

THE AUTHORSHIP OF THE FEDERALIST

THE arguments presented by Professor Bourne in the last number of the AMERICAN HISTORICAL REVIEW on the authorship of the disputed numbers of *The Federalist* appear to me open to a very serious objection so far as they attempt to prove the authorship by mere resemblance to ideas to be found in other writings of the same men, or by the use of certain authorities in their references. Any one who has studied the period in which *The Federalist* was written must realize that the air was filled with certain principles and facts, which were used by the writers of *The Federalist* as well as by many others, and for this reason any attempt to settle the question of the disputed numbers from mere similarity of thought is necessarily unsafe. From the letters of "Brutus," the great opponent of "Publius," could be selected a series of extracts that would go far to prove that the former was the writer of the disputed numbers of *The Federalist*. The same conditions which produced a dispute as to authorship served to produce a likeness in the essays; for they were penned by men who had been reading the same books and listening to the same debates, and whose minds were therefore necessarily for the moment steeped with the same material. Undoubtedly, too, there was some consultation between the writers of "Publius," with inevitable mutual coloring, and the letters were written with such haste that no one essay could especially impress itself on the mind of the writer. But an even greater cause than this matter of "stock" phrases and exchange of ideas, for the confusion and resulting contradiction of the writers, was the fact that both Hamilton and Madison were members of the conventions called in their respective states to discuss the constitution, and in their speeches, necessarily, went over the same points that had been discussed in *The Federalist*. Hamilton was charged by an enemy with "retailing" Publius to the New York state convention, and a reading of Madison's speeches in that of Virginia shows that he, too, made

large drafts on *The Federalist*.¹ When, therefore, the moment came that its writers could look over the collected edition it is not strange that much of it read so familiarly to each that he honestly thought himself the writer. Granting the possibility, therefore, that both men should be misled, the question becomes not what each author thought, but purely what other evidence than their opinions goes to prove.

But before dismissing this question of memory one fact of value cannot be omitted. Madison left New York three days after the last essay in dispute was published, and was at once engaged in the heat of party strife in Virginia, tending to obscure his memory on the question of authorship, and making it improbable that he could give the volumes of *The Federalist*, when they presently appeared, any careful examination for some time. Strange though it may appear, Madison apparently possessed no copy of the first edition, having presumably given away all those sent him by Hamilton.² On the other hand, while Madison was engaged in occupations likely to make him forget or confuse the part he had borne in the undertaking, Hamilton was revising the newspaper articles and seeing them through the press for the book edition. There is not an essay in the collected edition of 1788 in which he did not make from ten to twenty verbal corrections, implying careful study of the text, and as this revision was done within two months of the appearance of the essays in the newspapers, and before Hamilton had confused matters by "retailing Publius" in the New York convention, it is obvious that he refreshed his memory in a way most certain to fix the authorship clearly in his mind.

These facts being considered, it becomes of importance to find what is the earliest date at which each of the disputants asserted his claim of authorship. So far as is known, Madison's was first noted in a copy of the edition of *The Federalist* printed in 1799, or eleven years after the appearance of the essays. Hamilton's earliest statement was made to Chancellor Kent, and as he is spoken of in the memoranda as "general Hamilton" it must have been made while he held that rank, or in the years 1798 or 1799. Thus both assertions practically rest on equal ground, so far as time is concerned.

But one piece of evidence deserves mention, because it seemed at one time to threaten that Madison's claim was to be lost by default. Hamilton's list was published in a widely read periodical in

¹ From these Professor Bourne, by parallel columns, cites extracts to prove that Madison wrote the disputed numbers. But would it not be as good evidence if he quoted the paraphrasing of Montesquieu in *The Federalist* to prove that "Publius" wrote the *Esprit des Lois*?

² His copy was one of the edition of 1799.

1807, and the edition of *The Federalist*, printed in 1810,¹ gave further currency and authority to Hamilton's view by ascribing the numbers according to one of his statements. Yet not one word of denial was publicly made by Madison, or by any of his friends for him, until 1817. It has been urged in explanation that Madison's official positions prevented his entering into a controversy, but an adequate reply is furnished by the fact that through his friends the secretary of state and president conducted several newspaper controversies in these very years.

