepts down through the ages, his conclusions, after appraising what he had shown, seemed to be the only conclusions possible to thinking men. The main thesis of his argument remained uppermost at all times. His chains of reasoning were always clear. Every illustration seemed to further the point he was pursuing.

---

29Story, "Tribute to the Memory of Mr. Legare," Boston Daily Advertiser, June 30, 1843.

30Niles' National Register, LXV (1843-1844), 322.
Often Legare's reasoning would engulf the opponent's analyses and deductions, showing them to be but further examples of his own contention. In the case of Watkins v. The Lessee of Holman, Legare appropriated his opponent's strongest contention. Crittenden had based his case on a premise from the Roman civil law, contending that his clients held their rights to water front property under the law of alluvion as described by Justinian in his Institutes. Legare, who knew the Institutes as well as he knew the South Carolina Law Reports, accepted Crittenden's premise but went further into Justinian and showed that by the same law his opponent's clients did own the land on the water but that their claim ended at high water mark. As a consequence Legare was able to prove that the opponent's claim was not concerned with the land under contest, which lay above that point.31

Similarly, in deliberative speaking, Legare frequently used the opponents' authorities and examples to reach inferences and conclusions the reverse of what they had claimed. In this way he invalidated Hoffman's illustration of Roman monetary efficiency. Hoffman had called the Roman system a fine example of an economy based on metallic money. Legare described the Roman economy with

---

greater clarity, showing that it actually represented a
desperate, degenerate state which had so debauched its own
people that they were in little better condition than the
Vandals and the Huns who soon overran them.\(^{32}\)

Not only did Legare occasionally explode the
analogies and examples of his opponents but he often
strengthened his own position by corroborating the illustra-
tions of his colleagues. To enhance his own argument in
the same Sub-Treasury speech Legare substantiated John
Sergeant's\(^{33}\) example of a depression in England under
metallic money and went on to develop similar instances in
both United States and French history.

Although Legare's citation of authorities added
ethical appeal to his arguments, they were, nevertheless,
necessary elements of logical reasoning. In the Sub-
Treasury speech there were forty-eight citations of author-
ity. Only four were direct quotations, and those were
Latin illustrations of points made. All the remaining
forty-four were paraphrases, some of which covered several
pages of the printed text of the speech. It is interesting
to note that although Legare, the classic scholar, made
adequate use of ancient history for examples and analogies,
in this particular speech he went to classic authority only


\(^{33}\)Whig Vice-president candidate in 1832.
six times out of the forty-eight. The great bulk of his authority was taken from the writings of contemporary economists, statesmen, financiers, such as Rothschild and Gallatin. Added to these were records of the House of Commons and the House of Representatives, statistical publications, bank statements, and late issues of the learned journals. The list of materials covered in Legare's preparation for a speech reads like the bibliography of a careful debater, aware of all the contemporary trends, rather than that of a classical scholar merely delving into the past.

Throughout his arguments, forensic or deliberative, Legare made little use of formal syllogisms. He usually appealed to

-the sense of honor, the sense of duty, the example of illustrious ancestry, the pride of long established superiority, the sacred obligation of transmitting to our children the heritage of liberty and glory handed down to us from our fathers. He resorts continually to topics like these, not because he has no better ones, but because, in fact, no others can possibly supply their place. . . . He deals, therefore, not in syllogisms and dissertation, but in maxims, in statements, in examples and enthymemes.34

Legare chose enthymemes to move from substantiated principles to conclusions, or to bridge to the point under discussion. The few syllogisms he used were seldom emphasized, except as

34 "Demosthenes, the Man, the Statesman, and the Orator," Writings, I, 464.
devices of style, in which case he used sorites, either in a series of inferences as statements, or embedded within a chain of questions.

Intermingled with ethical and logical proof in Legare's arguments was a copious use of emotional appeal. In his legal pleadings his emotional proof was less distinct. In deliberative speaking it was ever present. It was the underlying factor in the persuasiveness with which he voiced his belief that much discussion and much time must elapse before the great problems of the country could be solved.

Legare made full use of the strong drives of man. Self-preservation, the desire to retain the status quo, the desire for change, altruism—all were appealed to in his speaking. Those drives were often blended closely, especially when he called for concerted action on the part of the audience.

He appealed most often to the sense of responsibility, speaking usually as if his audience were the only responsible agents of the right action he was advocating. In 1832 Legare used this appeal as he addressed the Union party in Charleston:

But the fallacy of the argument on the other side [the nullifiers'] consists in ... denying to others the very right of judging which we claim for ourselves [for South Carolinians] ... Let us [the thinking Unionists'] weigh and consider
before we advance to those measures which must bring on the most trying and terrible struggle this country ever saw.35

At the end of the same speech Legare made further use of the appeal to responsibility, adding to it the stronger drive of personal pride. He used the toast: "We have been taunted as submissionists—I am not afraid of a nickname. . . . I give you Sir,—The Submission-men of South Carolina—'They dare do all that may become a man. Who dares do more, is none.'36 Later, in the House of Representatives in Washington, he singled out his listeners as the only body capable of affirmative action by making the audience responsible for prosperity of the country. Unless Congress took immediate steps to preserve the financial institutions, it would be, Legare said, like a "wealthy individual who withdraws himself from his neighbors in time of trouble."37