Another point worth considering is the fact that Hamilton held by far the readier pen, and as the originator of the series undoubtedly intended to take the laboring oar. Madison was the last one of the three to join in the undertaking, and in the first thirty-six essays he wrote but two entirely by himself, the remaining three in which he bore a part having been begun as well by Hamilton. With this in mind let us consider a circumstance that marks a peculiarity in Madison's chief share of the work.

At No. 37 Hamilton for the time being ceased all work,² and Madison took up the task and wrote twelve consecutive essays, immediately following which come the twelve in dispute. The question naturally arises, Why should Hamilton suddenly transfer to Madison the continuance of the series, throwing upon him all the work? and the reason is not far to seek. No. 36 of *The Federalist*, or the last of Hamilton's contributions, was published on January 8. On January 15 the New York Supreme Court began its winter term, and Hamilton, as a busy lawyer, was called upon to attend

¹ One fact of interest in this edition is that it gives Hamilton as the author of No. 54, thus showing that there was a list "in his own handwriting" in existence at that time which corrected the obvious error he made in the Benson list.

² A very valuable piece of evidence on this question of authorship has been buried from sight by the mistakes of Hamilton's two editors in labelling a paper printed in both editions as a "Brief of Argument on the Constitution of the United States," though the manuscript of the paper bore no heading whatsoever. Study of it should have clearly indicated that it is a preliminary outline of *The Federalist* from the point at which Hamilton was interrupted in his composition by his legal and political occupations, and it was presumably drawn up as a guide for Madison in his continuance of the task. In accordance with this theory, we find the latter closely following, in the succeeding numbers, the outline here proposed, and by merely transposing the last portions headed "Powers" and "Miscellaneous Advantages" so that they precede that headed "Review" we have the arrangement of ideas adopted in *The Federalist* from the point at which Madison began. The syllabus is especially valuable in view of the dispute over the authorship, for it shows how sharp a line Hamilton drew between the "Powers" and the "Review" of the three departments, the latter being evidently considered by him as one synthetic whole. A comparison of No. 39 with "A" and "B" reveals how thoroughly Madison absorbed the syllabus in this number, and as that has been the most quoted of all those from Madison's pen the source of his ideas possesses much interest. See Hamilton's *Works*, II, 463.

it.¹ Furthermore, on January 11 the New York state legislature assembled, and Hamilton, who was a candidate for membership of Congress, was involved in a political campaign akin to the modern senatorial election. These joint occupations necessarily made such drafts upon his time that he could not continue *The Federalist*, and that there should be no break in it Madison assumed the entire task of carrying it on. The term of the court ended on January 25. We therefore have the choice of inferring that Hamilton at once resumed his work on *The Federalist* or else that he resumed it when Madison went south.²

Turning from these extraneous facts to those which can be drawn from the essays themselves, the first point deserving consideration relates to a condition implied by joint authorship. A moment's thought will suggest that a work produced in this manner must force upon each writer a little difficulty in maintaining in a nominally consecutive work an appearance of homogeneity. When an essay was to follow one written by the same author sequence was possible, but when it was to succeed one he had not written or read, the task was not easy. Necessarily, then, one would expect a certain disjointedness of connection, and this is the very thing one does find on examining the points where a new writer assumed the pen. Thus No. 10, by Madison, is an essay on faction, yet though the preceding letter was on the same subject, No. 10 does not continue the first, but is a distinct essay. Following this are three essays on the defects of the Confederation, by Hamilton, and then comes No. 14, by Madison, which is really a continuation of No. 10, and marks therefore an absolute break in the subject of both the letters which precede and those which follow it. If the authorship of these six numbers were not known, it would be possible to decide, from internal evidence, at what points a different writer undertook the labor. Nor does the obvious difference between a man opening an essay which follows one by himself as compared with his following one by another fail to show itself at every change of writer that is known to have occurred. By examining the opening phrases of Nos. 10, 14, 18 and 37, in which Madison began his contributions, the disconnection with the preceding numbers is made obvious, and the same is true of Nos. 2 and 64, in which those by Jay began. But

¹ That the courts gave Hamilton so much occupation as to force him to suspend his work on *The Federalist* is proved in a letter from him to Madison in April, 1788, when he wrote: "If our suspicions of the author be right he must be too much engaged to make a rapid progress in what remains. The Court of Chancery and the Circuit Court are now sitting." Turning to *The Federalist* we find at this very point a gap of over two months in the publication of a number.