The most comprehensive, and probably the most complex, use of the appeal to responsibility occurred in his speech on Official Defalcations. In the midst of a request to the conservatives in the House to check the corruption of the administration, Legare paused to define what the future political course of the South would be and what its responsibility should be:

35"Speech before the Union Party," ibid, 275, 279.
36Ibid., 279.
37"Spirit of the Sub-Treasury," ibid., 289.
I felicitate the country on the prospect that the South . . . will be brought back to her proper position in our federal politics. That position is necessarily defensive and conservative. We having nothing to desire or to hope from innovation or abuse of any kind. Our only salvation is in the constitution as it was formed by our fathers, honestly carried out in all its principles, and in its true spirit. The . . . consuls and dictatorships are not for us. None of us, it is probable, will ever more lead the pomp of the Triumph up the steep of this Capitol. But we have still our power and our mission . . . . Standing, as we ought, aloof from the perverse influences of ambition, it should be our aim, as it is undoubtedly within our power, to maintain that high public morality which is worth more than all constitutions . . . . No language can characterize the baseness and folly of the Southern man who would sacrifice the independence, the elevation, and the controlling advantages of such a position to the slavish discipline and low ends of faction. 38

Legare made a study of audiences. He saw the United States as a country speaking and listening, participating in an age of much discussion. His conclusions relative to the modern orator were written in an essay, "Demosthenes, the Man, the Statesman, and the Orator," shortly after he had ended his years in Congress. "We have seen multitudes," he stated, "probably greater than any addressed by the ancient masters, brought together, by means of the steam engine, from the most distant parts of our immense territory, to consult with one another upon the state of the nation." 39 Moreover, audiences, he continued,


39 "Demosthenes, the Man, the Statesman, and the Orator," ibid., 443.
"listened to the best speakers, exhausting all their resources of invention to supply topics . . . in order to meet the almost incessant demands made upon them by a people insatiable after political discussion." Even listeners such as these, however, would not give their attention indiscriminately, and Legare observed that quiet and patient as these vast popular audiences were, . . . their attention was far from being uniform and undiscerning. They never once failed to listen to the best speech with the deepest silence, and award the highest honors to the best speaker. We mean the best in the proper critical sense of the word; for our previous opinions, founded upon the experience of other times, have been fully confirmed by our own, that it is impossible to speak too well to a vast and promiscuous assembly . . . .

Legare emphasized his belief that such audiences demanded solid substance as the first criterion of a speech and placed that element above all others:

Our experience is conclusive that in any assembly met to discuss and do business, the speaker who really knows more about the matter in hand than any body else, and is at all in earnest about it, will be sure to lead, in spite of every disadvantage in style and delivery. We know it is so in the House of Representatives at Washington, for example—a body, of which, for many reasons it is so difficult to command the attention, that we have heard intelligent foreigners inquire whether it ever listened at all. Yet, it does listen; and it listens to any one who has information to communicate on a subject interesting to it, and will do so with any thing approaching to brevity. It listens always to gentlemen who have established a reputation for speaking only

\[40\text{Ibid.}, 443-444.\]
to inform others, and to illustrate the question before the House.\textsuperscript{41}

Both in forensic and in deliberative speaking Legare used an emotional appeal especially adapted to the particular audience he was addressing. Within a pleading or a speech it was a heightened psychological instrument, usually preceding a reasoned point. The specific device was that of eulogizing the authorities he used at the moment of their introduction. He did this effectively before Supreme Court Chief Justice John Marshall, as evidenced by the opinion rendered in Weston \textit{v.} City Council of Charleston.\textsuperscript{42}

This introductory praise of an authority, as employed by Legare, was never long. It was usually only a remark or two to enhance a citation, but it had a studied effectiveness. An instance of its use occurred in his speech on the "Recognition of Hayti." After Legare had ridiculed the "nine hundred and ninety-nine commentators" mentioned by Pickens of South Carolina, he praised the one authority which he had chosen to use himself:

\begin{quote}
the thousandth is all-sufficient for me. I mean honest Hatsell, whose work may scarcely aspire to the dignity of a commentary, but is, at any rate, a most useful and excellent compilation.
\end{quote}

\textsuperscript{41}Ibid., 457.

\textsuperscript{42}Weston \textit{et al.} \textit{v.} City Council of Charleston, 2 Peters, 449-480 (1829).
If you will turn to his indexes, you will find abundance of law for the proposition I am maintaining. 43

An analysis of any of Legare's speeches will reveal that he blended the three types of appeal, adapting his proofs both to the occasion and the audience. A breakdown of the Sub-Treasury speech, for instance, will show that, although he was ostensibly arguing for change (as it would take place through the great destiny open to the United States), he was actually advancing the contention that only by maintaining the status quo of the American credit system could the country attain to that destiny. 44

43 "Recognition of Hayti," Writings, I, 325.
44 Analysis of the interfusion of proofs of the Sub-Treasury speech:

I. Introduction
A. An analogy between British and American economics
B. An analogy between the administration's proposal and primitive Dorian money economy
C. Eulogy to the steam engine as the instrument of future greatness, which would
   1. make the human race a happy family
   2. bring cheap fabrics to the working class
D. An example of changes which factories had brought to Europe