² No. 48 was published on Feb. 2. Madison went south on March 4.

most marked of all are the opening sentences with which Hamilton resumed his part, and as they are of value, in the present consideration, they are quoted here :

No. 6. "The last three numbers of this work have been dedicated to an enumeration of the dangers"

No. 11. "The importance of the union in a commercial light"

No. 15. "In the course of the preceding papers I have endeavored"

No. 21. "Having, in the last three numbers, taken a summary review"

Here, then, in three cases are evident attempts to attach new subjects to previous essays so as to imply a sequence that was absent in the subjects and treatment. With this as a clue, if we run through the letters from No. 37 to No. 63 (after which there is no dispute), but two natural breaks are to be found, at Nos. 47 and 52, which severally begin :

No. 47. "Having reviewed the general form of the proposed government"

No. 52. "From the more general inquiries pursued in the four last papers"

If the analogy of the previous openings is allowed as evidence, it is at one of these two points, then, that we should conclude that a new writer had begun.

With these facts to work upon, an examination of the five essays, Nos. 47 to 51, shows them to be a discussion of the apportionment of the powers of government among the three departments. The general extent of these powers had been already discussed in the immediately preceding numbers, and a more minute survey of their relation to the three departments is the subject of the remaining essays almost to the end. They can therefore be considered as belonging to either. From Madison himself, however, we get a clue, for in No. 41 he distinctly assigns them to the second series.¹ But whether this is accepted as proof or not, an examination of the five forces the inference that they were all written by one man.

The authorship of Nos. 37 to 48 is given to Madison by every known list, so it is difficult to avoid concluding that the apparent

¹ "The Constitution proposed by the Convention may be considered under two general points of view. The FIRST relates to the sum or quantity of power which it vests in the Government, including the restraints imposed on the States. The SECOND, to the particular structure of the Government, and the distribution of this power among its several branches.

"Under the first view of the subject two important questions arise: 1. Whether any part of the powers transferred to the General Government be unnecessary or improper? 2. Whether the entire mass of them be dangerous to the portion of jurisdiction left in the several States?" (Opening paragraphs of No. 41.)

break between Nos. 46 and 47¹ merely represents the beginning of a new subject by the same pen, and not a change of writer. Furthermore we have the excellent authority of James Kent for the statement that "Mr. Hamilton told me that Mr. Madison wrote 48 and 49, or from p. 101 to 112 of Vol. 2d." No. 50 was almost surely written by the same hand which penned No. 49, and No. 51 was certainly composed by the writer of No. 50. Furthermore these essays discuss the powers chiefly from the historical and theoretical standpoints, views for which Madison had strong predilections. A candid survey of the facts therefore will, we think, lead every unbiased student to agree with Professor Bourne in assigning them to one author, and the balance of evidence certainly points to James Madison.²

But the same internal evidence shows that with No. 52 a minute and homogeneous examination of the structure of the government is begun, in which the three departments are analyzed point by point. That one man wrote Nos. 52 to 58, that a second contributed Nos. 59 to 61, that then the original writer resumed his work in Nos. 62 and 63, and that finally the task was again assumed by the second writer and completed by him, the essays themselves give no evidence. With the exception of the insertion of one essay (No. 64, on the treaty-making power of the Senate, which was given to Jay because of his diplomatic experience), it is difficult to resist the conviction that the whole remainder of the letters is the work of one writer and one prone to take the practical rather than the theoretical view of things.

¹One curious fact to which attention has never been called is that Taylor, in his *New Views of the Constitution*, 1823, divides the authorship at No. 46, giving No. 47 and all that follow to Hamilton. Yet though he was the friend and correspondent of Madison, and though this book was well known to the latter, neither publicly nor privately, so far as is known, did he correct Taylor's conclusion.