II. Body of speech (discussion and argument)
A. Objections to a metallic currency
   1. Example of brokers as mere profiteers
   2. Appeal to fear
      a. that panic might result
      b. that Congress might have to apologize to the nation if such a currency were adopted
B. Analogy of English suspension of bank payments, followed by logical argument
   1. The United States had more resources than England
   2. The action would permanently discredit bank notes
   3. (Appeal to fear) Control of currency would be given up to the states
C. Appeal to power of the House
   1. Power of example
   2. Power of authority, precept, patronage, connection
   3. Power to change the Constitution

D. Appeal to altruism
   1. The reform of the states' attitudes
      a. Example: Man who withdraws himself from his neighbors in time of trouble
   2. Use of various authorities:
      a. Old saw: Shall we hide our light under a bushel?
      b. The Bible: Shall we bury our ten talents?
      c. Interrogatory analogy: Shall it be right in a government which in a private citizen shocks the moral sense of mankind?
      d. Analogy: Shall the government bury itself like Sardanopolis?
      e. Shall the government, like Nero, fiddle while Rome burns?

E. Logical argument continued
   1. Executive's principles were correct; his inferences were wrong
      a. Paper currency must maintain convertibility
   2. Ethical appeal: We must as statesman . . . . This is why I . . . .
   3. Appeal to fear: The country will have a depreciated currency unless banks make an effort . . . .
   4. Appeal to duty: It is one of the highest obligations of government to . . . .
   5. Appeal to status quo: Far from being an innovation it has been universal from earliest times . . . .
      a. Analogy to Roman system of collecting taxes
   6. Example of England in 1822 and 1825
   7. Authority: Rothschild, Pitkin's Statistics
   8. Example: France in 1834
   9. Example: England and the states which surround her
   10. Eulogy: To England
   11. Example: The United States
   12. Eulogy: To the United States as seen by a returning traveller (ethical, in that Legare was the traveller)
   13. Eulogy to the Anglo-Saxon race
   14. Authority: Rothschild, showing Gallatin's errors

F. Appeal to self-preservation
   1. To the South: Resist this innovation
   2. Ethical: "I represent equally capital-rent-wages as a Southern man"

III. Conclusion--peroration
   A. A country in which all the rich have been poor
Legare spoke only when he felt there was a pressing need for him to do so. The speeches he made in South Carolina were demanded of him to fight the growing movement of nullification. His several occasional addresses were made at the urgent request of his friends of the Unionist party. Legare considered his speeches in Congress and those in the Harrison campaign as part of a national necessity. His pleadings were a part of his profession.

Much of Legare's adaptation, insofar as subject matter and arrangement were concerned, was, consequently, determined more by the premises he upheld than by any variation in audience composition. With the exception of the Harrison campaign, his audiences were similar. In the South Carolina legislature and in Congress his eloquence was directed, for the most part, to preserving the status quo against a vehemently proposed change. Only in the Harrison campaign and in his advocacy in Congress of a Southern naval depot did Legare strive to move his audience to affirmative action. Clarity of logical presentation was, therefore, the chief element that guided his arrangement and subject matter.

The arrangement he chose was usually the one which most clearly presented his point of view upon a debatable

B. Example: The picture of the signers of the Declaration which hung in the rotunda
1. Appeal to altruism: "Two out of five of that immortal committee were mechanics"
2. Appeal to pride: "... that generous emulation which every thing in their situation is fitted to inspire"
premise. The introduction, by analogy or example, presented the points he would argue and from which the argument would necessarily ensue. In House debating—when the preceding arguments precluded the necessity of further elaboration—his introductions were comparatively brief. Such was true of his speeches on the Recognition of Hayti, Official Defalcations, and Arbitrement of National Disputes. Yet, in the Southern Naval Depot speech fully one-third of his time was given to the introduction. He had entered the House late and had not heard what had been said before his arrival. Consequently, his preliminary remarks completely paved the way for his own argument.

Because Legare's speeches were invariably argumentative, they were selective and logical in topic arrangement. Each topic was, however, given exhaustive treatment. He examined it by analogy, by example, and by the opinion of authority. He reviewed it, departed from it, and returned to it, showing how it advanced the premises he was pursuing. Usually the topics were arranged in climactic order; each new idea grew out of the preceding one with a sense of inevitability.

In Legare's conclusions there was a greater audience


adaptation than in the other parts of his speeches. Often the peroration, or at least the climax, would be reached shortly before the end of the speech. Frequently his final words would suddenly be directed to a particular portion of the audience, usually the Southerners. This was true in his Sub-Treasury and Recognition of Hayti speeches in which his last words were uttered as an earnest, confidential warning. However it affected the Southern contingent, it must have been impressive to the rest of the audience, placed as it was, as onlookers and judges.

Legare achieved his greatest adaptation by means of variation in style and delivery. The two outstanding elements of his style were clarity and variety. Clarity he ever sought; never was a thought sacrificed to words. His speeches read with the same clear progression of thought as do his essays. In a few instances, it is true, his citations of authorities and his examples from remote sources went beyond the knowledge of his audience, especially in his pleadings, but these invariably arose from a previously laid groundwork of familiar material.

Legare's syntax was difficult to follow at times, although the thread of reasoning was never lost. Often one sentence would cover one-third or more of a printed page. His sentences always encompassed the thought. His parentheses, illustrations, comments, and contrasts were within the sentence. He enfolded and engulfed a thought
before he let it go. Even for his own age his sentences were long. He used short sentences, but entirely for rhetorical effect.

Whatever Legare said, he said consciously, carefully. If he "erred in his general manner of speaking, it was," as Preston remarked, "not accidental, but the result of a wrong judgment," for he did what he wished with words. An analysis of his paragraphs indicates his consciousness of choice. The following is a break-down as to sentence relationship of a paragraph near the conclusion of his Sub-Treasury speech:

<table>
<thead>
<tr>
<th>The sentences begin with the words:</th>
<th>Number of words in a sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sir (directed more to the South)</td>
<td>11</td>
</tr>
<tr>
<td>When your system</td>
<td>12</td>
</tr>
<tr>
<td>We told you</td>
<td>64</td>
</tr>
<tr>
<td>We told you</td>
<td>31</td>
</tr>
<tr>
<td>We reminded you</td>
<td>90</td>
</tr>
<tr>
<td>And we adjured you</td>
<td>83</td>
</tr>
<tr>
<td>Let well alone</td>
<td>18</td>
</tr>
<tr>
<td>Resist this uncalled for</td>
<td>18</td>
</tr>
<tr>
<td>Mark what your secretary</td>
<td>29</td>
</tr>
<tr>
<td>Go home, gentlemen of the South</td>
<td>51</td>
</tr>
</tbody>
</table>

The above analysis shows how Legare organized a paragraph as a unit complete in itself. The first sentence, beginning with "Sir," is introductory. The second is an exposition of the situation. The third, fourth, and fifth form an enthymeme (the prosperity of the South depends upon commerce; commerce depends upon cotton, and so on). The next sentence,

"Let well alone," is composed of only three words. But it shifts to the imperative mode, and that mode is retained throughout the last four sentences of the paragraph. The effect of this is to form a small peroration within the paragraph driving home the point.\(^4\&8\)

Most of Legare's sentences were declarative, although for effect he often made use of questions, commands, and exclamations. He seldom used inversion of word order; in fact, he avoided any device that called attention to itself. He shifted with ease from the indicative to the subjunctive or the imperative mode, using the last two as a strong element of his emotional proof. The subjunctive mode entered often into his use of ironical statement of conditions contrary to fact.

Legare made use of all varieties of syntax. Complex and compound sentences were scattered in almost equal proportion through his speeches. The simple sentence he used less frequently, and then usually for emphasis. He interspersed balanced sentences, often in groups of three, throughout his paragraphs; but never was the balanced structure allowed to continue to the point of dullness.

Ear-pleasing breaks in Legare's syntax were a prominent characteristic of his style. At one moment he would

throw out a comment intended for lawyers; at another, one meant for Southerners; and again, one of ridicule for an opponent's remarks. The result was that each member of his audience would now and then feel that Legare's thoughts were directed especially toward him.

The second element of Legare's adaptation lay within his word usage. His words were usually balanced equally between those of Latin, Old French, and Anglo-Saxon derivation. Latin words he used for clarity of thought, the Anglo-Saxon for warmth, and the Old French for variety. While such words as specie, confirmation, exculpation, and faction pointed out Legare's abstract ideas, the Anglo-Saxon glut, bare, low, end, heart, arm brought his thoughts to familiar ground. Such Old French terms as render, compeer, race, advert, folly, slavish added the distinction of novelty of sound. To these on occasion he added words from the German, the Spanish, or the Italian. All were part of his readily usable vocabulary and came to him at need. In asides or in his conclusions Anglo-Saxon and Old French predominated.

There were comparatively few tropes and figures of speech, such as metaphors and similes, in Legare's speaking. Rather he depended upon occasional abruptness: suddenness of transition, startling use of the epithet, the question, and the apostrophe. These were, for the greater part, amplifications of his reasonings. His ornaments were (1) pre-
sent in the same topic in many lights, (2) turning to ridicule the arguments of his opponents, (3) reducing what he had said to definition, (4) asking, then answering questions, (5) comparing analogous cases, and (6) citing examples.

Legare's greatest adaptation to his audience, however, lay in his delivery. In a day when Fourth of July declamations were considered models for eloquence, Legare was apparently conversational. Even as far back as 1831 Professor Henry Junius Nott of South Carolina College commented upon this quality:

The general idea of an oration is, far-fetched words, over-strained sentiment set forth in periods of lofty words and artfully modulated phrases. . . . Your speech I find produced a great effect on our young folks of the College. They were amazed to find that eloquence could be so much like common sense, common feeling and common talk.49

William Gilmore Simms, when editor of the Charleston Year Book, published an article that further points out this factor in Legare: The student by reading the speeches of Legare "will be taught how the simplest words in our language may be dignified by a fit use of them; and how the most ornamental and showy will appear only proper when used to finish and not merely to embellish."50


Before the Supreme Court Legare's delivery was adapted to the peculiar circumstances of the high bench, the nine justices, the greater formality. There he was more the discusser of issues, his manner completely at ease, intimate yet compelling. He was the eloquent persuader in the restricted sense that the Supreme Court demands of its speakers. He was unhurried as he presented his contentions or met the forensic thrusts of his opponents. His bodily movements were fewer, and his voice emphasized the conversational qualities. 51 His manner was casual but his delivery was permeated with an earnestness that was an essential element of his character. A Washington reporter was impressed with this trait: "His language made a strong impression upon me not only from its truthfulness, but from the fervent and heartfelt manner in which he poured forth his thoughts." 52

Throughout all of Legare's speeches there was a conscious and able use of rhetorical elements. His invention ranged throughout all knowledge. Clarity and variety went hand in hand. Style and delivery combined with ethical, logical, and emotional appeals to adapt his speeches to the occasion and to the audience he faced.