²One rather singular piece of evidence contradictory to the above conclusion is furnished by the comparative length of the different essays. When examining in the newspapers the original text of *The Federalist*, my attention was called to the fact that the letters contributed by Hamilton rarely overran a column and a half, while those by Madison seldom filled less than three columns. I therefore carefully estimated the lengths of each man's work, to find that the average length of the fifty essays unquestionably written by Hamilton is 1800 words; of those certainly written by Madison 3000 words. Madison wrote in the undoubted numbers (Nos. 10, 14, 37-46) but two essays of less than 2300 words, and Hamilton but once wrote one of 3000 words, except in the last five, when an evident attempt was made to finish the series up quickly. Testing Nos. 49 to 58 and Nos. 62 and 63, the average length is found to be 1800 words. No. 47 contains 2700 words; No. 48, 1800 words; No. 49, 1600 words; No. 50, 1100 words; No. 51, 1800 words; No. 52, 1700 words. It is needless to add, to any one who has studied the writings of the two men, that the difference between the two styles in this very respect is most noticeable. Madison is wordy and seems to have little ability to express an idea with brevity. Hamilton is direct and compact to an extent which made him a famous draftsman in his day, and few men have ever equalled him in his power of stating a thing tersely.

Examining Nos. 52 to 58 and 62 and 63 in detail, we find several small facts which throw light on the question of authorship. In Nos. 52, 56, 57, 58 and 63 are citations of examples in English history, like reference being numerous in many of Hamilton's essays, but only two passing references to Great Britain are to be found in any of those written by Madison.¹ The same difference is noticeable in the papers prepared by the two writers for the use of the Federal Convention—Hamilton's "Brief" of his speech, and Madison's "Notes"—the first citing British example frequently, the latter not once.²

In Nos. 53, 54 and 56 are paragraphs discussing taxation, and the first and last of these letters also discuss the militia, both of which subjects Hamilton had familiarized himself with, and which he had made his own topics in the earlier essays.

No. 54 is a discussion of slave representation, written nominally from the southern point of view, but really from the northern. Not once did Madison allude to this famous clause in the Virginia convention, but Hamilton spoke a résumé of this essay in that of New York. The cause for this is obvious: the "federal number" needed no defense in Virginia; in New York the contrary was true. But an even greater reason for Hamilton's taking up this particular point was the fact that on February 7, 1788, there had appeared in the *New York Journal* a letter entitled "The Expositor" savagely attacking the slave compromise and charging of Hamilton himself that "The delegate from this state acceded to it alone on the part of this state" and adding "I cannot help thinking it a most daring insult offered to the freemen and freeholders of this state, besides being an unparalleled departure from his duties to this state as well as to the United States." Necessarily this attack could not be disregarded, and the impersonal reply to it in No. 54 was published exactly one week later, on February 14. It seems almost conclusive under these circumstances that it was written by Hamilton. Another opinion in this number furthers this probability. The writer praises the "federal number" on the ground that it introduces through the slave a partial representation of property. This was a favorite idea of Hamilton's, for which he had spoken in the Federal Convention, and for which he praised this clause in one of his speeches in the New York convention. To this idea of property representation Madison was absolutely opposed.

¹ I omit here the résumé in No. 47 because, from what has already been shown, this number cannot be positively ascribed to Madison.

² In Madison's supplementary notes, prepared for use in the Virginia Convention, he cites British example, but this was after *The Federalist* had called his attention to the value of the material.

In No. 52 the writer is in doubt as to the term of office of the colonial assembly of Virginia before the Revolution; a fact so notorious in that state that it could not have been unknown to Madison.

In No. 63 the writer praises the British House of Lords, something Madison would not have done. Hamilton on the contrary had been most open in his admiration of the British government, and so admired this particular branch of it that he had but just modelled the senate in his proposed constitution as closely upon it as he could. This essay, too, devoted a paragraph to the senate of Maryland, which Hamilton had already noticed with some attention in his "great" speech in the Federal Convention.

In Nos. 54 and 57 the mention of local circumstances, of New York state, of New York city, and of Albany county, point to the knowledge of Hamilton rather than to that of Madison.

Finally and most conclusive, in the republication in 1788 of the letters in book form, Hamilton inserted in the newspaper text of No. 56 a paragraph relating to military affairs, and as he was scrupulous in correcting the numbers not written by himself to limit his changes to merely verbal improvements, this addition amounts to an assertion of authorship within two months of its writing. Strangely enough, in the edition of 1818 in which "the numbers written by Mr. Madison" were "corrected by himself," this insertion of Hamilton's was retained.

From the preceding facts, in which, so far as possible, all evidence that is of value has been included, without regard to whether it told for or against a particular man, it appears that Madison probably wrote Nos. 49 to 51, and Hamilton Nos. 52 to 58 and Nos. 62 and 63, of those essays on which we find their testimony in direct contradiction.