With such a rhetorical knowledge and with such

51 New York Commercial Advertiser, January 12, 1842.
52 Washington National Intelligencer, July 12, 1843.
success as his eulogists ascribe to him in the fields of oratory, why has Legare been practically ignored by the modern biographers of American speakers? Exponent as he was of all the oratory of the ages, why has Legare failed to attain recognition in the story of early nineteenth century oratory?

A few reasons suggest themselves. Paul Hamilton Hayne believed that because Legare was exceptional, he was forgotten by ordinary men: "The South, it seems, has been but too apt to turn coldly from the graves of those who, by exceptional endowments, extorted her admiration in life." But Hayne, in the same article, written thirty years after Legare died, belies his own statement by himself honoring the dead:

When the news of his death was spread abroad, it is no exaggeration to say, that the event was looked on as a National misfortune. Few, however, even then, possessed the means, or capacity, rightly to estimate his talents. A combination of intellectual faculties at once the most brilliant and the most profound, cultivated, strengthened, and made practically efficient, by a course of systematic discipline within the reach of few placed Legare alone among his contemporaries.53

Hayne's charge as to the neglect is not a sound one. Posterity does not neglect simply because it is her custom to do so. Causes other than the one assumed by Hayne have greater validity as reasons for the forgetfulness of posterity.

The first is that Legare died before he had made full use of his great powers. But conjectures along this line of thought, though interesting, are futile. The second reason is that Legare's greatest speaking was done before the Supreme Court, and his influence, consequently, was restricted. This, also, is not too valid a premise, for Legare was admittedly one of the country's greatest jurists, proclaimed so by critics from Preston to Parrington. The fact that his pleadings are not available to biographers, however, has kept the full portrait of Legare from the public.

A third cause is stronger. Legare never spoke unless forced to do so by some pressing need. This reticence accounts for the comparatively few speeches he made during his public life. As previously pointed out, his oratory in the South Carolina legislature was demanded by the growing threat of nullification. His compulsion in the Harrison campaign was the necessity of removing the Van Buren Administration from office. All of his debates in Congress sprang from an urgent feeling of public duty.

Legare never campaigned for any office for himself. For one reason or another, he refused speech opportunities again and again. His active responsibilities prevented his speaking more often. During his early years his nights were employed in study. From 1832 to 1836 he was out of the
country upon state business. After being appointed Attorney General he had no time for occasional speaking. As a consequence of this abstention from public utterance, and although he was proclaimed as an able speaker by many, Legare was actually heard by comparatively few. True, he had spoken in Charleston, Richmond, Washington, Baltimore, New York, Newport, and Boston; but, save for the few weeks he spoke during the Harrison campaign, he was unknown personally beyond those cities. When, at his death, there was a universal expression of national loss, it was more the character and intellect of Legare that was praised than his oratory. Few persons had actually heard Legare speak; most of them knew of him casually, by word of mouth or from spoken and written eulogies of those who had known him.

Yet at Legare's death, as Ticknor wrote, "the country, divided about every thing else, was beginning to look with great unanimity to him, from a perfect confidence alike in his talents, his principles and his honor." The dramatic suddenness of his death, when the bells of Boston, ringing in joyful celebration, changed to mournful tolling, and mail boats, their flags at half mast, carried the sad news to New York and Baltimore—all impressed upon the nation


55 Baltimore Sun, June 22, 1843.
the sense of a great loss. Although he had held a high position, he had been, as the National Intelligencer declared, "more an honor to his office than his office to him. . . . The stream of public sympathy therefore runs pure and clear through the channels of his personal character as a man and a citizen. It is the high-toned gentleman, the scholar, and the patriot, who is mourned." 56

Legare's primary thesis, indeed his guiding passion, had been that the United States had a great destiny. His insistence that the country must unite socially, economically, and politically in order to achieve national greatness was the antithesis of the principles of a Robert Barnwell Rhett, on the one hand, and those of the northern abolitionists on the other. That members of Congress saw and remembered him as a symbol of national unity is suggested by a letter written to Legare by William C. Dawson, Representative from Georgia:

When I look over this House & to the Senate and see so much littleness of soul, & paltry party movements among Southern men, I often say to myself--I really wish Legare were here to teach them patriotism. 57

Legare's patriotism was not a blind love of the Union. Nor was it merely an abstract idea. He realized the

---

56 Washington National Intelligencer, June 23, 1843.
57 Dawson to Legare, Washington, January 24, 1841. Chisolm Papers.
strength inherent in a cooperation among the states, a strength that could give to the individual a greater freedom than he had ever known. But Legare also believed that before man could enjoy such freedom he must bind himself with the highest of individual virtues and gain the knowledge needed to live in a harmonious social world. "True liberty, like true eloquence," he wrote," is founded on the most moral sentiments, and is incompatible with any other. . . . But it requires something more than this sublime spirit, rare as that is. Liberty is law—liberty is truth—liberty is reason, and always with right reason dwells, and from her hath no individual being."58

Legare, along with his friends Petigru and Huger, were, as Alexander Lawton remarked seventy-two years ago, "the product and outgrowth of that peculiar phase of Southern civilization which has probably now disappeared forever."59 He was brought up in a society of planters who looked to themselves and to their sons to be leaders, both politically and socially, by virtue of their own superior attainments. All were descended from men who had helped make the new country possible. All of them looked upon their responsibilities with the utmost seriousness. Among such

58"Cicero de Republica," Writings, II, 244.

men as these the most educated were Legare's friends. They chose him as editor of the Southern Review that he might produce an instructive work to raise the moral and intellectual standards of the South. As a result, all of the essays which he wrote were didactic in their purpose, and learnedly so. For four years, through that magazine, Legare set a pattern of public expression for his thoughts. His efforts, although exhausting his time and straining his patience, received universal acclaim.

It was only natural, then, that his later public addresses became a continuation of the teaching which had been so successful in his writings. Whenever he spoke he sought to elevate public taste. Late in life he declared to his friend, Waddy Thompson, that a good speech should be able, pungent, and in a severe style; and he added, "I lay a great stress on taste, which is sense."

His lifelong friendship with Ticknor and the Boston intellectual coterie strengthened Legare's conviction that public offerings, both written and spoken, should have teaching as their basic purpose. Ticknor himself was an important leader in American culture and is so considered by literary historians. It was understandable that Legare should wish to give to Charleston and, later, to a growing

60 Legare to Waddy Thompson, Charleston, April 22, 1840. Hugh Swinton Legare Papers. Duke University Library.
national audience, the same stimulus toward an elevated culture that Ticknor and his group had given to Boston and the New England states.

With this purpose always in his mind, it was essential that Legare be didactic in his writings and in his speeches, regardless of subject matter. Nor was there any indirection in his purpose. His earnestness prevented that, and a selfless service to the country proved it to the people. At his death the public genuinely mourned him when, as Justice Story said, they "had just learned to appreciate his inestimable value."^61

Legare's speeches, which were but one phase of his contribution, have grown dim in the mind of the American public. His contribution is, nevertheless, there, in our culture and in our institutions. While Legare did not give us our culture, he helped to define the standards which we accept. While he did not give us our institutions, those which he advocated are the ones which are standing today.

Legare, in final analysis, was an American intellectual who spoke and wrote from the perspective of a vast knowledge. It is not nearly so important to rank him as an orator as it is to be aware of the role he played in the development of American culture and life as we know it today.

---

^61 Story, "Tribute to the Memory of Mr. Legare," Boston Daily Advertiser, June 30, 1843.
BIBLIOGRAPHY

Manuscript Collections

Account Book of the Clerk of Court, Charleston District, 1821-1836. Records of the Secretary of State of South Carolina. Historical Commission of South Carolina.


Clerk of Court's Book, Charleston District, 1821-1846. Unfiled manuscript in the Historical Commission of South Carolina.


Gantt Register, 1821-1832. Historical Commission of South Carolina.

Governors' Messages. Historical Commission of South Carolina.


Hayne, Robert Y., Papers. South Caroliniana Library.

Huger, Alfred, Papers. South Caroliniana Library.

Legare, Hugh Swinton, Papers. Duke University Library.

Legare, Hugh Swinton, Papers, South Caroliniana Library.

Legare, Hugh Swinton, Papers, University of North Carolina Library. Chapel Hill, North Carolina.

Journals of the House of Representatives of the Legislature of the State of South Carolina, 1820-1832. Historical Commission of South Carolina.

Maxey, Jonathan, Papers. South Caroliniana Library.
Memoir of Hugh Swinton Legare, Chisolm Papers.

Minutes of the Clariosophic Society. South Caroliniana Library.

Minutes of the Faculty, South Carolina College, 1812-1815. Office of the Treasurer, University of South Carolina, Columbia, South Carolina.

Miscellaneous Manuscript Collection. South Caroliniana Library.

Miscellaneous Papers, South Carolina College Collection. South Caroliniana Library.

Miscellaneous Papers, Unfinished Business, 1824. Historical Commission of South Carolina.

Mortgage Book SSS, 1821. Records of the Secretary of State of South Carolina. Historical Commission of South Carolina.


Poinsett, Joel Roberts, Papers. South Caroliniana Library.

Proceedings of the Board of Trustees, South Carolina College, 1811-1815. Office of the Treasurer, University of South Carolina.


Rough Minute Book of the Clerk of Court, Charleston District, 1821-1832. Historical Commission of South Carolina.

South Carolina College Collection. South Caroliniana Library.

Documentary Publications and Collections


Catalogue of the Rare and Valuable Private Library of the 
Late Hon. Hugh S. Legare. Washington City, 1846.


Directory and Strangers’ Guide for the City of Charleston. 
Charleston, 1822, 1831.

Executive Documents of the House of Representatives, 25 

Exposition and Protest, Reported by the Special Committee of 
the House of Representatives on the Tariff . . . , 

Washington, 1900.

Boston, 1897.

The Journal of the Free Trade Convention, Held in Philadelphia, 
From September 30 to October 7, 1831; and their Address 
to the People of the United States: to which is added a 
Sketch of the Debates in the Convention. Philadelphia, 
1831.