PAUL LEICESTER FORD.

REMARKS BY PROFESSOR BOURNE.

MR. FORD'S paper, upon which I am invited to comment, offers a different solution from the one reached in my article in the last issue of the REVIEW, and the method employed is also different. His conclusion is at variance with all the lists, while mine is in accord with Madison's testimony. The amount of evidence necessary to prove a conclusion contrary to the combined testimony of Hamilton and Madison is obviously much greater than that required to prove a case in harmony with the assertions of either one.

Mr. Ford begins by objecting to conclusions drawn from comparisons of language and thought. A general objection of this sort

has little weight. Every piece of historical criticism must stand or fall on its own merits. Internal criticism may be applied in a rash or an ignorant fashion, but it must be met point by point. Mr. Ford has failed to examine my method with care or he would not have made the comparison about the *Esprit des Lois*, nor alleged that I quoted Madison's speeches in the Virginia convention to prove that he wrote the disputed numbers. I did that only once, p. 453, and, if that instance is examined critically, it will be seen that it was perfectly legitimate. All the other parallel passages from Madison are from his letters or memoranda written before *The Federalist*.

The next point that Mr. Ford makes is that Madison's opportunities for remembering the facts about the authorship of the disputed numbers were not as good as Hamilton's. That may be true as he puts the case, but Madison was a methodical man, and he may have kept a list from the beginning. However that may be, in the only case that can be tested with absolute certainty, that of the authorship of Nos. 18, 19 and 20, I have shown that Madison did remember the facts far more exactly than Hamilton. Mr. Ford offers no instance where it can be proved that Hamilton was more nearly right than Madison.

Mr. Ford next tries to establish the earliest dates of Madison's and Hamilton's lists, but his conclusions cannot be accepted. In the first place it is an unsupported conjecture that Madison's list was no older than the date of the copy of *The Federalist* that he sent to Gideon in 1818, *i. e.*, not earlier than 1799. Second, we have Madison's own assertion that his list was an early one, if not substantially a contemporary one. He wrote Robert Walsh, in 1819, as follows: "If I have any interest in proving the fallibility of Mr. Hamilton's memory, or the error of his statement, however occasioned, it is not that the authorship in question is of itself a point deserving the solicitude of either of the parties; but because I had, at the request of a confidential friend or two, communicated a list of the numbers in that publication, with the names of the writers annexed, at a time and under circumstances depriving me of a plea for so great a mistake in a slip of memory or attention." (*Writings of James Madison*, III. 126.) Again in his letter to Paulding (1831), Madison says that his assignment, "if erroneous, could not be ascribed to a lapse of memory," but to a lack of veracity. He calls it "the distribution communicated by me at an early day to a particular friend, and finally to Mr. Gideon." Hamilton's lapse of memory he attributes partly to "the period of time, not less than — years, between the date of the *Federalist* and that of the memorandum." (*Writings*, IV. 176-177.) All this is decisively against

the unsupported hypothesis that Madison did not draw up his list until twelve years had elapsed.

Again, the fact that Chancellor Kent calls Hamilton "General" fixes the date only in one direction, *i. e.*, Kent would not have called Hamilton "General" at a date prior to his holding that rank; nor would he, on the other hand, cease to call him so after he had left the army. Such titles stick to men the rest of their lives. Dawson, for example, in his introduction styles Hamilton "General," but that does not indicate that Dawson wrote in 1798 or 1799.

The passage just quoted from Madison's letter to Walsh gives the probable reason why he did not enter the discussion earlier.¹

In regard to Mr. Ford's next point, relating to the subdivision of the work, I will refer to my previous discussion of that matter, pp. 446-447. The suggestion that what Lodge (I. 497) prints as "Brief of Argument on the Constitution of the United States" was a draft for Madison's guidance in writing his numbers is interesting, but it will hardly stand examination. It is intrinsically improbable that Hamilton would have thought it necessary to outline for Madison the line of argument to be followed in defending the details of a constitution which he more than anyone else had made, and in the making of which Hamilton had taken little active part. It is doubtful if Madison would have accepted any such subordinate position. John C. Hamilton (*Republic*, III. 519) identifies this piece as the draft of the latter part of Hamilton's speech of July 13. Inasmuch as the things to be discussed in a speech defending the constitution and in *The Federalist* are the same, the heads to be taken up would necessarily be almost identical. To fit this "Brief" to his hypothesis, Mr. Ford rearranges the heads or topics. Even then the likeness is noteworthy in only a part of the topics. The decisive argument against Mr. Ford's conjecture is the fact that some of the heads reproduce the topics of some of Hamilton's earlier numbers. Compare, for example, "D" of the "Brief" with *The Federalist*, No. 9; also, Powers II. with No. 22, and Powers I. with No. 23. Second, while the historical examples of republics cited by Madison in No. 39 could not be very different from those which Hamilton might cite, owing to the limited number of well-known republics,