Mills, Robert, Statistics of South Carolina, Charleston, 1826.

The Original Institution of the General Society of the 
Cincinnati as formed by the Officers of the Army of the 
United States . . . together with the Rules and By-Laws 
of the State Society of South Carolina, as adopted at 
an extra meeting, July 13, 1803. n.p., n.d. South 
Caroliniana Library.

The Register of Debates, 23 Congress, 1 Session, 1834. 
Washington, 1834.

Senate Executive Documents, 25 Congress, 1-3 Sessions, 1837- 
1839.

Legal Documents

Bailey, Henry. Reports of cases argued and determined in the 
court of appeals of South Carolina, on appeal from the 
courts of law, /1828-1832/. Charleston, 1833, 1834. 2 
Gases in equity argued and determined in the court of appeals of South Carolina, containing cases from January 1830, to April, 1831, inclusive. Charleston, 1841 (8 S.C. equity).

The Bank Case, A Report of the Proceedings in the cases of The Bank of South Carolina, and the Bank of Charleston upon Scire Facias to Vacate their Charters, for Suspending Payments, with the Final Argument and Determination thereof, in the Court for the Correction of Errors of South Carolina in the years 1842 and 1843. Printed by order of the Legislature of South Carolina. Charleston, 1844.


Conner, James. A Digest of the cases decided in the law court of appeals of the state of South Carolina, from June term, 1835, to December term, 1854. Charleston, 1855.

Chisolm, J. Bachman, and Simeon Hyde, Jr. An index-digest of the reports of the supreme court of South Carolina, embracing all the reported decisions, both law and equity, from the organization of the court (Bay's Reports) to the present date (14 S.C.); and also the manuscript decisions cited in Rice's digest, [1783-1880]. Charleston, 1882. 2 vols.


McMullan, J. J. Cases at law, argued and determined in the court of appeals of South Carolina . . ., to which are added cases omitted by former reporters from 1835 to 1840, /T840-1842/. Columbia, 1841, 1843. 2 vols. (26-27 S. C. law).

Equity cases, argued and determined in the court of appeals of South Carolina . . ., from November, 1840, to May, 1842, both inclusive. To which are added cases omitted by former reporters from 1827 to 1837. Columbia, 1842. (16 S. C. equity).


Rice, William. A digest of the cases decided in the superior courts of the state of South-Carolina; from the earliest period to the present time with tables of the names of the cases, and of titles and references. Charleston, 1838. 2 vols.

Reports of cases in chancery, argued and determined in the court of appeals and court of errors of South-Carolina, from December, 1838, to May, 1839, both inclusive. Charleston, 1839. (14 S. C. equity).

Reports of cases at law, argued and determined in the court of appeals and court of errors of South-Carolina, from December, 1838 to May, 1839, both inclusive. Charleston, 1839. (24 S. C. law).


Simonton, Charles H., and James Conner. A digest of the equity reports of the state of South-Carolina, from the revolution [1787] to December, 1856. Charleston, 1857. 2 pts.


Newspapers and Periodicals

Albany Advertiser, 1840.
Albany Argus, 1837-1840.
Albany Evening Journal, 1839-1840.
Albany and New York Log Cabin, 1840.
Baltimore Sun, 1843.
Boston Courier, 1837-1843.
Boston Daily Advertiser and Patriot, 1839-1843.
Boston Daily Atlas, 1840; 1843.
Boston Daily Mail, 1843.
Charleston Courier, 1800-1843; 1845.
Charleston City Gazette, 1792; 1793.
Charleston Gazette, 1806-1810.
Charleston Mercury, 1820-1843.
Charleston Messenger, 1833-1834.
Charleston Southern Patriot, 1820-1840.
Columbia Southern Times & State Gazette, 1829-1832; 1836.
Columbia Southern Chronicle, 1840-1842.
Columbia Southern Journal, 1842.
Columbia State Gazette, 1829.
Columbia Telescope, 1838.
Cooperstown (N. Y.) Otsego Republican, 1840.
Edgefield (S. C.) Advertiser, 1840.
Macon Georgia Messenger, 1838.
Mobile Commercial Advertiser, 1836; 1840; 1843.
Newark Advertiser, 1840; 1843.
New York Commercial Advertiser, 1840-1843.
New York American, 1836; 1839-1840.
New York Evening Post, 1836.
New York Express, 1839-1840.
New York Herald, 1840.
Niles' Weekly Register, XVII (September, 1819)-LII (September, 1837).
Niles' National Register, LIII (September, 1837)-LXVI (March, 1844).
Pendleton Messenger, 1826-1831.
Poughkeepsie (N. Y.) Journal, 1840.
Richmond Compiler, 1830-1840.
Richmond Whig and Public Advertiser, 1839-1840.
Richmond Yeoman, 1840.

South Carolina State Gazette & Columbia Advertiser, 1827-1828.

Southern Literary Messenger, XXIV (March, 1857).

Washington Madisonian, 1837-1843.


**Reminiscent Works, Diaries, Autobiographies, and Biographies**


Barnes, Thurlow Weed, Memoir of Thurlow Weed, 2 vols. Boston, 1884.

Butler, Charles, Mémoire of the Life of Henry Francis D'Aguessaue, Chancellor of France; and his Ordinances for consolidating and amending certain portions of the French law; And an historical and literary account of the Roman and Canon Law. London, 1830.