¹ I am able to supply some information about the "list in his [*i. e.*, Hamilton's] own handwriting" from which the assignments were obtained for the edition of 1810. In the Virginia convention of 1829 Charles Fenton Mercer said: "This volume, the third of an edition of Hamilton's works, the editor of which, he supposed, had obtained his key to the names of the authors of Publius from a manuscript of Mr. Hamilton which he saw many years ago, in the possession of the late Richard Stockton, an eminent statesman of New Jersey." (*Virginia Debates*, 1829-30, p. 188.) The 1810 edition still assigned No. 64 to Hamilton.

yet the similarity between the two documents is mainly in the use of this common material. The portion of 39 which has been so frequently quoted is the analysis of the federal and national elements of the Constitution, and of this famous analysis there is not a vestige in Hamilton's "Brief."

Mr. Ford tries to show that it was his professional engagements that led Hamilton to suffer Madison to write twelve consecutive numbers, but Madison was early invited to take part, and the real question is not why he wrote so many after No. 37, but why he wrote so few in the first part (cf. my article, p. 446). Jay did not write more because of his illness during that winter. Mr. Ford's parallel example in April is not well taken, for the reason that although no more numbers were published in the journals for over two months the rest of the numbers were written in April or possibly earlier. May 4th, Hamilton wrote Madison: "The second [*i. e.*, volume of Publius] will be out in the course of a week." (*Writings*, VIII. 183.) When the first volume was issued, March 22, the publishers announced: "The second is in the press." (Dawson, p. lviii.) It is obvious that the last eight numbers were written and the second volume carried through the press at the time when Mr. Ford concludes that Hamilton suspended his labors.

Mr. Ford's argument from transitions and so-called breaks seems to me a very precarious one. In fact it breaks down just at the point where it ought to be strong. There is such a typical "break" at the beginning of No. 47, but as all the testimony is against a change of authorship at that point he concludes that the "break" merely indicates the taking up of a new subject by the same writer, whereas at No. 52, the evidence being conflicting, the "break" indicates a new writer and not a new subject, although the subject is new. An examination of these transitions in general seems to me to show that they are not significant unless you know beforehand what they mean.

In assigning Nos. 49, 50 and 51 to Hamilton Mr. Ford apparently does not realize that he raises Hamilton's certain errors to five (including 54 and 64), and proportionately strengthens Madison's testimony.

Mr. Ford next suggests a length-test, but if it is valid it counts against his conclusions in regard to Nos. 49-51; if he is right in these conclusions his length-test breaks down, for we have in that case four short papers from Madison in succession. On the other hand Nos. 62 and 63 contain about 2500 and 3000 words.

Mr. Ford ignores the striking break in continuity between Nos. 61 and 62, where 62 obviously joins on to No. 58.

The evidence from references to English history is unfairly weighed, because the cases in No. 47 are omitted on the ground that it cannot be positively ascribed to Madison. The only evidence against the unanimous testimony of all the lists in regard to 47 is the extremely equivocal transition or "break" test. It is impossible to believe that Madison, who was one of the most careful students of history of the time, had to have his attention called by Hamilton to the utility of examples from English history. I have called attention to the fact that Madison was reading at this time Burgh's *Disquisitions*, which are quoted in No. 56. Madison's "Notes" being "Notes of Ancient and Modern *Confederacies*," would not naturally contain facts about England.

In regard to No. 54, I will refer to the points made in my article, p. 452. As the number is put into the mouth of a Southern statesman, whether Madison or Hamilton believed in the arguments is irrelevant; the only requirement is that the arguments should be such as a Southerner would use.

That Madison was "absolutely opposed" to property representation is asserted without evidence, and, in fact, is a mistake. He wrote in 1785: "In a general view, I see no reason why the rights of property, which chiefly bears the burden of government, should not be respected as well as personal rights in the choice of rulers." (*Writings*, I. 181; cf. also p. 187.)

In regard to the uncertainty expressed in No. 52 on the term of the Virginia assembly, it may be said that as "Publius" pretended to be a citizen of New York, that uncertainty might have been assumed as a natural touch for a New Yorker.

There is no praise for the House of Lords in No. 63. It is merely cited to prove that there is no danger to be feared from the organization of the Senate when an aristocratic body like the Lords have not been able to hold their own against the Commons.

The reference to the senate of Maryland, as far as it goes, points to Madison's being the author of No. 63, rather than Hamilton. In the Convention Madison said of it: "In no instance had the Senate of Maryland created just suspicions of danger from it." Hamilton, on the other hand, said: "The Senate of Maryland has not been sufficiently tried." (Scott's ed. of the *Debates*, pp. 155 and 182; cf. also Madison's favorable opinions in his *Writings*, I. 177 and 186.)

The mention of local circumstances of New York state, etc., in Nos. 54 and 57 contains nothing beyond the ordinary knowledge that an intelligent man would acquire in a few months' residence. Furthermore there are similar references to several other states in No. 57.

As for the insertion of an additional paragraph in Number 56 when it was republished in the edition of 1788, the conclusions Mr. Ford draws are by no means so sure as they seem to him. When I wrote my article I took it for granted that Lodge was right when he said the insertion was first made in the 1802 edition, but the fact, first brought out by Mr. Ford, that it was made in 1788 puts a different face on the matter. The number was published February 19, and Madison did not leave New York till March 4. According to the announcement made March 22, a part of the second volume at least was already in the hands of the printers. It is not at all improbable that that insertion may have been made with Madison's assent, or by him at Hamilton's suggestion. We are informed that Hamilton was very scrupulous not to make changes in numbers not his own when the edition of 1802 was prepared, but any changes in Madison's numbers for the 1788 edition could have been made with his consent. In any case, with this possibility, the argument of Mr. Ford falls far short of conclusiveness. If the change were made with Madison's consent, the retention of the insertion by Madison in 1818 is explained.

EDWARD GAYLORD BOURNE.

DOCUMENTS

[Under this head it is proposed to print in each issue a few documents of historical importance, hitherto unprinted. It is intended that the documents shall be printed with verbal and literal exactness, and that exact statement be made of the present place of deposit of the document and, in the case of archives and libraries, of the volume and page or catalogue number by which the document is designated. Contributions of important documents, thus authenticated, will be welcomed.]

1. The First Charter to St. Edmund's Bury, Suffolk.

ALTHOUGH the name of Abbot Sampson of St. Edmund's has obtained an almost world-wide celebrity, through Carlyle's *Past and Present* and the late Mr. Green's *History of the English People*, his charter of liberties to the abbey's townfolk, on which the latter writer specially dwelt,¹ was but a confirmation of that which Anselm, an earlier abbot, had already granted them. As Anselm's charter, so far as I know, has never been printed, I here append it² not only for its value as a singularly early grant of town liberties, but also as possessing, perhaps, for American students a special interest from the connexion of Suffolk with the settlement of New England.

It is very unfortunate that the long period of Abbot Anselm's rule (1121-1148) prevents us from fixing closely the date of this charter. A careful analysis of the witnesses' names has not enabled me to narrow further the limit of date. We can, therefore, only say that it probably belongs to the early years of Stephen's reign. The document with which we should compare this charter is that which records, under Henry II., "the customs of Newcastle on Tyne" as they existed under Henry I. This document is printed by Stubbs in his well-known *Select Charters*, with an introduction which, I venture to think, minimizes the privileges it records, when it treats them as local bye-laws. They distinctly imply the existence of a community privileged above others.

It is very necessary to distinguish these records of "customary" privileges from a charter "giving" fresh ones, such as that of Archbishop Thurstan to Beverley, also printed in Stubbs's work. In the case of our document, it will be observed that Anselm speaks

¹ See also his paper on "Abbot and Town" in his *Stray Studies*.

² From Harl. MS. 639, fo. 5, a transcript of 1633 from Liber Niger of St. Edmund's, fo. 117 b.