Dickey, Dallas C., Seargent S. Prentiss, Whig Orator of the Old South. Baton Rouge, 1940.


Preston, William C., "Eulogy on Hugh Swinton Legare; delivered at the request of the City of Charleston, November 7, 1843." Charleston, 1843.


Special Articles

Bridenbaugh, Carl, "Colonial Newport as a Summer Resort," Rhode Island Historical Collections, XXVI (January, 1933), 1-24.

Caroliniensis con the arrest of a British seaman, in answer to Judge Johnson's opinion. Charleston, n.d.


"H. S. Legare, Late Attorney General of the United States," Southern Literary Messenger, IX (September, 1873), 570-574.

"Hugh Swinton Legare," The Southern Review, VII (January, 1870), 123-158.
"Letters of Dr. Thomas Cooper, 1825-1832," *American Historical Review*, VI (July, 1901), 725-765.

"Life and Labors of Hugh S. Legare," *The American Review*, II (October, 1845), 416-430.


"Oration Delivered to the South Carolina Historical Association . . ., May 27, 1858," *Collections of the South Carolina Historical Society*. Charleston, 1858.


"Poinsett-Campbell Correspondence," *South Carolina Historical and Genealogical Magazine*, XLIII (January, 1942), 27-34.


"Tribute to the Memory of Mr. Legare, by Mr. Justice Story," *Boston Daily Advertiser*, June 30, 1843; Philadelphia *Christian Observer*, July 12, 1843.


**General and Special Histories**

Bancroft, Frederick, *Calhoun and the South Carolina Nullification Movement*. Baltimore, 1926.


Crabb, George, A History of English Law, or an attempt to trace the rise, progress, and successive changes of the common law; from the earliest period to the present time. n.p., 1831.


Dunlop, John, History of Roman Literature, from its earliest period to the Augustan age, 2 vols. Philadelphia, 1827.


Howe, George, History of the Presbyterian Church in South Carolina, 3 vols. Columbia, 1883.


LaBorde, Maximilian, History of the South Carolina College. Columbia, 1859.


O'Neall, John Belton, Biographical Sketches of the Bench and Bar of South Carolina, 2 vols. Charleston, 1859.


Parks, Edd Winfield, Segments of Southern Thought. Athens, 1938.


Rocker, Rudolf, Nationalism and Culture. Los Angeles, 1937.


Writings and Printed Speeches of Legare


"Bryant's Poems," Southern Review, VIII (February, 1832), 443-462.


"Cooper's Bravo," Southern Review, VIII (February, 1832), 382-399.

"Crafts' Fugitive Writings," Southern Review, I (May, 1828), 503-529.

"D'Aguessaueau," Southern Review, VIII (February, 1832), 399-443.


"Demosthenes, the Man, the Statesman, and the Orator," The New York Review, IX (July, 1841), 1-70.


Four essays on "One of the People," by James Hamilton, Jr., Charleston Southern Patriot, October 2, 3, 4, 5, 1821.


Letter from the Hon. Hugh S. Legare on the probable effects of the Sub-Treasury policy with the specie clause to His Excellency, Pierce Butler, Governor of South Carolina. Washington, 1838.

"Lord Byron's Character and Writings," Southern Review, V (May, 1830), 463-522.


"On Internal Improvements in South Carolina," Camden Journal, September 6, 1828.


"Speech of Mr. H. S. Legare of South Carolina, on the Bill Imposing Additional Duties as Depositaries in certain cases, on Public Officers." Delivered in the House of Representatives, U.S., October, 1837. Washington, 1837.

"Speech of Mr. H. S. Legare on the Bill Making Appropriations for Preventing and Suppressing Indian Hostilities," June 4, 1838. Washington, 1838.


"Washington Birthday Speech," 1832, Charleston Courier, February 24, 1832.

Writings of Hugh Swinton Legare, Late Attorney General of the United States; consisting of A Diary of Brussels, and Journal of the Rhine; extracts from his Private and Diplomatic Correspondence; Orations and Speeches; and Contributions to the New York and Southern Reviews prefaced by a Memoir of his life. Edited by his sister. 2 vols. Charleston, Philadelphia, New York, Boston, 1846.
The writer was born on May 12, 1904, in Rockford, Illinois. He received his A.B. from Beloit College in 1926 and then taught in private schools, Racine College, 1927-1929, and Indian Hill Academy at Winnetka, Illinois, until 1934. He received his M.A. at Northwestern University in 1937. After two years of teaching at Armour Institute of Technology in Chicago he became an instructor at the University of South Carolina. During the second World War he taught navigation in the V-5 Program at that university. In 1946 he returned to civilian instruction, and was promoted to an adjunct professorship. In 1948 he was given the rank of associate professor in the Department of English.
This dissertation was prepared under the direction of the chairman of the candidate's supervisory committee and has been approved by all members of the committee. It was submitted to the Dean of the College of Arts and Sciences and to the Graduate Council and was approved as partial fulfillment of the requirements for the degree of Doctor of Philosophy.

January 30, 1954.

[Signature]
Dean, College of Arts and Sciences

[Signature]
Dean, Graduate School

SUPERVISORY COMMITTEE:

Dallas C. Dickey, Chairman

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]